# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 8-K

**CURRENT REPORT** 

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

Date of Report (Date of earliest event reported): December 18, 2023

## CONN'S INC.

(Exact name of registrant as specified in its charter)

	Delaware (State or other jurisdiction of incorporation or organization)	001-34956 (Commission File Number)	06-1672840 (IRS Employer Identification No.)		
	2445 Technology Forest Blvd., Suite 800 The Woodlands, Texas (Address of principal executive offices)		77381 (Zip Code)		
(936) 230-5899 (Registrant's telephone number, including area code)					
	eck the appropriate box below if the Form 8-K filing is intowing provisions:	ended to simultaneously satisfy the file	ing obligation of the registrant under any of the		
	Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)				
	Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)				
	Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.14d-2(b))				
	☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))				
Sec	urities registered pursuant to Section 12(b) of the Act:				
	Title of each class	Trading Symbol(s)	Name of each exchange on which registered		
	Common stock, par value \$0.01 per share	CONN	Nasdaq Global Select Market		
	cate by check mark whether the registrant is an emerging pter) or Rule 12b-2 of the Securities Exchange Act of 193		05 of the Securities Act of 1933(§230.405 of this		
			Emerging growth company $\square$		
	n emerging growth company, indicate by check mark if the or revised financial accounting standards provided pursu				

#### Item 1.01 Entry into a Material Definitive Agreement.

#### Investment Agreement

On December 18, 2023, Conn's, Inc. (the "Company") entered into an investment agreement (the "Investment Agreement"), among the Company, Franchise Group Newco BHF, LLC ("Newco BHF"), W.S. Badcock LLC ("Badcock"), Freedom VCM Interco Holdings, Inc. ("FVCM") and Franchise Group, Inc. ("FGI"). Pursuant to the Investment Agreement, Newco BHF contributed to the Company all of the issued and outstanding equity interests of Badcock and FVCM agreed to contribute residual interests in certain receivables currently held by B. Riley Receivables II, LLC ("BRR2") to Badcock upon the satisfaction of certain indebtedness of BRR2 in the future. In exchange for the contributions, the Company issued to: (a) Newco BHF 656,847.95 shares of Preferred Stock (as defined below); and (b) FVCM 343,152.05 shares of Preferred Stock. The Preferred Stock, subject to the terms set forth in the Certificate of Designation and approval by the stockholders of the Company, is convertible into an aggregate of 24,540,295 shares of Non-Voting Common Stock, which represents 49.99% of the issued and outstanding shares of common stock, par value \$0.01 of the Company ("Common Stock"), outstanding immediately following the closing after giving effect to the issuance of the Preferred Stock and assuming the conversion of the Preferred Stock into Non-Voting Common Stock. The closing of the contributions and the issuance of the Preferred Stock occurred simultaneously with the signing of the Investment Agreement.

Pursuant to the Investment Agreement, the Company has agreed to hold a stockholder's meeting (the "Special Meeting") to submit the following matters to its stockholders for their consideration: (a) the approval of an amendment to the Company's certificate of incorporation (the "Charter Amendment") to create a new class of non-voting common stock of the Company, par value \$0.01 per share ("Non-Voting Common Stock"); and (b) the conversion of the Preferred Stock issued to Newco BHF and to FVCM pursuant to the Investment Agreement into shares of new authorized and issued Non-Voting Common Stock (the "Conversion Amendment").

The Investment Agreement contains customary representations, warranties and covenants of the Company, Newco BHF, Badcock, FVCM and FGI.

#### Certificate of Designation

On December 18, 2023, the Company filed a Certificate of Designations of Nonvoting Convertible Preferred Stock (the "Certificate of Designation") with the Secretary of State of the State of Delaware in connection with the transactions contemplated by the Investment Agreement referenced in this Item 1.01 above. The Certificate of Designation provides for the designation of shares of the Company's Nonvoting Convertible Preferred Stock, par value \$0.01 per share (the "Preferred Stock").

#### Ranking and Dividend

The Preferred Stock ranks senior to the Common Stock with respect to dividends and distributions on liquidation, winding-up and dissolution. Holders of Preferred Stock are entitled to receive dividends on shares of Preferred Stock equal to, on an as if converted to Common Stock basis, and in the same form as dividends actually paid on shares of Common Stock. In addition, following the date that is six months following the receipt by the Company of the audited financial statements of Badcock, holders of Preferred Stock will receive dividends accruing daily on the basis of 12 30-day months and a 360-day year, at a rate of 8% per annum (the "Dividend Rate"); provided that following each dividend payment date, as described below, the Dividend Rate will increase 200 basis points, subject to a maximum Dividend Rate of 16% per annum; provided, further, that the Dividend Rate will automatically be increase to 16% per annum for such period that an event of default remains in effect (the "Preferred Dividends"). The Preferred Dividends will be cumulative and will be paid quarterly in arrears on the last day of March, June, September and December in each year and if nor paid on such date will compound and be added to the original issuance value.

#### Conversion

Effective immediately upon the receipt of stockholder approval, all Preferred Stock will automatically be converted into a number of shares of Non-Voting Common Stock as set forth in the Certificate of Designation. Upon such conversion, all shares of Preferred Stock will no longer be outstanding and holders of Preferred Stock will have no rights with respect to the Preferred Stock other than the right to receive the shares of Non-Voting Common Stock.

#### Voting

Except as otherwise required by law, the Preferred Stock does not have voting rights. As long as shares of Preferred Stock are outstanding, the Company will not, without the consent of the holders of Preferred Stock representing a majority of the shares of Preferred Stock: (a) amend the Company's certificate of incorporation or the Company's bylaws, if such amendment would materially and adversely affect the rights, preferences or privileges of the Preferred Stock as compared to the rights of other equity securities of the Company; (b) authorize, create or issue, or obligate the Company to authorize, create or issue, any senior stock; (c) amend or waive any provision of the Certificate of Designation applicable to the holders of Preferred Stock or the Preferred Stock; (d) grant registration rights on terms more favorable than the registration rights granted in the Registration Rights Agreement; or (e) effect the occurrence of a bankruptcy proceeding or the delisting of the Common Stock.

#### Optional Redemption

At any time on or after the first anniversary of May 22, 2027, upon the election of the holders of a majority of the Preferred Stock, the Company will redeem each share of Preferred Stock and will pay the holders of Preferred Stock an amount in cash per share as set forth in the Certificate of Designation.

#### **Voting Agreements**

On December 18, 2023, the Company, Newco BHF, FVCM and certain stockholders of the Company (the "Stockholders") parties thereto entered into voting agreements (the "Voting Agreements"). Under the Voting Agreements, the Stockholders agreed to vote their respective shares of Common Stock at the Special Meeting: (a) in favor of any proposal to approve the Conversion Amendment and the Charter Amendment (collectively, the "Relevant Matters"); (b) in favor of any proposal to postpone or adjourn a meeting at which there is a proposal for stockholders of the Company to approve the Relevant Matters to a later date if there are not sufficient votes to approve the Relevant Matters or if there are not sufficient shares of Common Stock present in person or represented by proxy at such meeting to constitute a quorum, in each case, so long as such postponement or adjournment is effected in accordance with the terms of the Investment Agreement; and (c) against any agreement, transaction or other matter that is intended to, would or would reasonably be expected to (i) impede, postpone, materially adversely affect or interfere with the Relevant Matters or otherwise obtaining the stockholder approval, or (ii) result in a breach of any covenant, representation or warranty or other obligation or agreement of the Company under the Investment Agreement, the Certificate of Designation, the Registration Rights Agreement or the investor rights agreement or of such Stockholder under the Voting Agreement. In total, the Stockholders that signed the Voting Agreements hold shares of Common Stock representing approximately 43% of the Company's outstanding voting power as of December 18, 2023.

#### Investor Rights Agreements

#### FRG Investor Rights Agreement

On December 18, 2023, the Company, Newco BHF and FVCM entered into an investor rights agreement (the "FRG Investor Rights Agreement"). Pursuant to the FRG Investor Rights Agreement, for so long as Newco BHF and FVCM (together with their respective permitted assignees, the "FRG Investors") continue to hold at least 20% of the Senior Preferred Stock or Non-Voting Common Stock received upon conversion of the Senior Preferred Stock issued at the closing of the Investment Agreement, the FRG Investors will have the right to designate one representative, subject to the consent of the Company, who will be invited to attend all meetings of the Board of Directors of the Company or any committee thereof in a non-voting observer capacity.

The FRG Investor Rights Agreement provides that until the second anniversary of the date of the FRG Investor Rights Agreement, the FRG Investors will not, without approval of the Board, transfer any equity securities of the Company, subject to certain exceptions.

For a period commencing on the date of the FRG Investor Rights Agreement and ending on the earlier of: (a) the occurrence of a specified termination event; and (b) three years from the date of the FRG Investor Rights Agreement (the earlier of (a) and (b), the "FRG Expiration Date"); without the prior written approval of the Company, the FRG Investors will not, and will not permit their respective affiliates, to acquire or purchase any equity securities of the Company other than: (1) acquisitions or purchases of such equity securities upon the conversion or exchange of any other equity securities that are issued pursuant to the Investment Agreement; (2) acquisitions or purchase of equity securities from the Company; (3) acquisitions or purchases of equity securities in a transfer permitted under the FRG Investor Rights Agreement; or (4) acquisitions or purchases in connection with the exercise of any remedies in its capacity as a lender to the Company or any of the Company's subsidiaries.

Under the FRG Investor Rights Agreement, until the FRG Expiration Date, the FRG Investors will not, and will not permit any of their respective affiliates, to: (a) make, initiate, solicit or submit a proposal for, or offer of, any merger, consolidation, business combination, tender or exchange of or for a material portion of the assets, properties or businesses of the Company or any subsidiary of the Company or any of the FRG Investors equity securities of the Company; (b) make or in any way participate in any solicitation of proxies as a participant in any director election contest; (c) propose any matter for submission to a vote

of the Company's stockholders or call or seek to call a meeting of the Company's stockholders; (d) grant proxies with respect to any voting securities of the Company to any person or deposit any voting securities of the Company in a voting trust or enter into any other agreement with respect to the voting thereof, other than as recommended by the Board, including in any proxy solicitation distributed by the Company; (e) form or join any group with respect to any voting securities of the Company with person; or (f) take any action, alone or in concert with other person, to remove or oppose the election of any directors of the Company or to seek to change the size or composition of the Board.

Pursuant to the FRG Investor Rights Agreement, each FRG Investor will have preemptive rights with respect to any issuance of any equity securities of the Company that are issued after the date of the FRG Investor Rights Agreement, subject to certain exceptions.

Furthermore, under the FRG Investor Rights Agreement, the Company will permit (a) any holder of Preferred Stock and (b) the FRG Investors for so long as any FRG Investor beneficially own shares of Common Stock, in the aggregate, in excess of 10% of Common Stock (on an as-converted basis), upon reasonable request, to have access to the books and records of the Company and the Company's subsidiaries.

If an event of default under the Certificate of Designation occurs while any of the shares of Preferred Stock are outstanding, without limiting the other rights or remedies of holders of Preferred Stock, the holders of at least a majority of the Preferred Stock then outstanding may elect, by written notice to the Company, to compel the Company to initiate a process to consummate a transaction (the form of which would be determined by the Company), in good faith, the net proceeds of which will be used to redeem the Preferred Stock in full at a price equal to that payable upon a Mandatory Redemption. If the Company fails to consummate a transaction within 12 months of receipt of written notice by holders of a majority of the Preferred Stock then outstanding or fails to redeem the Preferred Stock in full, then the holders of a majority of the Preferred Stock then outstanding will have the right to direct such transaction process and appoint a majority of the directors of the Board.

#### Registration Rights Agreement

On December 18, 2023, the Company, Newco BHF and FVCM entered into a registration rights agreement (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, the Company is required to use its reasonable best efforts to file and make effective immediately following the Special Meeting a resale registration statement covering the registrable securities described thereunder (to be effective no later than April 16, 2024).

At any time that a shelf registration statement is effective, the holders of registrable securities may on up to three occasions require the company to undertake an underwritten offering if the expected gross proceeds exceed \$10.0 million. The Company is not obligated to effect more than two underwritten offerings during any 12 month period.

#### Amendment to Revolving Credit Facility

On December 18, 2023, the Company entered into an Amendment No. 3 (the "Revolving Credit Agreement Amendment") to the Fifth Amended and Restated Loan and Security Agreement, dated as of March 29, 2021 (the "Revolving Credit Agreement"), by and among the Company, as parent and guarantor, Conn Appliances, Inc., Conn Credit I, LP and Conn Credit Corporation, Inc., as existing borrowers (the "Existing Borrowers"), and substantially concurrently with the closing of the Revolving Credit Agreement Amendment, Badcock, pursuant to a joinder, as new borrower ("New Borrower", and together with the Existing Borrowers, collectively, "Borrowers"), certain banks and financial institutions named therein, as lenders, and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders. The Revolving Credit Agreement Amendment, among other things: (a) consents to the consummation of the transactions contemplated by the Investment Agreement; (b) extends the maturity date of the Revolving Credit Agreement to December 18, 2026; (c) provides for certain adjustments to the representations, warranties and covenants to incorporate the New Borrower into the Revolving Credit Agreement; (d) increases the existing interest rate margins by 0.50%, resulting in possible interest rate margins between (i) 3.00% and 3.75% for SOFR Rate Loans and (ii) 2.00% and 2.75% for Base Rate Loans, in each case based on the total net leverage ratio; (e) extends the termination date of the covenant relief period, which removes testing of the interest coverage covenant, to April 30, 2025; (f) provides for certain amendments to the borrowing base, including (i) modifying the inventory advance rate by removing the cap of 33.3% of revolving commitments and (ii) modifying the contract advance rate to equal the lesser of (x) 80% of net eligible contract payments and (y) 80% of the net fair market value of the owned contract portfolio; (g) provides for increased reporting requirements; (h) amends the minimum excess availability covenant to require, at all times during the term of the Revolving Credit Agreement, availability under the revolver of no less than the greater of (i) 17.5% of the borrowing base and (ii) \$100,000,000; (i) replaces the minimum liquidity covenant with a springing, minimum fixed charge coverage ratio of 1.00:1.00, which shall only be tested to the extent availability under the Revolving Credit Agreement is less than 20% of the

borrowing base, and testing of such covenant shall continue until the occurrence of the first fiscal-quarter end where availability as of such date has been in excess of 20% of the borrowing base for 30 consecutive days; (j) added a minimum EBITDA financial covenant; and (k) increased the cap on revolver borrowings at any one time outstanding to \$400,000,000, with step downs thereafter to \$300,000,000.

#### Term Loan and Security Agreement

On December 18, 2023, the Company, as parent and guarantor, and the Borrowers, entered into a second-lien term loan and security agreement (the "Term Loan") with BRF Finance Co., LLC, as administrative agent and collateral agent, and the financial institutions party thereto, as lenders. The Term Loan provides for an aggregate commitment of \$108.0 million to the Borrowers pursuant to a secured term loan credit facility maturing on February 20, 2027, which was fully drawn on December 18, 2023. Outstanding loans under the Term Loan will bear interest at an aggregate rate per annum equal to the Term SOFR Rate (as defined in the Term Loan), subject to a 4.80% floor, plus a margin of 8.00%. The obligations of the Borrowers under the Term Loan are guaranteed by the Company and certain of the Borrowers' subsidiaries. The Borrowers are required to make quarterly scheduled amortization payments of the Term Loan prior to the maturity thereof in an amount equal to \$1.35 million. The Term Loan is secured by liens (subject, in the case of priority, to the liens under the Revolving Credit Agreement) on substantially all of the assets of the Borrowers and their subsidiaries, subject to customary exceptions.

Proceeds from borrowings made under the Term Loan may be used by the Borrowers for, among other things: (i) payment of fees and expenses associated with the closing of the Term Loan; (ii) repayment in full of the Company's existing second-lien term loan facility with Pathlight Capital LP and all fees and expenses associated therewith; and (iii) working capital and other lawful corporate purposes of the Borrowers and their subsidiaries in accordance with the Term Loan.

The Borrowers may elect to prepay all or any portion of the amounts owed under the Term Loan, without a premium or penalty. The Borrowers are required to make mandatory prepayments of amounts owed under the Term Loan in an amount equal to 100% of the proceeds received as a result of any of the following events, subject to certain adjustments: (i) the issuance of any equity securities by the Company that the Company contributes as additional common equity contributions to any Borrower; and (ii) the receipt by the Company, the Borrowers or any of their affiliates of any portion of the CARES Act Tax Refund Proceeds (as defined in the Term Loan), subject to a cap. Voluntary and mandatory prepayments will be applied to the remaining scheduled installments of principal due in respect of the Term Loan in the inverse order of maturity.

The Term Loan contains customary covenants regarding the Borrowers and their subsidiaries that are generally based upon and are comparable to those contained in the Revolving Credit Agreement including, without limitation: financial covenants, such as the maintenance of a minimum interest coverage ratio, subject to a covenant relief period through the fiscal quarter ending April 30, 2025, a maximum leverage ratio, a minimum excess availability covenant and a springing, minimum fixed charge coverage ratio; and negative covenants, such as limitations on indebtedness, liens, mergers, asset transfers, certain investing activities and other matters customarily restricted in such agreements. Most of these restrictions are subject to certain minimum thresholds and exceptions. The Term Loan also contains customary events of default, including, without limitation, payment defaults, material inaccuracy of representations and warranties, covenant defaults, bankruptcy and insolvency proceedings, cross-defaults to certain other agreements, and change of control.

#### Amendment to Delayed Draw Term Loan Facility

On December 18, 2023, the Company, entered into an Amendment No. 1 (the "DDTL Amendment") to Delayed Draw Term Loan and Security Agreement, dated as of July 31, 2023 (the "Term Loan Agreement"), by and among the Company, as parent and guarantor, the Existing Borrowers and substantially concurrently with the closing of the DDTL Amendment, Badcock, pursuant to a joinder, as new borrower, Stephens Investments Holdings LLC ("Stephens Investments") and Stephens Group, LLC and the other lenders party thereto from time to time, and Stephens Investments, as administrative agent. The DDTL Amendment, among other things: (a) consents to the consummation of the transactions contemplated by the Investment Agreement; (b) extends the maturity date of the Term Loan Agreement to May 22, 2027; (c) provides for certain adjustments to the representations, warranties and covenants to incorporate the New Borrower into the Term Loan Agreement; (d) added a minimum EBITDA financial covenant; and (e) provides for the ability of Borrowers to prepay all or any portion of the amounts owed under the Term Loan Agreement, without a premium or penalty, subject to certain conditions, including demonstrating a trailing twelve-month EBITDA (on a pro forma basis) of the Company and its subsidiaries of no less than \$185,000,000 and a trailing six-month liquidity (on a pro forma basis) of the Company and its subsidiaries of no less than \$100,000,000. In addition, the DDT Amendment (i) obligates the Company to solicit stockholder approval to issue the maximum amount of Non-Voting Common Stock upon exercise of the maximum number of warrants thereunder, (ii) if stockholder approval is received, obligates the Company to issue warrants under the Term Loan Agreement exercisable for Non-Voting Common Stock and (iii) if stockholder approval is received, clarifies that the provision of the Term Loan Agreement limiting the number of shares underlying warrants issued thereunder to no more than 19.99% of the outstanding shares of Common Stock issued and outstanding as of the date of the Term Loan Agreement does not apply to limit the number of shares of Non-Voting Common Stock issuable upon exercise of warrants.

Bob L. Martin, a member of the Company's Board of Directors and Lead Independent Director, is an Operating Partner of The Stephens Group LLC, one of the Lenders under the Term Loan Agreement; and Douglas H. Martin, a member of the Company's Board of Directors, is a Senior Executive Vice President of Stephens Inc., an affiliate of Stephens Investments Holdings LLC, one of the Lenders under the Term Loan Agreement. Each of Stephens Inc., and its affiliates, and The Stephens Group LLC, and its affiliates, are significant stockholders of the Company.

The foregoing descriptions of the Investment Agreement, the Certificate of Designation, the form of Voting Agreement, the FRG Investor Rights Agreement, the Registration Rights Agreement, the Revolving Credit Agreement Amendment, the Term Loan and the DDTL Amendment are a summary of the material terms of such agreements, do not purport to be complete and are qualified in their entirety by reference to the complete text of such agreements, copies of which are filed as Exhibit 2.1, 3.1, 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

#### Item 1.02 Termination of a Material Definitive Agreement.

On December 18, 2023, concurrent with entering into the Term Loan, the Company's existing second-lien term loan and security agreement (the "Existing Term Loan") with Pathlight Capital LP, as administrative agent and collateral agent, JPMorgan Chase Bank, N.A., as lead arranger and sole bookrunner, and the financial institutions party thereto, was terminated. Prior to its termination, the Existing Term Loan was scheduled to mature on February 20, 2026.

#### Item 2.01 Completion of Acquisition or Disposition of Assets.

The information in Item 1.01 above relating to the Investment Agreement is incorporated by reference into this Item 2.01.

#### Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-balance Sheet Arrangement of a Registrant.

The information in Item 1.01 above relating to the Revolving Credit Agreement Amendment, the Term Loan and the DDTL Amendment is incorporated by reference into this Item 2.03.

#### Item 3.02 Unregistered Sales of Equity Securities.

As described in Item 1.01 above, pursuant to the Investment Agreement, the Company has issued (a) 656,847.95 shares of Preferred Stock to Newco BHF and (b) 343,152.05 shares of Preferred Stock to FVCM. The offer and sale of the shares of Preferred Stock through the Investment Agreement was made in reliance on an exemption from registration under the Securities Act of 1933, as amended (the "Securities Act") pursuant to Section 4(a)(2) thereof. The shares of Non-Voting Common Stock issuable upon conversion of shares of the Preferred Stock will be issued in reliance upon the exemption from registration in Section 3(a)(9) of the Securities Act. The information in Item 1.01 above is incorporated by reference into this Item 3.02.

## Item 5.02. Departure of Directors or Certain Officers; Election of Director; Appointment of Certain Officers; Compensatory Arrangement of Certain Officers.

On December 18, 2023, the Board of Directors (the "Board") of the Company appointed Norman L. Miller, previously the Interim President and Chief Executive Officer, to the position of President and Chief Executive Officer effective immediately. The general terms and conditions of Mr. Miller's employment, including his compensation, have not been altered in connection with his appointment.

#### Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information in Item 1.01 under the heading "Certificate of Designation" above is incorporated into this Item 5.03 by reference.

(d) Exhibits			
Exhibit No.	Description		
2.1*	Investment Agreement, dated as of December 18, 2023, among Conn's, Inc., Franchise Group Newco BHF, LLC, W.S. Badcock LLC, Freedom VCM Interco Holdings, Inc. and Franchise Group, Inc.		
3.1	Certificate of Designations of Nonvoting Convertible Preferred Stock		
4.1	Form of Warrant (included as Exhibit E in Exhibit 10.6)		
10.1	Form of Voting Agreement, dated as of December 18, 2023		
10.2	Investor Rights Agreement, dated as of December 18, 2023, among Conn's, Inc., Franchise Group Newco BHF, LLC and Freedom VCM Interco Holdings, Inc.		
10.3	Registration Rights Agreement, dated as of December 18, 2023, among Conn's, Inc., Franchise Group Newco BHF, LLC and Freedom VCM Interco Holdings, Inc.		
10.4*	Amendment No. 3 to Fifth Amended and Restated Loan and Security Agreement, dated as of December 18, 2023, among Conn's, Inc., as parent and guarantor, Conn Appliances, Inc., Conn Credit I, LP and Conn Credit Corporation, Inc., as borrowers, the guarantors party thereto, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, and the lenders party thereto, as lenders		
10.5*	Term Loan and Security Agreement, dated as of December 18, 2023, among Conn's, Inc., as parent and guarantor, Conn Appliances, Inc., Conn Credit I, LP, Conn Credit Corporation, Inc., and W.S. Badcock LLC, as borrowers, BRF Finance Co., LLC, as administrative agent and collateral agent, and the financial institutions party thereto, as lenders		
10.6*	Amendment No. 1 to Delayed Draw Term Loan and Security Agreement, dated as of December 18, 2023, among Conn's, Inc., as parent and guarantor, Conn Appliances, Inc., Conn Credit I, LP and Conn Credit Corporation, Inc., as borrowers, certain financial institutions, as lenders, and Stephens Investments Holdings LLC, as administrative agent		
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)		

Item 9.01

Financial Statements and Exhibits.

<sup>\*</sup> Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant agrees to furnish supplementally to the Commission a copy of any omitted exhibits or schedule upon request.

### **SIGNATURES**

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

Date: December 20, 2023

Conn's, Inc.

By: /s/ Mark L. Prior

Senior Vice President, General Counsel

& Secretary

#### INVESTMENT AGREEMENT

by and among

### FRANCHISE GROUP NEWCO BHF, LLC,

### W.S. BADCOCK LLC (F/K/A W.S. BADCOCK CORPORATION),

### FREEDOM VCM INTERCO HOLDINGS, INC.,

FRANCHISE GROUP, INC.,

and

CONN'S, INC.

Dated as of December 18, 2023

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SCHEDULE A – BRR2 RECEIVABLES

#### INVESTMENT AGREEMENT

This **INVESTMENT AGREEMENT** ("*Agreement*") is made and entered into as of December 18, 2023, by and among: (i) Franchise Group Newco BHF, LLC, a Delaware limited liability company ("*Newco BHF*"); (ii) W.S. Badcock LLC (f/k/a W.S. Badcock Corporation), a Florida limited liability company (the "*Company*"); (iii) Freedom VCM Interco Holdings, Inc., a Delaware corporation ("*Freedom VCM*"); (iv) Franchise Group, Inc., a Delaware corporation ("*Parent*"); and (v) Conn's, Inc., a Delaware corporation ("*Issuer*"). Certain capitalized terms used in this Agreement are defined in Exhibit A.

#### WITNESETH:

WHEREAS, Parent indirectly holds, beneficially and of record, 100% of the issued and outstanding equity interests of Newco BHF;

WHEREAS, Newco BHF holds, beneficially and of record, 100% of the issued and outstanding equity interests of the Company (the "Badcock Units");

WHEREAS, Freedom VCM holds, beneficially and of record, 100% of the issued and outstanding equity interests of B. Riley Receivables II, LLC, a Delaware limited liability company ("BRR2");

WHEREAS, BRR2 has acquired certain Consumer Credit Receivables due and owing from certain customers of the Company that purchased products and services from the Company (collectively, the "*BRR2 Receivables*"), with a list of such BRR2 Receivables as of December 2, 2023 being set forth on <u>Schedule A</u> hereto (the BRR2 Receivables set forth on such schedule under the heading "Tranche 2" being referred to herein as the "*Tranche 2 Receivables*");

WHEREAS, on the terms and subject to the conditions of this Agreement, (a) Issuer desires to accept from Newco BHF, and Newco BHF desires to contribute to Issuer, all of the Badcock Units, and (b) Issuer desires to accept from BRR2, and Freedom VCM desires to cause BRR2 to contribute to Issuer, the Residual Tranche 2 Receivables (collectively, the "Contemplated Transactions");

WHEREAS, substantially contemporaneously with the execution and delivery of this Agreement by the parties hereto, Issuer is filing a Certificate of Designation, in the form attached hereto as <a href="Exhibit F">Exhibit F</a>, setting forth the rights and preferences of the Issuer Preferred Stock with the office of the Secretary of State of the State of Delaware (the "Certificate of Designation");

WHEREAS, the board of directors, board of managers or other applicable governing body of each of Newco BHF, Freedom VCM, the Company, Parent and Issuer have each approved, adopted and declared advisable and in the best interests of the each of Newco BHF, Freedom VCM, the Company, Parent and Issuer, respectively, this Agreement and the Contemplated Transactions in accordance with the DLLCA and the DGCL, and upon the terms and subject to the conditions set forth herein; and

WHEREAS, the parties hereto desire to make certain representations, warranties and agreements in connection with the execution of this Agreement and the consummation of the Contemplated Transactions.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and covenants and agreements contained herein, the parties to this Agreement, intending to be legally bound, hereby agree as follows:

#### ARTICLE I

### DESCRIPTION OF TRANSACTIONS

Section 1.1 Contribution and Investment. On the terms and subject to the conditions hereof, (a) at the Equity Closing, Newco BHF shall contribute and deliver, or cause to be contributed and delivered, to Issuer, free and clear of any Encumbrances (other than those arising out of post-Closing acts of Issuer), and Issuer shall accept from Newco BHF, the Badcock Units, and (b) at the Receivables Closing, Freedom VCM shall cause BRR2 assign, or cause to be assigned, to Issuer, free and clear of any Encumbrances (other than Encumbrances created or arising solely out of acts of Issuer from and after the Receivables Closing Date), and Issuer shall accept from BRR2, the Residual Tranche 2 Receivables, and in exchange for the contributions and deliveries (or commitments in respect thereof) referred to in the immediately preceding clauses (a) and (b), at the Equity Closing, Issuer shall effect the Closing Issuance to Newco BHF and Freedom VCM in the proportions and to the designees delivered in writing by Parent to Issuer prior to the date hereof in accordance with the terms hereinafter set forth.

#### Section 1.2 Closing.

- (a) The closing of the contribution and delivery of the Badcock Units and the consummation of the other transactions contemplated hereby that are related thereto (the "Equity Closing") shall take place at 10:00 a.m. Eastern Standard Time virtually via the electronic exchange of documents simultaneously with the execution and delivery of this Agreement. The date on which the Equity Closing occurs is referred to herein as the "Equity Closing Date". To the extent permitted by applicable law, the Equity Closing shall be deemed effective as of 12:01 a.m. Eastern Standard Time on the Equity Closing Date.
- (b) The closing of the contribution and delivery of the Residual Tranche 2 Receivables and the consummation of the other transactions contemplated hereby that are related thereto (the "*Receivables Closing*") shall take place virtually via the electronic exchange of documents on the date that is five (5) Business Days following the Obligation Satisfaction Date. The date on which the Receivables Closing occurs is referred to herein as the "*Receivables Closing Date*". To the extent permitted by applicable law, the Receivables Closing shall be deemed effective as of 12:01 a.m. Eastern Standard Time on the Receivables Closing Date.

#### Section 1.3 Transactions To Be Effected at the Equity Closing. At the Equity Closing:

- (a) Parent, Newco BHF, Freedom VCM or the Company shall deliver or cause to be delivered to Issuer:
- (i) a "good standing" certificate for the Company, and a copy of the articles of organization and all amendments thereto (or comparable document) of the Company, in each case certified by the Secretary of State of the jurisdiction of organization of such entity, each dated as of a date within ten (10) Business Days before the Equity Closing Date;
- (ii) a certificate of the secretary of Parent, Newco BHF, Freedom VCM and the Company, as applicable, in a form and substance reasonably acceptable to Issuer certifying as to (A) the resolutions of the board of directors, board of managers or other applicable governing body of each of Parent, Newco BHF, Freedom VCM and the Company, authorizing the entry into this Agreement and the consummation of the Contemplated Transactions, (B) in the case of the Company, the effective limited liability company agreement of the Company and (C) the incumbency of the individuals signing this Agreement and all Transaction Documents being delivered at the Equity Closing on behalf of Parent, Newco BHF, Freedom VCM and the Company;
- (iii) each Transaction Document that is listed on <u>Section 1.3(a)(iii)</u> of the Company Disclosure Schedule, duly executed by Parent or the Affiliate thereof party thereto;
- (iv) written resignations of such officers and directors of the Company as set forth on <u>Section 1.3(a)(iv)</u> of the Company Disclosure Schedule, effective as of the Equity Closing (which resignations shall not, if applicable, constitute a termination of employment);
- (v) one or more release agreements or similar documents specifying the automatic and immediate termination, discharge, and release (in each case after giving effect to the Contemplated Transactions) of (A) any and all guaranties by the Company and (B) all security interests and liens granted by the Company other than Permitted Encumbrances; and
- (vi) a duly executed and completed IRS Form W-9 for each of Parent, Newco BHF and Freedom VCM (or if any such Party is a disregarded entity for U.S. federal income tax purposes, such Party's regarded owner).
  - (b) Issuer shall deliver or cause to be delivered:
- (i) to Newco BHF and Freedom VCM (or any designee(s) thereof pursuant to <u>Section 1.1</u>), the Closing Issuances pursuant to <u>Section 1.4</u>;
- (ii) to Parent, a copy of the executed Certificate of Designation as certified by the office of the Secretary of State of the State of Delaware:
- (iii) to Parent and Newco BHF, a certificate of the secretary of Issuer in a form and substance reasonably acceptable to Parent certifying as to (A) the resolutions of the board of directors of Issuer authorizing the entry into this Agreement and the consummation of the Contemplated Transactions and (B) the incumbency of the individuals signing all Transaction Documents on behalf of Issuer;

- (iv) to Parent, a "good standing" certificate for Issuer and a copy of the certificate of incorporation, as applicable, and all amendments thereto (or comparable document) of Issuer (the "*Issuer Certificate of Incorporation*"), in each case certified by the Secretary of State of Delaware, dated as of a date within ten (10) Business Days before the Equity Closing Date;
- (v) to Parent or the applicable Affiliate(s) thereof party thereto, each Transaction Document that is listed on <u>Section 1.3(a)(iv)</u> of the Company Disclosure Schedule, duly executed by Issuer or the Affiliate thereof party thereto; and
- (vi) to Parent, executed copies of the Voting and Support Agreement, duly executed by each stockholder of the Issuer whose name is set forth on Section 1.3(b)(vi) of the Issuer Disclosure Schedule hereto.

Section 1.4 <u>Closing Consideration</u>. In exchange for the Badcock Units and the commitment to effect the Receivables Closing in accordance with the terms set forth herein, at the Equity Closing, Issuer shall issue or cause to be issued (the "Closing Issuance") to (a) Newco BHF (or any designee(s) thereof pursuant to <u>Section 1.1</u>), 656,847.95 shares of Issuer Preferred Stock, which Issuer Preferred Stock shall, immediately following the Equity Closing but subject to the terms set forth in the Certificate of Designation, be convertible into 16,119,242.40 shares of Issuer Non-Voting Common Stock, representing 32.84% of the issued and outstanding shares of Issuer Common Stock outstanding immediately following the Equity Closing after giving effect to the issuance of the Issuer Preferred Stock pursuant to the terms of this <u>Section 1.4</u> and assuming the conversion thereof into Issuer Non-Voting Common Stock, and (b) Freedom VCM (or any designee(s) thereof pursuant to <u>Section 1.1</u>), 343,152.05 shares of Issuer Preferred Stock, which Issuer Preferred Stock shall, immediately following the Equity Closing but subject to the terms set forth in the Certificate of Designation, be convertible into 8,421,052.60 shares of Issuer Non-Voting Common Stock, representing 17.15% of the issued and outstanding shares of Issuer Common Stock outstanding immediately following the Equity Closing on a Fully Diluted Basis and after giving effect to the issuance of the Issuer Preferred Stock pursuant to this <u>Section 1.4</u> and assuming the conversion thereof into Issuer Non-Voting Common Stock.

#### Section 1.5 Post-Closing Company Accounts Receivable Adjustment.

- (a) Within 60 days after the Equity Closing, Issuer shall prepare and deliver to Parent a statement (the "*Statement*") based upon the books and records of the Company setting forth Issuer's calculation of the Consumer Credit Receivables of the Company as of 12:01 a.m. Eastern Standard Time on the Equity Closing Date (the "*Closing Date A/R*").
- (b) During the 30-day period following Parent's receipt of the Statement, Parent shall be permitted to review the working papers of the Company relating to the Statement and have reasonable access during normal business hours to the personnel of Issuer and its Subsidiaries. The Statement shall become final and binding upon the parties on the 30th day following delivery thereof, unless Parent gives written notice of its disagreement with the Statement (a "Notice of Disagreement") to Issuer before such date. Any Notice of Disagreement shall specify in reasonable detail the nature of any disagreement so asserted. If a Notice of

Disagreement is received by Issuer in a timely manner, then the Statement (as revised in accordance with this sentence) shall become final and binding upon Parent and Issuer on the earlier of (A) the date Parent and Issuer resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement or (B) the date any disputed matters are finally resolved in writing by the Accounting Firm. During the 30-day period following the delivery of a Notice of Disagreement, Parent and Issuer shall seek in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Notice of Disagreement.

- (c) If at the end of such 30-day period, the Parties have not resolved all of the differences set forth in the Notice of Disagreement, then any unresolved differences shall be submitted by Parent and Issuer to an independent accounting firm (the "Accounting Firm") for resolution. The Accounting Firm shall not consider any issues not raised in the Statement or the Notice of Disagreement. The Accounting Firm shall be a nationally recognized independent public accounting firm as shall be agreed upon by the parties hereto in writing. Parent and Issuer shall jointly request that the Accounting Firm render a decision resolving only the matters submitted to the Accounting Firm within 30 days after such submission. The Accounting Firm shall have full authority to resolve all issues relating to the matters submitted to it for resolution pursuant to this Section 1.5(c) (including procedural, legal, factual and accounting issues). The Accounting Firm shall set forth its determination of all such issues in a written opinion. The Closing Date A/R shall be determined by the Accounting Firm as of 12:01 a.m. Eastern Standard Time on the Equity Closing Date and shall not take into account any events or facts occurring thereafter (including any payment, default or writedown) and shall be determined using the calculations and methodologies of the Company in the ordinary course prior to the Equity Closing Date.
- (d) The cost of the fees and expenses of the Accounting Firm and reasonable and documented attorney fees and expenses of the parties pursuant to this Section 1.5 shall be borne by Issuer and Parent in inverse proportion as they may prevail on matters resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm at the time its determination is rendered on the merits of the matters submitted. All other fees and expenses incurred in connection with the preparation, review or certification of the Statement, the Notice of Disagreement shall be borne by the party incurring such fees and expenses.
- (e) Within 10 Business Days upon final determination of the Closing Date A/R in accordance with this Section 1.5, to the extent that the Closing Date A/R is less than \$105,000,000 (such difference, the "Adjustment Amount"), Parent shall pay the Adjustment Amount to the Issuer through any of the following means determined in Parent's sole election (except for clause (iii), which shall require written consent of the Issuer prior to any such cancellation (such consent not to be unreasonably withheld, conditioned or delayed)): (i) pay, or shall cause to be paid, to the Company an amount of cash that equals the Adjustment Amount, (ii) deliver to Issuer Consumer Credit Receivables generated by the Company following October 31, 2023 and selected at random with an aggregate face value equal to the Adjustment Amount, pursuant to a purchase agreement substantially similar to the Receivables Purchase Agreement, or (iii) deliver to Issuer a written notice of election (the "Cancellation Notice") providing that in full satisfaction of the Adjustment Amount, Issuer shall cancel a number of shares of Issuer Preferred Stock, Issuer Non-Voting Common Stock or Issuer Common Stock (as applicable) held by Parent with an aggregate value (determine based on the VWAP (as defined in the Certificate of Designation) for the 20 full trading days immediately prior to the delivery of the Cancellation Notice) equal to the Adjustment Amount.

#### Section 1.6 Transactions To Be Effected at the Receivables Closing. At the Receivables Closing:

- (a) Parent, Newco BHF or Freedom VCM shall deliver or cause to be delivered to Issuer the Receivables Purchase Agreement and each other document listed on <u>Section 1.6(a)</u> of the Company Disclosure Schedule, duly executed by Parent or the applicable Affiliate thereof party thereto.
- (b) Issuer or the Company shall deliver or cause to be delivered the Receivables Purchase Agreement and each other document listed on Section 1.6(a) of the Company Disclosure Schedule, duly executed by Issuer, the Company or the applicable Affiliate thereof party thereto.

Section 1.7 Withholding. Notwithstanding anything herein to the contrary, if Parent, Newco BHF or Freedom VCM fails to deliver the applicable Form W-9 required in Section 1.3(a)(vii), Issuer and the respective Subsidiaries of Issuer (and any other Person that has any withholding obligation with respect to any payment made by Issuer pursuant to this Agreement) shall be entitled to deduct and withhold from any consideration or other amounts payable or otherwise deliverable pursuant to this Agreement such amounts as may be required to be deducted or withheld from such consideration or payment under the Code or any provision of state, local or foreign Tax law or under any other applicable Legal Requirement. To the extent such amounts are so deducted or withheld and paid to the appropriate Governmental Body, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

Section 1.8 <u>Further Action</u>. From time to time, as and when requested by Issuer, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions, as Issuer may reasonably deem necessary or desirable to consummate the Contemplated Transactions, including, in the case of Parent or Newco BHF, executing and delivering to Issuer such assignments, deeds, bills of sale, consents and other instruments as Issuer or its counsel may reasonably request as necessary or desirable for such purpose.

#### ARTICLE II

#### REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

Each of Parent, Freedom VCM, Newco BHF and the Company hereby represents and warrants to Issuer, as of the Equity Closing Date (unless the particular representation or warranty speaks expressly as of another date, in which case, such representation or warranty is made as of such other date), as follows (it being understood that each representation or warranty contained in this <u>Article II</u> is subject to <u>Section 7.9</u> and the exceptions and disclosures set forth in the Company Disclosure Schedule):

#### Section 2.1 Organization and Good Standing.

- (a) The Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Florida and is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its properties and assets requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not reasonably be expected to result in a Company Material Adverse Effect. The Company has all requisite power and authority to own, operate and lease the assets and properties that it purports to own, operate or lease and to carry on the Business as it is currently conducted.
- (b) The Company has made available to Issuer copies of its Organizational Documents and such Organizational Documents are true, accurate and complete in all respects and reflect all amendments made through the date hereof.
- Section 2.2 <u>Authorization; Execution; Enforceability.</u> The Company has the requisite limited liability power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is a party. The execution, delivery and performance by the Company of this Agreement, the other Transaction Documents to which the Company is a party, and each of the transactions contemplated hereby or thereby have been duly and validly authorized by all requisite action on the part of the Company and no other act or proceeding on the part of the Company is necessary to authorize the execution, delivery or performance by the Company of this Agreement or any Transaction Document to which the Company is a party or the consummation of any of the transactions contemplated hereby or thereby. This Agreement and each other Transaction Document to which the Company is a party have been duly and validly executed and delivered by the Company and, assuming the due and valid execution and delivery of this Agreement and the other applicable Transaction Documents by the other parties hereto and thereto, constitute a valid, legal and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as the enforceability hereof or thereof may be limited by (a) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar Legal Requirements affecting the enforcement of creditors' rights generally and (b) the availability of specific performance and other equitable remedies or applicable equitable principles (whether considered in a proceeding at law or in equity) (collectively, the "General Enforceability Exceptions").

#### Section 2.3 Non-Contravention; Consents.

- (a) Neither (x) the execution, delivery or performance of this Agreement, nor (y) the consummation of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time, or both):
  - (i) contravene, conflict with or result in a violation of any of the provisions of the articles of organization, limited liability company operating agreement, or Organizational Documents of the Company;

- (ii) contravene, conflict with or result in a violation of, in any material respect, any Legal Requirement or any Order to which the Company or any material asset of the Company is subject;
- (iii) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any material Governmental Authorization that is held by the Company or that otherwise relates to the Business or to any of the material assets of the Company;
- (iv) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Material Contract, or give any Person the right to: (1) declare a default or exercise any remedy or relief under any such Material Contract; (2) accelerate the maturity or performance of any such Material Contract; or (3) cancel, terminate or modify any right, benefit, obligation or other term of such Material Contract; or
- (v) result in the imposition, creation or continuance of any Encumbrance (other than a Permitted Encumbrance) upon or with respect to any asset of the Company;

except, with respect to clauses (i), (iv) and (v), where any such failure would not reasonably be expected to result in a Company Material Adverse Effect.

(b) Except as set forth on Section 2.3(b) of the Company Disclosure Schedule, the Company is not and will not be required to make any filing with or give any notice to, or to obtain any Consent from, any third-party or Governmental Body in connection with: (x) the execution, delivery or performance of this Agreement; or (y) the consummation of the Contemplated Transactions, except where any such failure would not reasonably be expected to result in a Company Material Adverse Effect.

#### Section 2.4 Capitalization of the Company.

- (a) Newco BHF collectively owns beneficially and of record 100% of the issued and outstanding Equity Interests of the Company. All of the issued and outstanding Badcock Units have been duly authorized, are validly issued, and no such Badcock Units were issued in violation of the Organizational Documents of the Company, any applicable Legal Requirements, or any applicable preemptive right, purchase option, call or right of first refusal or offer or similar right, or restriction on transfer on the Badcock Units.
- (b) Except as set forth on Section 2.4(b) of the Company Disclosure Schedule, (i) no outstanding Badcock Unit is entitled or subject to any preemptive right, right of repurchase, redemption or forfeiture, right of participation, right of maintenance or any similar right; (ii) no outstanding Badcock Unit is subject to any right of first refusal; and (iii) there is no Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to) any Badcock Units. The Company is not under any obligation, and is not bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding Badcock Units.

- (c) There are no outstanding options, stock appreciation, performance units, phantom stock or phantom stock rights, profit participation, conversion, or similar rights or other equity appreciation or other equity or equity-based compensation rights or arrangements with respect to any of the Badcock Units.
- (d) There is no (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any Equity Interests of the Company; (ii) outstanding security, bond, debenture, instrument or obligation that is or may become convertible into or exchangeable for any Equity Interests of the Company or that has the right to vote on any matter on which the members of the Company have the right to vote; or (iii) Contract under which the Company is or would become obligated to sell or otherwise issue any Equity Interests.
- (e) After giving effect to the Contemplated Transaction, there will be no outstanding indebtedness for borrowed money (or guarantees thereof) of the Company and all existing intercompany notes and balances between the Company and Parent or any of its Subsidiaries have been indefeasibly paid in full or otherwise settled.
- (f) The Company does not sponsor or maintain any option plan, equity plan, restricted stock plan or any other plan or agreement providing for equity compensation or profit participation features (whether contingent or otherwise) to any Person. There are no officers, employees, independent contractors or directors with an offer letter or other Contract or employee plan that contemplates a grant of, or right to purchase or receive options or other equity awards with respect to any Equity Interests or other securities of the Company.
- Section 2.5 <u>Subsidiaries</u>. The Company does not have any Subsidiaries and does not, directly or indirectly, hold beneficially or of record any Equity Interests of any other Person.

#### Section 2.6 Financial Statements.

(a) Parent, Freedom VCM, Newco BHF and the Company have made available copies of the unaudited consolidated balance sheet and the related unaudited consolidated statement of income of the Company (the "Badcock Financial Statements") dated as of October 31, 2023 (the "Balance Sheet Date"). The Badcock Financial Statements present fairly in all material respects the consolidated financial position of the Company as of the dates thereof and for the periods covered thereby (except, as otherwise noted therein, and subject to the absence of footnotes and normal and recurring year-end audit adjustments). For the avoidance of doubt, (i) the Badcock Financial Statements and the foregoing representations and warranties are qualified by the fact that the Business has operated as a part of a consolidated group of Parent entity and the Business has received certain allocated charges and credits which do not necessarily reflect amounts that would have resulted from arm's-length transactions or that the Business would incur on a standalone basis or on an integrated basis within another organization, and (ii) the Financial Statements are not pro forma financial statements giving effect to the transactions contemplated by this Agreement.

- (b) Parent maintains a system of internal accounting controls over financial reporting that is designed to provide reasonable assurances regarding the reliability of financial reporting and preparation of the Badcock Financial Statements in accordance with GAAP.
- (c) The Company does not have any liability or obligation of the type required to be reflected in financial statements prepared in accordance with GAAP, other than any such liabilities or obligations (i) reflected or reserved against on the Badcock Financial Statements or (ii) incurred since the Balance Sheet Date in the ordinary course of business (none of which is a liability resulting from breach of Contract, breach of warranty, tort, infringement or misappropriation by the Company).
- (d) The Company is not a party to, and does not have any commitment to become a party to, any "off-balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K promulgated by the U.S. Securities and Exchange Commission).
- (e) All Accounts Receivable outstanding as of the date of this Agreement (i) resulted from bona fide sales in the ordinary course of business, and (ii) represent the genuine, valid and legally enforceable obligations of the account debtor, payable on trade terms granted in the ordinary course of business. Except as would not result in a Company Material Adverse Effect, no portion of the Accounts Receivable is delinquent or subject to any valid defense, set off or counterclaim. There is no material contest, claim or right of set-off under any contract with any obligor of any Accounts Receivable related to the amount or validity of such Accounts Receivable, and no bankruptcy, insolvency or similar actions have been commenced by or against any such obligor. Except as set forth on Section 2.6(e) of the Company Disclosure Schedule and other than the Consumer Credit Receivables, no Account Receivable of the Company is delinquent by 90 days or more and, to the Knowledge of Parent, no written communications of default have been received by the Company with respect to any such Accounts Receivable.
- (f) Without limiting the generality of the foregoing Section 2.6(e), all Consumer Credit Receivables outstanding as of the date of this Agreement have been originated, serviced, and collected in compliance in all material respects with the Company's underwriting, servicing and collection policies, true, complete and correct copies of which have been made available by the Company to Issuer. All Consumer Credit Receivables originated by the Company outstanding as of the date of this Agreement were, to the Knowledge of Parent, originated based on true and accurate underwriting information in all material respects, including information submitted by Dealers. Each finance charge disclosed, billed, charged or received by the Company and each Dealer in connection with all Consumer Credit Receivables is calculated in all material respects in accordance with the methodology for determining such finance charge contained in the Contract between the account debtor, on the one hand, and the Company, on the other hand, under which such account debtor is obligated to make a payment therefor to the Company.

(g) All Inventory is new at the time of acquisition of such Inventory, except for customer returned Inventory which is resold, and salable in the ordinary course of business and is not excessive, but is reasonable in the present circumstances of the Company, except to the extent the value of such inventory is the subject of allowances in accordance with GAAP, if any, to the extent expressly reflected in the Badcock Financial Statements for obsolete, damaged, defective, excess or slow-moving items. The reserve for such obsolete, damaged, defective, excess of slow-moving Inventory is in all material respects adequate and calculated consistently with past practices of the Company. Except as set forth on Section 2.6(g) of the Company Disclosure Schedules: (i) all such Inventory is owned by the Company free and clear of all Encumbrances, other than Permitted Encumbrances, (ii) all Inventory is located at premises owned or leased by the Company or at premises owned or leased by the Company's Dealers or in transit to any such premises, (iii) no Inventory is held by the Company on a consignment basis and (iv) all Inventory was purchased for use in the Business in the ordinary course of business.

#### Section 2.7 Absence of Changes.

Except as set forth on Section 2.7 of the Company Disclosure Schedule:

- (a) Since the Balance Sheet Date, except for discussions, negotiations and transactions related to this Agreement or the other Transaction Documents, the Company has conducted the Business in the ordinary course of business consistent with past practice in all material respects.
- (b) Since the Balance Sheet Date and through the date of this Agreement, no Effect has occurred or exists that, individually or in the aggregate, has had, or would reasonably be expected to have, a Company Material Adverse Effect.
- (c) Since the Balance Sheet Date, the Company has not declared or paid any dividends or made any other distribution to its equityholders other than in the ordinary course of business consistent with past practice;
- (d) Since the Balance Sheet Date, the Company has not made any material change in any method of accounting or accounting practice or policy other than as required by changes in any applicable Legal Requirement or GAAP;
- (e) Since the Balance Sheet Date, the Company has not sold, leased, licensed or otherwise disposed of any material assets, except (i) Inventory sold in the ordinary course of business consistent with past practice, and (ii) non-exclusive licenses granted in the ordinary course of business; and
- (f) Since the Balance Sheet Date, the Company has not made or incurred any material capital expenditure other than planned capital expenditures for fiscal year 2023.

#### Section 2.8 Assets.

(a) The Company has good and valid title to, or a valid and enforceable leasehold interest in, license to or valid right to use, all of the material assets, properties and rights of the Company and any other material assets, properties and rights owned or purported to be owned by the Company. All of said assets, properties and rights are owned by the Company free and clear of any Encumbrances, except Permitted Encumbrances.

(b) The assets, properties and rights of the Company, taken together with the services made available from Parent or Newco BHF, as applicable, to Issuer and its Subsidiaries under the Transition Services Agreement and the arrangements under the other Transaction Documents, will constitute all of the assets, properties and rights necessary and sufficient in all material respects for Issuer and its Subsidiaries to operate the Business immediately following the Equity Closing as it is currently conducted.

#### Section 2.9 Real Property; Leasehold.

- (a) Section 2.9(a) of the Company Disclosure Schedule sets forth a complete, current and correct list of all of the Owned Real Property owned by the Company as of the date hereof (the "Company Owned Real Property"). Except as set forth on Section 2.9(b) of the Company Disclosure Schedule, the Company is not obligated or bound by any options, obligations or rights of first refusal or contractual rights to sell, lease or acquire such Company Owned Real Property or any other real property. Except as disclosed in Section 2.9(a) of the Company Disclosure Schedule, the Company Owned Real Property is owned free and clear of any Encumbrances, except Permitted Encumbrances.
- (b) Except as set forth on <u>Section 2.9(b)</u> of the Company Disclosure Schedule, with respect to each parcel of Company Owned Real Property, there are no outstanding Contracts to sell, lease or otherwise transfer such Company Owned Real Property.
- (c) With respect to each lease, sublease, license or similar use or occupancy agreement (each a "Company Lease") pursuant to which the Company leases or otherwise uses or occupies real property (all such real property that is the subject of any Company Lease, the "Company Leased Real Property"), (i) each Company Lease is the legal, valid and binding obligation of the applicable entity that is lessee, sublessee or occupant thereunder subject to the General Enforceability Exceptions, and (ii) the applicable lessee, sublessee or occupant entity is not in default, and no other party to such Company Lease is in default beyond any applicable notice and cure period, under such Company Lease, except, in each case of (i) and (ii), as would not reasonably be expected to have a Company Material Adverse Effect. Section 2.9(c) of the Company Disclosure Schedule sets forth a complete, current and correct list of all Company Leases with respect to the Company Leased Real Property.
- (d) With respect to the Company Owned Real Property, all material buildings, structures, fixtures and improvements are in satisfactory condition (reasonable wear and tear excepted) sufficient to support the operations of the Business as presently conducted. Except as set forth on Section 2.9(d) of the Company Disclosure Schedule, there are no leases, subleases, licenses or occupancy agreements by the Company granting to any Person the right of use or occupancy of any portion of the Company Real Property (except under the Company Leases). As of the date of this Agreement, the Company has not received any written notice of any pending or threatened condemnation or other Legal Proceedings relating to the Company Real Property, except as would not reasonably be expected to have a Company Material Adverse Effect.

#### Section 2.10 Intellectual Property; Data Privacy.

- (a) Section 2.10(a) of the Company Disclosure Schedule sets forth, as of the date of this Agreement, a true and complete list of (i) each item of Registered IP owned or purported to be owned by the Company (the "Company Registered IP") and includes, where applicable, the jurisdiction, record owner, issuance, registration and application number and date, and (ii) material proprietary Software owned or purported to be owned by the Company from which the Company derives material revenue. For the avoidance of doubt and notwithstanding anything to the contrary, no social media account names or handles shall be required to be set forth on Section 2.10(a) of the Company Disclosure Schedules. Except as would not reasonably be expected to result in a Company Material Adverse Effect, the Company Registered IP is subsisting, and none of the registrations included in the Company Registered IP is invalid or unenforceable, and all applications for registrations for the Company Registered IP are pending and in good standing.
- (b) Except as would not reasonably be expected to result in a Company Material Adverse Effect, the Company exclusively owns all right, title and interest to and in the Company Owned IP free and clear of any Encumbrances other than Permitted Encumbrances, and to the Knowledge of Parent, the Company has a valid right or license or other right to use all other material IP Rights used or held for use in or otherwise necessary for the conduct of the Business (collectively, the "Company IP Rights"). Except as would not reasonably be expected to result in a Company Material Adverse Effect, (i) the Company IP Rights owned by the Company immediately prior to the Equity Closing Date will be owned by the Company immediately after the Equity Closing Date on substantially identical terms and conditions as immediately prior to the Equity Closing Date and (ii) the consummation of the Contemplated Transactions will not cause or require the Company to grant, or cause to be granted, to any third party any right to or with respect to any Company Owned IP.
- (c) Except as would not reasonably be expected to result in a Company Material Adverse Effect, the Company has taken all commercially reasonable efforts to protect, preserve and maintain the confidentiality of all Trade Secrets owned, used or held for use by the Company or with respect to the Business ("Company Trade Secrets"). Except as would not reasonably be expected to result in a Company Material Adverse Effect, there has been no unauthorized disclosure or use of any Company Trade Secrets or other material confidential information of the Company or with respect to the Business.
- (d) Except as would not reasonably be expected to result in a Company Material Adverse Effect, to the Knowledge of Parent, no Person is infringing, misappropriating, diluting or otherwise violating any Company Owned IP.
- (e) Except as would not reasonably be expected to result in a Company Material Adverse Effect, (i) to the Knowledge of Parent, since the Look-Back Period the conduct of the Business has not and does not infringe, misappropriate, dilute or otherwise violate any IP Right of any third party and (ii) as of the date of this Agreement, no claim (including any offers to license) or Legal Proceeding is pending or has, since the Look-Back Period, been threatened in writing against the Company by any other Person either (A) involving or alleging any of the foregoing, or (B) challenging the ownership, use, validity, registration or enforceability of any Company Owned IP.

- (f) Since the Look-Back Period, Parent and its Subsidiaries, with respect to the Business, the Company and, with respect to the Processing of Company Data, its Data Processors (i) comply and has complied at all times with Privacy Requirements applicable to the Company; (ii) to the Knowledge of Parent, neither Parent nor any of its Subsidiaries, with respect to the Business, nor the Company has received a written notice (including any enforcement notice), letter, or complaint from a Governmental Body or any Person alleging noncompliance or potential noncompliance with any Privacy Requirements nor has the Company been subject to litigation relating to compliance with Privacy Requirements or the Processing of Personal Data; and (iii) the Company has not been subject to any regulatory inquiries or Action from any Governmental Body regarding any noncompliance or potential noncompliance with Privacy Requirements.
- (g) Since the Look-Back Period, Parent and its Subsidiaries, with respect to the Business, and the Company have established, maintained and complied at all times in all material respects with an Information Security Program that complies with applicable Privacy Requirements and:
  (i) includes policies and procedures regarding the Processing of Personal Data with respect to the Business and the Company, (ii) includes administrative, technical and physical safeguards that are commercially reasonable to protect the security, confidentiality, integrity and availability of any Personal Data owned, controlled, maintained, held, or Processed by or on behalf of the Company or any third party operating at the direction of the Company; (iii) includes commercially reasonable disaster recovery, business continuity, incident response, and security plans, procedures and facilities; and (iv) protects against Security Incidents, Malicious Code, and unauthorized access to, and disruption of, the Processing of Personal Data held by or on behalf of the Company, Company Data, and the Company's IT Systems. Since the Look-Back Period, there have been no material violations of Parent's or any of its Subsidiaries', with respect to the Business, or the Company is in breach or default of any Contracts relating to the protection of its IT Systems or Company Data.
- (h) During the Look-Back Period, except as set forth in Section 2.10(h) of the Company Disclosure Schedule, the Company has not suffered and are not suffering a Security Incident, has not been and are not required to notify any Person or Governmental Body of any Security Incident, and have not been or are not adversely affected by any Malicious Code, ransomware or malware attack, or denial-of-service attacks on any IT System used by the Company. Neither the Company nor any third party acting at the direction or authorization of the Company has paid any perpetrator of any actual or threatened Security Incident or cyber-attack, including but not limited to a ransomware attack or a denial-of-service attack. The Company maintains, and has maintained, cyber liability insurance with reasonable coverage limits.

(i) Since the Look-Back Period, the IT Systems used by the Company (or Parent or its Subsidiaries, with respect to the Business) operate and perform as is necessary to conduct the Business in the manner in which it is currently being conducted and are sufficient for the current needs and operations of the Business and the Company. Since the Look-Back Period, the IT Systems of the Company (or Parent or its Subsidiaries, with respect to the Business) are free of and does not contain any material defects or Malicious Code. The Company (or Parent or its Subsidiaries, with respect to the Business) has assessed and tested the Information Security Program on no less than an annual basis, mitigated or remediated all critical and high risks and vulnerabilities and the Information Security Program has proven adequate and compliant with Privacy Requirements in all material respects.

#### Section 2.11 Contracts.

- (a) <u>Section 2.11(a)</u> of the Company Disclosure Schedule sets forth, under the appropriate subsection, complete, current and correct list of all of the Material Contracts as of the date hereof. For purposes of this Agreement, "*Material Contract*" shall mean the following Contracts to which the Company is a party or by which any of its assets are bound:
  - (i) (A) any material joint venture, partnership or other similar Contract and (B) any shareholders, investors rights, registration rights or similar agreement or arrangement relating to the Company;
  - (ii) each Contract relating to the acquisition or disposition of any material business of the Company (whether by merger, sale of stock, sale of assets or otherwise) pursuant to which the Company has or would reasonably be expected to have material continuing rights or obligations following the date of this Agreement, including pursuant to any "earn-out" or indemnity;
  - (iii) any Contract (A) granting any Person a license, covenant not to sue or similar right to any material Company Owned IP, other than (1) non-exclusive licenses granted to customers or resellers in the ordinary course of business, (2) non-disclosure agreements entered into in the ordinary course of business, and (3) non-exclusive licenses that are merely incidental to the transaction contemplated by the agreement in which such license is included; or (B) pursuant to which any Person has granted to the Company a license, covenant not to sue or similar right to any IP Rights material to the Company or the operation of the Business as currently conducted, except (1) licenses to commercially available, off-the-shelf Software that are licensed under "shrink-wrap," "click-through," or other standard, non-discriminatory terms for an annual or aggregate fee of no more than \$100,000, (2) non-exclusive licenses that are merely incidental to the transaction contemplated by the agreement in which such license is included and (3) non-disclosure agreements entered into in the ordinary course of business;
  - (iv) each Contract that limits the freedom of the Company to compete in any line of business or geographic region (including any Contract that requires the Company to work exclusively with any Person in any line of business or geographic region, or which by its terms would so limit the freedom of Issuer or its Subsidiaries after the Closing), or with any Person, or otherwise restricts the research, development, extraction, manufacture, marketing, distribution or sale of any product by the Company, in each case, in a manner that is material to the Business as currently conducted;

(v) each Contract involving the settlement of any Legal Proceeding or threatened Legal Proceeding (or series of related Legal Proceedings) (A) which (x) would reasonably be expected to involve payments after the date hereof in excess of \$1,000,000 or (y) would reasonably be expected to impose or currently imposes material monitoring or reporting obligations to any other Person outside the ordinary course of business or material restrictions on the Company or (B) which is material to the Company and with respect to which material conditions precedent to the settlement have not been satisfied as of the date hereof;

(vi) any collective bargaining agreement or other Contract with any labor union or similar organization; and

(vii) (A) each loan Contract, promissory note, letter of credit (to the extent drawn) and other evidence of indebtedness for borrowed money in excess of \$1,000,000, (B) any mortgages, pledges and other evidences of Encumbrances securing such obligations on any real or other property that is material to the Company, and (C) any guarantees provided for the benefit of any Person that is material to the Company other than performance guarantees to any customer or supplier in the ordinary course of business, in each case, only to the extent that the Company would be obligated in respect thereof following the Closing.

(b) Each Material Contract is valid and binding on the Company and, to the Knowledge of Parent, is in full force and effect and is enforceable by the Company, in accordance with its terms. The Company has performed all material obligations required to be performed by it under the Material Contracts, and it is not (with or without notice or lapse of time, or both) in breach or default in any material respect thereunder and, to the Knowledge of Parent, no other party to any Material Contract is (with or without notice or lapse of time, or both) in breach or default in any material respect thereunder. The Company has not received written notice of any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Material Contract. To the Knowledge of the Parent, no circumstances exist that (with or without notice or lapse of time, or both) would contravene, conflict with, or result in a material violation or material breach of, or give Parent or its Subsidiaries (including the Company) or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Material Contract. The Company has not received any written notice of the intention of any party to materially modify, terminate or not renew (which includes proposing to renew on terms materially less favorable to the Company) any Material Contract. True and complete copies of all Material Contracts, together with all amendments, supplements and modifications thereto, have been made available to Issuer.

Section 2.12 <u>Compliance with Legal Requirements; Regulatory Matters</u>. Except as set forth on <u>Section 2.12</u> of the Company Disclosure Schedule, the Company is, and since November 22, 2021 (the "*Look-Back Period*") has been, in compliance in all material respects with all Legal Requirements and Orders applicable to the Business, the Company and the assets and properties thereof. Since the beginning of the Look-Back Period, the Company has not received any written notice from, and no Actions have been filed, or, to the Knowledge of the Parent, threatened against the Company by any Governmental Body or any other Person (a)

regarding any actual, alleged, possible, or potential material breach or violation of, or material failure to comply with, any Legal Requirement or Order to which the Company is subject or alleging that the Company has otherwise engaged in any unlawful business practice, (b) regarding any actual, alleged, possible, or potential obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any material remedial action of any nature, (c) requiring the Company to enter into a cease and desist order, agreement, or memorandum of understanding, (d) restricting or disqualifying the activities of the Company in any material respect, or (e) regarding any investigation into the Company, the subject of which notice has not been resolved.

#### Section 2.13 Anti-Corruption Compliance; Export Control and Sanctions Compliance.

- (a) During the Look-Back Period, except as would not have a Company Material Adverse Effect, neither Parent nor any of its Subsidiaries (with respect to the Business), nor, to the Knowledge of Parent, any of their officers or employees, nor Newco BHF, nor the Company, nor any of their respective agents, distributors or representatives with respect to the Business (i) has directly or indirectly, offered, paid, promised, or authorized, any money gift, or other thing of value unlawfully, to any foreign official (as such term is defined in the U.S. Foreign Corrupt Practices Act (the "FCPA")), or to any person while knowing or having reason to know that such person had or would offer, pay, promise, or authorize the payment, promising or offering of any money, gift, or other thing of value to any director, officer, employee, or agent of a Governmental Body or to any foreign official (as such term is defined in the FCPA); (ii) is or has otherwise been in violation of any applicable anti-bribery, anti-corruption or similar Legal Requirements, including the FCPA or the UK Bribery Act 2010; and (iii) has received any notice from, or voluntarily provided any notice to, a Governmental Body or other Person with respect to the Business or the Company that alleges any of the foregoing.
- (b) During the Look-Back Period, Parent and its Subsidiaries (including the Company) have conducted the Business in compliance with applicable provisions of U.S. economic or financial sanctions or trade embargoes, export controls, and anti- boycott laws and regulations imposed, administered or enforced from time to time by relevant Governmental Bodies, including those administered by the U.S. government through the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce's Bureau of Industry and Security, except where such non-compliance would not be material to the Parent or its Subsidiaries. During the Look-Back Period, neither Parent nor any of its Subsidiaries (with respect to the Business) nor the Company has had any transactions, business or financial dealings that directly or, to the best of the Parent's or any Subsidiary's knowledge indirectly, benefited or involved any person or entity located, organized, or ordinarily resident in a U.S.-embargoed country or territory (currently Cuba, Iran, North Korea, Syria or the Crimea, Luhansk, and Donetsk regions of Ukraine).

Section 2.14 <u>Governmental Authorizations</u>. The Company holds all material Governmental Authorizations necessary to enable the conduct of the Business in the manner in which such Business is currently being conducted. To the Knowledge of the Parent, all such Governmental Authorizations are valid and in full force and effect, except where such failure would not reasonably be expected to result in a Company Material Adverse Effect. The Company is, and, at all times during the Look-Back Period, has been in material compliance with the terms and requirements of such Governmental Authorizations, except where such failure would not reasonably be expected to result in a Company Material Adverse Effect.

#### Section 2.15 Tax Matters.

- (a) All Taxes (whether or not shown on any Tax Return) for which the Company may be liable (or imposed with respect to the assets or operations of the Company) have been timely paid. All Tax Returns required to have been filed by or with respect to the assets or operations of the Company have been timely filed (taking into account any extensions), and all such Tax Returns are complete and accurate and disclose all Taxes required to be paid by or with respect to the assets or operations of the Company for the periods covered thereby. No extension of time within which to file any such Tax Return is in effect. No waiver of any statute of limitations relating to Taxes for which the Company may be liable (or imposed with respect to the assets or operations of the Company) is in effect, and no written request for such a waiver is outstanding. All Taxes which the Company is required by Legal Requirement to withhold or to collect for payment have been duly withheld and collected and have been paid to the appropriate Taxing Authority.
- (b) There is no action, suit, investigation, audit, claim or assessment pending or proposed or threatened with respect to Taxes for which the Company may be liable (or imposed with respect to the assets or operations of the Company). No issue has been raised by a Taxing Authority in any prior examination of the Company which, by application of the same or similar principles, could reasonably be expected to result in a proposed deficiency for any subsequent taxable period. The Company has not been informed in writing by any jurisdiction that the jurisdiction believes that the Company was required to file any Tax Return that was not filed or was required to pay any Tax that was not paid. All deficiencies asserted or assessments made as a result of any examination of the Tax Returns filed by or on behalf of the Company have been paid in full or otherwise finally resolved.
- (c) The charges, accruals and reserves for Taxes with respect to the Company reflected on the books of the Company (excluding any provision for deferred income taxes) are adequate to cover tax liabilities accruing through the end of the last period for which the Company has recorded items on its respective books.
- (d) There are no Tax rulings, requests for rulings, or closing agreements relating to Taxes for which the Company may be liable (or imposed with respect to the assets or operations of the Company) that could affect the Company's (or, in the case of Taxes imposed with respect to the assets or operations of the Company, Issuer's) liability for Taxes for any taxable period ending after the Equity Closing Date. The Company (i) has not granted any Person any power of attorney that is currently in force with respect to any material Tax matter, (ii) will not be required to include or accelerate the recognition of any item in income, or exclude or defer any deduction or other tax benefit, in each case in any taxable period (or portion thereof) after Closing, as a result of any change in method of accounting, closing agreement, election, intercompany transaction, installment sale, or the receipt of any prepaid amount.

- (e) The Company is not party to or bound by any Tax sharing agreement, Tax indemnity or similar agreement in favor of any Person with respect to Taxes, other than commercial agreements, the primary purpose of which does not relate to Taxes.
  - (f) There are no liens for Taxes upon the assets of the Company except liens relating to current Taxes not yet due.
- (g) Since the Look-Back Period, the Company (i) has not been a member of any company group other than each company group of which it is presently a member (the "*Parent Group*"), (ii) does not have and has not had any direct or indirect ownership interest in any corporation, partnership, joint venture or other entity (other than the Subsidiaries) and (iii) does not have any liability for Taxes of another Person, other than the Parent Group, under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), under any agreement or arrangement, as a transferee or successor, or by contract or otherwise.
- (h) The Company (i) does not have and has not ever had a permanent establishment in any country other than the country of its organization, (ii) has not engaged in a trade or business in any country other than the country in which it is organized that subjected it to Tax in such country or (iii) is not, or has not ever been, subject to Tax in a jurisdiction outside the country in which it is organized.
- (i) The Company (i) is not, or during the past 12 month period has not been, a United States shareholder (within the meaning of Section 951(b) of the Code) of a controlled foreign corporation (within the meaning of Section 957 of the Code), or (ii) does not own any interest in any passive foreign investment company (as defined in Section 1297 of the Code) or other entity the income of which is or could be required to be included in the income of the Company.
  - (j) Since December 7, 2023, the Company has been properly classified as a disregarded entity for U.S. federal Income Tax purposes.
- (k) To the Knowledge of Parent, there are no facts that would cause the transactions set forth in this Agreement to be treated for Tax purposes other than as described in <u>Section 5.5(e)(i)</u> hereof.

#### Section 2.16 Employee and Labor Matters; Benefit Plans.

(a) (i) There is not, and during the Look-Back Period there has not been, any labor strike, dispute, work stoppage or lockout pending, or, to the Knowledge of Parent, threatened against or affecting the Company; (ii) to the Knowledge of Parent, no union organizational campaign is in progress with respect to the Badcock Employees and no question concerning representation of such Badcock Employees exists; (iii) the Company is not engaged in any unfair labor practice; (iv) there are not any unfair labor practice charges or complaints against the Company pending, or, to the Knowledge of Parent, threatened, before the National Labor Relations Board; (v) there are not any pending, or, to the Knowledge of Parent, threatened, union grievances against the Company as to which there is a reasonable possibility of adverse determination; (vi) there are not any pending, or, to the Knowledge of Parent, threatened, charges against the Company or any of its current or former Badcock Employees before the Equal

Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; (vii) none of Newco BHF, Parent or the Company has received any communication during the Look-Back Period of the intent of any Governmental Body responsible for the enforcement of labor or employment Legal Requirements to conduct an investigation of the Company and, to the Knowledge of Parent, no such investigation is in progress; and (viii) the Company is in compliance in all material respects with all applicable Legal Requirements respecting employment and employment practices, terms and conditions of employment, worker classification, wages, hours of work, withholding and occupational safety and health.

- (b) No Badcock Employee is, to the Knowledge of Parent, a party to or bound by any Contract, or subject to any Order, that may interfere with the use of such Person's best efforts to promote the interests of the Company, may conflict with the Company or the Contemplated Transactions or that has had or would reasonably be expected to have a Company Material Adverse Effect.
- (c) To the Knowledge of Parent, the Company does not currently employ, nor since the Look-Back Date has the Company employed, any Person who has not submitted to the Company facially adequate evidence of their right to work in the jurisdiction in which such Person was employed.
- (d) The Company is, and during the Look-Back Period has been, in compliance with the federal Workers Adjustment and Retraining Notification Act and all similar state or local Legal Requirements ("WARN") and has no liabilities pursuant thereto.
- (e) Section 2.16(e) of the Company Disclosure Schedule contains a list of each material Badcock Benefit Plan. With respect to each material Badcock Benefit Plan, the Company has made available to Issuer true and complete copies, to the extent applicable, of: (i) the governing plan document and any amendments thereto in respect of each such Badcock Benefit Plan (or, in the case of any such Badcock Benefit Plan that is unwritten, a description thereof), (ii) the most recent annual report on Form 5500 (including all schedules and attachments thereto) filed with the IRS, (iii) the most recent summary plan description (or similar document) and any summaries of material modifications thereto, (iv) any related trust agreements, insurance or annuity contracts or other funding or financing arrangements, (v) the most recent determination, opinion or advisory letter from the IRS and any legal opinions issued thereafter with respect to such Badcock Benefit Plan's continued qualification; and (vi) any material and non-routine notices, letters or other correspondence during the Look-Back Period with the IRS, the Department of Labor, the Pension Benefit Guaranty Corporation or any other Governmental Body.
- (f) Each Badcock Benefit Plan has been established, administered and maintained in all material respects in accordance with its terms and applicable Legal Requirements, including ERISA and the Code. There are no pending, or to the Knowledge of Parent, threatened Legal Proceedings or Actions (except routine claims for benefits) against or involving any Badcock Benefit Plan that could give rise to any material liability, and, to the Knowledge of Parent, there are not any facts or circumstances that could give rise to any material liability in the event of any such Legal Proceeding or Action.

- (g) Each Badcock Benefit Plan that is intended to be a tax-qualified plan under Section 401(a) of the Code is so qualified, and is the subject of a favorable determination letter, opinion letter or advisory letter, as applicable, from the IRS to the effect that such Badcock Benefit Plan and related trust is so qualified. To the Knowledge of Parent, no event has occurred and no circumstances exist that would reasonably be expected to materially and adversely affect the tax-qualification of such Badcock Benefit Plan.
- (h) The Company has not engaged in, and to the Knowledge of Parent, no other "party in interest" or "disqualified person" with respect to any Badcock Benefit Plan has engaged in any non-exempt "prohibited transaction" within the meaning of Section 4975 of the Code or Section 406 of ERISA that could, directly or indirectly (whether through indemnification or otherwise), subject the Company to any material Tax or sanctions on prohibited transactions imposed by Section 4975 of the Code or Title I of ERISA.
- (i) Neither the Company, nor any of its ERISA Affiliates, has during the Look-Back Period, contributed to, contributes to, has been required to contribute to, or otherwise participated in or participates in or in any way has any material liability, directly or indirectly (contingent or otherwise), with respect to (i) any plan subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA, including any "multiemployer plan" (within the meaning of Sections 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code) or any single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) that is subject to Sections 4063, 4064 or 4069 of ERISA or Section 413(c) of the Code; (ii) any "multiple employer plan" (within the meaning of Section 413(c) of the Code) or "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA; or (iii) except as set forth on Section 2.16(i) of the Company Disclosure Schedule, any plan or arrangement that provides post-employment medical, life insurance or other welfare-type benefits to any current or former Badcock Employee (other than health continuation coverage required by Section 4980B of the Code and Title I, Subtitle B, Part 6 of ERISA or otherwise as required by Legal Requirement).
- (j) Each Badcock Benefit Plan that is a "group health plan" within the meaning of Section 5000(b)(1) of the Code is in compliance in material respects with the applicable terms of the Patient Protection and Affordable Care Act of 2010, as amended. Since the Look-Back Date, the Company has complied in all material respects with the annual health insurance coverage reporting requirements under Sections 6055 and 6056 of the Code. Except as would not reasonably be expected to result in any material liability to Issuer, neither of the Company or, to the Knowledge of Parent, any ERISA Affiliate has incurred, and to the Knowledge of Parent, (i) no event has occurred, and (ii) no condition or circumstances exists, that could subject the Company to any material penalty or excise Tax under Sections 4980D and 4980H of the Code.
- (k) Neither the execution nor delivery of this Agreement nor the consummation of the Contemplated Transactions would, whether alone or in combination with any other event(s), (i) entitle any Badcock Employee, individual independent contractor or other individual service provider of the Company to, or result in any increase in the amount or enhancement to the terms of, any severance pay, unemployment compensation or any other payment or benefit, (ii) trigger any increased or accelerated contributions to any Badcock Benefit Plan or trigger funding of any Badcock Benefit Plan, (iii) accelerate the time of payment, vesting

or funding or increase the amount or enhance the terms of compensation or benefits due to any Badcock Employee or individual independent contractor or other individual service provider of the Company, or (iv) result in any payment or benefit (whether in cash or property or the vesting of property) to any "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) that would, individually or in combination with any other payment, constitute an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code). The Company is not obligated in any way to pay any gross up or other payment or indemnification amount relating to any Tax that could be imposed under Sections 280G, 409A or 4999 of the Code to any Badcock Employee or other individual service provider of the Company.

Section 2.17 Environmental Matters. Except as would not, individually or in the aggregate, be material to the Company: (i) the Company is and at all times during the Look-Back Period has been in compliance in all respects with all applicable Environmental Laws. (ii) the Company holds all Environmental Permits that are necessary for the conduct of the Business as currently conducted, all such Environmental Permits are valid and in full force and effect, the Company is and at all times during the Look-Back Period has been in compliance in all material respects with all such Environmental Permits and there is no Legal Proceeding pending or, to the Knowledge of Parent, threatened that seeks the revocation, cancellation, suspension or adverse modification of any such Environmental Permit. The Company has not received any written notice, demand, citation, request for information, claim or Order alleging any material violation of or material liability under any Environmental Laws or relating to Hazardous Materials with respect to the Company or any assets owned or used by the Company. There are no Legal Proceedings pending or, to the Knowledge of Parent, threatened against the Company or any assets owned or used by the Company under Environmental Laws. Except as would not, individually or in the aggregate, be material to the Company, there has been no Release of, or exposure to, any Hazardous Materials on, at, under or from any Company Owned Real Property, Company Leased Real Property, any real property formerly owned, leased or occupied by the Company or, to the Knowledge of Parent, at any other location that could reasonably be expected to give rise to material liability on the part of the Company under Environmental Laws. Except as set forth on Section 2.17 of the Company Disclosure Schedule, the Company has not provided an indemnity with respect to, expressly assumed or undertaken any liability, including any corrective, investigatory or remedial obligation of any other Person relating to any Environmental Laws, except for customary indemnities entered into in the ordinary course of business. The Company has made available to Issuer true, complete and accurate copies of all material site assessment reports, studies, and audits prepared since November 22, 2021 relating to the Business, the Company Owned Real Property, the Company Leased Real Property and any real property formerly owned, leased or occupied by the Company that are in the reasonable control and possession of the Company.

Section 2.18 <u>Legal Proceedings</u>; <u>Orders</u>. Except as set forth on <u>Section 2.18</u> of the Company Disclosure Schedule, there is no pending material Legal Proceeding affecting the Company and, to the Knowledge of Parent, no Person has threatened to commence any such material Legal Proceeding. There is no material Order to which the Company is subject. There are no material settlement, consent, non-assertion or other similar agreements to which the Company is a party pursuant to which the Company has any outstanding liabilities, obligations or limitations.

#### Section 2.19 Rental Contracts; Inventory.

- (a) The Company has no lease or rent-to-own Contract currently used by the Company or in the Business.
- (b) During the Look-Back Period, all Inventory was, in all material respects, ordered new or factory refurbished, purchased new or factory refurbished, or acquired in the ordinary course of business pursuant to acquisitions and consistent with the regular inventory practices of the Company.

#### Section 2.20 Key Business Relationships.

- (a) Section 2.20(a) of the Company Disclosure Schedule sets forth a true, complete and correct list of (i) the top 10 Dealer locations of the Business based on revenue generated by Dealers at such locations for the twelve months December 31, 2022 (each such Dealer referred to as a "Key Dealer") and, in each case, the amount of such revenue generated with respect to each Key Dealer, and (ii) the top 10 vendors or suppliers of the Business based on expenses for the twelve months ended December 31, 2022 (and, together with Snap Finance LLC and its Affiliates, each, a "Key Vendor") and the amount of such expenses incurred with respect to each Key Vendor (including, for the avoidance of doubt, Snap Finance LLC and its Affiliates).
- (b) The Company has not at any time delivered to, or received from, any Key Dealer or Key Vendor any written notice or written allegation of a material default or material breach with respect to any Contract. None of the Key Dealers or Key Vendors has (i) terminated or failed to renew or given written, or to the Knowledge of Parent, verbal notice to the Company evidencing its intention to terminate or fail to renew its relationship with such entity, (ii) been in a material dispute with Parent or its Subsidiaries, with respect to the Business or the Company, (iii) with respect to the Key Dealers, given written, or to the Knowledge of Parent, verbal notice to the Company, with respect to the Business or the Company evidencing that it plans to materially reduce the quantity of products or services that it purchases from such entity or otherwise materially alter the terms of its commercial relationship in a manner that would be detrimental to the Company, or (iv) with respect to the Key Vendors, given written, or to the Knowledge of Parent, verbal notice to the Company, evidencing that it plans to materially reduce the quantity of products or services that it provides to such entity or otherwise materially alter the terms of its commercial relationship in a manner that would be detrimental to the Company.

#### Section 2.21 Product Warranty and Product Liability.

- (a) During the Look-Back Period, the Company has not manufactured or designed (other than with respect to packaging or branding) any goods, products or Inventory that it sells or distributes.
- (b) Sections 2.21(b)(i) and (ii) of the Company Disclosure Schedule set forth a true, complete and correct list of (i) each Action related to the Company warranty, product liability or guaranty that has, or would reasonably be expected to involve, a cost to the Company in excess of \$1,000,000 individually or \$5,000,000 in the aggregate, and (ii) each recall required to be taken by the Company, in each case of clauses (i) and (ii), with respect to any goods, products or Inventory sold or distributed by or any service provided by the Company at any time

during the Look-Back Period. All Actions and recalls related to the Company warranty, product liability or guaranty listed on Sections 2.21(b)(i) or (ii) of the Company Disclosure Schedule have been resolved and the Company does not have any further material liability with respect thereto. Except as listed on Section 2.21(b)(iii) of the Company Disclosure Schedule, no Action or series of Actions related to the Company warranty, product liability or guaranty with respect to goods, products or Inventory sold or distributed by, or services provided by the Company has resulted in a cost or liability to the Company in excess of \$1,000,000 individually or \$5,000,000 in the aggregate in any calendar year during the Look-Back Period.

(c) During the Look-Back Period, the Company has not received any written notice of any recalls ordered by any Governmental Body or any other Person with respect to any goods, products or Inventory sold or distributed by, or services provided by the Company or the Business. Except as listed on Section 2.21(c) of the Company Disclosure Schedule, during the Look-Back Period, there has not been any written Order or Action declaring or alleging any of the goods, products or Inventory sold or distributed by, or services provided by the Company to be materially defective or unsafe. To the Knowledge of Parent, no goods, products or Inventory sold, made or distributed by the Company contains, or during the Look-Back Period, contained, asbestos.

#### Section 2.22 Dealer Matters.

- (a) Section 2.22(a) of the Company Disclosure Schedule sets forth a true, complete and correct list of (i) all Dealer Agreements (including, for the avoidance of doubt, each amendment thereto), (ii) the exact legal name of each Dealer party to such Dealer Agreement, as such name appears in its respective certificate of incorporation, formation or such other applicable organizational document, in all material respects, (iii) the jurisdiction of organization or formation, as applicable, for each Dealer party to such Dealer Agreement, in all material respects, (iv) the business address of the Designated Premises under such Dealer Agreement, in all material respects and (v) the effective date and expiration date of such Dealer Agreement, in all material respects. No Dealer Agreement varies in any material respect from the form of Dealer Agreement provided to the Issuer except as set forth on Section 2.22(a) of the Company Disclosure Schedule. The Company has delivered to Issuer true and complete copies, including all material amendments, exhibits and schedules thereto, of the Dealer Agreements, it being understood that amendments related to the consignment and ownership of the merchandise, the Company's (or its designee's or any third party beneficiaries') access to the premises, the obligations of a Dealer to keep the merchandise lien free or payment or the deposit and collection of monies from the sale of merchandise are material.
- (b) To the Knowledge of Parent, each Person who is (i) operating a retail business identified by any Trademarks included in the Company Owned IP, including "Badcock Home Furniture & more" or "Badcock Home Furnishings Center" or (ii) selling home furnishings, appliances or other durable goods consigned by the Company to such Person, is a party to a Dealer Agreement,
- (c) Except for the Dealer Agreements, the Company is not bound by any other Contract granting a right to any Person to (i) develop or operate a retail business identified by any Trademarks included in the Company Owned IP, including "Badcock Home Furniture & more" or "Badcock Home Furnishings Center" or (ii) sell home furnishings, appliances or other durable goods consigned by the Company to such Person.

- (d) No Dealer Agreement prohibits or restricts the Business or the Company from offering or selling competitive merchandise through any channel of distribution under any Trademarks that are not licensed to the applicable Dealer under such Dealer Agreement.
- (e) During the Look-Back Period, the Company has not operated (i) a franchise system subject to the FTC Rule in connection with its retail operation of the Business, or (ii) any network or system of dealers or retailers to sell goods or services anywhere in the United States other than the Badcock Dealer Network.
- (f) The Company has complied with all applicable Franchise and Dealer Relationship Laws in all material respects, except where such failure would not result in a Company Material Adverse Effect or is otherwise not subject to them or is otherwise exempt therefrom.
- (g) To the Knowledge of Parent, none of the terms or provisions of any Dealer Agreement violates any applicable Legal Requirement in any material respect, and none of the policies or practices of the Company in connection with its relationship with any Dealer violates any applicable Legal Requirement in any material respect. Without limiting the foregoing, no changes in the Dealer commission structure or rates implemented by the Company since the beginning of the Look-Back Period has, to the Knowledge of Parent, breached or violated the rights of any Dealer under its Dealer Agreement or under applicable Legal Requirement in any material respect.
- (h) Since the beginning of the Look-Back Period, the Company has not received any written, or to the Knowledge of Parent, verbal notice, demand or claim from a Dealer that the Company has violated any Legal Requirements in connection with its relationship with such Dealer in any material respect or that its Dealer Agreement constitutes a Franchise under applicable Franchise Sales Laws.
- (i) Except as set forth on  $\underline{\text{Section 2.22(i)}}$  of the Company Disclosure Schedule and, in the case of clause (ii), after giving effect to the assignment of such financing statements attached to any release agreement delivered pursuant to  $\underline{\text{Section 1.3(a)(v)}}$ , the Company has (i) a duly perfected, first priority security interest in all furniture, merchandise, and other goods owned by the Company and delivered by the Company to Dealer pursuant to the applicable Dealer Agreement and (ii) not assigned any such security interest or financing statement that lists the Company as a secured party filed in respect of a Dealer Agreement.
- (j) Section 2.22(j) of the Company Disclosure Schedule sets forth a true, complete and correct list of all of the banks that the Company currently has deposit account, and identifies each of the Company's deposit accounts at such bank (including those that are used solely for receiving store receipts from (x) a retail store location of the Company or (y) any store owned or leased and operated by a Dealer).
- (k)  $\underline{\text{Section 2.22(k)}}$  of the Company Disclosure Schedule sets forth a true, complete and correct list of all Credit Card Processing Agreements as of the Equity Closing Date. The Company has delivered to Issuer true and complete copies, including all exhibits, schedules and amendments thereto, of such Credit Card Processing Agreements.

(l) Since the beginning of the Look-Back Period, the Company has not received any written notice of, or to the Knowledge of Parent, verbal notice, that the relationship between such party and any Dealer under the terms of the Dealer Agreement constitutes a Franchise or a business opportunity under any Franchise Sales Laws or any state business opportunity laws.

Section 2.23 <u>Insurance</u>. Except as has not had, and would not reasonably be expected to result in a Company Material Adverse Effect, (a) all current, insurance policies (or replacements thereof) and Contracts of insurance of the Company are in full force and effect and are valid and binding and cover against the risks as are customary in all material respects for companies of similar size in the same or similar lines of business and (b) all premiums due thereunder have been paid. The Company has not received written notice of cancellation or termination with respect to any current third party insurance policies or Contracts of insurance (other than in connection with normal renewals of any such insurance policies or Contracts) where such cancellation or termination would reasonably be expected to result in a Company Material Adverse Effect.

### Section 2.24 Accounts.

- (a) During the Look-Back Period, the Company has not issued any Credit Cards or partnered with a third-party bank in issuance of any private label Credit Cards.
- (b) Each Company Account that is currently in effect (i) is a valid and binding obligation of the Company and, to the Knowledge of Parent, each Borrower party thereto, (ii) is, to the Knowledge of Parent, enforceable against such Borrowers in accordance with its terms, subject to (A) any claims and defenses asserted by such Borrower with respect to disputed transactions, (B) the Servicemembers Civil Relief Act and (C) the General Enforceability Exceptions, (iii) is, to the Knowledge of Parent, not subject to any claim of usury against the Company or of fraud or offset, recoupment, adjustment, rescission or any other valid and cognizable claim or defense of a Borrower, and (iv) was originated in accordance with, and has at all times been serviced in accordance with, and otherwise complies with all Legal Requirement, including all Consumer Credit Laws, in each case as would materially and adversely affect the validity, enforceability or collectability of such Account.
- (c) The Company has established and maintained a compliance management system designed to ensure compliance with all Consumer Credit Laws and has made available a copy of such system to Issuer.
- (d) Each Account that is currently in effect is governed by an Account Agreement. Representative forms of Account Agreements used since January 1, 2023 have been made available to Issuer. The terms of the Account Agreements currently in effect have not been materially waived, impaired, altered or modified. During the Look-Back Period, each of the Charged Off Accounts has been charged off by the Company in accordance with the policies and procedures of the Company and any applicable Legal Requirements.

Section 2.25 Company Affiliated Transactions. Section 2.25 of the Company Disclosure Schedule sets forth a true, complete and correct list of all Contracts and transactions currently in effect between the Company, on the one hand, and any officer, director, member, manager, direct or indirect equity holder or Affiliate of the Company (except for any employment arrangements (including compensation) entered into in the ordinary course of business or indemnification or exculpation obligations). Such transactions or arrangements described in the immediately preceding sentence are referred to herein collectively as "Company Affiliated Transactions". To the Knowledge of Parent, no Affiliate, director, officer, partner, member, manager or direct or indirect equity holder of the Company, or any affiliate of any of the foregoing or any entity in which any of the foregoing Persons owns Equity Interests, (a) owns or has any other interest in any material assets or properties, tangible or intangible, which is used by the Company in the conduct of the Business, (b) has any material commercial relationship (including as landlord, tenant, vendor, distributor, customer, consultant, lender, creditor, borrower, supplier, licensee, licensor, competitor, representative or other business relationship) with the Company, (c) has any ownership or other interest in or has made any loan to, or is a director (or applicable equivalent), officer or employee of any Key Vendor or Key Dealer or competitor of the Company, or (d) is a party to any Action that is pending or, to the Knowledge of Parent, threatened, against the Company.

Section 2.26 <u>Acknowledgement by the Company</u>. The Company is neither relying nor has relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in this Agreement and the Transaction Documents. The representations and warranties by Issuer contained in this Agreement and the Transaction Documents constitute the sole and exclusive representations and warranties of Issuer, the other Issuer Companies and their respective Representatives in connection with the Contemplated Transactions, and the Company understands, acknowledges and agrees that all other representations and warranties of any kind or nature, whether express, implied or statutory, are specifically disclaimed by Issuer. The Company acknowledges that, except for the representations and warranties of Issuer contained in <u>Article IV</u>, no representations or warranties are made by Issuer or its Representatives with respect to the accuracy or completeness of any information, documents or other materials (including any such materials contained in any data room or otherwise reviewed by the Company or any of its Representatives) or any management presentations that have been or shall hereafter be provided to the Company or its Representatives.

# ARTICLE III

# REPRESENTATIONS AND WARRANTIES OF PARENT, FREEDOM VCM AND NEWCO BHF

Each of Parent, Freedom VCM and Newco BHF hereby represents and warrants to Issuer, as of the Equity Closing Date (unless the particular representation or warranty speaks expressly as of another date, in which case, such representation or warranty is made as of such other date), as to itself only as follows (it being understood that each representation or warranty contained in this <a href="Article III">Article III</a> is subject to <a href="Section 7.9">Section 7.9</a> and the exceptions and disclosures set forth in the Company Disclosure Schedule):

Section 3.1 Organization and Good Standing. Each of Parent, Freedom VCM and Newco BHF is duly organized or formed, validly existing and in good standing under the laws of the State of Delaware and is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its properties and assets requires such qualification or authorization, except where the failure to be so qualified, authorized, or in good standing would not reasonably be expected to result in a Company Material Adverse Effect. Each of Parent, Freedom VCM and Newco BHF has all requisite power and authority to own, operate and lease the assets and properties that it purports to own, operate or lease and to carry on its business as it is currently conducted.

Section 3.2 <u>Authorization; Execution; Enforceability.</u> Each of Parent, Freedom VCM and Newco BHF has the requisite power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is a party. The execution, delivery and performance by each of Parent, Freedom VCM and Newco BHF of this Agreement, the other Transaction Documents to which it is a party, and each of the transactions contemplated hereby or thereby have been duly and validly authorized by all requisite action on the part of such party and no other act or proceeding on the part of such party is necessary to authorize the execution, delivery or performance by such party of this Agreement or any Transaction Document to which it is a party or the consummation of any of the transactions contemplated hereby or thereby. This Agreement, and each other Transaction Document to which Parent, Freedom VCM or Newco BHF is a party have been duly and validly executed and delivered by each such party and, assuming the due and valid execution and delivery of this Agreement and the other applicable Transaction Documents by the other parties hereto and thereto, constitute a valid, legal and binding obligation of such party, enforceable against such party in accordance with its terms, except as the enforceability hereof or thereof may be limited by the General Enforceability Exceptions.

# Section 3.3 Non-Contravention; Consents.

- (a) Neither (x) the execution, delivery or performance of this Agreement, nor (y) the consummation of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time, or both):
  - (i) contravene, conflict with or result in a violation of any of the provisions of the certificate of incorporation, certificate of formation, bylaws, limited liability company operating agreement, or Organizational Documents of Parent, Freedom VCM and Newco BHF;
  - (ii) contravene, conflict with or result in a violation of, in any material respect, any Legal Requirement or any Order to which Parent, Freedom VCM or Newco BHF or any material asset of such party is subject;
  - (iii) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any material Governmental Authorization that is held by Newco BHF or that otherwise relates to the Business or to any of the material assets of the Company;

- (iv) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Material Contract, or give any Person the right to: (1) declare a default or exercise any remedy or relief under any such Material Contract; (2) accelerate the maturity or performance of any such Material Contract; or (3) cancel, terminate or modify any right, benefit, obligation or other term of such Material Contract; or
- (v) result in the imposition, creation or continuance of any Encumbrance (other than a Permitted Encumbrance) upon or with respect to any asset of the Company;

except, with respect to clauses (i), (iv) and (v), where any such failure would not reasonably be expected to result in a Company Material Adverse Effect.

- (b) Except as set forth on Section 3.3(b) of the Company Disclosure Schedule, neither Parent, Freedom VCM or Newco BHF is making, nor will any such party be required to make, any filing with or give any notice to, or to obtain any Consent from, any third-party or Governmental Body in connection with: (x) the execution, delivery or performance of this Agreement; or (y) the consummation of the Contemplated Transactions, except where any such failure would not reasonably be expected to result in a Company Material Adverse Effect.
- Section 3.4 <u>Brokers or Finders</u>. No agent, broker, finder, investment banker, Person or firm acting on behalf of Parent, Freedom VCM or Newco BHF or any of their respective Subsidiaries (including the Company) is entitled to any brokerage, finder's or other fee or commission in connection with the Contemplated Transactions as a result of arrangements made by or on behalf of the Company, other than any broker, finder or investment banker whose fees will be paid by Parent, Freedom VCM or Newco BHF.
- Section 3.5 <u>Badcock Units</u>. Newco BHF has good and valid title to the Badcock Units, free and clear of all Encumbrances, other than Permitted Encumbrances or restrictions on securities under applicable Legal Requirements. Other than this Agreement and the Organizational Documents of the Company, the Badcock Units are not subject to any voting trust agreement or other Contract, restricting the voting, dividend rights or disposition of the Badcock Units.
- Section 3.6 <u>Taxes</u>. To the Knowledge of Parent, there are no facts that would cause the transactions set forth in this Agreement to be treated for Tax purposes other than as described in <u>Section 5.5(e)(i)</u> hereof.
- Section 3.7 <u>Acknowledgement by Parent, Freedom VCM and Newco BHF</u>. Each of Parent, Freedom VCM and Newco BHF is neither relying nor has relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in this Agreement and the Transaction Documents. The representations and warranties by Issuer contained in this Agreement and the Transaction Documents constitute the sole and exclusive representations and warranties of Issuer, the other Issuer Companies and their respective Representatives in connection with the Contemplated Transactions, and each of Parent, Freedom VCM and Newco BHF understands, acknowledges

and agrees that all other representations and warranties of any kind or nature, whether express, implied or statutory, are specifically disclaimed by Issuer. Each of Parent, Freedom VCM and Newco BHF acknowledges that, except for the representations and warranties of Issuer contained in Article IV, no representations or warranties are made by Issuer or its respective Representatives with respect to the accuracy or completeness of any information, documents or other materials (including any such materials contained in any data room or otherwise reviewed by Parent, Freedom VCM, and Newco BHF or any of their respective Representatives) or any management presentations that have been or shall hereafter be provided to Parent, Freedom VCM, Newco BHF or their respective Representatives.

#### ARTICLE IV

### REPRESENTATIONS AND WARRANTIES REGARDING ISSUER

Issuer hereby represents and warrants to Parent, Freedom VCM and Newco BHF, as of the Equity Closing Date (unless the particular representation or warranty speaks expressly as of another date, in which case, such representation or warranty is made as of such other date), as follows (it being understood that each representation or warranty contained in this <u>Article IV</u> is subject to (i) <u>Section 7.9</u>, (ii) the exceptions and disclosures set forth in the Issuer Disclosure Schedule and (iii) any information set forth in the documents filed on the SEC's EDGAR database and publicly available prior to the date of this Agreement (but excluding any supplements or amendments thereto to the extent such supplement or amendment is not publicly filed prior to the date hereof), other than information set forth therein under the headings "Risk Factors" or "Forward-Looking Statements" and any other information or statement set forth therein that is primarily cautionary, predictive or forward-looking in nature):

# Section 4.1 Organization and Good Standing.

- (a) Issuer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its properties and assets requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not reasonably be expected to result in an Issuer Material Adverse Effect. Issuer has all requisite power and authority to own, operate and lease the assets and properties that it purports to own, operate or lease and to carry on its business as it is currently conducted.
- (b) Issuer has made available to Parent, Freedom VCM and Newco BHF copies of its Organizational Documents and such Organizational Documents are true, accurate and complete in all respects and reflect all amendments made through the date hereof.

Section 4.2 <u>Authorization, Execution; Enforceability</u>. Issuer has the requisite corporate power and authority to execute and deliver this Agreement and each of the other Transaction Documents to which it is a party. The execution, delivery and performance by Issuer of this Agreement, the other Transaction Documents to which Issuer is a party, and each of the transactions contemplated hereby or thereby have been duly and validly authorized by all requisite action on the part of Issuer and no other act or proceeding on the part of Issuer is

necessary to authorize the execution, delivery or performance by Issuer of this Agreement or any Transaction Document to which Issuer is a party or the consummation of any of the transactions contemplated hereby or thereby. This Agreement and each other Transaction Document to which Issuer is a party have been duly and validly executed and delivered by Issuer and, assuming the due and valid execution and delivery of this Agreement and the other applicable Transaction Documents by the other parties hereto and thereto, constitute a valid, legal and binding obligation of Issuer, enforceable against Issuer in accordance with its terms, except as the enforceability hereof or thereof may be limited by the General Enforceability Exceptions.

### Section 4.3 Non-Contravention; Consents.

- (a) Neither (x) the execution, delivery or performance of this Agreement, nor (y) the consummation of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time, or both):
  - (i) contravene, conflict with or result in a violation of any of the provisions of the certificate of incorporation, bylaws, or Organizational Documents of any Issuer Company;
  - (ii) contravene, conflict with or result in a violation of, in any material respect, any Legal Requirement or any Order to which any Issuer Company or any material asset of any Issuer Company is subject;
  - (iii) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any material Governmental Authorization that is held by any Issuer Company or that otherwise relates to the business of any Issuer Company or to any of the material assets of any Issuer Company;
  - (iv) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Issuer Material Contract, or give any Person the right to: (1) declare a default or exercise any remedy or relief under any such Issuer Material Contract; (2) accelerate the maturity or performance of any such Issuer Material Contract; or (3) cancel, terminate or modify any right, benefit, obligation or other term of such Issuer Material Contracts; or
  - (v) result in the imposition, creation or continuance of any Encumbrance (other than a Permitted Encumbrance) upon or with respect to any asset of any Issuer Company;

except, with respect to clauses (i), (iv) and (v), where any such failure would not reasonably be expected to result in an Issuer Material Adverse Effect.

(b) Except as set forth on Section 4.3(b) of the Issuer Disclosure Schedule, no Issuer Company is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any third-party or Governmental Body in connection with: (x) the execution, delivery or performance of this Agreement; or (y) the consummation of the Contemplated Transactions, except where any such failure would not reasonably be expected to result in an Issuer Material Adverse Effect.

### Section 4.4 Capitalization of Issuer.

- (a) Issuer Stockholders collectively own beneficially and of record 100% of the issued and outstanding Equity Interests of Issuer. The authorized capital stock of Issuer consists solely of 100,000,000 authorized shares of Issuer Common Stock and 1,000,000 authorized shares of Issuer Preferred Stock. As of December 11, 2023 (i) 24,550,113 shares of Issuer Common Stock are issued and outstanding, (ii) 1,000,000 shares of Issuer Preferred Stock are issued and outstanding, (iii) 9,405,000 shares of Issuer Common Stock are held in the treasury of Issuer, (iv) 600,000 shares underlying outstanding options to purchase shares of Issuer Common Stock granted under the Issuer Equity Plan with a weighted average exercise price of \$30.12, (v) 1,975,551 shares of Issuer Common Stock underlying outstanding restricted stock units granted under the Issuer Equity Plan, (vi) 397,621 shares of Issuer Common Stock underlying performance vesting restricted stock units granted under the Issuer Equity Plan assuming maximum performance, and (vii) 949,836 shares of Issuer Common Stock reserved and available for issuance under the Issuer Equity Plan. The Issuer Preferred Stock issued pursuant to the terms of this Agreement is duly authorized, is validly issued, has the rights, preferences and privileges specified in Issuer's Organizational Documents, as amended, is free of any Encumbrances, and is not issued in violation of any preemptive or similar purchase rights or any purchase option, right of first refusal, call right or other similar rights or other restrictions on transfer, other than (i) restrictions on transfer under applicable state and federal securities Legal Requirements, (ii) those as are created by or related to Newco BHF and its Subsidiaries and (iii) those arising under this Agreement and the other Transaction Documents.
- (b) Issuer or one or more wholly owned Subsidiaries of Issuer collectively own beneficially and of record 100% of the issued and outstanding Equity Interests of each of Issuer's Subsidiaries. All of the issued and outstanding Equity Interests of each of Issuer's Subsidiaries have been duly authorized, are validly issued, and no such Equity Interests were issued in violation of the Organizational Documents of Issuer and such Issuer's Subsidiaries, any applicable Legal Requirements, or any applicable preemptive right, purchase option, call or right of first refusal or offer or similar right, or restriction on transfer on the Equity Interests of the Issuer's Subsidiaries.
- (c) Except as set forth on Section 4.4(c) of the Issuer Disclosure Schedule, (i) no Issuer Preferred Stock issued pursuant to the terms of this Agreement or any other Transaction Document is entitled or subject to any preemptive right, right of repurchase, redemption or forfeiture, right of participation, right of maintenance or any similar rights; (ii) no Issuer Preferred Stock issued pursuant to the terms of this Agreement or any other Transaction Document is subject to any right of first refusal; and (iii) there is no Contract relating to the voting or registration of, or restricting any Person from purchasing selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to) any Issuer Preferred Stock issued pursuant to the terms of this Agreement or any other Transaction Document. Issuer is not under any obligation, and is not bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any Issuer Preferred Stock issued pursuant to the terms of this Agreement or any other Transaction Document.

- (d) As of the date of this Agreement, there is no outstanding indebtedness for borrowed money (or guarantees thereof) of Issuer and its Subsidiaries other than indebtedness for borrowed money reflected on the consolidated balance sheet of Issuer and its Subsidiaries set forth in the Issuer Financial Statements.
- (e) There are no outstanding options, stock appreciation, performance units, phantom stock or phantom stock rights, profit participation, conversion, or similar rights or other equity appreciation or other equity or equity-based compensation rights or arrangements with respect to any of the Issuer Preferred Stock issued pursuant to the terms of this Agreement and/or any other Transaction Document.
- (f) Other than as described in Section 4.4(a) and except as set forth on Section 4.4(f) of the Issuer Disclosure Schedule, there is no (i) outstanding security of Issuer convertible into, exchangeable or exercisable for any Equity Interests of Issuer, (ii) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any Equity Interests of Issuer, including securities convertible into or exchangeable for Equity Interests of Issuer; (iii) equity equivalent, interest in the ownership or earnings, or other similar right of or with respect to Issuer; (iv) outstanding security, bond, debenture, instrument or obligation that is or may become convertible into or exchangeable for any Equity Interests of Issuer or that has the right to vote on any matter on which the Issuer Stockholders have the right to vote; or (v) Contract under which Issuer is or would become obligated to sell or otherwise issue any Equity Interests.
- (g) Issuer is not party to any agreement with any holder of Issuer Equity Interests that (i) allows such holder to include such Equity Interests in any registration; (ii) allows such holder to initiate a demand for registration of any securities held by such holder or prospective holder; or (iii) otherwise conflicts with the rights granted to any of Parent, Newco BHF and Freedom VCM under this Agreement or any of the other Transaction Documents

# Section 4.5 Subsidiaries.

- (a) Except as set forth on Section 4.5(a) of the Issuer Disclosure Schedule, Issuer does not have any Subsidiaries and does not, directly or indirectly, hold beneficially or of record any Equity Interests of any other Person.
- (b) Each Subsidiary of Issuer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such concepts are applicable under the laws of the jurisdiction of its organization) and is duly qualified or authorized to do business and is in good standing (or the equivalent thereof, if applicable) under the laws of each jurisdiction in which the conduct of its business or the ownership of its properties and assets requires such qualification or authorization, except where the failure to be so qualified, authorized, or in good standing would not reasonably be expected to result in an Issuer Material Adverse Effect. Each Subsidiary of Issuer has all requisite power and authority to own and lease its properties and assets and carry on its business as presently conducted, except where the failure to have such power and authority would not reasonably be expected to result in an Issuer Material Adverse Effect.

(c) Section 4.5(c) of the Issuer Disclosure Schedule sets forth for each Subsidiary of the Issuer (i) its name and jurisdiction of organization and (ii) its form of organization. Each outstanding partnership or limited liability company unit or share of capital stock of each Subsidiary of Issuer is duly authorized, validly issued, (in the case of shares of capital stock) fully paid and nonassessable and is not subject to and was not issued in violation of any preemptive rights. Issuer is the sole direct or indirect beneficial and record owner of the outstanding Equity Interests in each of its Subsidiaries.

# Section 4.6 SEC Documents; Financial Statements; Controls; Listing.

- (a) Except as set forth on Section 4.6(a) of the Issuer Disclosure Schedule, Issuer has timely filed or furnished with the SEC all reports, schedules, forms, statements, and other documents (including exhibits and other information incorporated therein) required to be filed or furnished by it since January 1, 2020 (all such documents, collectively, the "Issuer SEC Documents"). Issuer has made available copies of the unaudited consolidated balance sheet of Issuer dated as at December 31, 2022, the related unaudited consolidated statement of income of Issuer, and any notes thereto or schedules included therein (the "Issuer Financial Statements"). The Issuer SEC Documents, at the time filed or furnished (except to the extent corrected by a subsequently filed or furnished Issuer SEC Document filed or furnished prior to the date hereof), (i) complied, and currently comply, in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as applicable and (ii) complied, and currently comply, as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto. The Issuer Financial Statements present fairly in all material respects the consolidated financial position of the Issuer Companies as of the dates thereof and for the periods covered thereby (except as otherwise noted therein or the omission of notes to the extent permitted by Regulation S-K or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC, and subject to the absence of footnotes and normal and recurring year-end audit adjustments). For the avoidance of doubt, (i) the Issuer Financial Statements and the foregoing representations and warranties are qualified by the fact that the business of Issuer Companies has operated as a part of a consolidated group of Issuer entity and the business of Issuer Companies has received certain allocated charges and credits which do not necessarily reflect amounts that would have resulted from arm's-length transactions or that the business of Issuer Companies would incur on a standalone basis or on an integrated basis within another organization, and (ii) the Financial Statements are not pro forma financial statements giving effect to the transactions contemplated by this Agreement.
- (b) Issuer and its Subsidiaries (i) maintain a system of internal accounting controls over financial reporting that is designed to provide reasonable assurances regarding the reliability of financial reporting and preparation of the Issuer Financial Statements in accordance with GAAP (except as may be indicated in the notes therein or the omission of notes to the extent permitted by Regulation S-K or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) and (ii) have not identified any significant deficiencies or material weakness in the design or operation of its internal accounting controls.
- (c) Issuer does not have any liability or obligation of the type required to be reflected in financial statements prepared in accordance with GAAP, other than any such liabilities or obligations (i) reflected or reserved against on the Issuer Financial Statements or (ii) incurred since August 30, 2023 in the ordinary course of business (none of which is a liability resulting from breach of Contract, breach of warranty, tort, infringement or misappropriation by Issuer or any of its Subsidiaries).

- (d) No Issuer Company is a party to, or has any commitment to become a party to, any "off-balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K promulgated by the U.S. Securities and Exchange Commission).
- (e) All Accounts Receivable outstanding as of the date of this Agreement (i) resulted from bona fide sales in the ordinary course of business, and (ii) represent the genuine, valid and legally enforceable obligations of the account debtor, payable on trade terms granted in the ordinary course of business. Except as would not result in an Issuer Material Adverse Effect, no portion of the Accounts Receivable is delinquent or subject to any valid defense, set off or counterclaim. There is no material contest, claim or right of set-off under any Issuer Material Contract with any obligor of any Accounts Receivable related to the amount or validity of such Accounts Receivable, and no bankruptcy, insolvency or similar actions have been commenced by or against any such obligor. Except as set forth on Section 4.6(e) of the Issuer Disclosure Schedule and other than the Consumer Credit Receivables, no Account Receivable of Issuer is delinquent by 90 days or more and, to the Knowledge of Issuer, no written communications of default have been received by any Issuer Company with respect to such Accounts Receivable.
- (f) Without limiting the generality of the foregoing Section 4.6(e), all consumer credit receivables outstanding as of the date of this Agreement have been originated, serviced, and collected in compliance in all material respects with the Issuer's underwriting, servicing and collection policies, true, complete and correct copies of which have been made available by the Company to Issuer. All consumer credit receivables originated by an Issuer Company outstanding as of the date of this Agreement were, to the Knowledge of Issuer, originated based on true and accurate underwriting information in all material respects. Each finance charge disclosed, billed, charged or received by an Issuer Company in connection with all such consumer credit receivables is calculated in all material respects in accordance with the methodology for determining such finance charge contained in the Contract between the account debtor, on the one hand, and such Issuer Company, on the other hand, under which such account debtor is obligated to make a payment therefor to such Issuer Company.
- (g) All Inventory consists of a quality and quantity usable and salable in the ordinary course of business and is not excessive, but is reasonable in the present circumstances of Issuer, subject to allowances in accordance with GAAP, if any, to the extent expressly reflected in the Issuer Financial Statements for obsolete, damaged, defective, excess or slow-moving items. The reserve for such obsolete, damaged, defective, excess of slow-moving Inventory is in all material respects adequate and calculated consistently with past practices of Issuer. Except as set forth on Section 4.6(g) of the Purchaser Disclosure Schedule, (i) all such Inventory is owned by Issuer free and clear of all Encumbrances, other than Permitted Encumbrances, (ii) all Inventory is located at premises leased by Issuer or one of its Subsidiaries, (iii) no Inventory is held by Issuer or any of its Subsidiaries on a consignment basis and (iv) all Inventory was purchased for use in the business of the Issuer Company in the ordinary course of business.

- (h) Issuer has established and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) designed to give reasonable assurance that information relating to Issuer required to be disclosed in the Issuer SEC Documents is recorded, summarized and reported within the time periods specified by the SEC and that such information is communicated to Issuer's management. There are no material weaknesses in the design or operation of the internal control over financial reporting of Issuer and its Subsidiaries.
- (i) The Issuer Common Stock is listed on Nasdaq Global Select Market, and Issuer has not received any notice of delisting. Issuer has taken no action that is designed to terminate the registration of the Issuer Common Stock under the Exchange Act.

# Section 4.7 Absence of Changes.

Except as set forth on Section 4.7 of the Issuer Disclosure Schedule:

- (a) Since August 30, 2023, except for discussions, negotiations and transactions related to this Agreement or the other Transaction Documents, the Issuer Companies have conducted its business in the ordinary course of business consistent with past practice in all material respects.
- (b) Since August 30, 2023 and through the date of this Agreement, no Effect has occurred or exists that, individually or in the aggregate, has had, or would reasonably be expected to have, an Issuer Material Adverse Effect.
- (c) Since August 30, 2023, Issuer has not declared or paid any dividends or made any other distribution to its equityholders other than in the ordinary course of business consistent with past practice in all material respects;
- (d) Since August 30, 2023, Issuer has not made any material change in any method of accounting or accounting practice or policy other than as required by changes in any applicable Legal Requirement or GAAP; and
- (e) Since August 30, 2023, Purchaser has not sold, leased, licensed or otherwise disposed of any material assets, except (i) Inventory sold in the ordinary course of business consistent with past practice, and (ii) non-exclusive licenses granted in the ordinary course of business; Since August 30, 2023, Issuer has not made or incurred any material capital expenditure, other than planned capital expenditures for fiscal year 2023.
- Section 4.8 <u>Assets</u>. The Issuer Companies have good and valid title to, or a valid and enforceable leasehold interest in, license to or valid right to use, all of the material assets, properties and rights of the Issuer Companies and any other material assets, properties and rights owned or purported to be owned by the Issuer Companies. All of said assets, properties and rights are owned by an Issuer Company free and clear of any Encumbrances, except Permitted Encumbrances.

### Section 4.9 Real Property; Leasehold.

(a) No Issuer Company owns or has ever owned any real property.

- (b) With respect to each lease, sublease, license, or similar use or occupancy agreement (each a "Issuer Lease") pursuant to which any Issuer Company leases or otherwise uses or occupies real property (all such real property that is the subject of any Issuer Lease, the "Issuer Lease Real Property"), (i) each Issuer Lease is the legal, valid and binding obligation of the applicable entity that is lessee, sublessee or occupant thereunder subject to the General Enforceability Exceptions, and (ii) the applicable lessee, sublessee or occupant entity is not in default, and no other party to such Issuer Lease is in default beyond any applicable notice and cure period, under such Issuer Lease, except, in each case of (i) and (ii), as would not reasonably be expected to have an Issuer Material Adverse Effect. Section 4.9(b) of the Issuer Disclosure Schedule sets forth a complete, current and correct list of all Issuer Leases with respect to the Issuer Leased Real Property.
- (c) With respect to the Issuer Leased Real Property, all material buildings, structures, fixtures and improvements are in satisfactory condition (reasonable wear and tear excepted) sufficient to support the operations of the Issuer Companies' business as presently conducted. Except as set forth on Section 4.9(c) of the Issuer Disclosure Schedule, there are no leases, subleases, licenses or occupancy agreements by any Issuer Company granting to any Person the right of use or occupancy of any portion of the Issuer Leased Real Property (except under the Issuer Leases). As of the date of this Agreement, no Issuer Company has received any written notice of any pending or threatened condemnation or other Legal Proceedings relating to the Issuer Leased Real Property, except as would not reasonably be expected to have an Issuer Material Adverse Effect.

# Section 4.10 Intellectual Property; Data Privacy.

- (a) Section 4.10(a) of the Issuer Disclosure Schedule sets forth, as of the date of this Agreement, a true and complete list of (i) each item of Registered IP owned or purported to be owned by any Issuer Company (the "Issuer Registered IP") and includes, where applicable, the jurisdiction, record owner, issuance, registration and application number and date and (ii) material proprietary Software owned or purported to be owned by any Issuer Company from which any Issuer Company derives material revenue. For the avoidance of doubt and notwithstanding anything to the contrary, no social media account names or handles shall be required to be set forth on Section 4.10(a) of the Issuer Disclosure Schedules. Except as would not reasonably be expected to result in an Issuer Material Adverse Effect, the Issuer Registered IP is subsisting, and none of the registrations included in the Issuer Registered IP is invalid or unenforceable, and all applications for registrations for the Issuer Registered IP are pending and in good standing.
- (b) Except as would not reasonably be expected to result in an Issuer Material Adverse Effect, the Issuer Companies exclusively own all right, title and interest to and in the Issuer Owned IP free and clear of any Encumbrances other than Permitted Encumbrances, and the Issuer Companies have a valid right or license or other right to use all other material IP Rights used or held for use in or otherwise necessary for the conduct of the business of the Issuer Companies, (collectively, the "Issuer IP Rights"). Except as would not reasonably be expected to result in an Issuer Material Adverse Effect, (i) the Issuer IP Rights owned by the Issuer Companies immediately prior to the Equity Closing Date will be owned by the Issuer Companies immediately after the Equity Closing Date on substantially identical terms and conditions as immediately prior to the Equity Closing Date and (ii) the consummation of the Contemplated Transactions will not cause or require any Issuer Company to grant, or cause to be granted, to any third party any right to or with respect to any Issuer Owned IP.

- (c) Except as would not reasonably be expected to result in an Issuer Material Adverse Effect, each Issuer Company has taken all commercially reasonable efforts to protect, preserve and maintain the confidentiality of all Trade Secrets owned, used or held for use by the Issuer Companies or with respect to the business of the Issuer Companies ("Issuer Trade Secrets"). Except as would not reasonably be expected to result in an Issuer Material Adverse Effect, there has been no unauthorized disclosure or use of any Issuer Trade Secrets or other material confidential information of the Issuer Companies or with respect to the business of the Issuer Companies.
- (d) Except as would not reasonably be expected to result in an Issuer Material Adverse Effect, to the Knowledge of Issuer, no Person is infringing, misappropriating, diluting or otherwise violating any Issuer Owned IP.
- (e) Except as would not reasonably be expected to result in an Issuer Material Adverse Effect, (i) to the Knowledge of Issuer, since the Look-Back Period, the conduct of the business of any Issuer Company has not and does not infringe, misappropriate, dilute or otherwise violate any IP Right of any third party and (ii) as of the date of this Agreement, no claim (including any offers to license) or Legal Proceeding is pending or has, since the Look-Back Period, been threatened in writing against Issuer or its Subsidiaries by any other Person either (A) involving or alleging any of the foregoing, or (B) challenging the ownership, use, validity, registration or enforceability of any Issuer Owned IP.
- (f) Since the Look-Back Period, each Issuer Company, with respect to the business of the Issuer Companies and, with respect to the Processing of Issuer Data, its Data Processors (i) comply and has complied at all times with Privacy Requirements applicable to each Issuer Company; (ii) to the Knowledge of Issuer, with respect to the business of the Issuer Companies, each Issuer Company has not received a written notice (including any enforcement notice), letter, or complaint from a Governmental Body or any Person alleging noncompliance or potential noncompliance with any Privacy Requirements nor has any Issuer Company been subject to litigation relating to compliance with Privacy Requirements or the Processing of Personal Data; and (iii) each Issuer Company has not been subject to any regulatory inquiries or Action from any Governmental Body regarding any noncompliance or potential noncompliance with Privacy Requirements.
- (g) Since the Look-Back Period, the Issuer Companies, with respect to the business of the Issuer Companies, have established, maintained and complied at all times in all material respects with an Information Security Program that complies with applicable Privacy Requirements and:
  (i) includes policies and procedures regarding the Processing of Personal Data with respect to the business of each Issuer Company, (ii) includes administrative, technical and physical safeguards that are commercially reasonable to protect the security, confidentiality, integrity and availability of any Personal Data owned, controlled, maintained, held, or Processed by or on behalf of any Issuer Company or any third party operating at the direction of any Issuer Company; (iii) includes commercially reasonable disaster recovery, business continuity, incident

response, and security plans, procedures and facilities; and (iv) protects against Security Incidents, Malicious Code, and unauthorized access to, and disruption of, the Processing of Personal Data held by or on behalf of the Issuer, Issuer Data, and the Issuer Companies' IT Systems. Since the Look-Back Period, there have been no material violations of the Issuer Companies', with respect to the business of the Issuer Companies, Information Security Program, and as of the date of this Agreement, the Issuer Companies, with respect to the business of the Issuer Companies, are not in breach or default of any Contracts relating to the protection of its IT Systems or Issuer Data.

- (h) During the Look-Back Period, except as set forth in Section 4.10(h) of the Issuer Disclosure Schedule, the Issuer Companies have not suffered and are not suffering a Security Incident, have not been and are not required to notify any Person or Governmental Body of any Security Incident, and have not been and are not adversely affected by any Malicious Code, ransomware or malware attack, or denial-of-service attacks on any IT System used by any Issuer Company. Neither the Issuer Companies nor any third party acting at the direction or authorization of any Issuer Company have paid any perpetrator of any actual or threatened Security Incident or cyber-attack, including but not limited to a ransomware attack or a denial-of-service attack. The Issuer Companies maintain, and have maintained, cyber liability insurance with reasonable coverage limits.
- (i) Since the Look-Back Period, the IT Systems used by each Issuer Company operate and perform as is necessary to conduct the business of such Issuer Company in the manner in which it is currently being conducted, and are sufficient for the current needs and operations of the business of such Issuer Company. Since the Look-Back Period, the IT Systems of each Issuer Company are free of and do not contain any material defects or Malicious Code. Each Issuer Company has assessed and tested their Information Security Program on no less than an annual basis, mitigated or remediated all critical and high risks and vulnerabilities, and the Issuer Information Security Program has proven adequate and compliant with Privacy Requirements in all material respects.

# Section 4.11 Contracts.

- (a) <u>Section 4.11(a)</u> of the Issuer Disclosure Schedule sets forth, under the appropriate subsection, complete, current and correct list of all of the Issuer Material Contracts as of the date hereof. For purposes of this Agreement, "*Issuer Material Contract*" shall mean the following Contracts to which any Issuer Company is a party or by which any of its assets are bound:
  - (i) (A) any material joint venture, partnership or other similar Contract and (B) any shareholders, investors rights, registration rights or similar agreement or arrangement relating to any Issuer Company;
  - (ii) each Contract relating to the acquisition or disposition of any material business of any Issuer Company (whether by merger, sale of stock, sale of assets or otherwise) pursuant to which any Issuer Company has or would reasonably be expected to have material continuing rights or obligations following the date of this Agreement, including pursuant to any "earn-out" or indemnity;

- (iii) any Contract (A) granting any Person a license, covenant not to sue or similar right to any material Issuer Owned IP, other than (1) non-exclusive licenses granted to customers or resellers in the ordinary course of business, (2) non-disclosure agreements entered into in the ordinary course of business and (3) non-exclusive licenses that are merely incidental to the transaction contemplated by the agreement in which such license is included; or (B) pursuant to which any Person has granted to any Issuer Company a license, covenant not to sue or similar right to any IP Rights material to any of the Issuer Companies or the operation of their business as currently conducted, except (1) licenses to commercially available, off-the-shelf Software that are licensed under "shrink-wrap," "click-through," or other standard, non-discriminatory terms for an annual or aggregate fee of no more than \$100,000, (2) non-exclusive licenses that are merely incidental to the transaction contemplated by the agreement in which such license is included and (3) non-disclosure agreements entered into in the ordinary course of business;
- (iv) each Contract that limits the freedom of any Issuer Company to compete in any line of business or geographic region (including any Contract that requires any Issuer Company to work exclusively with any Person in any line of business or geographic region, or which by its terms would so limit the freedom of Newco BHF or the Company after the Closing), or with any Person, or otherwise restricts the research, development, extraction, manufacture, marketing, distribution or sale of any product by any Issuer Company, in each case, in a manner that is material to the business of such Issuer Company, taken as a whole, as currently conducted;
- (v) each Contract involving the settlement of any Legal Proceeding or threatened Legal Proceeding (or series of related Legal Proceedings) (A) which (x) would reasonably be expected to involve payments after the date hereof in excess of \$1,000,000 or (y) would reasonably be expected to impose or currently imposes material monitoring or reporting obligations to any other Person outside the ordinary course of business or material restrictions on any Issuer Company or (B) which is material to the Issuer Companies, taken as a whole, and with respect to which material conditions precedent to the settlement have not been satisfied as of the date hereof;
  - (vi) any collective bargaining agreement or other Contract with any labor union or similar organization; and
- (vii) (A) each loan Contract, promissory note, letter of credit (to the extent drawn) and other evidence of indebtedness for borrowed money in excess of \$1,000,000, (B) any mortgages, pledges and other evidences of Encumbrances securing such obligations on any real or other property that is material to the Issuer Companies, taken as a whole, and (C) any guarantees provided for the benefit of any Person that is material to the Issuer Companies, taken as a whole, other than performance guarantees to any customer or supplier in the ordinary course of business, in each case, only to the extent that an Issuer Company would be obligated in respect thereof following the Closing.

(b) Each Issuer Material Contract is valid and binding on the applicable Issuer Company and, to the Knowledge of Issuer, is in full force and effect and is enforceable by the applicable Issuer Company, in accordance with its terms. The applicable Issuer Company has performed all material obligations required to be performed by it under the Issuer Material Contracts, and it is not (with or without notice or lapse of time, or both) in breach or default in any material respect thereunder and, to the Knowledge of Issuer, no other party to any Issuer Material Contract is (with or without notice or lapse of time, or both) in breach or default in any material respect thereunder. The Issuer has not received written notice of any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Issuer Material Contract. To the Knowledge of Issuer, no circumstances exist that (with or without notice or lapse of time, or both) would contravene, conflict with, or result in a material violation or material breach of, or give Issuer or its Subsidiaries or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Issuer Material Contract. The Issuer has not received any written notice of the intention of any party to materially modify, terminate or not renew (which includes proposing to renew on terms materially less favorable to the applicable Issuer Company) any Issuer Material Contract. True and complete copies of all Issuer Material Contracts, together with all amendments, supplements and modifications thereto, have been made available to the other parties hereto.

Section 4.12 <u>Compliance with Legal Requirements; Regulatory Matters.</u> Except as set forth on <u>Section 4.12</u> of the Issuer Disclosure Schedule, each Issuer Company is, and since the Look-Back Period has been, in compliance in all material respects with all Legal Requirements and Orders applicable to the business of such Issuer Company and the assets and properties thereof. Since the beginning of the Look-Back Period, no Issuer Company has received any written notice from, and no Actions have been filed, or, to the Knowledge of Issuer, threatened against, any Issuer Company by, any Governmental Body or any other Person (a) regarding any actual, alleged, possible, or potential material breach or violation of, or material failure to comply with, any Legal Requirement or Order to which any Issuer Company is subject, or alleging that any Issuer Company has otherwise engaged in any unlawful business practice, (b) regarding any actual, alleged, possible, or potential obligation on the part of any Issuer Company to undertake, or to bear all or any portion of the cost of, any material remedial action of any nature, (c) requiring any Issuer Company to enter into a cease and desist order, agreement, or memorandum of understanding, (d) restricting or disqualifying the activities of any Issuer Company in any material respect, or (e) regarding any investigation into any Issuer Company, the subject of which notice has not been resolved.

# Section 4.13 Anti-Corruption Compliance; Export Control and Sanctions Compliance.

(a) During the Look-Back Period, except as would not have an Issuer Material Adverse Effect, no Issuer Company, nor, to the Knowledge of Issuer, any of their respective agents, distributors or representatives (i) has directly or indirectly, offered, paid, promised, or authorized, any money gift, or other thing of value unlawfully, to any foreign official (as such term is defined in the FCPA), or to any person while knowing or having reason to know that such person had or would offer, pay, promise, or authorize the payment, promising or offering of any money, gift, or other thing of value to any director, officer, employee, or agent of a Governmental Body or to any foreign official (as such term is defined in the FCPA); (ii) is or has otherwise been in violation of any applicable anti-bribery, anti-corruption or similar Legal Requirements, including the FCPA or the UK Bribery Act 2010; and (iii) has received any notice from, or voluntarily provided any notice to, a Governmental Body or other Person with respect to any Issuer Company that alleges any of the foregoing.

(b) During the Look-Back Period, the Issuer Companies have conducted their business in compliance with applicable provisions of U.S. economic or financial sanctions or trade embargoes, export controls, and anti-boycott laws and regulations imposed, administered or enforced from time to time by relevant Governmental Bodies, including those administered by the U.S. government through the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce's Bureau of Industry and Security, except where such non-compliance would not be material to the Issuer Companies. During the Look-Back Period, no Issuer Company has had any transactions, business or financial dealings that directly or, to the best of the knowledge of the Issuer Companies indirectly, benefited or involved any person or entity located, organized, or ordinarily resident in a U.S.-embargoed country or territory (currently Cuba, Iran, North Korea, Syria or the Crimea, Luhansk, and Donetsk regions of Ukraine).

Section 4.14 <u>Governmental Authorizations</u>. The applicable Issuer Company holds all material Governmental Authorizations necessary to enable the conduct of such Issuer Company's business in the manner in which such business is currently being conducted. To the Knowledge of Issuer, all such Governmental Authorizations are valid and in full force and effect, except where such failure would not reasonably be expected to result in an Issuer Material Adverse Effect. Each Issuer Company is, and, at all times during the Look-Back Period, has been in material compliance with the terms and requirements of such Governmental Authorizations, except where such failure would not reasonably be expected to result in a Company Material Adverse Effect.

# Section 4.15 Taxes of Issuer.

- (a) All material Taxes (whether or not shown on any Tax Return) for which any Issuer Company may be liable have been timely paid. All material Tax Returns required to have been filed by any Issuer Company have been timely filed (taking into account any extensions), and all such Tax Returns are complete and accurate in all material respects. No extension of time within which to file any such Tax Return is in effect. No waiver of any statute of limitations relating to Taxes for which any Issuer Company may be liable is in effect, and no written request for such a waiver is outstanding. All material Taxes which any Issuer Company is required by Legal Requirement to withhold or to collect for payment have been duly withheld and collected and have been paid to the appropriate Taxing Authority.
- (b) There is no action, suit, investigation, audit, claim or assessment pending or proposed or threatened with respect to Taxes for which any Issuer Company may be liable. No Issuer Company has been informed in writing by any jurisdiction that the jurisdiction believes that any such person was required to file any Tax Return that was not filed or was required to pay any Tax that was not paid. All deficiencies asserted or assessments made as a result of any examination of the Tax Returns filed by or on behalf of each Issuer Company have been paid in full or otherwise finally resolved.

- (c) The charges, accruals and reserves for Taxes with respect to each Issuer Company reflected on the books of the Issuer (excluding any provision for deferred income taxes) are adequate to cover tax liabilities accruing through the end of the last period for which the Issuer has recorded items on its respective books.
- (d) No Issuer Company is party to or bound by any Tax sharing agreement, Tax indemnity or similar agreement in favor of any Person with respect to Taxes, other than commercial agreements, the primary purpose of which does not relate to Taxes.
  - (e) There are no liens for Taxes upon the assets of any Issuer Company except liens relating to current Taxes not yet due.
- (f) No Issuer Company (i) has been a member of any company group other than each company group of which it is presently a member (the "Consolidated Group"), (ii) has or has had any direct or indirect ownership interest in any corporation, partnership, joint venture or other entity (other than the Subsidiaries) or (iii) has any liability for Taxes of another Person, other than the Consolidated Group, under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), under any agreement or arrangement, as a transferee or successor, or by contract or otherwise.
- (g) No Issuer Company (i) has or has ever had a permanent establishment in any country other than the country of its organization, (ii) has engaged in a trade or business in any country other than the country in which it is organized that subjected it to Tax in such country or (iii) is, or has ever been, subject to Tax in a jurisdiction outside the country in which it is organized.
- (h) To the Knowledge of Issuer, of any facts that would cause the transactions set forth in this Agreement to be treated for Tax purposes other than as described in Section 5.5(e)(i) hereof.

# Section 4.16 Employee and Labor Matters; Benefit Plans.

(a) (i) There is not, and during the Look-Back Period there has not been, any labor strike, dispute, work stoppage or lockout pending, or, to the Knowledge of Issuer, threatened against or affecting any Issuer Company; (ii) to the Knowledge of Issuer, no union organizational campaign is in progress with respect to the employees of any Issuer Company and no question concerning representation of such employees exists; (iii) no Issuer Company is engaged in any unfair labor practice; (iv) there are not any unfair labor practice charges or complaints against any Issuer Company pending, or, to the Knowledge of Issuer, threatened, before the National Labor Relations Board; (v) there are not any pending, or, to the Knowledge of Issuer, threatened, union grievances against any Issuer Company as to which there is a reasonable possibility of adverse determination; (vi) there are not any pending, or, to the Knowledge of Issuer, threatened, charges against any Issuer Company or any of their current or former employees before the Equal Employment Opportunity Commission or any state or local agency responsible for the prevention of unlawful employment practices; (vii) no Issuer Company has received any communication during the Look-Back Period of the intent of any Governmental Body responsible for the enforcement of labor or employment Legal

Requirements to conduct an investigation of any Issuer Company and, to the Knowledge of Issuer, no such investigation is in progress; and (viii) each Issuer Company is in compliance in all material respects with all applicable Legal Requirements respecting employment and employment practices, terms and conditions of employment, worker classification, wages, hours of work, withholding and occupational safety and health.

- (b) No employee of any Issuer Company is, to the Knowledge of Issuer, a party to or bound by any Contract, or subject to any Order, that may interfere with the use of such Person's best efforts to promote the interests of the Issuer Companies, may conflict with any Issuer Company or the Contemplated Transactions or that has had or would reasonably be expected to have an Issuer Material Adverse Effect.
- (c) To the Knowledge of Issuer, no Issuer Company currently employs, nor since the Look-Back Date has any Issuer Company employed, any Person who has not submitted to the Issuer Company facially adequate evidence of their right to work in the jurisdiction in which such Person was employed.
  - (d) Each Issuer Company is, and during the Look-Back Period has been, in compliance with WARN and has no liabilities pursuant thereto.
- (e) Section 4.16(e) of the Issuer Disclosure Schedule contains a list of each material Issuer Benefit Plan. With respect to each material Issuer Benefit Plan, Issuer has made available to Parent true and complete copies, to the extent applicable, of: (i) the governing plan document and any amendments thereto in respect of each such Issuer Benefit Plan (or, in the case of any such Issuer Benefit Plan that is unwritten, a description thereof), (ii) the most recent annual report on Form 5500 (including all schedules and attachments thereto) filed with the IRS, (iii) the most recent summary plan description (or similar document) and any summaries of material modifications thereto, (iv) any related trust agreements, insurance or annuity contracts or other funding or financing arrangements, (v) the most recent determination, opinion or advisory letter from the IRS and any legal opinions issued thereafter with respect to such Issuer Benefit Plan's continued qualification; and (vi) any material and non-routine notices, letters or other correspondence during the Look Back Period with the IRS, the Department of Labor, the Pension Benefit Guaranty Corporation or any other Governmental Body.
- (f) Each Issuer Benefit Plan has been established, administered and maintained in all material respects in accordance with its terms and applicable Legal Requirements, including ERISA and the Code. There are no pending, or to the Knowledge of Issuer, threatened Legal Proceedings or Actions (except routine claims for benefits) against or involving any Issuer Benefit Plan that could give rise to any material liability, and, to the Knowledge of Issuer, there are not any facts or circumstances that could give rise to any material liability in the event of any such Legal Proceeding or Action.
- (g) Each Issuer Benefit Plan that is intended to be a tax-qualified plan under Section 401(a) of the Code is so qualified, and is the subject of a favorable determination letter, opinion letter or advisory letter, as applicable, from the IRS to the effect that such Issuer Benefit Plan and related trust is so qualified. To the Knowledge of Issuer, no event has occurred and no circumstances exist that would reasonably be expected to materially and adversely affect the tax-qualification of such Issuer Benefit Plan.

- (h) No Issuer Company has engaged in, and to the Knowledge of Issuer, no other "party in interest" or "disqualified person" with respect to any Issuer Benefit Plan has engaged in any non-exempt "prohibited transaction" within the meaning of Section 4975 of the Code or Section 406 of ERISA that could, directly or indirectly (whether through indemnification or otherwise), subject any Issuer Company to any material Tax or sanctions on prohibited transactions imposed by Section 4975 of the Code or Title I of ERISA.
- (i) Neither any Issuer Company, nor any of their ERISA Affiliates, has during the Look-Back Period, contributed to, contributes to, has been required to contribute to, or otherwise participated in or participates in or in any way has any material liability, directly or indirectly (contingent or otherwise), with respect to (i) any plan subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA, including any "multiemployer plan" (within the meaning of Sections 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code) or any single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) that is subject to Sections 4063, 4064 or 4069 of ERISA or Section 413(c) of the Code; (ii) any "multiple employer plan" (within the meaning of Section 413(c) of the Code) or "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA; or (iii) except as set forth on Section 4.16(i) of the Issuer Disclosure Schedule, any plan or arrangement that provides for post-employment medical, life insurance or other welfare-type benefits to any current or former employee of an Issuer Company (other than health continuation coverage required by Section 4980B of the Code and Title I, Subtitle B, Part 6 of ERISA or otherwise as required by Legal Requirement).
- (j) Each Issuer Benefit Plan that is a "group health plan" within the meaning of Section 5000(b)(1) of the Code is in compliance in material respects with the applicable terms of the Patient Protection and Affordable Care Act of 2010, as amended. Since the Look-Back Date, each Issuer Company has complied in all material respects with the annual health insurance coverage reporting requirements under Sections 6055 and 6056 of the Code. Except as would not reasonably be expected to result in any material liability to Parent, none of the Issuer Companies or, to the Knowledge of the Issuer, any ERISA Affiliate has incurred, and to the Knowledge of Issuer, (i) no event has occurred, and (ii) no condition or circumstances exists, that could subject any Issuer Company to any material penalty or excise Tax under Sections 4980D and 4980H of the Code.
- (k) Neither the execution nor delivery of this Agreement nor the consummation of the Contemplated Transactions would, whether alone or in combination with any other event(s), (i) entitle any employee, individual independent contractor or other individual service provider of any Issuer Company to, or result in any increase in the amount or enhancement to the terms of, any severance pay, unemployment compensation or any other payment or benefit, (ii) trigger any increased or accelerated contributions to any Issuer Benefit Plan or trigger funding of any Issuer Benefit Plan, (iii) accelerate the time of payment, vesting or funding or increase the amount or enhance the terms of compensation or benefits due to any such employee or individual independent contractor or other individual service provider of any Issuer Company, or (iv) result in any payment or benefit (whether in cash or property or the vesting of

property) to any "disqualified individual" (as such term is defined in proposed Treasury Regulation Section 1.280G-1) that would, individually or in combination with any other payment, constitute an "excess parachute payment" (as such term is defined in Section 280G(b)(1) of the Code). No Issuer Company is obligated in any way to pay any gross up or other payment or indemnification amount relating to any Tax that could be imposed under Sections 280G, 409A or 4999 of the Code to any employee or other individual service provider of an Issuer Company.

Section 4.17 Environmental Matters. Except as would not result in an Issuer Material Adverse Effect, each Issuer Company is and at all times during the Look-Back Period has been in compliance in all respects with all applicable Environmental Laws. Except as would not result in an Issuer Material Adverse Effect, each Issuer Company holds all Environmental Permits that are necessary for the conduct of its business as currently conducted, all such Environmental Permits are valid and in full force and effect, each Issuer Company is and at all times during the Look-Back Period has been in compliance in all material respects with all such Environmental Permits and there is no Legal Proceeding pending or, to the Knowledge of Issuer, threatened that seeks the revocation, cancellation, suspension or adverse modification of any such Environmental Permit. No Issuer Company has received any written notice, demand, citation, request for information, claim or Order alleging any material violation of or material liability under any Environmental Laws or relating to Hazardous Materials with respect to any Issuer Company or any assets owned or used by any of them. There are no Legal Proceedings pending, or to the Knowledge of Issuer, threatened against any Issuer Company or any assets owned or used by any of them under Environmental Laws. Except as would not result in an Issuer Material Adverse Effect, there has been no Release of, or exposure to, any Hazardous Materials on, at, under or from any Issuer Leased Real Property, any real property formerly owned, leased or occupied by any Issuer Company or, to the Knowledge of Issuer, at any other location that could reasonably be expected to give rise to material liability on the part of any Issuer Company under Environmental Laws. Except as set forth on Section 4.17 of the Issuer Disclosure Schedule, the Issuer has not provided an indemnity with respect to, expressly assumed or undertaken any liability, including any corrective, investigatory or remedial obligation of any other Person relating to any Environmental Laws, except for customary indemnities entered into in the ordinary course of business. Issuer has made available to Parent true, complete and accurate copies of all material site assessment reports, studies, and audits prepared since November 22, 2021 relating to Issuer's business, the Issuer Leased Real Property and any real property formerly owned, leased or occupied by any Issuer Company that are in the reasonable control and possession of the Company.

Section 4.18 <u>Legal Proceedings</u>; <u>Orders</u>. Except as set forth on <u>Section 4.18</u> of the Issuer Disclosure Schedule, there is no pending material Legal Proceeding affecting any Issuer Company and, to the Knowledge of Issuer, no Person has threatened to commence any such material Legal Proceeding. There is no material Order to which any Issuer Company is subject. There are no material settlement, consent, non-assertion or other similar agreements to which any Issuer Company is a party pursuant to which any Issuer Company has any outstanding liabilities, obligations or limitations.

### Section 4.19 Rental Contracts; Inventory.

- (a) Issuer has made available true and correct copies of each form of lease or rent-to-own Contract currently used by the Issuer Companies or in the business of the Issuer Companies, in each case, since January 1, 2023.
- (b) During the Look-Back Period, all Inventory was, in all material respects, ordered new or factory refurbished, purchased new or factory refurbished, or acquired in the ordinary course of business pursuant to acquisitions and consistent with the regular inventory practices of the Issuer Companies.

# Section 4.20 Key Business Relationships.

- (a) <u>Section 4.20(a)</u> of the Issuer Disclosure Schedule sets forth a true, complete and correct list of the top 10 vendors or suppliers of the business of the Issuer Companies based on expenses for the six months ended June 30, 2023 (each, a "*Key Issuer Supplier*") and the amount of such expenses incurred with respect to each Key Issuer Supplier.
- (b) No Issuer Company has at any time delivered to, or received from, any Key Issuer Supplier any written notice or written allegation of a material default or material breach with respect to any Contract. None of the Key Issuer Suppliers has (i) terminated or failed to renew or given written, or to the Knowledge of Issuer, verbal notice to any Issuer Company evidencing its intention to terminate or fail to renew its relationship with such entity, (ii) been in a material dispute with any Issuer Company, with respect to the business of any Issuer Company, or (iii) with respect to the Key Issuer Suppliers, given written, or to the Knowledge of Issuer, verbal notice to any Issuer Company, evidencing that it plans to materially reduce the quantity of products or services that it provides to such entity or otherwise materially alter the terms of its commercial relationship in a manner that would be detrimental to any Issuer Company.

# Section 4.21 Product Warranty and Product Liability.

- (a) During the Look-Back Period, no Issuer Company has manufactured or designed (other than with respect to packaging or branding) any goods, products or Inventory that it sells or distributes.
- (b) Sections 4.21(b)(i) and (ii) of the Issuer Disclosure Schedule set forth a true, complete and correct list of (i) each Action related to any Issuer Company warranty, product liability or guaranty that has, or would reasonably be expected to involve, a cost to any Issuer Company in excess of \$1,000,000 individually or \$5,000,000 in the aggregate, and (ii) each recall required to be taken by the applicable Issuer Company, in each case of clauses (i) and (ii), with respect to any goods, products or Inventory sold or distributed by or any service provided by, any Issuer Company at any time during the Look-Back Period. All Actions and recalls related to any Issuer Company warranty, product liability or guaranty listed on Sections 4.21(b)(ii) or (ii) of the Issuer Disclosure Schedule have been resolved and no Issuer Company has any further material liability with respect thereto. Except as listed on Section 4.21(b)(iii) of the Issuer Disclosure Schedule, no Action or series of Actions related to any Issuer Company warranty, product liability or guaranty with respect to goods, products or Inventory sold or distributed by, or services provided by, any Issuer Company has resulted in a cost or liability to any Issuer Company in excess of \$1,000,000 individually or \$5,000,000 in the aggregate in any calendar year during the Look-Back Period.

(c) During the Look-Back Period, no Issuer Company has received any written notice of any recalls ordered by any Governmental Body or any other Person with respect to any goods, products or Inventory sold or distributed by, or services provided by, an Issuer Company or the business of any Issuer Company. Except as listed on Section 4.21(c) of the Issuer Disclosure Schedule, during the Look-Back Period, there has not been any written Order or Action declaring or alleging any of the goods, products or Inventory sold or distributed by, or services provided by, any Issuer Company to be materially defective or unsafe. To the Knowledge of Issuer, no goods, products or Inventory sold, made or distributed by any Issuer Company contains, or, during the Look-Back Period, contained, asbestos.

Section 4.22 <u>Insurance</u>. Except as has not had, and would not reasonably be expected to result in an Issuer Material Adverse Effect, (a) all current, insurance policies (or replacements thereof) and Contracts of insurance of the Issuer Companies are in full force and effect and are valid and binding and cover against the risks as are customary in all material respects for companies of similar size in the same or similar lines of business and (b) all premiums due thereunder have been paid. No Issuer Company has received written notice of cancellation or termination with respect to any current third party insurance policies or Contracts of insurance (other than in connection with normal renewals of any such insurance policies or Contracts) where such cancellation or termination would reasonably be expected to result in an Issuer Material Adverse Effect.

### Section 4.23 Accounts.

- (a) During the Look-Back Period, no Issuer Company has issued any Credit Cards or partnered with a third-party bank in issuance of any private label Credit Cards.
- (b) Each Issuer Account that is currently in effect (i) is a valid and binding obligation of Issuer and to the Knowledge of Issuer, each Borrower party thereto, (ii) is, to the Knowledge of Issuer, enforceable against such Borrowers in accordance with its terms, subject to (A) any claims and defenses asserted by such Borrower with respect to disputed transactions, (B) the Servicemembers Civil Relief Act and (C) the General Enforceability Exceptions, (iii) is, to the Knowledge of Issuer, not subject to any claim of usury against Issuer or any of its Subsidiaries or of fraud or offset, recoupment, adjustment, rescission or any other valid and cognizable claim or defense of a Borrower, and (iv) was originated in accordance with, and has at all times been serviced in accordance with, and otherwise complies with all Legal Requirement, including all Consumer Credit Laws, in each case as would materially and adversely affect the validity, enforceability or collectability of such Account.
- (c) Issuer has established and maintained a compliance management system designed to ensure compliance with all Consumer Credit Laws and has made available a copy of such system to Parent, Freedom VCM and Newco BHF.

(d) Each Account that is currently in effect is governed by an Account Agreement. Representative forms of Account Agreements used since January 1, 2023 have been made available to Parent. The terms of the Account Agreements currently in effect have not been materially waived, impaired, altered or modified. During the Look-Back Period, each of the Charged Off Accounts has been charged off by Issuer or its applicable Subsidiary in accordance with the policies and procedures of Issuer and any applicable Legal Requirements.

Section 4.24 <u>Issuer Affiliated Transactions</u>. <u>Section 4.24</u> of the Issuer Disclosure Schedule sets forth a true, complete and correct list of all Contracts and transactions currently in effect between an Issuer Company, on the one hand, and any officer, director, member, manager, direct or indirect equity holder or Affiliate of Issuer Companies, on the other hand (except for any employment arrangements (including compensation) entered into in the ordinary course of business or indemnification or exculpation obligations). Such transactions or arrangements described in the immediately preceding sentence are referred to herein collectively as "*Issuer Affiliated Transactions*." To the Knowledge of Issuer, no Affiliate, director, officer, partner, member, manager or direct or indirect equity holder of Issuer Companies, or any affiliate of any of the foregoing or any entity in which any of the foregoing Persons owns Equity Interests, (a) owns or has any other interest in any material assets or properties, tangible or intangible, which is used by an Issuer Company in the conduct of its business or (b) has any material commercial relationship (including as landlord, tenant, vendor, distributor, customer, consultant, lender, creditor, borrower, supplier, licensee, licensor, competitor, representative or other business relationship) with Issuer, (c) has any ownership or other interest in or has made any loan to, or is a director (or applicable equivalent), officer or employee of any Key Issuer Supplier or competitor of the Issuer, or (d) is a party to any Action that is pending or, to the Knowledge of Issuer, threatened, against the Issuer Companies.

# Section 4.25 Existing Issuer Credit Agreements.

- (a) Issuer has delivered to Parent, Freedom VCM and Newco BHF true and complete copies, including all exhibits, schedules and amendments thereto, of the Issuer Credit Facility Amendments which amend the applicable Existing Issuer Credit Agreements to permit the Contemplated Transactions. As of the date hereof, each of the Issuer Credit Facility Amendments is valid, binding and in full force and effect and is enforceable by Issuer in accordance with its terms.
- (b) Neither (i) the execution, delivery or performance of this Agreement, nor (ii) the consummation of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time, or both) conflict with or result in a violation of any of the provisions of each Existing Issuer Credit Agreement, as amended by the applicable Issuer Credit Facility Amendments.

Section 4.26 <u>Brokers or Finders</u>. Other than as set forth on <u>Section 4.26</u> of Issuer Disclosure Schedule, no agent, broker, finder, investment banker, Person or firm acting on behalf of Issuer or any of its Subsidiaries is entitled to any brokerage, finder's or other fee or commission in connection with the Contemplated Transactions as a result of arrangements made by or on behalf of Issuer or any of its Subsidiaries, other than any broker, finder or investment banker whose fees will be paid by Issuer.

Section 4.27 Section 203. The Issuer Board has taken all necessary action to approve, and has approved, for purposes of Section 203 of the DGCL, Newco BHF and Freedom VCM becoming, together with their respective affiliates and associates, an "interested stockholder" within the meaning of Section 203 of the DGCL, such that, as of the date hereof and from and after the Equity Closing, Section 203 of the DGCL will not be applicable to any "business combination" within the meaning of Section 203 of the DGCL that may take place between one or more of the Newco BHF or Freedom VCM or their respective affiliates or associates, on the one hand, and the Issuer or its affiliates or associates, on the other, as a result of the transactions contemplated by this Agreement or otherwise.

Section 4.28 <u>Acknowledgement by Issuer</u>. Issuer is neither relying nor has relied on any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties in this Agreement and the Transaction Documents. The representations and warranties by Parent, Freedom VCM, Newco BHF and the Company, as applicable, contained in this Agreement and the Transaction Documents constitute the sole and exclusive representations and warranties of Parent, Freedom VCM, Newco BHF and the Company, as applicable, and their respective Representatives in connection with the Contemplated Transactions, and Issuer understands, acknowledges and agrees that all other representations and warranties of any kind or nature, whether express, implied or statutory, are specifically disclaimed by Parent, Freedom VCM, Newco BHF and the Company, Issuer acknowledges that, except for the representations and warranties of Parent, Freedom VCM, Newco BHF and the Company, as applicable, contained in <u>Articles II</u> and <u>III</u>, no representations or warranties are made by Parent, Freedom VCM, Newco BHF and the Company, as applicable, or their respective Representatives with respect to the accuracy or completeness of any information, documents or other materials (including any such materials contained in any data room or otherwise reviewed by the Issuer, as applicable, or any of their respective Representatives) or any management presentations that have been or shall hereafter be provided to the Issuer, as applicable, and its Representatives.

### ARTICLE V

# ADDITIONAL COVENANTS AND AGREEMENTS OF THE PARTIES

Section 5.1 <u>Disclosure</u>. Each of the parties hereto shall consult with each other and mutually agree before issuing any press release or other public statement regarding this Agreement or the Contemplated Transactions. Notwithstanding the foregoing: (i) each party may, without such consultation or consent, make any public statement in response to questions from the press, analysts, investors or those attending industry conferences and make internal announcements to employees, so long as such statements are consistent with previous press releases, public disclosures or public statements made jointly by the parties (or individually, if approved by the other party); and (ii) each party may, without the prior consent of any other party hereto, issue any such press release or make any such public announcement or statement as may be required by Legal Requirement, in which case such party shall use its reasonable best efforts to consult in good faith with the other parties hereto prior to issuing any such press release or making any such public announcement or statement.

### Section 5.2 D&O Indemnification.

- (a) For a period of six (6) years after the Equity Closing Date, Issuer shall cause the Company to not adversely modify or amend, or to repeal, and to maintain in effect and continue to provide to the fullest extent permitted by applicable Legal Requirement all rights to indemnification, advancement of expenses, exculpation and other limitations on liability as in effect on the date hereof in the Organizational Documents of the Company in favor of any current or former director or officer that benefits from such indemnification, advancement of expenses, exculpation and other limitations on liability as set forth in such Organizational Documents (each such director or officer, a "D&O Indemnitee"). Without liming the foregoing, from and after the Closing, Issuer shall, and shall cause the Company to, (i) indemnify and hold harmless each D&O Indemnitee who at the Equity Closing is a D&O Indemnitee against all judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that a D&O Indemnitee was a director or officer of, or otherwise entitled to indemnification from, the Company at or prior to the Equity Closing, in each case, whether asserted or claimed prior to, at or after the Equity Closing (the "D&O Indemnifiable Claims"), and (ii) pay or, if requested by any D&O Indemnitee advance, to such D&O Indemnitee all costs, charges and expense, including attorneys' fees paid or incurred in connection with investigating, defending, being a witness in or participating in, or preparing to defend, to be a witness in or participate in any D&O Indemnifiable Claim, in each case to the fullest extent that Parent, Newco BHF or any of their respective Subsidiaries (including the Company), as the case may be, would have been permitted under the applicable Legal Requirements to indemnify such Person (including promptly advancing expenses as incurred to the
- (b) Notwithstanding anything contained in this Agreement to the contrary, this Section 5.2 shall survive the consummation of the Contemplated Transactions and shall be binding, jointly and severally, on all successors and assigns of Issuer and are intended to be for the benefit of, and will be enforceable by, each D&O Indemnitee and each of their heirs and representatives. In the event that Issuer or any of its respective successors or assigns consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or substantially all of its assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Issuer shall succeed to the obligations set forth in this Section 5.2.

# Section 5.3 Preparation and Mailing of Proxy.

(a) As promptly as reasonably practicable, and in any event within 20 days following the date Issuer receives the audited financial statements of the Company required to be delivered pursuant to Section 5.6, Issuer shall prepare a proxy statement/prospectus/consent solicitation statement in respect of the Required Issuer Stockholder Approval (in such context, together with all amendments and supplements thereto, the "Proxy Statement"). Issuer shall use commercially reasonable efforts to cause the Proxy Statement, when filed with the SEC, to comply, in all material respects, with all Legal Requirements applicable thereto. Parent shall furnish all information concerning Parent, Newco BHF or the Company to Issuer that is required to be included in the Proxy Statement, and provide such other assistance, as may be reasonably

requested by Issuer in connection with the preparation, filing, and distribution of the Proxy Statement. All filings or other communications by Issuer with the SEC in connection with the Contemplated Transactions, and all mailings or other communications to the holders of Issuer Common Stock ("Issuer Stockholders") in connection with such transactions, shall be subject to the reasonable prior review by and comment of Parent prior to any filings or dissemination thereof to the SEC or such stockholders, as applicable.

- (b) Issuer, with the reasonable assistance of Parent, shall use commercially reasonable efforts to cause the Proxy Statement to be cleared by the SEC as promptly as practicable after its filing.
- (c) Each of Issuer and Parent shall, as promptly as practicable after receipt thereof, provide each other with copies of any written comments and advise each other of any oral comments with respect to the Proxy Statement from the SEC. Issuer shall provide Parent with a reasonable opportunity to review and comment on any amendment or supplement to the Proxy Statement prior to filing the same with the SEC.

# Section 5.4 <u>Issuer Stockholder Meeting</u>.

(a) As promptly as reasonably practicable following the clearance of the Proxy Statement by the SEC, Issuer shall, in accordance with applicable Legal Requirements and Issuer's Organizational Documents, (i) establish a record date for and duly call and give notice of a special meeting of the Issuer Stockholders (the "Issuer Stockholders Meeting") for the purpose of obtaining the Required Issuer Stockholder Approval, (ii) cause the Proxy Statement (and all other proxy materials for the Issuer Stockholders Meeting) to be mailed to the Issuer Stockholders, and (iii) duly convene and hold the Issuer Stockholders Meeting. Issuer shall use commercially reasonable efforts to solicit proxies from the Issuer Stockholders to obtain the Required Issuer Stockholder Approval. Issuer shall not, without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), (A) adjourn or postpone the Issuer Stockholders Meeting, or (B) once the Issuer has established a record date for the Issuer Stockholders Meeting, change or establish a different record date for the Issuer Stockholders Meeting; provided, that Issuer may, notwithstanding the foregoing, without the prior written consent of Parent, adjourn or postpone the Issuer Stockholders Meeting if, after consultation with Parent, (x) Issuer believes in good faith that such adjournment or postponement is reasonably necessary to allow reasonable additional time to distribute any supplement or amendment to the Proxy Statement that the Issuer Board has determined in good faith after consultation with outside legal counsel is necessary under applicable Legal Requirements and for such supplement or amendment to be reviewed by Issuer Stockholders prior to the Issuer Stockholders Meeting, or (y) such adjournment or postponement is required due to an absence of a quorum. Without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), the Conversion and the Amendment shall be the only matter (other than matters of procedure and matters required by applicable Legal Requirements to be voted on by Issuer Stockholders in connection with this Agreement and the Contemplated Transactions, including any adjournment proposal) that Issuer shall propose to be acted on by the Issuer Stockholders at the Issuer Stockholders Meeting.

- (b) The Proxy Statement shall include the Issuer Recommendation, and neither the Issuer Board nor any committee thereof, shall (i) withdraw or qualify (or amend or modify in a manner adverse to Parent or Newco BHF) or (ii) publicly propose to withdraw or qualify (or amend or modify in a manner adverse to Parent or Newco BHF), the Issuer Recommendation.
- (c) If Issuer does not receive the Required Issuer Stockholder Approval at the Issuer Stockholders Meeting, then, for so long as any Issuer Preferred Stock remains outstanding, Issuer shall continue to use its reasonable best efforts to obtain the Required Issuer Stockholder Approval at each annual meeting of Issuer Stockholders thereafter until the Required Issuer Stockholder Approval is obtained.
- (d) Upon Parent's request, Issuer agrees to reasonably promptly following such request provide Parent a reasonably detailed update concerning proxy solicitation results (including, if requested, promptly providing daily voting reports to the extent reasonably practicable).

# Section 5.5 Tax Matters.

- (a) <u>Preparation and Filing of Income Tax Returns; Payment of Income Taxes</u>. Parent, at its sole cost and expense, shall (A) prepare and timely file all Income Tax Returns of the Company for any Pre-Closing Tax Period (including Form 966 and the final Form 1120 of W.S. Badcock Corporation), and (B) shall timely pay all Income Taxes that are shown as payable with respect to any such Income Tax Return. Each such Income Tax Return shall be prepared on a basis consistent with existing procedures and practices of the Company except as otherwise required by applicable Legal Requirement. Each such Income Tax Return filed after the Equity Closing Date shall be submitted to Issuer for Issuer's review and comment at least 30 days prior to filing such Income Tax Return. Parent shall incorporate any reasonable comments made by Issuer in such Income Tax Return prior to filing. No Income Tax Return filed pursuant to this Section 5.5(a)(i) may be amended after the Equity Closing without the prior written consent of Issuer (such consent no to be unreasonably conditioned, withheld or delayed). Notwithstanding the foregoing, the provisions of this Section 5.5(a) shall not apply to any Parent Tax Return.
- (b) <u>Cooperation on Tax Matters</u>. Parent and Issuer shall provide reasonable cooperation, as and to the extent reasonably requested by the other party, in connection with the preparation and filing of any Income Tax Return and any audit, litigation or other action with respect to Taxes of the Company for Pre-Closing Tax Periods. Such cooperation shall include cooperating in order to retain and provide records and information that are reasonably relevant to any such Income Tax Return, audit, litigation or other action and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

### (c) Tax Contests.

- (i) If any Taxing Authority issues to the Company (A) a written notice of its intent to audit or conduct another action with respect to Income Taxes of the Company for any Pre-Closing Tax Period or (B) a written notice of deficiency for such Taxes, Issuer shall notify Parent of its receipt of such communication from the Taxing Authority within 30 days of receipt. Notwithstanding anything herein to the contrary, no failure or delay of Issuer in the performance of the foregoing shall reduce or otherwise affect the obligations or liabilities of Parent pursuant to this Agreement, except to the extent Parent is actually prejudiced thereby. Parent, at its sole cost and expense, shall be responsible for controlling all audits and other proceedings relating to Taxes or Tax Returns with respect to Income Taxes of the Company for any Pre-Closing Tax Period and shall be responsible for paying any amounts due as a result of any such audit or proceeding.
- (ii) Issuer shall control any audit or other action in respect of any Tax Return or Taxes of the Company not addressed by Section 5.5(c)(i).
- (d) <u>Transfer Taxes</u>. Any sales and transfer Taxes, real property Taxes, transfer Taxes, stamp duties, recording charges and similar Taxes, fees or charges imposed as a result of the transactions contemplated by this Agreement ("*Transfer Taxes*") shall be borne equally by Issuer and Parent. Issuer and Parent shall reasonably cooperate in timely making all filings, returns, reports and forms as necessary or appropriate to comply with the provisions of all applicable Legal Requirements in connection with the payment of such Transfer Taxes, and shall cooperate in good faith to minimize, to the fullest extent possible under such Legal Requirements, the amount of any such Transfer Taxes payable in connection herewith.

# (e) Tax Treatment; Allocation.

- (i) For U.S. federal and applicable state Income Tax purposes, the parties hereto agree that the transaction contemplated by this Agreement is intended to be treated as the purchase by Issuer, and the sale by Newco BHF, of all of the assets of the Company in a transaction governed by Section 1001 of the Code (or similar provision of state law).
- (ii) Within 60 days of the Equity Closing Date, Issuer shall provide to Parent a schedule allocating the total consideration paid by Issuer for the Transaction as finally determined pursuant to the terms of this Agreement among the assets of the Company (the "*Purchase Price Allocation Schedule*"), which will be prepared in accordance with the applicable provisions of the Code. If, within 10 days following delivery of the Purchase Price Allocation Schedule, Parent does not notify Issuer in writing of its disagreement with the Purchase Price Allocation Schedule, the Purchase Price Allocation Schedule shall be final and binding. If within such 10-day period Parent so notifies Issuer, Parent and Issuer shall endeavor to resolve such disagreement, and if they are able to do so shall make such revisions to the Purchase Price Allocation Schedule to reflect such resolution, which shall be final and binding. If, within 30 days following delivery of the Purchase Price Allocation Schedule by Issuer to Parent, Parent and Issuer are unable to resolve such disagreement, from and after such time either Parent or Issuer may submit the remaining disputed items to an internationally recognized independent public accountant (or, if none is available, an internationally recognized consulting or valuation firm) that is mutually agreeable to Parent and Issuer (the "*Independent Accounting Firm*") for resolution.

- (A) If any items in dispute are submitted to the Independent Accounting Firm for resolution, (1) Issuer and Parent shall use their respective reasonable efforts to cause the Independent Accounting Firm to resolve all remaining disagreements (only to the extent such disagreements remain in dispute) as soon as practicable but in any event shall direct the Independent Accounting Firm to render a determination within 30 days after its retention, (2) Issuer and Parent shall cooperate with the Independent Accounting Firm during its engagement and furnish to the Independent Accounting Firm and each other such work papers and other documents and information (subject to customary non-reliance letters, confidentiality agreements, or similar agreements that may be requested by third parties) relating solely to the disputed issues as the Independent Accounting Firm may reasonably request and are available to that party, and shall be afforded the opportunity to present to the Independent Accounting Firm any materials relating to the determination and to discuss the determination with the Independent Accounting Firm; provided, however, that copies of all such materials are promptly provided to the other party and that discussions may only occur in the presence (including by telephone) of the other party; provided, further, however, that the Independent Accounting Firm shall consider only those items and amounts which are identified as being in dispute, and (3) the determination by the Independent Accounting Firm of the disputed items, as shall be set forth in a notice delivered to both parties by the Independent Accounting Firm, shall be final and binding on Issuer and Parent on the date the Independent Accounting Firm delivers its final resolution in writing to Issuer and Parent.
- (B) The Independent Accounting Firm shall have full authority to resolve all issues relating to the disputed items; provided, however, that the Independent Accounting Firm shall not have the authority to resolve issues relating to (1) breaches of representations, warranties, or covenants, or (2) other claims that are not primarily within the scope of the disputed items. The Independent Accounting Firm shall set forth its determination of all issues in a written opinion. In resolving any disputed item, the Independent Accounting Firm shall render a decision choosing an amount no higher than the higher of Issuer's position or Parent's position and no lower than the lower of Issuer's position or Parent's position, in each case, with respect to each item or amount that is identified as being in dispute. The Independent Accounting Firm shall make its determination based solely on presentations by Issuer and Parent and not on the basis of independent review. The final decision of the Independent Accounting Firm may be entered into any court having jurisdiction over the issues addressed in the decision.
- (C) The parties and the Independent Accounting Firm will keep confidential, and will not disclose to any Person, except to their legal counsel, investors, and Representatives or as may be required by Legal Requirement or in connection with enforcing the decision of the Independent Accounting Firm, the existence of any dispute, claim, or controversy under this Section 5.5, the referral of any such dispute, claim, or controversy to arbitration or the status or resolution thereof. The fees of the Independent Accounting Firm for such determination shall be borne by Issuer, on the one hand, and Parent, on the other hand, in proportion to the portion of the aggregate amount in dispute that is finally resolved by the Independent Accounting Firm in a manner adverse to such party.

(f) Issuer, Parent and the Company will not take any position inconsistent with the intended Tax treatment set forth in Section 5.5(e)(i) in notices to or filings with any Governmental Body, in audit or other actions with respect to Taxes, or in other documents or notices relating to the transactions contemplated by this Agreement unless required to do so by a final determination as defined in Section 1313 of the Code.

Section 5.6 <u>Preparation and Delivery of Additional Financial Statements</u>. As soon as reasonably practicable following the date hereof (but in any event within 30 Business Days after the date hereof), Parent shall deliver to Issuer the audited consolidated balance sheets and statements of operations and comprehensive loss, cash flows and changes in temporary and permanent equity of the Company for the fiscal years ended December 31, 2022 and December 31, 2021, together with the unaudited consolidated balance sheets and statements of operations and comprehensive loss, cash flows and changes in temporary and permanent equity of the Company for the nine month period ended September 30, 2023, in each case, as may be necessary or required by any accounting rules and regulations of the SEC to be included in Issuer's Proxy Statement, together (in the case of audited financial statements) with the auditor's reports thereon (the "*Financial Statements*"). The Financial Statements shall comply with the applicable accounting requirements and with the rules and regulations of the SEC, the Exchange Act and the Securities Act as required for inclusion of the Financial Statements into the Proxy Statement.

Section 5.7 401(k) Plan. As soon as practicable following the Equity Closing Date, Issuer shall, or shall cause an Affiliate to, make available to each Badcock Employee a tax-qualified defined contribution plan in which such Badcock Employees shall, subject to the eligibility provisions of such plan and applicable law, be eligible to participate (the "Issuer 401(k) Plan"). Subject to the terms of the Issuer 401(k) Plan and applicable law, (a) Issuer shall permit, and shall cause the Issuer 401(k) Plan to permit, any Badcock Employee entitled to an "eligible rollover distribution" (as defined in Section 402(c)(4) of the Code) from a tax-qualified plan maintained by Parent or its Affiliates (the "Parent 401(k) Plan") to elect to transfer such "eligible rollover distribution" (to the extent consisting of cash and, as applicable and subject to the plan loan policy of the Issuer 401(k) Plan, notes relating to outstanding plan participant loans) in a direct rollover to the Issuer 401(k) Plan, and (b) in the case of any such outstanding plan participant loans, Parent or its Affiliates and Issuer shall cooperate with each other and use commercially reasonable efforts to, subject to the plan loan policy of the Issuer 401(k) Plan, enable rollovers of such loans to occur before such loans default. Prior to the Equity Closing, Parent shall, or shall cause its applicable Affiliate (i) to amend the Parent 401(k) Plan, effective immediately prior to the Equity Closing Date and subject to consummation of the Contemplated Transactions in this Agreement, to the extent necessary to remove the Company and its Subsidiaries as employers or related employers for purposes of such Parent 401(k) Plan, and (ii) to take all actions that are necessary or advisable to ensure that such Parent 401(k) Plan shall not be deemed as a "multiple employer plan" (within the meaning of Section 413(c) of the Code) with respect to the Company and its Subsidiaries.

#### Section 5.8 Relevant Lease Agreements.

- (a) Following the Equity Closing, Parent shall not terminate the Existing FRG Guarantees.
- (b) Following the Equity Closing, if Issuer or any Subsidiary or parent company thereof shall satisfy the Replacement Guarantee Requirements in respect of any Relevant Lease Agreement, then Issuer shall promptly notify the Parent thereof and shall thereafter take (or cause to be taken) any and all actions that are reasonably required to enter into a replacement guarantee as contemplated by and pursuant to the Relevant Lease Agreement and, in connection therewith, shall take such further action as may be required to cause the termination, release and extinguishment of any Existing FRG Guarantee such that neither Parent nor any Affiliate shall have any continuing obligations or liability thereunder. Without limiting the foregoing, Issuer and the Company shall, jointly and severally, indemnify and hold harmless Parent and its Affiliates for and against any and all Losses, liabilities or claims arising from or incurred pursuant to any Existing FRG Guarantee following the Equity Closing, including any such Losses, liabilities or claims arising from or incurred in connection with any payment made by Parent or any of its Affiliates pursuant to any Existing FRG Guarantee following the Equity Closing.
- (c) So long as any Existing FRG Guarantee remains outstanding or in effect, Issuer and the Company shall not, and shall not permit any Affiliate thereof to, (i) knowingly and intentionally take any action (or knowingly and intentionally fail to take any action) that would cause any breach of the terms of, or non-compliance with the terms of, any of the Relevant Lease Agreements, or (ii) amend, modify, extend or renegotiate any material term of any obligation that is covered by an Existing FRG Guarantee in any manner that increases or extends the potential exposure of Parent or any of its Affiliates under any Existing FRG Guarantee.

Section 5.9 <u>Termination of Insurance Coverage</u>. From and after the Equity Closing, the Company and the Business and operations thereof shall cease to be insured by the insurance policies of Parent and its Affiliates.

Section 5.10 <u>Post-Closing Access to Information</u>. Without limiting the terms of any other Transaction Document, from and after the Equity Closing Date, Issuer shall, and shall cause the Company to, (i) maintain the books and records of the business of the Company for the period prior to Equity Closing (the "*Pre-Closing Books and Records*") for a period of six (6) years following the Equity Closing, and (ii) upon reasonable written notice and during working hours, so long as such access does not unreasonably interfere with the normal business operations of Issuer or the Company, afford to the Parent, its Affiliates and their respective agents and representatives reasonable access to the Pre-Closing Books and Records.

Notwithstanding the foregoing, neither Issuer nor the Company shall have any obligation to provide such access or information to the extent such access would be restricted or prohibited by any Legal Requirement or to the extent that Issuer or the Company determines such disclosure or access would result in the loss of attorney-client or similar privilege.

### Section 5.11 Certain BRR2 Related Covenants.

- (a) From and after the Equity Closing and until the occurrence of the Receivables Closing, except as otherwise contemplated by this Agreement or required by applicable law, (i) Freedom VCM shall use commercially reasonable efforts to cause BRR2 to conduct its business in the ordinary course, and (ii) without limiting the generality of the foregoing, Freedom VCM shall cause BRR2 not to (A) sell, assign, transfer, convey, or otherwise dispose of any of the Tranche 2 Receivables other than pursuant to the A&R B. Riley Funding Agreement or in connection with the release or settlement of any Tranche 2 Receivables in the ordinary course of business, (B) amend or modify the A&R B. Riley Funding Agreement in any manner that relates to or otherwise materially and adversely impacts the Tranche 2 Receivables or the right of BRR2 to retain the proceeds of the Tranche 2 Receivables.
- (b) From and after the Equity Closing, the Company shall, and Issuer shall direct the Company to, comply in all material respects with the servicing and related agreements described on <u>Schedule 5.10(b)</u> (collectively, the "*Servicing Agreement*"), and the Company shall, and Issuer shall direct the Company to, continue to provide the scope and quality of services under the Servicing Agreement substantially consistently with the scope and manner in which such services are provided as of the Equity Closing Date.

# ARTICLE VI

# **INDEMNIFICATION**

Section 6.1 Nonsurvival. Subject to the terms of the next sentence, none of the representations, warranties, covenant or agreements of any party hereto in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Equity Closing, and as a result thereof, none of the parties hereto (or any Affiliates thereof) shall have any obligation or liability of any kind to any other party hereto or any other Person for any breach or alleged breach of or non-compliance with any such representation, warranty, covenant or agreement following the Equity Closing. Notwithstanding the foregoing, (a) this Section 6.1 shall not limit any covenant or agreement of the parties hereto set forth in this Agreement that by its terms contemplates performance after the Equity Closing or any rights or remedies of any party in respect of any breach or alleged breach of or non-compliance with any such covenant or agreement, or (b) nothing in this Agreement shall limit the common law liability of any Person in the event that such Person committed actual and intentional fraud in connection with the negotiation, execution, delivery or performance of this Agreement.

### Section 6.2 Indemnification.

(a) Parent, Newco BHF and Freedom VCM (each, a "Parent Indemnifying Party") shall, jointly and severally, indemnify Issuer, its officers, directors, and Affiliates (including the Company after the Equity Closing), successors and permitted assigns (collectively, the "Issuer Parties") and hold each of them harmless from and against and pay on behalf of or reimburse such Issuer Parties in respect of any Loss which any such Issuer Party suffers, sustains or becomes subject to as a result of, in connection with, relating to or by virtue of: (i) the Parent Taxes; (ii) the breach of any covenant or agreement following the Equity Closing by Parent, Newco BHF or Freedom VCM that is set forth in this Agreement and that, in accordance with the terms set forth herein expressly survives (and requires performance following) the Equity Closing and (iii) the matters set forth on Section 6.2(a)(iii) of the Issuer Disclosure Schedule.

(b) Issuer and the Company (each, a "Issuer Indemnifying Party" and, together with the Parent Indemnifying Parties, the "Indemnifying Parties") shall, jointly and severally, indemnify Parent, its officers, directors, and Affiliates, successors and permitted assigns (collectively, the "Parent Parties" and, together with the Issuer Parties, the "Indemnified Parties") and hold each of them harmless from and against and pay on behalf of or reimburse such Parent Parties in respect of any Loss which any such Issuer Party suffers, sustains or becomes subject to as a result of, in connection with, relating to or by virtue of the breach of any covenant or agreement following the Equity Closing by Issuer or the Company that is set forth in this Agreement and that, in accordance with the terms set forth herein expressly survives (and requires performance following) the Equity Closing.

(c) Any Indemnified Party making a claim for indemnification under this Article VI shall notify the Indemnifying Parties of the claim in writing promptly after receiving written notice of the applicable Action against it (if by a third party) or discovering a potential liability, obligation or facts giving rise to such claim for indemnification, describing the claim, the amount thereof (if known and quantifiable) and the basis thereof in reasonable detail; provided, that the failure to so notify the Indemnifying Parties shall not relieve the Indemnifying Parties of their obligations hereunder, except to the extent (and only to the extent) such failure shall have materially prejudiced any of the Indemnifying Parties. The Indemnifying Parties shall be entitled to assume the defense and control of a third party claim so long as (i) such third party claim involves solely claims for monetary relief and any non-monetary relief that is immaterial in nature and no criminal Action is threatened by such third party claim, and (ii) counsel to the Indemnified Party shall not have reasonably concluded that there is a conflict of interest between the Indemnified Party and any Indemnifying Party in the conduct of the defense of such third party claim such that the conduct of the defense of such third party claim by the Indemnifying Party would not be appropriate. In the event that an Indemnified Party assumes the defense of any third party claim, (A) the Indemnifying Parties shall have the right to participate in such defense, (B) such Indemnified Party shall keep the applicable Indemnifying Parties reasonably apprised of all material developments in such third party claim and shall consult with the Indemnifying Party with respect thereto, and (C) such Indemnified Party shall obtain the prior written consent of the applicable Indemnifying Parties (which shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement or compromise of such third party claim; provided, that in the event that the applicable Indemnifying Parties do not consent to such settlement or compromise, the amount of such proposed settlement or compromise shall not be dispositive of the amount of indemnifiable Losses, if any, under this Section 6.2. If the Indemnifying Parties shall assume the control of the defense of any third party claim in accordance with the provisions of this Section 6.2(c), such Indemnifying Parties shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement or compromise of such third party claim, if (x) the settlement or compromise does not expressly release the Indemnified Party and its Affiliates from all liabilities and obligations with respect to, or involve the dismissal with prejudice of all claims asserted in, such third party claim or (y) the settlement imposes

injunctive or other equitable relief against the Indemnified Party or any of its Affiliates other than any of the foregoing that is immaterial in nature. The applicable Indemnified Party shall be entitled to participate in the defense of any such third party claim with respect to which an Indemnifying Party has assumed control and to employ separate counsel of its choice for such purpose; provided, that the cost of such counsel shall be at the Indemnified Party sole cost. Notwithstanding anything herein to the contrary, the Indemnifying Parties shall lose their right to contest, defend, litigate and settle a third party claim if the applicable Indemnifying Parties fail to promptly accept a tender of the defense of the third party claim or thereafter at all relevant times conduct a good faith and diligent defense of such third party claim. In such event, the Indemnified Party will have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of any such third party claim, subject to the other conditions set forth in this Section 6.2(c). For the avoidance of doubt, this Section 6.2(c) shall not apply to the any consolidated, combined, unity or similar Tax Return of the Parent (a "Parent Tax Return"), and the Parent shall control any matters related to any Parent Tax Returns in its sole and absolute discretion. None of the Issuer, nor any of its Affiliates, shall have the right to review any Parent Tax Returns or any audits or similar matters related thereto.

- (d) Any indemnification payments to be made by the Indemnifying Parties pursuant to Section 6.2(a) or 6.2(b) shall be paid by the Indemnifying Parties in cash by wire transfer of immediately available funds to the account or accounts designated by the Indemnified Party within five (5) Business Days after the final and conclusive determination that the Indemnifying Party owes the applicable amount to the Indemnified Party either through the written agreement of the Indemnifying Party and Indemnified Party or through a final and non-appealable judgment of a court of competent jurisdiction. If, solely with respect to indemnification payments to be made by the Indemnifying Parties pursuant to Section 6.2(a)(iii), the applicable Indemnifying Party has not made the payment due to Issuer in accordance with the immediately preceding sentence, Issuer shall be entitled to cancel a number of shares of Issuer Preferred Stock, Issuer Non-Voting Common Stock or Issuer Common Stock held by such Indemnifying Party with an aggregate value, calculated using the weighted average closing price of the Issuer Common Stock, as applicable, during the 10 trading days immediately cancellation thereof, equal to the amount owed by such Indemnifying Parties; provided, that prior to effecting any such cancellation, Issuer shall provide at least 10 Business Days' notice thereof to the Indemnifying Parties and such cancellation may only be effected in accordance with the terms hereof with respect to the portion, if any, of any indemnification payment owing hereunder that has not been made at the end of such 10 Business Day period.
- (e) For purposes of calculating the amount of Loss incurred by an Indemnified Party under this Agreement, such amount shall be reduced by (i) the amount of any insurance proceeds actually recoverable by such Indemnified Party in respect of such Loss, net of any deductible amounts, any increase in premiums related thereto and any costs associated with obtaining such insurance proceeds, (ii) the amount of any indemnification, contribution, and other similar payment proceeds actually recoverable from a third party by such Indemnified Party in respect of such Loss, net of any costs associated with obtaining such proceeds and (iii) the amount of any Tax benefit arising out of such Loss that is realized within 24 months of the Equity Closing Date, net of any Taxes imposed upon the receipt of the indemnification payment related to such Loss. If any Indemnified Party receives any insurance or other third-party payment in connection with any claim for Losses for which it has already been indemnified pursuant to this Article VI, the Indemnified Party shall pay to the applicable Indemnifying Party such recovery (or, if less, the amount previously received from the Indemnifying Party) within 30 days after such payment is actually received.

- (f) Any Loss under this Agreement shall be determined without duplication of recovery by reason of the state of facts giving rise to such Loss constituting a breach of more than one representation, warranty, covenant or agreement.
- (g) In no event will any Indemnifying Party be liable for any other Indemnifying Party's breach of such other Indemnifying Party's representations, warranties, covenants or agreements contained in any Transaction Document to which such other Indemnifying Party is a party.
- (h) Notwithstanding anything contained herein to the contrary, from and after the Equity Closing, the right to indemnification of the Indemnified Parties pursuant to this Article VI shall constitute the sole and exclusive remedy of the Indemnified Parties for any and all Losses, rights, Actions or other obligations or liabilities incurred or allegedly incurred from any breach of any representation, warranty, covenant or agreement set forth in this Agreement or otherwise arising from or out of this Agreement or the Contemplated Transactions, but without limitation of the rights and remedies of any party pursuant to any Transaction Document other than this Agreement.

#### ARTICLE VII

#### MISCELLANEOUS PROVISIONS

Section 7.1 <u>Amendment</u>. This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by an authorized representative of each of the parties hereto. For the avoidance of doubt, this <u>Section 7.1</u> shall survive the Equity Closing.

#### Section 7.2 Waiver.

- (a) Except as expressly set forth herein to the contrary, no failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any party would otherwise have.
- (b) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 7.3 Entire Agreement; Counterparts; Electronic Exchanges. This Agreement, the other Transaction Documents and the Confidentiality Agreement including the schedules, exhibits and amendments hereto and thereto shall together constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof; provided, however, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms (it being understood that no provision in the Confidentiality Agreement shall limit any party's rights or remedies in the case of fraud). This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this Agreement.

Section 7.4 Governing Law; Jurisdiction; Specific Performance; Remedies. This Agreement and all actions, proceedings or counterclaims (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Parent, Newco BHF, Freedom VCM, the Company or Issuer in the negotiation, administration, performance and enforcement thereof, shall be governed by, and construed in accordance with, the laws of the State of Delaware, including its statute of limitations, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof that would cause the applications of laws of any jurisdiction other than the State of Delaware. In any Legal Proceeding between any of the parties arising out of or relating to this Agreement or any of the Contemplated Transactions: (a) each of the parties hereto irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or (solely if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any other state or federal courts within the State of Delaware) and any appellate court from any thereof; and (b) each of the parties hereto irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, any claim (i) that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason; (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts; and (iii) that (x) the claim, action, suit or other Legal Proceeding in any such court is brought in an inconvenient forum; (y) the venue of such claim, action, suit or other Legal Proceeding is improper; or (z) this Agreement, the other Transaction Documents, or the subject matter hereof or thereof, may not be enforced in or by such courts. Each of the parties hereto further agrees that, to the fullest extent permitted by applicable Legal Requirements, service of any process, summons, notice or document by U.S. registered mail to such Person's respective address set forth in Section 7.7 will be effective service of process for any claim, action, suit or other Legal Proceeding in the Court of Chancery of the State of Delaware or, to the extent required by Legal Requirements, any state or federal court in the State of Delaware, with respect to any matters to which it has submitted to jurisdiction as set forth in this paragraph. The parties hereto hereby agree that a final judgment in any such claim, suit, action or other Legal Proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties

shall be entitled to specific performance and injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without the requirement for the posting of any bond, this being in addition to any other remedy to which they are entitled at law or in equity. Except as expressly set forth herein to the contrary, all rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 7.5 <u>WAIVER OF JURY TRIAL</u>. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE PURSUANT TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING (WHETHER FOR BREACH OF CONTRACT, TORTIOUS CONDUCT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. EACH PARTY ACKNOWLEDGES AND AGREES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (b) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (c) IT MAKES THIS WAIVER VOLUNTARILY; AND (d) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS <u>SECTION 7.5</u>.

Section 7.6 <u>Assignability; No Third-Party Rights</u>. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; <u>provided</u>, <u>however</u>, that neither this Agreement nor any party's rights, interests or obligations hereunder may be assigned or delegated by any such party without the prior written consent of the other parties, and any attempted assignment or delegation of this Agreement or any of such rights, interests or obligations by any party without the prior written consent of the other parties shall be void and of no effect. Except as otherwise expressly provided for herein, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.7 <u>Notices</u>. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the U.S. return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier (such as Federal Express), two Business Days after mailing; (c) if sent by e-mail before 5:00 p.m. Eastern Time, when transmitted and receipt is confirmed; (d) if sent by e-mail after 5:00 p.m. Eastern Time and receipt is confirmed, on the following Business Day; or (e) if otherwise actually personally delivered, when delivered; <u>provided</u>, that such notices, requests, demands and other communications are delivered to the physical address, e-mail address or facsimile number set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

if to Issuer or the Company:

2445 Technology Forest Blvd., Suite 800

The Woodlands, TX 77381 Attn: General Counsel

Email: Mark.Prior@conns.com

with a copy (which shall not constitute notice) to:

Sidley Austin LLP 1000 Louisiana Street, Suite 5900 Houston, TX 77002 Attn: Kevin Lewis

Email: klewis@sidley.com

and

Sidley Austin LLP 2021 McKinney Ave., Suite 2000 Dallas, TX 75201

Attn: Bill Howell and Ryan Scofield

Email: bhowell@sidley.com and rscofield@sidley.com

if to Parent, Newco BHF or Freedom VCM:

c/o Franchise Group, Inc. 109 Innovation Court, Suite J, Delaware, Ohio 43015

Attn: Tiffany McMillan-McWaters Email: <u>tmcwaters@franchisegrp.com</u>

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019

Attn: Russell L. Leaf and Jared N. Fertman

Email: <u>rleaf@willkie.com</u> and <u>jfertman@willkie.com</u>

Section 7.8 <u>Severability</u>. Any term or provision of this Agreement (or part thereof) that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision (or part thereof) in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement (or part thereof) is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit such term or provision (or part thereof), to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to

expressing the intention of the invalid or unenforceable term or provision (or part thereof), and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision (or part thereof) with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

#### Section 7.9 Construction.

- (a) Each of the parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, including the other Transaction Documents, and any and all drafts relating thereto exchanged between the parties shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted it is of no application and is hereby expressly waived.
- (b) The inclusion of any information in the Company Disclosure Schedule or the Issuer Disclosure Schedule shall not be deemed an admission or acknowledgment, in and of itself and solely by virtue of the inclusion of such information in the Company Disclosure Schedule or the Issuer Disclosure Schedule, as applicable, that such information is required to be listed in the Company Disclosure Schedule or the Issuer Disclosure Schedule, as applicable, that such items are material to Parent, Newco BHF, Freedom VCM and their respective Subsidiaries (including the Company), taken as a whole, or Issuer, taken as a whole, as the case may be, or that such items have resulted in a Company Material Adverse Effect, Issuer Material Adverse Effect or materially impair the ability of any party hereto to consummate the Contemplated Transactions. The headings, if any, of the individual sections of each of the Company Disclosure Schedule or the Issuer Disclosure Schedule are inserted for convenience only and shall not be deemed to constitute a part thereof or a part of this Agreement. The Company Disclosure Schedule or the Issuer Disclosure Schedule are arranged in sections corresponding to the Sections of this Agreement merely for convenience. Notwithstanding anything to the contrary contained in the Agreement or the Company Disclosure Schedule or the Issuer Disclosure Schedule, as applicable, the information and disclosures contained in the Company Disclosure Schedule or the Issuer Disclosure Schedule, as applicable, as applicable, as though fully set forth in such disclosure schedule for which applicability of such information and disclosure is reasonably apparent on its face.
- (c) The specification of any dollar amount in the representations and warranties or otherwise in this Agreement or in the Company Disclosure Schedule or the Issuer Disclosure Schedule is not intended and shall not be deemed to be an admission or acknowledgment of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the parties to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement.

- (d) All references in this Agreement to Exhibits, Schedules, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Schedules, Articles, Sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, subsections or other subdivisions, and shall be disregarded in construing the language contained therein. The words "this Agreement," "herein," "hereby," "hereunder" and "hereof" and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "this Section," "this subsection" and words of similar import, refer only to the Sections or subsections hereof in which such words occur. The word "including" (in its various forms) means "including, without limitation." Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all references to a specific time shall refer to Houston, Texas time. The word "or" is disjunctive but not exclusive.
- (e) In this Agreement, except as the context may otherwise require, references to: (i) any agreement (including this Agreement) or contract, are to the agreement or contract as amended, modified, supplemented, restated or replaced from time to time; (ii) any Governmental Body include any successor to that Governmental Body; (iii) any applicable Legal Requirement refers to such applicable Legal Requirement as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under such statute) and references to any section of any applicable Legal Requirement or other law include any successor to such section; and (iv) days mean calendar days.
- (f) Any reference in this Agreement to "made available" or "Made Available" means a document or other item of information that was provided or made available to (i) Issuer or its representatives in the "Project Blade Blade Due Diligence" virtual data room hosted by Datasite Diligence at least two (2) Business Days prior to the date hereof or (ii) Parent, Freedom VCM, Newco BHF, the Company or their respective representatives in the "CUTLASS Diligence" virtual data room hosted by Datasite Diligence at least two (2) Business Day prior to the date hereof.
- Section 7.10 Expenses and Obligations. Except as otherwise provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the Contemplated Transactions shall be borne solely and entirely by the party that has incurred such expenses, provided that, notwithstanding the foregoing, Issuer shall pay, or cause to be paid, all costs and expenses incurred by Parent and its Affiliates in connection with the Contemplated Transactions up to an amount equal to \$7,300,000.

## Section 7.11 Attorney Client Privilege.

(a) Issuer waives and will not assert, and agrees to cause the Company to waive and not to assert, any conflict of interest arising out of or relating to the representation, after the Equity Closing, of Parent, Newco BHF, Freedom VCM or any shareholder, officer, member, partner, employee or director of any of the foregoing Persons or any Affiliate thereof

(any such Person, a "Designated Person") in any matter involving this Agreement or any Contemplated Transaction, including any Action between or among Issuer or its Affiliates, the Company and any Designated Person, by Willkie Farr & Gallagher LLP or any other legal counsel currently representing the Company or Designated Person connection with this Agreement or any other Transaction Document (the "Current Representation" and such other legal counsel, the "Other Counsel"), even though the interests of such Designated Person may be directly adverse to Issuer or its Affiliates, including the Company following the Equity Closing.

(b) It is the intention of the parties hereto that all rights to any attorney-client privilege applicable to communications between Willkie Farr & Gallagher LLP and any Other Counsel currently representing any Designated Person or the Company in connection with the Current Representation (the "Attorney-Client Privilege") shall be retained (or assigned to the Parent to the extent necessary) and controlled solely by the Parent (and not Issuer or the Company). Accordingly, neither the Issuer nor the Company shall have access to any such communications, or to the files of Willkie Farr & Gallagher LLP or any Other Counsel currently representing the Company, from and after the Equity Closing. The Attorney-Client Privilege shall survive the Equity Closing and shall remain in effect. In furtherance of the foregoing, each of the parties hereto agrees to take the steps necessary to ensure that the Attorney-Client Privilege survives Equity Closing and remains in effect and be assigned to (to the extent necessary) and controlled by the Parent. Without limiting the generality of the foregoing, upon and after the Equity Closing, (i) the Parent and its Affiliates (excluding the Company) shall be the sole holders of the attorney-client privilege with respect to the Current Representation, and the Issuer and the Company in connection with the Current Representation constitute property of a client, only the Parent and its Affiliates (excluding the Company) shall hold such property rights and (iii) with respect to any privileged attorney-client communications (the "Privileged Communications") between Willkie Farr & Gallagher LLP and any Other Counsel currently representing the Company in connection with the Current Representation prior to the Equity Closing Date, Issuer and the Company, together with any of their respective Affiliates, successors or assigns, agree that no such party may use or rely on any of the Privileged Communications in any action or claim against or involving any of the parties hereto after the Equity Closin

### Section 7.12 Third Party Rights; No Recourse Against Affiliates.

- (a) Except for Section 5.2, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person, other than the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, the D&O Indemnitees shall be third party beneficiaries of Section 5.2 (and any related provisions of this Agreement).
- (b) No past, present or future director, officer, employee, incorporator, member, partner, shareholder, Affiliate, agent, attorney or representative of any party hereto shall have any liability (whether in applicable law or in equity or in contract or in tort) for any obligations or liabilities of the parties to this Agreement arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of, the Contemplated Transactions.

\*\*\*

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

# FRANCHISE GROUP, INC.

By: /s/ Andrew Laurence
Name: Andrew Laurence
Title: Executive Vice President

# FRANCHISE GROUP NEWCO BHF, LLC

By: /s/ Brian Kahn
Name: Brian Kahn

Title: Chief Executive Officer, President

## FREEDOM VCM INTERCO HOLDINGS, INC.

By: /s/ Andrew Laurence
Name: Andrew Laurence
Title: Vice President, Treasurer

## W.S. BADCOCK LLC

By: /s/ Mitchell Stiles

Name: Mitchell Stiles

Title: President and Chief Operations Officer

# CONN'S, INC.

By: /s/ Mark Prior

Name: Mark Prior

Title: Senior Vice President and General Counsel

#### **EXHIBIT A – CERTAIN DEFINITIONS**

For purposes of this Agreement (including this Exhibit A):

- "A&R B. Riley Funding Agreement" shall mean that certain Amended and Restated B. Riley Funding Agreement, dated as of the date hereof, by and among the B. Riley Principal Investment, LLC, Klotz Family Trust, BRR2, Freedom VCM and Freedom VCM Receivables, Inc., in the form attached as Exhibit H.
- "Account" means any account under which a retail installment sales contract or installment loan may be or has been made between a Borrower and Issuer or the Company, as applicable, in connection with a sale of merchandise and related repair services agreement and credit insurance.
- "Account Agreement" means a promissory note or retail installment contract between Issuer or the Company, as applicable, on the one hand, and a Borrower or Borrowers, on the other hand, under which an Account is established for personal, family or household purposes.
  - "Accounting Firm" shall have the meaning set forth in Section 1.5(c).
- "Accounts Receivable" means all accounts, notes, accounts receivable, contract rights, drafts and other forms of claims, demands, instruments, receivables and rights to the payment of money or other forms of consideration, whether for goods sold or leased, services performed or to be performed, or otherwise owned by either the Company, Issuer or one of Issuer's Subsidiaries, as applicable, or in which the Company, Issuer or one of Issuer's Subsidiaries, as applicable, has any interest, together with all guarantees, security agreements, mortgages and rights and interests securing the same, which, for the avoidance of doubt, shall not include any Sold Receivables.
- "Action" means any action, proceeding, arbitration or litigation (whether civil, criminal or administrative) commenced, brought, conducted or heard by or before any Governmental Body.
  - "Adjustment Amount" shall have the meaning set forth in Section 1.5(e).
- "Affiliate" means, with respect to any Person, any other Person, that, directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such Person, and, for the purposes of this definition only, "control" (including the terms "controlling," "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person whether through the ownership of securities, by contract or agency or otherwise; provided, however, with respect to the Company or Parent, Freedom VCM and Newco BHF, and other than in respect of Section 2.25, "Affiliate" shall not include B. Riley Financial, Inc. and any other institutional investor in Freedom VCM Holdings, LLC and their respective Affiliates, or any investment fund, investment vehicle, partner, manager, portfolio company, or investment thereof, in each case, other than Freedom VCM Holdings, LLC and its Subsidiaries

- "Agreement" shall have the meaning set forth in the Preamble.
- "Amendment" shall have the meaning set forth in the definition of "Required Issuer Stockholder Approval".
- "Attorney-Client Privilege" shall have the meaning set forth in Section 7.11(b).
- "Badcock Benefit Plans" means each "employee pension benefit plan" (as defined in Section 3(2) of ERISA), "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and each other plan, arrangement or policy relating to stock options, stock purchases, compensation, deferred compensation, severance, retention, employment, consulting, commission, change-of-control, collective bargaining, bonus, incentive, vacation, tuition reimbursement or other fringe benefits or employee benefits, in each case whether or not reduced to writing, whether funded or unfunded, whether or not tax-qualified and whether or not subject to ERISA, which is maintained or contributed to, or required to be maintained or contributed to, by the Company or any ERISA Affiliate for the benefit of any present or former officers, Badcock Employees, directors or individual independent contractors of the Company, or under which the Company has or may have any liability, contingent or otherwise.
  - "Badcock Dealer Network" means the Company's network of Dealers, in each case, operating under a Dealer Agreement.
  - "Badcock Employee" means each employee of the Company.
  - "Badcock Financial Statements" shall have the meaning set forth in Section 2.6(a).
  - "Badcock Units" shall have the meaning set forth in the Recitals.
  - "Balance Sheet Date" shall have the meaning set forth in Section 2.6(a).
  - "Borrower" means a Person or Persons in whose name or names an Account has been established, including any guarantor, co-signor or surety.
  - "BRR2" shall have the meaning set forth in the Recitals.
  - "BRR2 Receivables" shall have the meaning set forth in the Recitals.
- "Business" means the business of the Company as currently conducted as of the date hereof or at an time during the 12-month period prior to the date hereof (including, for the avoidance of doubt, the origination of consumer credit transactions and the sale of ancillary products thereto, including credit insurance and debt protection), in each case, in the ordinary course of business.
- "Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day on which commercial banking institutions are authorized or required by applicable Legal Requirements to be closed in the State of New York or the State of Texas.
  - "Cancellation Notice" shall have the meaning set forth in Section 1.5(e).

- "Certificate of Designation" has the meaning set forth in the Recitals.
- "Charged Off Accounts" means any Account which would have constituted an Account had it been in effect as of the Equity Closing and that has been charged off by Issuer or the Company, as applicable, prior to the Equity Closing.
  - "Closing Date A/R" shall have the meaning set forth in Section 1.5(a).
  - "Closing Issuance" shall have the meaning set forth in Section 1.4.
  - "Code" means the U.S. Internal Revenue Code of 1986, as amended.
  - "Company" shall have the meaning set forth in the Preamble.
  - "Company Affiliated Transactions" shall have the meaning set forth in Section 2.25.
- "Company Data" means all confidential data, information, and data compilations contained in the IT Systems of the Company or any databases of Parent, Freedom VCM, Newco BHF or any of their respective Subsidiaries (including the Company), including Personal Data, that are used by the Company or in the ordinary course of Business by Parent, Freedom VCM, Newco BHF or any of their respective Subsidiaries (including the Company).
- "Company Disclosure Schedule" means the Company Disclosure Schedule that has been delivered by Parent, Freedom VCM, Newco BHF and the Company to Issuer concurrently with the execution of this Agreement.
  - "Company IP Rights" shall have the meaning set forth in Section 2.10(b).
  - "Company Lease" shall have the meaning set forth in Section 2.9(c).
  - "Company Leased Real Property" shall have the meaning set forth in Section 2.9(c).
- "Company Material Adverse Effect" means any event, circumstance, change, occurrence or effect (an "Effect") (a) that, individually or in the aggregate, has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the Company or (b) that materially and adversely affects the ability of Parent, Freedom VCM, Newco BHF and their respective Subsidiaries or the Company to timely consummate the Contemplated Transactions and to perform its obligations under this Agreement and the other Transaction Documents.
  - "Company Owned IP" means all IP Rights with respect to which the Company owns or purports to have an ownership interest in.
  - "Company Owned Real Property" shall have the meaning set forth in Section 2.9(a).
  - "Company Real Property" means the Company Owned Real Property and the Company Leased Real Property.
  - "Company Registered IP" shall have the meaning set forth in Section 2.10(a).

- "Company Trade Secrets" shall have the meaning set forth in Section 2.10(c).
- "Confidentiality Agreement" means that certain Mutual Confidentiality Agreement dated as of October 25, 2022, between Parent and Issuer.
- "Consent" means any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).
- "Consolidated Group" shall have the meaning set forth in Section 4.15(f).
- "Consumer Credit Laws" means all Legal Requirements related to consumer protection or the extension of credit to consumers, including state usury Legal Requirements, consumer lending Legal Requirements, state adaptations of the Uniform Consumer Credit Code, Legal Requirements prohibiting unfair, deceptive and abusive acts and practices, truth-in-lending Legal Requirements, anti-money laundering Legal Requirements, know your customer Legal Requirements, debt collection Legal Requirements, and other applicable federal, state and local consumer credit, fair lending, disclosure and privacy laws, including the federal Truth-in-Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Gramm-Leach-Bliley Act, the Federal Trade Commission Act, the Electronic Fund Transfer Act, the Telephone Consumer Protection Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Servicemembers Civil Relief Act, Military Lending Act, and any guidance, bulletins, rules or regulations promulgated by a Governmental Body.
- "Consumer Credit Receivables" means all outstanding Accounts Receivable arising or resulting from consumer credit, consumer financing or similar transactions or arrangement originated by the Company including any retail charge agreements with outstanding balances.
  - "Contemplated Transactions" shall have the meaning set forth in the Recitals.
- "Contract" means any written or oral agreement, contract, subcontract, lease, instrument, note, option, warranty, purchase order, license, sublicense or legally binding commitment or undertaking of any nature.
  - "Conversion" shall have the meaning set forth in the definition of "Required Issuer Stockholder Approval".
  - "Copyrights" shall have the meaning set forth in the definition of "IP Rights".
- "Credit Card" means a card that may be used by the holder thereof to purchase goods and services and, if applicable, to obtain cash advances through credit, commonly known as a credit or charge card, whether or not bearing the service mark of Visa, MasterCard, American Express, Discover or any other network.
- "Credit Card Processing Agreement" means all agreements now or hereafter entered into by the Company with any (a) any Person (other than the Company) who issues or whose members issue credit cards, including, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., VISA, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non- bank credit or debit cards or (b) any servicing or processing agent or any financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of the Company's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Person in clause (a) hereof.

- "Current Representation" shall have the meaning set forth in Section 7.11(a).
- "D&O Indemnifiable Claims" shall have the meaning set forth in Section 5.2(a).
- "D&O Indemnitee" shall have the meaning set forth in Section 5.2(a).
- "Data Processor" shall mean a natural or legal Person, public authority, agency or other body that Processes Personal Data on behalf of or at the direction of the Company or, with respect to Issuer, any of the Issuer Companies.
- "Dealer" means each Person, other than the Company, who is granted a right to (a) develop or operate a retail business identified by any Trademarks included in the Company Owned IP, including "Badcock Home Furniture & more" or "Badcock Home Furnishings Center" and (b) sell certain home furnishings, appliances and other durable goods consigned by the Company to such Person, in each case, pursuant to a Dealer Agreement.
- "Dealer Agreement" means the W.S. Badcock Corporation Dealership Agreement entered into by and between the Company and each applicable Dealer (together with all exhibits, addenda, ancillary agreements and amendments thereto) pursuant to which the Company licenses such Dealers with the authority to operate a retail business identified by any Trademarks included in the Company Owned IP, including "Badcock Home Furniture & more" or "Badcock Home Furnishings Center" and sell certain home furnishings, appliances and other durable goods consigned by the Company to such Dealer.
  - "Designated Person" shall have the meaning set forth in Section 7.11(a).
- "Designated Premises" shall mean, with respect to each Dealer, the location of such Dealer's retail business as set forth in the introductory paragraph of such Dealer's Dealer Agreement.
  - "DGCL" shall mean the General Corporation Law of the State of Delaware.
  - "DLLCA" shall mean the Limited Liability Company Act of the State of Delaware.
  - "Effect" shall have the meaning set forth in the definition of "Company Material Adverse Effect".
- "Encumbrance" means (other than those created under applicable securities Legal Requirements) any covenant, mortgage, deed of trust, encumbrance, encroachment, restriction, lien, security interest, pledge, equitable interest, charge, easement, title or survey defect, right of first refusal, hypothecation, servitude, right of way, variance or encumbrance of any kind.

"Entity" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity.

"Environmental Laws" means all Legal Requirements relating to pollution or protection of the environment, human health or safety (in respect to exposure to Hazardous Materials), including Legal Requirements relating to the exposure to, or Release, threatened Release or the presence of Hazardous Materials, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, transport, handling, remediation, cleanup or reporting of Hazardous Materials, and all Legal Requirements relating to endangered or threatened species of fish, wildlife and plants and the management or use of natural resources.

"Environmental Permits" means all Governmental Authorizations required under or issued, granted, given, authorized by or made pursuant to any Environmental Law.

"Equity Closing" shall have the meaning set forth in Section 1.2(a).

"Equity Closing Date" shall have the meaning set forth in Section 1.2(a).

"Equity Interests" means with respect to any Person, (i) shares of capital stock, voting securities, membership interests, partnership interests or other equity or similar interests or securities of such Person, including any securities convertible into or exercisable or exchangeable for any of the foregoing, or (ii) options, warrants, contracts, pledges, puts, subscription rights, calls, restricted shares, share or equity appreciation rights, phantom shares or units or other rights, agreements or commitments to which such Person is a party or which is binding upon such Person providing for the issuance, disposition or acquisition of any of its capital stock, voting securities, membership interests, partnership interests or other equity or similar interests of such Person or securities convertible into or exercisable or exchangeable for any of the foregoing (including any equity or equity-based awards).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means (a) with respect to the Company, any Person or entity under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder and (b) with respect to Issuer, each Subsidiary of Issuer and any other Person or entity under common control with Issuer or of its Subsidiaries within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

"Exchange Act" means the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Existing FRG Guarantee" means, individually or collectively as the context requires, the NNN Guaranty and the Oak Street Guaranty.

"Existing Issuer Credit Agreements" means, collectively, (i) that certain Fifth Amended and Restated Loan and Security Agreement, dated as of March 29, 2021, among Issuer, certain Subsidiaries of the Issuer as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as amended through that certain Amendment No. 2 to Fifth Amendment and Restated Loan and Security Agreement, dated as of February 21, 2023, (ii) that certain Term Loan and Security Agreement, dated as of the date hereof, among Issuer, certain Subsidiaries of the Issuer as borrowers, the lenders party thereto and BRF Finance Co., LLC, as administrative agent and collateral agent and (iii) that certain Delayed Draw Term Loan and Security Agreement, dated as of July 31, 2023, among Issuer, certain Subsidiaries of the Issuer as borrowers, the lenders party thereto and Stephens Investments Holdings LLC, as administrative agent.

"FCPA" shall have the meaning set forth in Section 2.13(a).

"Financial Statements" shall have the meaning set forth in Section 5.6.

"Franchise" shall means any grant by the Company or predecessors in interest of the Company, to any Person of the right to engage in or carry on a business, or to sell or offer to sell any product or service, which constitutes a "franchise," "business opportunity," "seller assisted marketing plan," or the like (a) as "franchise" or "business opportunity" is defined under the FTC Rule; or (b) as "franchise," "business opportunity" or "seller-assisted marketing plan" is defined under any Legal Requirement.

"Franchise and Dealer Relationship Laws" means any Legal Requirements governing the relationship of the parties to a franchise or dealer agreement, including in the areas of terminating, failing to renew and transferring such arrangement or agreement.

"Franchise Sales Laws" means the following: the FTC Rule, and any other Legal Requirements governing the offer or sale of Franchises, business opportunities, seller-assisted marketing plans or similar arrangements or governing the relationships between franchisers and Franchisees.

"Freedom VCM" shall have the meaning set forth in the Preamble.

"FTC Rule" means the Federal Trade Commission trade regulation rules entitled "Disclosure Requirements and Prohibitions Concerning Franchising" and "Disclosure Requirements and Prohibitions Concerning Business Opportunities," 16 C.F.R Parts 436.1 et seq.

"Fully Diluted Basis" shall mean, with respect to Issuer, the outstanding shares of Issuer Common Stock assuming the issuance, conversion or exchange into shares of Issuer Common Stock of all securities, instruments, rights, options or agreements that contemplate or provide for the issuance, conversion or exchange of any securities, instruments, rights, options or agreements into shares of Issuer Common Stock, excluding all existing restricted stock units, performance stock units, options and warrants issued pursuant to that certainDelayed Draw Term Loan and Security Agreement, dated as of July 31, 2023, among Issuer, as parent and guarantor, Conn Appliances, Inc., Conn Credit I, LP and Conn Credit Corporation, Inc., as borrowers, certain financial institutions, as lenders, and Stephens Investments Holdings LLC, as administrative agent.

"GAAP" shall mean generally accepted accounting principles in the United States.

"General Enforceability Exceptions" shall have the meaning set forth in Section 2.2.

"Governmental Authorization" means any permit, license, certificate, franchise, permission, variance, clearance, registration, qualification, exemption or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any: (a) nation, state, commonwealth, province, territory, region, county, political subdivision, municipality, district, judiciary, executive branch, legislature or other jurisdiction of any nature; (b) federal, state, regional local, municipal, domestic, foreign, multinational, supranational or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal); (d) self-regulatory organization (including the Nasdaq); or (e) any duly constituted arbitral panel, board or body, in each case, of competent jurisdiction.

"Hazardous Materials" means (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is defined, designated, identified or classified as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance under, or for which liability or standards of care are imposed by, any Environmental Law; and (b) any petroleum, petroleum distillate or petroleum-derived products, radon, radioactive materials or wastes, per- and polyfluoroalkyl substances, asbestos or asbestos-containing materials, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

"Income Tax" means any Tax that is based on, or computed with respect to, gross or net income, earnings, capital or, net worth (and any franchise Tax or other Tax in connection with doing business imposed in lieu thereof) and any related penalties or interest..

"Income Tax Return" means any Tax Return relating to Income Taxes.

"Indemnified Party" shall have the meaning set forth in Section 6.2(b).

"Indemnifying Party" shall have the meaning set forth in Section 6.2(b).

"Independent Accounting Firm" shall have the meaning set forth in Section 5.5(e)(ii).

"Information Security Program" means a written information security program that complies with Privacy Requirements, that when appropriately implemented and maintained would constitute reasonable security procedures and practices appropriate to the nature of Personal Data and the Processing thereof, and that is at least as stringent as one or more relevant industry standards.

"IP Rights" means all intellectual property rights, whether protected, created or arising under the laws of the United States or any other jurisdiction in the world, including: (a) rights in works of authorship or other copyrightable work (including those in Software), whether or not registered or published, including exploitation rights, copyrights, moral rights, and mask works

("Copyrights"); (b) all trademark and trade name rights and similar rights, including all trademarks, service marks, logos, trade names, brand names, corporate names, Internet domain names, social media handles, trade dress, trade styles, and other similar identifiers indicating the business or source of goods or services, whether registered, arising under common law or statutory law, and all registrations and applications to register, and renewals of, and all goodwill associated with, any of the foregoing ("Trademarks"); (c) rights in Trade Secrets; (d) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents and industrial property rights; and (e) all registrations, renewals, revisions, extensions, continuations, continuations-in-part, divisions, reexaminations or reissues of, and applications for issuance or registration of, any of the rights referred to in clauses (a) through (d) above.

"*Inventory*" means all raw materials, works in process, by-products, finished goods and production, packaging and other materials and supplies of Issuer or the Company, as applicable, including any such items consigned to others.

"Investor Rights Agreement" shall mean the Investor Rights Agreement by and among Freedom VCM, Issuer, and Newco BHF, in the form attached as Exhibit E.

"IRS" means the United States Internal Revenue Service.

"Issuer" shall have the meaning set forth in the Preamble.

"Issuer Affiliated Transactions" shall have the meaning set forth in Section 4.24.

"Issuer Benefit Plan" means each "employee pension benefit plan" (as defined in Section 3(2) of ERISA), "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and each other plan, arrangement or policy relating to stock options, stock purchases, compensation, deferred compensation, severance, retention, employment, consulting, commission, change-of-control, collective bargaining, bonus, incentive, vacation, tuition reimbursement or other fringe benefits or employee benefits, in each case whether or not reduced to writing, whether funded or unfunded, whether or not tax-qualified and whether or not subject to ERISA, which is maintained or contributed to, or required to be maintained or contributed to, by an Issuer Company or any ERISA Affiliate for the benefit of any present or former officers, employees, directors or individual independent contractors of any Issuer Company, or under which any Issuer Company has or may have any liability, contingent or otherwise.

"Issuer Board" means the board of directors of Issuer.

"Issuer Certificate of Incorporation" shall have the meaning set forth in Section 1.3(b)(iv).

"Issuer Common Stock" means the common stock, par value \$0.01 per share, of Issuer.

"Issuer Companies" means: (a) Issuer and (b) each of Issuer's Subsidiaries (each, a "Issuer Company").

"Issuer Credit Facility Amendments" means (i) that certain Amendment No. 3 to Fifth Amended and Restated Loan and Security Agreement, dated as of the date hereof among Issuer, certain Subsidiaries of the Issuer as borrowers, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent and (ii) Amendment No. 1 to Delayed Draw Term Loan and Security Agreement, dated as of the date hereof, among Issuer, certain Subsidiaries of the Issuer as borrowers, the lenders party thereto and Stephens Investments Holdings LLC, as administrative agent.

"Issuer Data" means all confidential data, information, and data compilations contained in the IT Systems of Issuer or any databases of the Issuer Companies, including Personal Data, that are used by any Issuer Company or in the ordinary course of business.

"Issuer Disclosure Schedule" means the Issuer Disclosure Schedule that has been delivered by Issuer to Parent, Freedom VCM, Newco BHF and the Company concurrently with the execution of this Agreement.

"Issuer Equity Plan" means the Conn's Inc. Amended 2020 Omnibus Equity Plan.

"Issuer Financial Statements" shall have the meaning set forth in Section 4.6(a).

"Issuer Indemnifying Party" shall have the meaning set forth in Section 6.2(b).

"Issuer IP Rights" shall have the meaning set forth in Section 4.10(b).

"Issuer Lease" shall have the meaning set forth in Section 4.9(b).

"Issuer Leased Real Property" shall have the meaning set forth in Section 4.9 (b).

"Issuer Material Adverse Effect" means mean Effect (a) that, individually or in the aggregate, has had, or would reasonably be expected to have, a material adverse effect on the business, assets, liabilities, financial condition or results of operations of Issuer, in each case, taken as a whole, or (b) that materially and adversely affects the ability of Issuer to timely consummate the Contemplated Transactions and to perform its obligations under this Agreement and the other Transaction Documents.

"Issuer Material Contract" shall have the meaning set forth in Section 4.11(a).

"Issuer Non-Voting Common Stock" shall have the meaning set forth in the definition of "Required Issuer Stockholder Approval".

"Issuer Owned IP" means all IP Rights with respect to which any of the Issuer Companies owns or purports to have an ownership interest in.

"Issuer Parties" shall have the meaning set forth in Section 6.2(a).

"Issuer Preferred Stock" means the senior preferred convertible stock, par value \$0.01 per share, of Issuer, which, subject to is convertible into a number of shares of a newly-created Issuer Non-Voting Common Stock.

- "Issuer Recommendation" means a recommendation by the Issuer Board to the Issuer Stockholders that the Issuer Stockholders entitled to vote thereon approve the Conversion and the Amendment.
  - "Issuer Registered IP" shall have the meaning set forth in Section 4.10(a).
  - "Issuer SEC Documents" shall have the meaning set forth in Section 4.6(a).
  - "Issuer Stockholders" shall have the meaning set forth in Section 5.3(a).
  - "Issuer Stockholders Meeting" shall have the meaning set forth in Section 5.4(a).
  - "Issuer Trade Secrets" shall have the meaning set forth in Section 4.10(c).
  - "Issuer 401(k) Plan" shall have the meaning set forth in Section 5.7.
- "IT Systems" means the hardware, Software, firmware, middleware, equipment, electronics, platforms, servers, workstations, routers, hubs, switches, interfaces, data, databases, data communication lines, network and telecommunications equipment, websites and Internet-related information technology infrastructure, wide area network and other data communications or information technology equipment, owned or leased by, licensed to, or used in the conduct of (a), with respect to the Parent and its Subsidiaries (including Company), the Business or (b) with respect to Issuer, the business of Issuer Companies as currently conducted.
  - "Key Dealer" shall have the meaning set forth in Section 2.20(a).
  - "Key Issuer Supplier" shall have the meaning set forth in Section 4.20(a).
  - "Key Vendor" shall have the meaning set forth in Section 2.20(a).
- "Knowledge of Parent" means the knowledge, after reasonable due inquiry, of Brian Kahn, Andrew Laurence, Tiffany Mcmillan-Mcwaters, Mitchell Stiles and Shannon Collins.
  - "Knowledge of Issuer" means the knowledge, after reasonable due inquiry, of Norman Miller, Timothy Santo, Mark Prior and Rodney Lastinger.
- "Legal Proceeding" means any action, complaint, suit, demand, claim, countersuit, litigation, subpoena, case, mediation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, review, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body, or grand jury, or mediation tribunal, or any arbitrator or arbitration panel.
- "Legal Requirement" means any federal, state, local, municipal, provincial, domestic, foreign, multinational, supranational, or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, binding directives, Order, award, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

"Look-Back Period" shall have the meaning set forth in Section 2.12.

"Loss" means, with respect to any Person, any losses, liabilities, demands, judgments, damages, fines, suits, actions, Taxes, reasonable and documented out-of-pocket costs and expenses (including reasonable and documented attorneys' fees) incurred by such Person. Notwithstanding the foregoing, Losses shall not include any amounts that would otherwise be deemed Losses hereunder (but for the terms of this sentence) to the extent that such amounts are in the nature of punitive, special, indirect, exemplary, consequential or other similar types of losses, liabilities or demands or (b) based on diminution in value, a multiple of earnings before interest, taxes, depreciation or amortization or of any other financial metric (in each case, whether trailing, forward or otherwise), except to the extent actually required to be paid pursuant to a third party claim that has been determined in a final and non-appealable judgment of a court of competent jurisdiction.

"Malicious Code" means any "back door," "drop dead device," "time bomb," "Trojan horse," "virus," "ransomware," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (a) disrupting, disabling, harming, interfering with or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (b) damaging or destroying any data or file without the user's consent.

"Material Contract" shall have the meaning set forth in Section 2.11(a).

"Nasdaq" means the NASDAQ Global Select Market.

"Newco BHF" shall have the meaning set forth in the Preamble.

"NNN Guaranty" means, individually or collectively as the context requires, those certain Lease Guaranties more particularly set forth on Section 5.8 of the Company Disclosure Schedule.

"NNN Lease" means, individually or collectively as the context requires, those certain Leases more particularly set forth on Section 5.8 of the Company Disclosure Schedule.

"NNN Replacement Guaranty Requirements" means those certain Replacement Guarantor and Substitute Guaranty (as each such term is defined in each NNN Lease) requirements set forth in Article 12 of each NNN Lease.

"Notice of Disagreement" shall have the meaning set forth in Section 1.5(b).

"Oak Street Guaranty" means, individually or collectively as the context requires, that certain (i) Guaranty, by Parent in favor of Oak Street DC Landlord, dated as of June 17, 2022 and (ii) Guaranty, by Parent in favor of Oak Street HQ Landlord, dated as of August 2, 2022.

"Oak Street DC Landlord" means BCDC Portfolio Owner LLC, a Delaware limited liability company.

- "Oak Street HQ Landlord" means BCHQ Owner LLC, a Delaware limited liability company.
- "Oak Street Lease" means, individually or collectively as the context requires, that certain (i) Master Lease Agreement, between Oak Street DC Landlord, and the Company, dated as of June 17, 2022, and (ii) Master Lease Agreement between Oak Street HQ Landlord, and the Company, dated as of August 2, 2022.
- "Oak Street Replacement Guaranty Requirements" means those certain Substitute Guaranty (as such term is defined in each Oak Street Lease) requirements set forth in Article 22 of each Oak Street Lease.
- "Obligation Satisfaction Date" means the date that is the later to occur of (i) all principal, interest, fees and other obligations (obligations or indemnification obligations, in each case for which no claim has been asserted) outstanding under the Pathlight Debt Facility has been repaid in full and all Encumbrances securing the Pathlight Debt Facility have been released, and the Pathlight Debt Facility has terminated in accordance with its terms and (ii) the date five business days following the Satisfaction Date (as defined in the A&R B. Riley Funding Agreement).
  - "Order" means any order, writ, injunction, judgment or decree of a Governmental Body of competent jurisdiction.
- "Organizational Documents" means, with respect to any Person that is an entity, such Person's certificate of incorporation, bylaws, stockholders agreement, limited liability company agreement, certificate of formation or other analogous documents.
  - "Other Counsel" shall have the meaning set forth in Section 7.11(a).
  - "Owned Real Property" means all land, together with all buildings, structures, improvements and fixtures located thereon, that is owned.
  - "Parent" shall have the meaning set forth in the Preamble.
  - "Parent Group" shall have the meaning set forth in Section 2.15(g).
  - "Parent Indemnifying Party" shall have the meaning set forth in Section 6.2(a).
  - "Parent Parties" shall have the meaning set forth in Section 6.2(b).
  - "Parent Tax Return" shall have the meaning set forth in Section 6.2(c).
- "Parent Taxes" means any Taxes (i) payable by Parent pursuant to <u>Section 5.5</u>, and (ii) of, imposed upon or assessed against Parent (including to the extent attributable to income of the Company that flows through to Parent or any pre-Equity Closing Date reorganization).
  - "Parent 401(k) Plan" shall have the meaning set forth in Section 5.7.

"Pathlight Debt Facility" means the term loan facility extended pursuant to the terms and conditions of that certain Credit Agreement, dated as of September 23, 2022, among BRR2, as borrower, PLC Agent LLC, as administrative agent for the lenders and the lenders party thereto, as amended by Amendment No. 1 to Credit Agreement and Consent dated October 17, 2022, Amendment No. 2 to Credit Agreement and Consent dated January 12, 2023, and Amendment No. 3 to Credit Agreement and Consent dated March 31, 2023, and Amendment No. 4 to Credit Agreement and Consent dated August 21, 2023.

"Permitted Encumbrances" means (i) any Encumbrance for current Taxes, assessments or other governmental charges not yet due and payable as of the Equity Closing Date or that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (ii) mechanics', carriers', workmen's, warehousemen's, repairmen's or other like Encumbrances arising or incurred in the ordinary course of business with respect to amounts not yet due or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (iii) zoning, building codes and other land use Legal Requirements regulating the use or occupancy of any Company Real Property or Issuer Leased Real Property that are not violated in any material respect by the current use or occupancy of such Company Real Property or Issuer Leased Real Property; (iv) easements, covenants, conditions, rights-of-way, restrictions and other similar nonmonetary matters and nonmonetary encumbrances of record, or matters that would be disclosed by a true and correct current title report or current survey, affecting title to any Company Real Property or Issuer Leased Real Property that do not or would not materially impair the use or occupancy of such Company Real Property or Issuer Leased Real Property in the operation of the business conducted thereon; (v) nonexclusive licenses in IP Rights granted in the ordinary course of the Business; (vi) the Encumbrances in favor of the landlord of any Company Leased Real Property or Issuer Leased Real Property arising in the ordinary course of business and not incurred in connection with the borrowing of money, to the extent the same does not affect tenant's use and occupancy of the Company Leased Real Property or Issuer Leased Real Property and (vi) with respect to Issuer, any Encumbrance arising out of or related to an Existing Issuer Credit Agreement.

"Person" means any individual, Entity or Governmental Body.

"Personal Data" means information relating to or reasonably capable of being associated directly or indirectly with an identified or identifiable person, device, or household, including, but not limited to: (a) a natural person's name, street address or specific geolocation information, date of birth, telephone number, email address, online contact information, photograph, biometric data, Social Security number, driver's license number, passport number, tax identification number, any government-issued identification number, financial account number, credit card number, any information that would permit access to a financial account, a user name and password that would permit access to an online account, health information, insurance account information, any persistent identifier such as customer number held in a cookie, an Internet Protocol address, a processor or device serial number, or a unique device identifier; or (b) "personal data," "personal information," "protected health information," "nonpublic personal information," or other similar terms as defined by Privacy Laws.

"Pre-Closing Books and Records" shall have the meaning set forth in Section 5.10.

"Pre-Closing Tax Period" means any taxable period ending on or before the Equity Closing Date.

"Privacy Laws" means any and all applicable Legal Requirements relating to the Processing of Personal Data applicable to the Company or Issuer Company, including but not limited to, the Federal Trade Commission Act, 15 U.S.C. § 45; the CAN-SPAM Act of 2003, 15 U.S.C. § 7701 et seq.; the Telephone Consumer Protection Act, 47 U.S.C. § 227; the Fair Credit Reporting Act, 15 U.S.C. 1681; the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et seq.; the Electronic Communications Privacy Act, 18 U.S.C. § 2510-22; the Stored Communications Act, 18 U.S.C. § 2701-12; the California Consumer Privacy Act, Cal. Civ. Code § 1798.100, et seq.; the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), including but not limited to its implementing rules and regulations with respect to privacy, security of health information, and transactions and code sets ("HIPAA"); and the South Carolina Privacy of Consumer Financial and Health Information Regulation, South Carolina Code § 69-58; Massachusetts Gen. Law Ch. 93H, 201 C.M.R. 17.00; Nev. Rev. Stat. 603A; Cal. Civ. Code § 1798.82, N.Y. Gen. Bus. Law § 899-aa; the European Union's Directive on Privacy and Electronic Communications (2002/58/EC); the General Data Protection Regulation (2016/679); and all implementing regulations and requirements of the foregoing, and other similar Legal Requirements.

"*Privacy Policies*" means each (a) internal or external past or present data protection, data usage, privacy and security policies of the Company or Issuer Company, as applicable, (b) public statements, representations, obligations, promises, commitments by the Company or Issuer Company, as applicable, relating to privacy, data security, or the Processing of Personal Data, and (c) policies and obligations applicable to the Company or Issuer Company as a result of any certification relating to privacy, security, or the Processing of Personal Data.

"Privacy Requirements" means, each as applicable to either (i) the Company or (ii) the Issuer Companies: (A) Privacy Laws, (B) Privacy Policies, (C) binding codes of conduct or contractual requirements related to the Processing of Personal Data, and (D) the Payment Card Industry Data Security Standard.

"Privileged Communications" shall have the meaning set forth in Section 7.11(b).

"Processing", "Process" or "Processed" means any operation or set of operations which is performed upon Personal Data, by any means, such as collection, recording, organization, protection, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

"Promissory Note" means the Promissory Note, dated August 21, 2023, delivered by Freedom VCM to B. Riley Principal Investment, LLC, and Klotz Family Trust.

"Proxy Statement" shall have the meaning set forth in Section 5.3(a).

"Purchase Price Allocation Schedule" shall have the meaning set forth in Section 5.5(e)(ii).

- "Receivables Closing" shall have the meaning set forth in Section 1.2(b).
- "Receivables Closing Date" shall have the meaning set forth in Section 1.2(b).
- "Receivables Purchase Agreement" means the Receivables Purchase Agreement by and between BRR2 and the Company, in the form attached hereto as Exhibit I.
- "Registered IP" shall mean all IP Rights that are registered, filed with, or issued by or under the authority of or the subject of a pending application before any Governmental Body or Internet domain name registrar, including all patents, registered Copyrights, and registered Trademarks, Internet domain name registrations and all pending applications for any of the foregoing.
- "Registration Rights Agreement" means the Registration Rights Agreement by and among Issuer, Freedom VCM and Newco BHF, in the form attached as Exhibit G.
- "Release" means any release, spill, emission, discharge, leaking, pumping, pouring, emptying, escape, injection, deposit, disposal, dispersal, dumping, leaching or migration into or through the indoor or outdoor environment (including ambient air, surface water, groundwater and surface or subsurface strata or within any building, structure, facility or fixture) or into or out of any property, including the movement of Hazardous Materials through or in the air, soil, surface water or groundwater.
  - "Relevant Lease Agreement" means, individually or collectively as the context requires, the NNN Lease and the Oak Street Lease.
- "Replacement Guarantee Requirements" means, individually or collectively as the context requires, the NNN Replacement Guaranty Requirements and the Oak Street Replacement Guaranty Requirements.
- "Representatives" shall mean with respect to an Entity, the directors, officers, other employees, agents, attorneys, accountants, investment bankers, other advisors and representatives of such Entity.
- "Required Issuer Stockholder Approval" shall mean the affirmative vote at the Issuer Stockholders Meeting or any adjournment or postponement thereof at which a quorum is present of the holders of a majority of Issuer Common Stock entitled to vote, present in person or represented by proxy, approving (a) an amendment to the Issuer Certificate of Incorporation, in the form attached hereto as <a href="Exhibit D">Exhibit D</a>, to create a new class of non-voting common stock of Issuer, par value \$0.01 per share (the "Issuer Non-Voting Common Stock") (the "Amendment"), and (b) the conversion of the Issuer Preferred Stock issued to Newco BHF and to Freedom VCM pursuant to this Agreement into newly authorized and issued Issuer Non-Voting Common Stock (the "Conversion").
- "Residual Tranche 2 Receivables" means the Tranche 2 Receivables that are issued, outstanding and unpaid, in whole or in part, as of 12:01 a.m. Eastern Standard Time on the Receivables Closing Date.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Incident" means any unauthorized Processing of Company Data or Issuer Data (as applicable), any unauthorized access to the IT Systems of the Company or Issuer Companies (as applicable), or any incident affecting Personal Data that would in each instance require notification to a Person, Governmental Body, or any other entity under Privacy Requirements.

"Servicing Agreement" shall have the meaning set forth in Section 5.11(b).

"Software" means any and all (a) computer programs, operating systems, applications systems, firmware and software systems, including objects, modules, routines, subroutines, program architecture, libraries, tool sets, APIs, compilers, files, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces and any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet websites, web content and links, source code, object code, operating systems and specifications, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, and compilers, and data formats all versions, updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

"Sold Receivables" mean any Consumer Credit Receivables sold by the Company to and currently owned by B Riley Receivables, LLC, or B Riley Receivables II, LLC.

"Statement" shall have the meaning set forth in Section 1.5(a).

"Subsidiary" means, with respect to any Person, any other Person of which such Person directly or indirectly owns, beneficially or of record:

(a) an amount of voting securities of or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity's board of directors or other governing body; or (b) more than 50% of the outstanding equity, voting or financial interests in such Entity.

"Tax" means all taxes, charges, fees, duties, levies, imposts, rates or other assessments or governmental charges of any kind imposed by any U.S. federal, state, local or non-U.S. Taxing Authority, including, without limitation, income, gross receipts, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, custom duties, property, sales, use, license, capital stock, transfer, franchise, registration, payroll, withholding, social security, unemployment, disability, value added, alternative or add-on minimum or other taxes, whether disputed or not, and including any interest, penalties, charges or additions attributable thereto.

"Tax Return" means any return, report, certificate, election, form or similar statement or document (including any related supporting information or schedule attached thereto and any information return, amended Tax return, claim for refund or declaration of estimated Tax) supplied to or filed with, or required to be supplied to or filed with, a Taxing Authority, or any bill for or notice related to ad valorem or other similar Taxes received from a Taxing Authority, in each case, in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Taxing Authority" means any governmental authority or any subdivision, agency, commission or entity thereof or any quasi- governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

"Trade Secrets" means all trade secrets, confidential know-how, and rights in confidential information, including ideas, designs, algorithms, formulas, compositions, discoveries and improvement, concepts, compilations of information, methods, techniques, procedures, processes, testing information, research and development information, technology, inventions, invention disclosures, inventor's notes, specifications, plans, proposals and technical data, business and marketing plans, market know-how, reports, data, customer lists, supplier lists, mailing lists, business plans or other proprietary information, to the extent the foregoing permits the holder to derive independent economic value, actual or potential, from it not being generally known or readily ascertainable by other Persons.

"Trademarks" shall have the meaning set forth in the definition of "IP Rights".

"Tranche 2 Receivables" shall have the meaning set forth in the Recitals.

"Transaction Documents" means this Agreement, the Transition Services Agreement, the Confidentiality Agreement, the Voting and Support Agreement, the Registration Rights Agreement, the Investor Rights Agreement, and the A&R B. Riley Funding Agreement and the Receivables Purchase Agreement.

"Transfer Taxes" shall have the meaning set forth in Section 5.5(d).

"Transition Services Agreement" means the Transition Services Agreement by and between Issuer (or one of its Subsidiaries) and Newco BHF, in the form attached as <a href="Exhibit C">Exhibit C</a>.

"Treasury Regulations" means the regulations promulgated under the Code.

"Voting and Support Agreement" means those certain Voting and Support Agreements, in each case, by and among Issuer, Newco BHF, Freedom VCM and the stockholders of Issuer listed thereto, each in the form attached as <a href="Exhibit B">Exhibit B</a>.

"WARN" shall have the meaning set forth in Section 2.16(d).

# SCHEDULE A

# **BRR2** Receivables

Reference is hereby made to that certain PDF file (Named: "Investment Agreement - Receivables Schedule") sent by Benjamin Hubeny of Willkie Farr & Gallagher LLP to Sidley Austin LLP on December 13, 2023 at 11:22AM ET with the email subject line: "RE: Project Blade – Receivables Dividend Agreements".

## CERTIFICATE OF DESIGNATIONS

OF

#### NONVOTING CONVERTIBLE PREFERRED STOCK

OF

## CONN'S, INC.

Conn's, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "<u>Corporation</u>"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation (the "<u>Board of Directors</u>") as required by Section 151 of the General Corporation Law of the State of Delaware (the "<u>DGCL</u>") at a meeting duly called and held on December 18, 2023:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors in accordance with the Certificate of Incorporation of the Corporation (the "<u>Certificate of Incorporation</u>"), the Board of Directors hereby creates a series of preferred stock, par value \$0.01 per share, of the Corporation designated as Nonvoting Convertible Preferred Stock (the "<u>Nonvoting Preferred</u>"), and hereby states the designation and number of shares, and fixes the relative rights, preferences and limitations thereof as follows:

#### ARTICLE I

#### **DEFINITIONS**

As used in this Certificate of Designations, the following terms shall have the meanings set forth below:

"Accrued Dividend Amount" means with respect to any share of the Nonvoting Preferred, all declared and unpaid Participating Dividends and all accrued and unpaid Preferred Dividends.

"Accreted Share Amount" means, with respect to any share of the Nonvoting Preferred, as of any date, the Accrued Dividend Amount divided by the Reference Stock Price.

"Affiliate" of any specified Person means any other Person directly or indirectly through one or more intermediaries controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Audit Delivery Date" means the date that is six (6) months following the receipt by the Corporation of the audited consolidated balance sheets and statements of operations and comprehensive loss, cash flows and changes in temporary and permanent equity of the Company for the fiscal years ended December 31, 2022 and December 31, 2021, together with the unaudited consolidated balance sheets and statements of operations and comprehensive loss, cash flows and changes in temporary and permanent equity of the Company for the nine month period ended September 30, 2023.

"Automatic Conversion" means a conversion of Nonvoting Preferred pursuant to Article II, Section 4.

"Bankruptcy Event" means any of the following events: (a) the Corporation or any Subsidiary thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Subsidiary thereof, (b) there is commenced against the Corporation or any Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Corporation or any Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Corporation or any Subsidiary thereof makes a general assignment for the benefit of creditors, or (e) the Corporation or any Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Business Day" means any day other than a Saturday or Sunday, a legal holiday or any other day on which the Securities and Exchange Commission is closed.

"Common Stock" means the Voting Common Stock and Non-Voting Common Stock.

"Conversion Agent" means the Transfer Agent acting in its capacity as conversion agent for the shares of the Nonvoting Preferred, and its successors and assigns.

"Conversion Date" means, with respect to any given share of Nonvoting Preferred, the date on which such share of Nonvoting Preferred has been converted pursuant to Article II, Section 4(a).

"Converted Stock Equivalent Amount" means, for each share of Nonvoting Preferred, a number of shares of Common Stock equal to 24.540295 plus the Accreted Share Amount; provided that if, after issuance of any shares of Nonvoting Preferred, the Corporation subdivides or splits its outstanding Common Stock, including by way of a dividend or distribution of Common Stock, or combines its outstanding Common Stock into a lesser number of shares, the "Converted Stock Equivalent Amount" with respect to such issued and outstanding shares of Nonvoting Preferred shall be adjusted as if such action applied to the shares of Common Stock represented by the Converted Stock Equivalent Amount.

"Debt Maturity Date" means May 22, 2027.

"<u>Delisting Event</u>" means any time while shares of Nonvoting Preferred remain outstanding and the Voting Common Stock is not listed for and actively trading on the NASDAQ Stock Market or is suspended or delisted with respect to the trading of the shares of Common Stock on such market.

"DTC" shall have the meaning set forth in Article II, Section 4(b).

"Event of Default" means (i) the direct or indirect taking by the Corporation or any Subsidiary thereof of any action requiring the approval of the Nonvoting Preferred pursuant to Article II, Section 5(b), (ii) the failure by the Corporation to pay when due any amounts owed pursuant to Article II, Section 3(a)-(b), (iii) the material breach by the Corporation or any Subsidiary thereof of any material covenant or agreement relating to the Nonvoting Preferred as set forth in this Certificate of Designations and (iv) a Bankruptcy Event; provided, that, with respect to clauses (i), (ii) and (iii), immediately following the occurrence of such Event of Default, the non-defaulting party must give written notice to the defaulting party (a "Default Notice") and, following receipt of a Default Notice, the defaulting party will be entitled to 30 days to cure any such default to the extent curable (a "Cure Period"), and no "Event of Default" shall be deemed to have occurred if such default is cured within such Cure Period.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

"Holder" means the Person in whose name shares of the Nonvoting Preferred are registered, which may be treated by the Corporation, Transfer Agent, paying agent and Conversion Agent as the absolute owner of such shares of Nonvoting Preferred for the purpose of making payment and settling the related conversions and for all other purposes.

"<u>Liquidation Event</u>" means the occurrence, directly or indirectly, of one of the following, whether in a single transaction or a series of transactions:

- (a) the voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (b) the merger or consolidation of the Corporation with or into another Person or the merger of another Person with or into the Corporation, or the sale, lease or transfer of all or substantially all of the assets of the Corporation (determined on a consolidated basis) to another Person, or any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, other than (i) a transaction following which holders of securities that represented 100% of the Common Stock immediately prior to such transaction own, directly or indirectly (in substantially the same proportion to each other as immediately prior to such transaction, other than changes in proportionality as a result of any cash/stock election provided under the terms of the definitive agreement regarding such transaction), at least a majority of the voting power of the common stock of the surviving Person in such merger or consolidation transaction immediately after such transaction or (ii) a sale, lease or transfer to a Subsidiary or a Person that becomes a Subsidiary of the Corporation; or
- (c) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), is or becomes the "beneficial owner", directly or indirectly, of a majority of the total voting power of the Common Stock, other than as a result of any such transaction in which the holders of securities that represented 100% of the Common Stock immediately prior to such transaction are substantially the same as the holders of securities that represent a majority of the total voting power of all classes of common stock of the surviving Person or any parent entity that directly or indirectly wholly owns such surviving Person immediately after such transaction.

"Non-Voting Common Stock" means the non-voting common stock of the Corporation, par value \$0.01 per share, or any other capital stock of the Corporation into which such non-voting common stock shall be reclassified or changed.

"Organic Change" means any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Corporation's assets, exchange or tender offer by the Corporation or any of its Subsidiaries, or other transaction, in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation and whether automatically or at their election) stock, securities or assets with respect to or in exchange for Common Stock; <u>provided</u>, <u>however</u>, that no such transaction shall constitute an Organic Change if it constitutes a Liquidation Event.

"Original Issuance Value" means with respect to each share of Nonvoting Preferred, \$72.138651.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

"Reference Stock Price" means \$2.9396.

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

"Senior Stock" means any class or series of capital stock of the Corporation the terms of which expressly provide that such class or series will rank senior to or pari passu with the Nonvoting Preferred as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case, without regard to whether dividends accrue cumulatively).

"Shareholder Approval" means the affirmative vote at a meeting of the stockholders of the Corporation or any adjournment or postponement thereof at which a quorum is present of the holders of a majority of Voting Common Stock entitled to vote, present in person or represented by proxy, approving (a) an amendment to the Certificate of Incorporation to create the Non-Voting Common Stock and (b) the conversion of the Nonvoting Preferred into Non-Voting Common Stock.

"Subsidiary" of any Person means any corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) owned by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Transfer Agent" means Computershare acting as transfer agent, registrar, paying agent and Conversion Agent for the Nonvoting Preferred and its successors and assigns.

"<u>Voting Common Stock</u>" means the voting common stock of the Corporation, par value \$0.01 per share, or any other capital stock of the Corporation into which such common stock shall be reclassified or changed.

"VWAP" means, as of any period of determination, the volume-weighted average price per share of Common Stock as displayed under the heading Bloomberg VWAP on Bloomberg (or, if Bloomberg ceases to publish such price, any successor service reasonably chosen by the Corporation) page "CSU <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the open of trading on the first full trading day during the applicable period.

#### ARTICLE II

#### NONVOTING PREFERRED

1. <u>Designation and Number of Shares</u>. There shall be a series of preferred stock designated "Nonvoting Convertible Preferred Stock." The number of authorized shares of Nonvoting Preferred shall be 1,000,000. The Corporation shall have the authority to issue fractional shares of Nonvoting Preferred. The rights, preferences, powers, restrictions and limitations of the Nonvoting Preferred shall be as set forth herein.

#### 2. Dividends.

(a) Participating Dividends. Each Holder shall be entitled to receive, with respect to the shares of Nonvoting Preferred held by such Holder, if, as and when declared by the Board of Directors or any duly authorized committee thereof, dividends or distributions ("Participating Dividends") of the same amount, in an identical form of consideration and at the same time, as those dividends or distributions that would have been payable on the number of whole shares of Common Stock equal to the product of the Converted Stock Equivalent Amount and the number of such shares of Nonvoting Preferred (rounding upwards or downwards any fractional shares resulting from such computation to the nearest whole number) such that no holder of Common Stock shall receive a dividend or distribution unless equivalent dividends or distributions (as described above) are also made to each share of Nonvoting Preferred, taking into account any adjustment to the Converted Stock Equivalent Amount as provided herein; provided that the foregoing shall not apply to any dividend or distribution payable in shares of Common Stock that results in an adjustment in the Converted Stock Equivalent Amount, as set forth in Article I in the definition of "Converted Stock Equivalent Amount." The Corporation shall not declare a dividend or distribution to the holders of the Common Stock unless a dividend or distribution (as described above) is also made to the Holders in accordance with this Article II, Section 2(a), Notwithstanding anything set forth in this Article II, Section 2(a), if any dividend or distribution is payable in rights or warrants to subscribe for Common Stock or the purchase of Common Stock pursuant to a conversion feature in a debt or equity security, the corresponding dividend or distribution payable on the Nonvoting Preferred shall consist of an identical right or warrant except that such right or warrant shall be a right or warrant to subscribe for a number of shares of Nonvoting Preferred equal to the number of shares of Common Stock that would otherwise be subject to such right or warrant. Other than as expressly provided in Article II, Section 2(b) in respect of Preferred Dividends, the Nonvoting Preferred shall have no fixed dividend rate. Each declared dividend or distribution pursuant to this Article II, Section 2(a) shall be payable to the holders of record of Nonvoting Preferred at the same time as dividends or distributions are payable to the holders of record of Common Stock.

#### (b) Preferred Dividends.

- (i) In addition to the dividends contemplated by Article II, Section 2(a), following the Audit Delivery Date, each Holder shall receive dividends accruing daily on the basis of twelve 30-day months and a 360-day year, at the rate of 8% per annum (the "Dividend Rate") on the Original Issuance Value per share of such Nonvoting Preferred whether or not declared; provided, however, that following each Dividend Payment Date, the Dividend Rate shall increase 200 basis points, subject to a maximum Dividend Rate of 16% per annum; provided, further, that the Dividend Rate shall automatically be increased to 16% per annum for such period that an Event of Default remains in effect (the "Preferred Dividends"). The Preferred Dividends shall be cumulative and shall be paid quarterly in arrears on the last day of March, June, September and December in each year (each, a "Dividend Payment Date") and if not so paid on such date shall compound and be added to the Original Issuance Value.
  - (ii) The Preferred Dividends may be paid in cash with the approval of the Holders of a majority of the Nonvoting Preferred.
- (c) <u>Priority of Dividends</u>. The Nonvoting Preferred shall rank senior with regard to the Preferred Dividends to any class or series of capital stock of the Corporation, including the Common Stock. The Nonvoting Preferred shall have the same priority, with regard to Participating Dividends, as the Common Stock. For so long as any shares of Nonvoting Preferred remain outstanding, unless full dividends on all outstanding shares of Nonvoting Preferred have been paid in full, including any accrued and unpaid dividends on the Nonvoting Preferred that are then in arrears, the Corporation may not declare any dividend on, or make any distributions relating to any Common Stock, or redeem, purchase, acquire (either directly or through any Subsidiary) or make any payment due as a result of a Liquidation Event relating to, any Common Stock, other than if approved by a majority of the Nonvoting Preferred.

## 3. Liquidation Rights; Optional Redemption.

- (a) <u>Liquidation</u>. In the event of a Liquidation Event, after payment or provision for payment of the debts and other liabilities of the Corporation, the assets of the Corporation legally remaining available for distribution to the Corporation's stockholders shall be distributed (i) first, to the Holders (with each such Holder being treated for this purpose as holding the number of whole shares of Common Stock equal to the product of the Converted Stock Equivalent Amount and the number of such shares of Nonvoting Preferred immediately prior to such Liquidation Event, excluding any fractional shares resulting from such computation) and (ii) second, the remaining balance, pro rata among (A) the holders of Common Stock and (B) the holders of any other securities of the Corporation having the right to participate in such distributions upon the occurrence of a Liquidation Event, in accordance with the respective terms thereof.
- (b) Optional Redemption. At any time on or after the first anniversary of the Debt Maturity Date, upon the election of the Holders of a majority of the Nonvoting Preferred, the Corporation shall redeem (an "Optional Redemption" and the date upon which the Optional Redemption occurs, the "Optional Redemption Date") each share of Nonvoting Preferred and shall pay the Holder thereof an amount of cash per share equal to the product of (1) Converted Stock Equivalent Amount, multiplied by (2) the VWAP for the twenty (20) consecutive full trading days immediately preceding the Optional Redemption Date.

#### 4. Conversion.

- (a) <u>Automatic Conversion Immediately Upon Receipt of Shareholder Approval</u>. Effective immediately upon the receipt of Shareholder Approval, all Nonvoting Preferred shall automatically be converted into a number of shares of Non-Voting Common Stock equal to the product of the number of shares of Nonvoting Preferred being converted and the Converted Stock Equivalent Amount; provided that cash will be paid in lieu of fractional shares pursuant to Article III, Section 7. Upon such conversion, all shares of Nonvoting Preferred shall no longer be deemed outstanding for any purpose, and such converting Holders shall have no rights with respect to the Nonvoting Preferred other than the right to receive the shares of Non-Voting Common Stock.
- (b) Conversion Procedures. The Corporation shall promptly (but in any event no more than two (2) Business Days thereafter) issue or cause the Conversion Agent to issue the Non-Voting Common Stock issuable upon an Automatic Conversion (provided that, if the Conversion Agent for the Non-Voting Common Stock is participating in The Depository Trust Company ("DTC") Fast Automated Securities Transfer Program and the Holder is eligible to receive shares through DTC, such Conversion Agent shall instead credit such number of full shares of Non-Voting Common Stock to such Holder's balance account with DTC through its Deposit/Withdrawal at Custodian system). The Corporation shall bear the cost associated with the issuance of the Non-Voting Common Stock issuable upon an Automatic Conversion. The Non-Voting Common Stock issued pursuant to an Automatic Conversion shall be issued with a restrictive legend indicating that it was issued in a transaction which is exempt from registration under the Securities Act, and that it cannot be transferred unless it is so registered, or an exemption from registration is available, in the opinion of counsel to the Corporation. The Non-Voting Common Stock issuable pursuant to an Automatic Conversion shall be issued in the same name as the Holder unless, in the opinion of counsel to the Corporation, such transfer can be made in compliance with applicable securities laws.
- (c) No Responsibility of the Corporation. In connection with any conversion of any shares of Nonvoting Preferred pursuant to or as permitted by Article II, Section 4(a):
  - (i) The Corporation shall be under no obligation to make any investigation of facts.
  - (ii) Except as otherwise required by law, neither the Corporation nor any director, officer, employee or agent of the Corporation shall be liable in any manner for any action taken or omitted in good faith in connection with the issuance of shares of Non-Voting Common Stock in connection with any such conversion.
- (d) No Effect on Other Obligations. Nothing contained in this Article II, Section 4 shall be deemed to eliminate or otherwise modify any other requirements applicable to conversions under this Certificate of Designations or applicable law.

(e) <u>Record Holder as of Conversion Date</u>. The Person or Persons entitled to receive the Non-Voting Common Stock issuable upon conversion of Nonvoting Preferred or other property issuable upon conversion of the Nonvoting Preferred on any applicable Conversion Date shall be treated for all purposes as the record holder(s) of such shares of Non-Voting Common Stock immediately upon the receipt of Shareholder Approval in the case of a conversion pursuant to an Automatic Conversion.

#### 5. Voting Rights.

- (a) <u>General</u>. The holders of the Nonvoting Preferred shall be entitled to notice of all stockholder meetings at which holders of Common Stock shall be entitled to vote; provided that notwithstanding any such notice, except as required by applicable law or as expressly set forth herein, the Holders shall not be entitled to vote on any matter presented to the stockholders of the Corporation for their action or consideration.
- (b) <u>Approval Rights</u>. In addition to any approval rights that may be required by applicable law, the consent of the Holders representing a majority of the shares of Nonvoting Preferred, given in person or by proxy, either in writing or by vote, at a special or annual meeting, voting or consenting as a separate class, shall be necessary to: (i) amend the Certificate of Incorporation or bylaws of the Corporation then in effect at such time (the "<u>Bylaws</u>"), if such amendment would materially and adversely affects the rights, preferences or privileges of the Nonvoting Preferred as compared to the rights of other equity securities of the Corporation; (ii) authorize, create or issue, or obligate the Corporation to authorize, create or issue, any Senior Stock; (iii) amend or waive any provision of this Certificate of Designations applicable to the Holders or the Nonvoting Preferred; (iv) grant registration rights on terms more favorable than the registration rights granted in connection with the issuance of the Nonvoting Preferred as of the date hereof; or (v) effect the occurrence of a Bankruptcy Event or a Delisting Event.
- (c) <u>Action by Written Consent</u>. Any action, including any vote required or permitted to be taken at any annual or special meeting of stockholders of the Corporation, that requires a separate vote of the Holders voting as a single class, may be taken by the Holders without a meeting, without prior notice and without a vote, if a consent or consents in writing or electronic transmission, setting forth the action so taken, shall be given by the Holders having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Nonvoting Preferred entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to the Corporate Secretary of the Corporation at its principal executive office.
- 6. <u>Subdivision</u>; <u>Stock Splits</u>; <u>Combinations</u>. The Corporation shall not at any time subdivide (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Nonvoting Preferred into a greater number of shares, or combine (by combination, reverse stock split or otherwise) its outstanding shares of Nonvoting Preferred into a smaller number of shares.
- 7. <u>Reorganization, Reclassification, Consolidation, Merger or Sale</u>. In the event an Organic Change occurs, each share of Nonvoting Preferred shall be treated the same as each share of Common Stock, taking into account any adjustment of the Converted Stock Equivalent Amount. In the event that holders of shares of Common Stock have the option to elect the form of consideration to be received in such Organic Change, Holders shall have the same election privileges as the holders of Common Stock.

#### ARTICLE III

## MISCELLANEOUS

- 1. <u>Unissued or Reacquired Shares</u>. Shares of Nonvoting Preferred that have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be retired upon their acquisition, shall not be reissued as shares of Nonvoting Preferred, and, upon the taking of any action required by law, shall be restored to the status of authorized but unissued shares of preferred stock of the Corporation without designation as to series until such shares are once more designated as part of a particular series by the Board of Directors pursuant to the provisions of the Certificate of Incorporation.
  - 2. No Sinking Fund. Shares of Nonvoting Preferred are not subject to the operation of a sinking fund.
  - 3. Issuance of Non-Voting Common Stock.
- (a) <u>Free and Clear Delivery</u>. All shares of Non-Voting Common Stock delivered upon conversion of the Nonvoting Preferred, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).
- (b) <u>Compliance with Law</u>. Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Nonvoting Preferred, the Corporation shall use its reasonable best efforts to comply with any federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.
- 4. <u>Transfer Agent, Conversion Agent and Paying Agent</u>. The duly appointed Transfer Agent, Conversion Agent and paying agent for the Nonvoting Preferred shall be Computershare Trust Company, N.A. The Corporation may appoint a successor transfer agent that shall accept such appointment prior to the effectiveness of such removal. Upon any such appointment, the Corporation shall send notice thereof to the Holders.
- 5. <u>Uncertificated Shares</u>. The Nonvoting Preferred and any shares of Non-Voting Common Stock or Common Stock, as applicable, issued upon conversion thereof shall be in uncertificated, book entry form as permitted by the Bylaws and the DGCL.
- 6. No Closing of Books; Cooperation. The Corporation shall not close its books against the transfer of Nonvoting Preferred or of Non-Voting Common Stock issued or issuable upon conversion of Nonvoting Preferred in any manner which interferes with the timely conversion of Nonvoting Preferred. The Corporation shall assist and cooperate with any Holder required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of Nonvoting Preferred hereunder (including, without limitation, making any governmental filings required to be made by the Corporation).

7. <u>Cash In Lieu of Fractional Interests</u>. If any fractional interest in a share of capital stock would, except for the provisions of this Article III, Section 7, be delivered upon any conversion of the Nonvoting Preferred, the Corporation, in lieu of delivering the fractional share therefor, shall pay an amount to the holder thereof equal to the market value of such fractional interest as of the date of conversion.

### 8. Taxes.

- (a) <u>Transfer Taxes</u>. The Corporation shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Nonvoting Preferred or shares of Non-Voting Common Stock or other securities issued on account of Nonvoting Preferred pursuant hereto or certificates representing such shares or securities; <u>provided, however</u>, that the Corporation shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Nonvoting Preferred, shares of Non-Voting Common Stock or other securities in a name other than that in which the shares of Nonvoting Preferred with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the registered holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been, or will be, paid or is not payable.
- (b) <u>Withholding</u>. All payments and distributions (or deemed distributions) on the shares of Nonvoting Preferred (and on the shares of Non-Voting Common Stock received upon their conversion) shall be subject to withholding and backup withholding of tax to the extent required by law, subject to applicable exemptions, and amounts withheld, if any, shall be treated as received by the Holders.
- 9. Notices. All notices referred to in this Certificate of Designations shall be in writing, and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given: (i) upon receipt, when delivered personally; (ii) one (1) Business Day after deposit with an overnight courier service; or (iii) three (3) Business Days after the mailing thereof if sent by registered or certified mail (unless first class mail shall be specifically permitted for such notice under the terms of this Certificate of Designations) with postage prepaid, in each case addressed: (x) if to the Corporation, to its office at 2445 Technology Forest Blvd., Suite 800, The Woodlands, TX 77381 (Attention: Corporate Secretary), or (y) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Corporation (which may include the records of the Transfer Agent) or (z) to such other address as the Corporation or any such Holder, as the case may be, shall have designated by notice similarly given.

[Remainder of page intentionally blank; Signature page follows.]

IN WITNESS WHEREOF, Conn's, Inc. has caused this Certificate of Designations to be executed by its duly authorized officer on and as of December 18, 2023.

# CONN'S, INC.

By: /s/ Mark Prior

Name: Mark Prior

Title: Senior Vice President and General Counsel

[Signature Page to Certificate of Designation]

### VOTING AND SUPPORT AGREEMENT

This VOTING AND SUPPORT AGREEMENT (this "<u>Agreement</u>"), dated as of December 18, 2023, is by and among (i) Franchise Group Newco BHF, LLC, a Delaware limited liability company ("<u>FRG</u>"), (ii) Freedom VCM Interco Holdings, Inc. ("<u>FVCM</u>" and, together with FRG, the "<u>Investors</u>"), (iii) Conn's, Inc., a Delaware corporation (the "<u>Company</u>"), and (iv) the stockholder of the Company listed on <u>Schedule A</u> hereto in its capacity as record or beneficial owners of Common Shares (as defined below) (the "<u>Stockholder</u>"). Each of the Investors, the Company and the Stockholder are sometimes referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>."

### RECITALS

A. Concurrently with the execution and delivery of this Agreement, the Company, W.S. Badcock LLC, Franchise Group, Inc. and the Investors have entered into an Investment Agreement (as amended, supplemented or otherwise modified from time to time, the "Investment Agreement"), pursuant to which the Investors agreed to contribute and deliver to the Company (or cause to be contributed and delivered to the Company), (i) all of the equity interests in W.S. Badcock LLC and (ii) the Residual Tranche 2 Receivables (as defined in the Investment Agreement), in exchange for the issuance by the Company to the Investors (or designees thereof) of senior preferred convertible stock of the Company, par value \$0.01 per share (the "Senior Preferred Stock");

B. As of the date hereof, the Stockholder is the record and/or "beneficial owner" (within the meaning of Rule 13d-3 under the Exchange Act) of the number of shares of common stock of the Company, par value \$0.01 per share (the "Common Shares") set forth next to the Stockholder's name on Schedule A hereto, being all of the Common Shares owned of record or beneficially by the Stockholder as of the date hereof (with respect to the Stockholder, the "Owned Shares", and the Owned Shares together with any additional Common Shares or other equity interests of the Company that the Stockholder may acquire record and/or beneficial ownership of after the date hereof (including pursuant to a stock split, reverse stock split, stock dividend or distribution or any change in Common Shares by reason of any recapitalization, reorganization, combination, reclassification, exchange of shares or similar transaction), the Stockholder's "Covered Shares"); and

C. As a condition and material inducement to the Investors' willingness to enter into the Investment Agreement and consummate the transactions contemplated thereby, the Investors have required the Stockholder, and the Stockholder has agreed, to enter into this Agreement with respect to the Stockholder's Covered Shares.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

- 1. <u>Definitions.</u> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Investment Agreement. When used in this Agreement, the following terms shall have the meanings assigned to them in this <u>Section 1</u>.
- 1.1. "Conversion" means the issuance of Issuer Non-Voting Common Stock to the Investors upon the conversion of the Senior Preferred Stock in accordance with the terms of the Certificate of Designation.
- 1.2. "Expiration Time" shall mean the earlier to occur of (a) the termination of this Agreement by written agreement of all of the Parties and (b) the obtaining of the Required Issuer Stockholder Approval.

### 2. Agreement to Vote the Covered Shares.

- 2.1. Voting Agreement. Until the Expiration Time, at every special or annual meeting of the Company's stockholders at which any of the following matters are to be voted on (and at every adjournment or postponement thereof), and on any action or approval of the Company's stockholders by written consent with respect to any of the following matters, the Stockholder irrevocably and unconditionally agrees to cause to be present in person or represented by proxy and to vote (including via proxy) all of the Stockholder's Covered Shares (or cause the holder of record on any applicable record date to vote (including via proxy) all of the Stockholder's Covered Shares) (a) in favor of any proposal to approve the Conversion and the Amendment (collectively, the "Relevant Matters"); (b) in favor of any proposal to postpone or adjourn a meeting at which there is a proposal for stockholders of the Company to approve the Relevant Matters to a later date if there are not sufficient votes to approve the Relevant Matters or if there are not sufficient Common Shares present in person or represented by proxy at such meeting to constitute a quorum, in each case, so long as such postponement or adjournment is effected in accordance with the terms of the Investment Agreement; and (c) against any agreement, transaction or other matter that is intended to, would, or would reasonably be expected to, (i) impede, postpone, materially adversely affect or interfere with the Relevant Matters or otherwise obtaining the Required Issuer Stockholder Approval, or (ii) result in a breach of any covenant, representation or warranty or other obligation or agreement of the Company under the Investment Agreement, the Certificate of Designation, the Registration Rights Agreement or the Investor Rights Agreement or of the Stockholder under this Agreement. The obligations of the Stockholder specified in this Section 2.1 shall apply whether or not the Relevant Matters or any other transactions contemplated by the Investment Agreement are recommended by the Company's Board of Directors and irrespective, for the avoidance of doubt, of any change of recommendation by the Company's Board of Directors or any committee thereof.
- 2.2. Quorum; Procedure. Until the Expiration Time, at every special or annual meeting of the Company's stockholders (and at every adjournment or postponement thereof), the Stockholder shall be represented in person or by proxy at such meeting (or cause the holders of record on any applicable record date to be represented in person or by proxy at such meeting) in order for the Covered Shares to be counted as present for purposes of establishing a quorum. Any vote required to be cast hereunder shall be cast in accordance with all applicable procedures so as to ensure that it is duly counted for purposes of establishing a quorum and for purposes of recording the results of that vote.

- 2.3. Return of Proxy. The Stockholder hereby revokes (and agrees to cause to be revoked and to promptly communicate in writing notice of such revocation to the relevant proxy holder) any proxies that the Stockholder has heretofore granted with respect to the Covered Shares. The Stockholder shall execute and deliver (or cause the holders of record to execute and deliver), promptly upon receipt (but in any event no later than two (2) Business Days thereafter), any proxy card or voting instructions it or the Stockholder receive that is sent to stockholders of the Company soliciting proxies with respect to any matters described in Section 2.1, which shall be voted in the manner described in Section 2.1 (with the Investors to be promptly notified (and provided reasonable evidence) of such execution and delivery of such proxy card or voting instructions).
- 2.4. No Inconsistent Agreements. The Stockholder hereby represents, covenants and agrees that, except as contemplated by this Agreement, the Stockholder (a) has not entered into, and shall not enter into at any time prior to the Expiration Time, any voting agreement or voting trust with respect to any Covered Shares, except to the extent permitted hereunder and (b) has not granted, and shall not grant at any time prior to the Expiration Time, a proxy or power of attorney with respect to any Covered Shares, in either case, which is inconsistent with the Stockholder's obligations pursuant to this Agreement.
- 2.5. <u>Acquisitions of Common Shares</u>. Prior to the Expiration Time, in the event that the Stockholder acquires record or beneficial ownership of, or the power to vote or direct the voting of, any additional Common Shares or other voting securities with respect to the Company, such Common Shares or voting securities shall, without further action of the parties, be deemed Covered Shares and subject to the provisions of this Agreement, and the number of Common Shares held by the Stockholder set forth on <u>Schedule A</u> hereto will be deemed amended accordingly and such Common Shares or voting securities shall automatically become subject to the terms of this Agreement. The Stockholder shall promptly (but in no event later than five (5) Business Days thereafter) notify the Investors of any such event.
- 3. Waiver of Certain Actions. The Stockholder hereby agrees that (a) it shall not commence or participate in, or facilitate, assist or encourage and (b) it shall take all actions reasonably necessary to opt out of any class in any class action with respect to, in each of cases (a) and (b), any claim, derivative or otherwise, against the Investors, the Company or any of their respective Affiliates, successors, directors, managers or officers (i) challenging the validity of, or seeking to enjoin or delay the operation of, any provision of this Agreement or (ii) alleging a breach of any duty of the Company's Board of Directors in connection with the Investment Agreement, this Agreement or the transactions contemplated thereby or hereby.
- 4. <u>Stockholder Capacity</u>. The Stockholder is entering into this Agreement solely in its capacity as the record holder or beneficial owner of the Stockholder's Covered Shares, not in his, her or its capacity (if applicable) as a member of the Company's Board of Directors.

- 5. Representations and Warranties of the Stockholder. The Stockholder hereby represents and warrants to the Investors and the Company that:
- 5.1. <u>Authorization; Execution; Enforceability.</u> The Stockholder has the requisite power and authority to execute and deliver this Agreement. The execution, delivery and performance by the Stockholder of this Agreement and each of the transactions contemplated hereby have been duly and validly authorized by all requisite action on the part of the Stockholder and no other act or proceeding on the part of the Stockholder is necessary to authorize the execution, delivery or performance of this Agreement or the consummation of any of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Stockholder and, assuming the due execution and delivery of this Agreement, constitutes a valid, legal and binding obligation of the Stockholder, enforceable against the Stockholder in accordance with its terms, except as the enforceability hereof or thereof may be limited by the General Enforceability Exceptions. If the Stockholder is a natural person and is married, and any of the Covered Shares constitute community property or spousal approval is otherwise necessary for this Agreement to be legal, binding and enforceable, this Agreement has been duly authorized, executed and delivered by, and constitutes the legal, valid and binding obligation of, the Stockholder's spouse, enforceable against the Stockholder's spouse in accordance with its terms.
- 5.2. Ownership of the Covered Shares. (a) The Stockholder is, as of the date hereof, the beneficial and record owner of the Stockholder's Covered Shares, free and clear of any and all Encumbrances other than those (i) created by this Agreement or (ii) arising under applicable Legal Requirements, and (b) the Stockholder has sole voting and dispositive power over all of the Covered Shares beneficially owned by the Stockholder. The Stockholder has not entered into any agreement to transfer any Covered Shares. As of the date hereof, the Stockholder does not own, beneficially or of record, any Common Shares or other voting shares of the Company (or any securities convertible, exercisable or exchangeable for, or rights to purchase or acquire, any Common Shares or other voting shares of the Company) other than the Owned Shares.

### 5.3. No Conflict; Consents.

- (a) The execution and delivery of this Agreement by the Stockholder does not, and the performance by the Stockholder of its obligations under this Agreement and the compliance by the Stockholder with any provisions hereof does not and will not: (a) conflict with or violate any Legal Requirements, (b) if the Stockholder is a legal entity, constitute a breach or violation of, or a default under, the certificate of incorporation, limited liability company agreement or similar organizational or governing documents of the Stockholder, or (c) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of an Encumbrance on any of the Covered Shares of the Stockholder pursuant to any Contract or obligation to which the Stockholder is a party or by which the Stockholder is subject.
- (b) No consent, approval, order or authorization of, or registration, declaration or, except as required by the rules and regulations promulgated under the Exchange Act, filing with, any Governmental Body or any other Person, is required by or with respect to the Stockholder in connection with the execution and delivery of this Agreement or the consummation by it of the transactions contemplated hereby.

- 5.4. <u>Legal Proceedings</u>; <u>Orders</u>5.5. There is not pending, or to the knowledge of the Stockholder, threatened any Legal Proceeding or Order that would reasonably be likely to prevent, impair or materially delay the ability of the Stockholder to perform its obligations under this Agreement.
- 5.6. Stockholder Has Adequate Information. The Stockholder acknowledges that the Stockholder is a sophisticated investor with respect to the Stockholder's Covered Shares and has adequate information concerning the business and financial condition of the Company and the transactions contemplated by the Investment Agreement to make an informed decision regarding the transactions contemplated by this Agreement and has, independently and without reliance upon the Investors, the Company or any Affiliate of the Investors and the Company, and based on such information as the Stockholder has deemed appropriate, made the Stockholder's own analysis and decision to enter into this Agreement. The Stockholder has received and reviewed a copy of this Agreement and the Investment Agreement and the Stockholder acknowledges that the Stockholder has had the opportunity to seek independent legal advice prior to executing this Agreement and fully understands and accepts all of the provisions hereof and of the Investment Agreement.
- 5.7. <u>Reliance</u>. The Stockholder understands and acknowledges that the Investors are entering into the Investment Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement and upon the representations and warranties and covenants of the Stockholder contained in this Agreement.
- 5.8. No Inconsistent Agreements. The Stockholder acknowledges that the Stockholder has not entered into any agreement or knowingly taken any action that would make any representation or warranty of the Stockholder contained herein untrue or incorrect with respect to any of the Stockholder's Covered Shares or is otherwise inconsistent with, or would interfere with, or prohibit or prevent the Stockholder from satisfying, its obligations pursuant to this Agreement.

### 6. Miscellaneous.

- 6.1. Certain Adjustments. In the event of a stock split, stock dividend or distribution, or any change in the Common Shares by reason of any split-up, reverse stock split, recapitalization, combination, reclassification, exchange of shares or the like, the terms "Common Shares", and "Covered Shares" shall be deemed to refer to and include such shares as well as all such stock dividends and distributions and any securities into which or for which any or all of such shares may be changed or exchanged or which are received in such transaction.
- 6.2. <u>Amendment</u>. This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by an authorized representative of each of the parties hereto.

### 6.3. Waiver.

(a) Except as expressly set forth herein to the contrary, no failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any party would otherwise have.

- (b) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.
- 6.4. Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred by the Parties in connection with the transactions contemplated hereby shall be borne solely and entirely by the Party that has incurred such expenses.
- 6.5. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the U.S. return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier (such as Federal Express), two (2) Business Days after mailing; (c) if sent by e-mail before 5:00 p.m. Eastern Time, when transmitted and receipt is confirmed; (d) if sent by e-mail after 5:00 p.m. Eastern Time and receipt is confirmed, on the following Business Day; or (e) if otherwise actually personally delivered, when delivered; provided, that such notices, requests, demands and other communications are delivered to the physical address, e-mail address or facsimile number set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:
  - (a) if to the Stockholder, to the address for notice set forth on Schedule A hereto;
  - (b) if to the Investors, to:

Franchise Group, Inc. 109 Innovation Court, Suite J Delaware, Ohio 43015 Attention: Tiffany McMillan-McWaters Email: tmcwaters@franchisegrp.com

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019 Attention: Russell L. Leaf: Jared N. F.

Attention: Russell L. Leaf; Jared N. Fertman Email: rleaf@willkie.com; jfertman@willkie.com

(c) if to the Company, to:

Conn's, Inc. 2445 Technology Forest Blvd., Suite 800 The Woodlands, TX 77381 Attention: General Counsel Email: Mark.Prior@conns.com

with a copy (which shall not constitute notice) to:

Sidley Austin LLP 1000 Louisiana Street, Suite 5900 Houston, TX 77002 Attention: Kevin Lewis Email: klewis@sidley.com

and

Sidley Austin LLP 2021 McKinney Ave., Suite 2000 Dallas. TX 75201

Attacking Dill Hamilton

Attention: Bill Howell; Ryan Scofield

Email: bhowell@sidley.com; rscofield@sidley.com

6.6. Governing Law; Jurisdiction; Specific Performance; Remedies. This Agreement and all actions, proceedings or counterclaims (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of the parties hereto in the negotiation, administration, performance and enforcement thereof, shall be governed by, and construed in accordance with, the laws of the State of Delaware, including its statute of limitations, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof that would cause the applications of laws of any jurisdiction other than the State of Delaware. In any Legal Proceeding between any of the parties arising out of or relating to this Agreement: (a) each of the parties hereto irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, (solely if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any other state or federal courts within the State of Delaware) and any appellate court from any thereof; and (b) each of the parties hereto irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, any claim (i) that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason; (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts; and (iii) that (x) the claim, action, suit or other Legal Proceeding in any such court is brought in an inconvenient forum; (y) the venue of such claim, action, suit or other Legal Proceeding is improper; or (z) this Agreement or the subject matter hereof may not be enforced in or by such courts. Each of the parties hereto further agrees that, to the fullest extent permitted by applicable Legal Requirements, service of any process, summons, notice or document by U.S. registered mail to such Person's respective will be effective service of process for any claim, action, suit or other Legal Proceeding in the Court of Chancery of the State of Delaware or, to the extent required by Legal Requirements, any state or federal court in the

State of Delaware, with respect to any matters to which it has submitted to jurisdiction as set forth in this paragraph. The parties hereto hereby agree that a final judgment in any such claim, suit, action or other Legal Proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to specific performance and injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without the requirement for the posting of any bond, this being in addition to any other remedy to which they are entitled at law or in equity. Except as expressly set forth herein to the contrary, all rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

- 6.7. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE PURSUANT TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING (WHETHER FOR BREACH OF CONTRACT, TORTIOUS CONDUCT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY ACKNOWLEDGES AND AGREES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) IT MAKES THIS WAIVER VOLUNTARILY; AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.7.
- 6.8. Entire Agreement; Counterparts; Electronic Exchanges. This Agreement, including the schedules, exhibits and amendments hereto and thereto shall together constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this Agreement.
- 6.9. No Ownership Interest. Nothing contained in this Agreement shall be deemed to vest in the Investors or the Company any direct or indirect ownership or incidence of ownership of or with respect to the Covered Shares. All rights, ownership and economic benefits of and relating to the Covered Shares shall remain vested in and belong to the Stockholder.

- 6.10. Documentation and Information. No Party shall make any public announcement regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed), except as may be required by applicable Legal Requirement (provided that reasonable notice of, and opportunity to comment on, any such disclosure will be provided to the Company and the Investors), and such Party will consider in good faith the reasonable comments of the other Parties with respect to such disclosure and otherwise reasonably cooperate with the other Parties in obtaining confidential treatment with respect to such disclosure. The Stockholder consents to and authorizes the publication and disclosure by the Investors and the Company of the Stockholder's identity and holding of the Covered Shares, and the terms of this Agreement (including the disclosure of this Agreement), in any press release, the Proxy Statement and any other disclosure document required in connection with the Investment Agreement and the transactions contemplated by the Investment Agreement, and the Stockholder acknowledges that the Investors and the Company may, in their sole discretion, file this Agreement or a form hereof with the Securities and Exchange Commission (the "SEC") or any other Governmental Body or securities exchange. The Stockholder agrees to promptly give the Company and the Investors of any required corrections with respect to any information supplied by the Stockholder specifically for use in any such disclosure document, if and to the extent that any such information shall have become false or misleading in any material respect.
- 6.11. <u>Further Assurances</u>. The Stockholder agrees that it shall, from time to time, at the reasonable request of the Company and without further consideration, execute and deliver such additional documents and take all such further action as may be reasonably required to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

### 6.12. Construction.

- (a) Each of the parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement, and any and all drafts relating thereto exchanged between the parties shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted it is of no application and is hereby expressly waived.
- (b) All references in this Agreement to Exhibits, Schedules, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Schedules, Articles, Sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, subsections or other subdivisions, and shall be disregarded in construing the language contained therein. The words "this Agreement," "herein," "hereby," "hereunder" and "hereof" and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "this Section," "this subsection" and words of similar import, refer only to the Sections or subsections hereof in which such words occur. The word "including" (in its various forms) means "including, without limitation." Pronouns in

masculine, feminine or neuter genders shall be construed to state and include any other gender and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all references to a specific time shall refer to Houston, Texas time. The word "or" is disjunctive but not exclusive.

### 6.13. Assignability; No Third-Party Rights; Transfers.

- (a) This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor any party's rights, interests or obligations hereunder may be assigned or delegated by any such party without the prior written consent of the other parties, and any attempted assignment or delegation of this Agreement or any of such rights, interests or obligations by any party without the prior written consent of the other parties shall be void and of no effect. Except as otherwise expressly provided for herein, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (b) Each transferee or assignee of any Covered Shares subject to this Agreement shall continue to be subject to the terms hereof, and, as a condition precedent to such transfer and to the Company's recognizing such transfer, each transferee or assignee shall agree in writing to be subject to each of the terms of this Agreement by executing and delivering to the Company (with a copy to the Investors) an Adoption Agreement substantially in the form attached hereto as Exhibit A. Upon the execution and delivery of an Adoption Agreement by any transferee, such transferee shall be deemed to be a Party hereto as if such transferee were the transferor and such transferee's signature appeared on the signature pages of this Agreement and shall be deemed to be a "Stockholder". The Company shall not permit the transfer of Covered Shares subject to this Agreement on its books or issue a new certificate representing any such Covered Shares unless and until such transferee shall have complied with the terms of this Section 6.13(b).
- 6.14. Severability. Any term or provision of this Agreement (or part thereof) that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision (or part thereof) in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement (or part thereof) is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit such term or provision (or part thereof), to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision (or part thereof), and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision (or part thereof) with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

6.15. Proxy Statement. As promptly as practical following the date of the Investment Agreement but subject to the receipt of the financial statements referred to in Section 5.6 thereof, the Company (with the assistance and cooperation of the Investors as reasonably requested by the Company) shall prepare and file with the SEC a preliminary proxy statement relating to the Required Issuer Stockholder Approval (the "Proxy Statement"). The Company, the Investors and the Stockholder shall cooperate to, concurrently with the preparation and filing of the Proxy Statement. The Stockholder will provide information reasonably requested by the Company or the Investors in connection with the preparation of the Proxy Statement. To the knowledge of the Stockholder, the information supplied by the Stockholder for inclusion or incorporation by reference in the Proxy Statement will not, at the time that such information is provided, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not false or misleading.

6.16. <u>Termination</u>. This Agreement shall automatically terminate without further action by any of the Parties and shall have no further force or effect as of the Expiration Time; <u>provided</u> that the provisions of <u>Sections 6.4, 6.5, 6.6, 6.7, 6.8, 6.10, 6.12, 7.13</u> and this <u>7.16</u> shall survive any such termination. Notwithstanding the foregoing, termination of this Agreement shall not prevent any Party from seeking any remedies (at law or in equity) against any other Party for that Party's breach of any of the terms of this Agreement prior to the date of termination.

[Signature page follows]

FREEDOM VCM INTERCO HOLDINGS, INC.
By:
Name: Andrew Laurence
Title: Vice President, Treasurer
FRANCHISE GROUP NEWCO BHF, LLC
,
By:
Name: Brian Kath
Title: Chief Executive Officer, President

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date and year first above written.

[SIGNATURE PAGE TO VOTING AND SUPPORT AGREEMENT]

CONN'S, INC.

By:

Name: Mark Prior

Title: Senior Vice President and General Counsel

[SIGNATURE PAGE TO VOTING AND SUPPORT AGREEMENT]

[STOCKHOLDER]
By:
Name: [•]
Title: [•]

[SIGNATURE PAGE TO VOTING AND SUPPORT AGREEMENT]

SCHEDULE A
STOCKHOLDER

Name	Address	Owned Shares*
[•]	[•]	[•]

\* If any additional Common Shares are owned by any of the Stockholder as of the date hereof, such shares shall be automatically deemed to be "Owned Shares" notwithstanding the contents of this <a href="Schedule A">Schedule A</a>.

### **EXHIBIT A**

## ADOPTION AGREEMENT

- **1.1** <u>Acknowledgement</u>. Holder acknowledges that Holder is acquiring certain shares of the capital stock of the Company (the "<u>Stock</u>") as a transferee of Common Shares from a party in such party's capacity as an "Stockholder" bound by the Agreement, and after such transfer, Holder shall be considered a "Stockholder" for all purposes of the Agreement.
- 1.2 <u>Agreement</u>. Holder hereby (a) agrees that the Stock, and any other shares of capital stock or securities required by the Agreement to be bound thereby, shall be bound by and subject to the terms of the Agreement and (b) adopts the Agreement with the same force and effect as if Holder were originally a party thereto.
- 1.3 Notice. Any notice required or permitted by the Agreement shall be given to Holder at the address or facsimile number listed below Holder's signature hereto.

HOLDER:	ACCEPTED AND AGREED:
By: Name and Title of Signatory	CONN'S, INC.
Address:	By:
	Title:

## INVESTOR RIGHTS AGREEMENT

by and among

CONN'S, INC.,

# FRANCHISE GROUP NEWCO BHF, LLC,

and

## FREEDOM VCM INTERCO HOLDINGS, INC.

Dated as of December 18, 2023

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### INVESTOR RIGHTS AGREEMENT

This INVESTOR RIGHTS AGREEMENT (this "Agreement") is dated as of December 18, 2023, by and among (i) Conn's, Inc., a Delaware corporation (the "Company"), (ii) Franchise Group Newco BHF, LLC, a Delaware limited liability company ("FRG Newco") and (iii) Freedom VCM Interco Holdings, Inc., a Delaware corporation (together with FRG Newco and their respective permitted assignees, the "FRG Investors", and each, an "FRG Investor"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Investment Agreement (as defined below).

WHEREAS, simultaneously with the execution of this Agreement, the Company, the FRG Investors, W.S. Badcock LLC and Franchise Group, Inc. have entered into an Investment Agreement (as amended, supplemented or otherwise modified from time to time, the "Investment Agreement"), pursuant to which the FRG Investors agreed to contribute and deliver to the Company (or cause to be contributed and delivered to the Company), (i) all of the equity interests in W.S. Badcock LLC (f/k/a W.S. Badcock Corporation) and (ii) the Residual Tranche 2 Receivables, in exchange for the issuance by the Company to the Investors (or designees thereof) of senior preferred convertible stock of the Company, par value \$0.01 per share (the "Senior Preferred Stock"); and

WHEREAS, the parties hereto desire to enter into this Agreement to govern certain of the rights, duties and obligations of the Company and the FRG Investors following the consummation of the Contemplated Transactions.

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

1. Observer Rights. For so long as the FRG Investors continue to hold at least twenty percent (20%) of the Senior Preferred Stock or Non-Voting Common Stock received upon conversion of the Senior Preferred Stock issued at the Equity Closing, the FRG Investors shall have the right to designate one representative, subject to the consent of the Company (which shall not be unreasonably withheld, conditioned or delayed) (the "FRG Board Observer"), who shall be shall be invited to attend all meetings of the Company's Board of Directors (the "Board") or any now existing or hereafter formed committee thereof in a non-voting observer capacity; provided, however, that the Board may require, in its reasonable discretion, that the FRG Board Observer be replaced by a new FRG Board Observer designated by the FRG Investors subject to the consent of the Company (which shall not be unreasonably withheld, conditioned or delayed). The Company shall give the FRG Board Observer copies of all notices, minutes, consents, and other materials and information that it provides to its directors at the same time and in the same manner as provided to such directors; provided, however, that the FRG Investors shall cause the FRG Board Observer to hold in confidence all information so provided, subject to the right of the FRG Board Observer to disclose such information to the FRG Investors or Affiliates thereof; and provided further, that the Company reserves the right to withhold any information and to exclude the FRG Board Observer from any meeting of the Board or any committee thereof or portion thereof if (a) access to such information or attendance at such meeting would be reasonably likely to result in the loss of the attorney-client privilege between the Company and its counsel, or (b) such information or meeting (or portion thereof) involves the FRG Investors or Affiliates thereof. The initial FRG Board Observer shall be Andrew Laurence, and the Company hereby consents to Andrew Laurence acting as the FRG Board Observer subject to the

### 2. Transfer Restrictions.

### (a) Restrictions.

(i) Until the two-year anniversary of the date hereof (the "<u>Transfer Restricted Period</u>"), no FRG Investor shall, without the approval of the Board, Transfer any Equity Securities whether now or hereinafter owned by such FRG Investor; <u>provided, however</u>, each FRG Investor shall be permitted to Transfer any Equity Securities now or hereafter owned by it without the approval of the Board in connection with the following: (1) Transfers to Affiliates of such FRG Investor or in a Planning Transfer; (2) Transfers pursuant to a pledge of such Equity Securities by such FRG Investor to secure obligations of such FRG Investor or any Affiliate thereof pursuant to a bona fide financing or in connection with the exercise by any lender or agent in respect of any such financing of any rights or remedies thereunder; (3) a Change of Control; (4) Transfers between or among the FRG Investors or between or among the FRG Investors and the Significant Holders; (5) Transfers to the Company, including in connection with the conversion or exchange of any such Equity Securities into other Equity Securities; or (6) a Transfer contemplated by the terms of the immediately following sentence. Notwithstanding anything to the contrary herein, at any time following the eighteen (18) month anniversary of the date hereof, each FRG Investor may distribute any or all of the Equity Securities now or hereinafter owned thereby to the holders of the Equity Securities of such FRG Investor, and any recipient of such Equity Securities in connection with any such distribution shall be free to thereafter Transfer such Equity Securities or any portion thereof in a Qualifying Transfer or a

Permitted Transfer, except that (other than as would otherwise constitute a Permitted Transfer) no Restricted Holder shall have the right to Transfer any Equity Securities received in connection with any such distribution until the expiration of the Transfer Restriction Period and, following such expiration, any such Transfer by a Restricted Holder may only be effected if it is a Qualifying Transfer or a Permitted Transfer.

- (ii) Without limiting the foregoing, any Transfer of Equity Securities (other than a Permitted Transfer) by any FRG Investor must be made (1) pursuant to a registered offering under the Securities Act or (2) without registration under the Securities Act in a transaction that is exempt from registration thereunder, including pursuant to Rule 144 under the Securities Act, as such rule may be amended from time to time, and, in each case, to the actual knowledge of such FRG Investor, such Transfer (excluding, for the avoidance of doubt, a Permitted Transfer or a Transfer in an open market transaction) would not result in the transferee (excluding any underwriter in any underwritten public offering or brokerage firm or similar intermediary facilitating a transaction in the Equity Securities) owning five percent (5%) or more of the outstanding Common Stock on an as-converted basis, unless such transferee files or is eligible to file a Schedule 13G (or any successor schedule) with the SEC after giving effect to such Transfer in which case such five percent (5%) limitation shall not apply (any such Transfer to any such five percent (5%) or lower holder or filer of a Schedule 13G in connection therewith, a "Qualifying Transfer").
- (iii) No Transfer of Equity Securities of the FRG Investors to a Permitted Transferee pursuant to Section 2(a)(i)(1), Section 2(a)(i)(2) (but only in connection with the exercise of remedies as set forth therein) or Section 2(a)(i)(6) shall be effective until such time as such Permitted Transferee in any such Transfer has executed and delivered to the Company, as a condition precedent to such Transfer, a joinder to this Agreement substantially in the form attached hereto as Exhibit B.
- (iv) Notwithstanding anything contained herein to the contrary, upon the occurrence of an Event of Default the Transfer Restricted Period shall immediately terminate and this Section 2(a) shall be of no force and effect.
- 3. Standstill; Acquisitions of Securities and Other Matters.
- (a) <u>Acquisitions of Common Stock</u>. For a period commencing immediately following the Equity Closing and ending on the earlier of (1) the occurrence of a Termination Event, and (2) three (3) years from the date of this Agreement (the earlier of clauses (1) and (2), the "<u>Expiration Date</u>"), without the prior written approval of the Company, no FRG Investor shall, nor shall any FRG Investor permit its Affiliates, to acquire or purchase any Equity Securities of the Company, other than (i) acquisitions or purchases of such Equity Securities upon the conversion or exchange of any other Equity Securities that are issued pursuant to the Investment Agreement, (ii) acquisitions or purchases of Equity Securities from the Company, including pursuant to the exercise of the preemptive rights set forth in Section 4 hereof, (iii) acquisitions or purchases of Equity Securities in a Permitted Transfer referred to in Section 2(a)(i)(1) or Section 2(a)(i)(6) hereof, (iv) acquisitions or purchases of Equity Securities in the ordinary course of business in connection with any brokerage or market making activities, or (v) acquisitions or purchases in connection with the exercise of any remedies in its capacity as a lender to the Company or any Subsidiary thereof.

- (b) Other Restrictions. For a period commencing immediately following the Equity Closing and ending on the Expiration Date, no FRG Investor shall, nor shall any FRG Investor permit its Affiliates, to:
  - (i) make, initiate, solicit or submit a proposal (public or otherwise) for, or offer of (with or without conditions), any merger, consolidation, business combination, tender or exchange offer of or for (i) a material portion of the assets, properties or businesses of the Company or any of its Subsidiaries or (ii) any of their respective Equity Securities (provided, that, nothing in this clause (a) shall restrict any tender of shares in any such tender or exchange);
  - (ii) make or in any way participate in any "solicitation" of "proxies" as a "participant" in any "election contest" (as such terms are used in the proxy rules of the Exchange Act);
  - (iii) propose any matter for submission to a vote of stockholders of the Company or call or seek to call a meeting of the stockholders of the Company;
  - (iv) grant any proxies with respect to any voting securities of the Company to any Person or deposit any voting securities of the Company in a voting trust or enter into any other agreement with respect to the voting thereof other than as recommended by the Board, including in a proxy solicitation distributed by the Company;
  - (v) other than as a result of this Agreement, form or join any 13D Group with respect to any voting securities of the Company with any Persons other than the FRG Investors and their Affiliates; or
  - (vi) take any action, alone or in concert with other Persons, to remove or oppose the election of any Directors or to seek to change the size or composition of the Board.

Notwithstanding the foregoing, and for the avoidance of doubt, none of the foregoing restrictions in this <u>Section 3(b)</u> shall limit or restrict the ability of an FRG Investor or any of their respective Affiliates to (A) privately respond to requests for assistance from, or privately provide advice or assistance or perspectives to, Company management from time to time, (B) act as a director of the Company or a Board observer, (C) enforce any rights or obligations or exercise any remedies in its capacity as a lender to the Company or any Subsidiary thereof, or (D) exercise any rights or remedies under this Agreement, including pursuant to Section 6 hereof.

## 4. Preemptive Rights.

(a) Each FRG Investor will have the preemptive rights set forth in this Section 4 with respect to any issuance of any Equity Securities that are issued after the date hereof, other than the issuance of Equity Securities (i) pursuant to the acquisition of another Person by the Company or any Subsidiary, whether by purchase of stock, merger, consolidation, purchase of all or substantially all of the assets of such Person or otherwise, provided such acquisition has been

approved by the Board and the Equity Securities are being issued to the seller(s) in such acquisition and not as a means of financing such transaction, (ii) pursuant to an employee stock option plan, stock bonus plan, stock purchase plan, employment agreement or other management equity program or arrangement approved by the Board, (iii) by reason of a dividend, stock split, subdivision, reverse split, combination or other distribution on shares of Common Stock or upon the conversion or exchange of any Equity Securities issued in accordance with the terms hereof, including the conversion of any Equity Securities issued to the FRG Investors, (iv) to employees, officers, independent directors or consultants of the Company or any of its Subsidiaries for compensation for services, (v) to any debt holders of the Company or its subsidiaries in connection with debt financing transactions or upon conversion of any duly authorized and then-existing convertible debt, warrants or debentures only to the extent issued in accordance with the terms hereof, (vi) as expressly contemplated by the Investment Agreement, or (vii) as contemplated by that certain Delayed Draw Term Loan and Security Agreement (the "DDTL"), dated as of July 31, 2023, by and among the Company, Conn Appliances, Inc., a Texas corporation, Conn Credit I, LP, a Texas limited partnership, Conn Credit Corporation, Inc., a Texas corporation and W.S. Badcock LLC, a Florida limited liability company, the Significant Holders and the other financial institutions named therein as lenders, and the agent thereto (as amended by Amendment No. 1 to the DDTL, dated as of the date hereof, and as may be further amended, restated or modified from time to time), then, subject to the provisions set forth below, as to each FRG Investor, the Company shall provide written notice (an "Issuance Notice"):

- (i) setting forth in reasonable detail (1) the designation and all of the terms and provisions of the Equity Securities proposed to be issued (the "<u>Proposed Securities</u>"), including, where applicable, the voting powers, preferences and relative participating, optional or other special rights, and the qualification, limitations or restrictions thereof and interest or dividend rate and maturity; (2) the price and other terms of the proposed issuance of such Equity Securities; (3) the amount of such Equity Securities proposed to be issued and the percentage of the Company's outstanding Equity Securities such issuance would represent; and (4) the proposed issuance date, which shall be at least thirty (30) days from the date of such notice; and
- (ii) offering to issue to each such FRG Investor a portion of the Proposed Securities equal to a percentage determined by dividing (x) the number of shares of Common Stock, calculated on an as-converted basis, owned by such Preemptive Right Holder immediately prior to such Issuance Notice, by (y) the total number of shares of Common Stock then outstanding on an as-converted basis on such date immediately prior to such Issuance Notice (such portion of Proposed Securities in respect of such FRG Investor, the "Full Allotment" thereof).
- (b) Each such FRG Investor must exercise its purchase rights (which may be assigned by such FRG Investor) hereunder by delivering a written notice to the Company within ten (10) days after receipt of such notice from the Company, which notice shall state the dollar amount of Proposed Securities such FRG Investor would like to purchase up to a maximum amount equal to such Preemptive Right Holder's Full Allotment. To the extent that the Company offers two or more securities to all prospective purchasers in a proposed issuance in units, such as convertible notes coupled with attached warrants (and only in such units), such FRG Investor must purchase such units as a whole and will not be given the opportunity to purchase only one of the securities making up such unit.

- (c) Upon the expiration of the offering periods described above, the Company will be free to sell such Proposed Securities that such FRG Investor have not elected to purchase (the "<u>Unclaimed Securities</u>") during the ninety (90) days following such expiration on terms not materially more favorable, taken as a whole, to the purchasers thereof than those offered to the FRG Investors (it being understood and agreed that the price at which such Unclaimed Securities are sold must be equal to or greater than the per share purchase price set forth in the Issuance Notice), <u>provided</u> that such ninety (90) day period shall be subject to extension (not to exceed ninety (90) additional days) if definitive documentation in respect of the issuance of the Proposed Securities has been entered into but such issuance has not been consummated pending the receipt of required third party or regulatory approvals. Any Proposed Securities offered or sold by the Company after such ninety (90)-day period (as it may extended as provided herein) must be reoffered to the FRG Investor pursuant to this <u>Section 4</u>.
- (d) Except as set forth in this Section 4, the election by any FRG Investor not to exercise such Preemptive Right Holder's preemptive rights under this Section 4 in any one instance shall not affect such Preemptive Right Holder's right (other than in respect of a reduction in such Preemptive Right Holder's percentage holdings) as to any subsequent proposed issuance subject to this Section 4.

## 5. Information Rights.

- (a) The Company shall, and shall cause its Subsidiaries to, permit (i) any holder of Senior Preferred Stock and (ii) the FRG Investors for so long as any FRG Investor and/or an Affiliate thereof (and any Permitted Transferees thereof) Beneficially Own shares of Common Stock, in the aggregate, in excess of 10% of the Common Stock (on an as-converted basis) (clauses (i) and (ii) together, the "Information Rights Holders"), upon the reasonable request of any such Information Rights Holder to provide such Information Rights Holder and its authorized representatives with reasonable access during normal business hours, and upon reasonable advance written notice, to the books and records of the Company and its Subsidiaries.
- (b) Without limiting the foregoing, the Company shall, and shall cause its Subsidiaries to, deliver to the FRG Investors the following (provided that the public filing with the SEC of any of the following shall satisfy the delivery requirements to the FRG Investors set forth herein):
  - (i) within 90 days after the end of each fiscal year of the Company (or such later date as Form 10-K of the Company is required to be filed with the SEC), its audited consolidated balance sheet and audited consolidated statements of operations, shareholders' equity and cash flows as of the end of and for such fiscal year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year, prepared in accordance with generally accepted auditing standards and reported on by an independent public accountants of recognized national standing to the effect that such financial statements present fairly in all material respects the financial condition, results of operations and cash flow of the Company and its Subsidiaries on a consolidated basis as of the end of and for such fiscal year;

- (ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Company (or such later date as Form 10-Q of the Company), its unaudited consolidated balance sheet and unaudited consolidated statements of operations and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year;
- (iii) concurrently with the delivery thereof to BRF Finance Co., LLC, a Delaware limited liability, or otherwise promptly following a request therefor by an FRG Investor, in each case, in respect of any indebtedness of the Company or any Subsidiary under that certain Term Loan and Security Agreement, dated as of December 18, 2023, by and among the Company, as parent and guarantor, Conn Appliances, Inc., a Texas corporation, Conn Credit I, LP, a Texas limited partnership, Conn Credit Corporation, Inc., a Texas corporation, and W.S. Badcock LLC, a Florida limited liability company, as borrowers, the financial institutions from time to time party thereto as lenders and BRF Finance Co., LLC, as administrative agent and collateral agent for the lenders (the "BRF Facility"), copies of all documents, reports, information or other materials provided to (or that would needed to have been provided to) such lender under the BRF Facility as in effect on the date hereof and irrespective of whether such indebtedness remains outstanding; and
- (iv) promptly following a request therefor, all other documents, reports, information or other materials requested to satisfy any and all FRG Investor obligations to any bank or lender thereof.
- 6. Event of Default. If an Event of Default shall occur while any of the Senior Preferred Stock remains outstanding, without limitation of any other rights or remedies, the holders of at least a majority of the Senior Preferred Stock then outstanding (the "Electing Series A Holders") may elect, by written notice to the Company ("Liquidity Transaction Notice"), to compel the Company to initiate a process to consummate a transaction (the form of which would be determined by the Company, in good faith (a "Liquidity Transaction")), the net proceeds of which shall be used by the Company to redeem the Senior Preferred Stock in full at a price equal to that payable upon a Mandatory Redemption. The form of any such Liquidity Transaction may, subject to applicable third party and shareholder approval requirements, include, but not be limited to, (i) a sale of the Company and its Subsidiaries, including a sale of all or substantially all of the assets, or a sale of certain assets, lines of business or divisions, in each case, of the Company and its Subsidiaries and/or (ii) a refinancing of the Senior Preferred Stock. In the event that any such Liquidity Transaction is initiated, the Company shall keep the Electing Series A Holders reasonably informed of such Liquidity Transaction process. If, within twelve (12) months of receipt of a Liquidity Transaction Notice, the Company (i) fails to consummate such Liquidity Transaction or (ii) fails to redeem the Senior Preferred Stock in full at a price equal to that payable upon a Mandatory Redemption, then the holders of a majority of the Senior Preferred Stock will thereafter have the right to direct the Liquidity Transaction process and appoint a majority of the Directors of the Board and the Company shall take any and all reasonable actions to effectuate such rights, including by causing the size of the Board to expanded such that designees of the Electing Series A Holders constitute a majority of the members of the Board and thereafter designating such designees as members o

### 7. Miscellaneous.

(a) Amendment. This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by an authorized representative of the Company and the FRG Investors that hold a majority of the outstanding shares of Common Stock on an as-converted basis that are held by all of the FRG Investors.

### (b) Waiver.

- (i) Except as expressly set forth herein to the contrary, no failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any party would otherwise have.
- (ii) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is
- (c) Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the transactions contemplated hereby shall be borne solely and entirely by the party that has incurred such expenses.
- (d) Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the U.S. return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier (such as Federal Express), two Business Days after mailing; (c) if sent by e-mail before 5:00 p.m. Eastern Time, when transmitted and receipt is confirmed; (d) if sent by e-mail after 5:00 p.m. Eastern Time and receipt is confirmed, on the following Business Day; or (e) if otherwise actually personally delivered, when delivered; provided, that such notices, requests, demands and other communications are delivered to the physical address, e-mail address or facsimile number set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

(a) if to the FRG Investors, to:

Franchise Group, Inc. 109 Innovation Court, Suite J Delaware, Ohio 43015 Attention: Tiffany McMillan-McWaters

Email: tmcwaters@franchisegrp.com

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher LLP 787 7<sup>th</sup> Avenue New York, NY 10019

Attention: Russell L. Leaf; Jared N. Fertman Email: <a href="relat@willkie.com">relat@willkie.com</a>; <a href="jeteman@willkie.com">jfertman@willkie.com</a></a>

(c) if to the Company, to:

Conn's, Inc. 2445 Technology Forest Blvd., Suite 800 The Woodlands, TX 77381

Attention: General Counsel Email: Mark.Prior@conns.com

with a copy (which shall not constitute notice) to:

Sidley Austin LLP 1000 Louisiana Street, Suite 5900 Houston, TX 77002 Attention: Kevin Lewis

Email: klewis@sidley.com

and

Sidley Austin LLP 2021 McKinney Ave., Suite 2000 Dallas, TX 75201

Attention: Bill Howell; Ryan Scofield

Email: <u>bhowell@sidley.com</u>; <u>rscofield@sidley.com</u>

(e) Governing Law; Jurisdiction; Specific Performance; Remedies. This Agreement and all actions, proceedings or counterclaims (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of the parties hereto in the negotiation, administration, performance and enforcement thereof, shall be governed by, and construed in accordance with, the laws of the State of Delaware, including its statute of limitations, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof that would cause the applications of laws of any jurisdiction other than the State of Delaware. In any Legal Proceeding between any of the parties arising out of or relating to this Agreement: (a) each of the parties hereto irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, (solely if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any other state or federal courts within the State of Delaware) and any appellate court from any thereof; and (b) each of the parties hereto irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, any claim (i) that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason; (ii) that it

or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts; and (iii) that (x) the claim, action, suit or other Legal Proceeding in any such court is brought in an inconvenient forum; (y) the venue of such claim, action, suit or other Legal Proceeding is improper; or (z) this Agreement or the subject matter hereof may not be enforced in or by such courts. Each of the parties hereto further agrees that, to the fullest extent permitted by applicable Legal Requirements, service of any process, summons, notice or document by U.S. registered mail to such Person's respective address set forth in Section 7(d) will be effective service of process for any claim, action, suit or other Legal Proceeding in the Court of Chancery of the State of Delaware or, to the extent required by Legal Requirements, any state or federal court in the State of Delaware, with respect to any matters to which it has submitted to jurisdiction as set forth in this paragraph. The parties hereto hereby agree that a final judgment in any such claim, suit, action or other Legal Proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to specific performance and injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without the requirement for the posting of any bond, this being in addition to any other remedy to which they are entitled at law or in equity. Except as expressly set forth herein to the contrary, all rights and remedies existing under this

(f) <u>WAIVER OF JURY TRIAL</u>. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE PURSUANT TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING (WHETHER FOR BREACH OF CONTRACT, TORTIOUS CONDUCT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY ACKNOWLEDGES AND AGREES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) IT MAKES THIS WAIVER VOLUNTARILY; AND (d) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(F).

(g) Entire Agreement; Counterparts; Electronic Exchanges. This Agreement, including the schedules, exhibits and amendments hereto and thereto shall together constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this Agreement.

### (h) Construction.

- (i) Each of the parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement, and any and all drafts relating thereto exchanged between the parties shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted it is of no application and is hereby expressly waived
- (ii) All references in this Agreement to Exhibits, Schedules, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Schedules, Articles, Sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, subsections or other subdivisions, and shall be disregarded in construing the language contained therein. The words "this Agreement," "herein," "hereby," "hereunder" and "hereof" and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "this Section," "this subsection" and words of similar import, refer only to the Sections or subsections hereof in which such words occur. The word "including" (in its various forms) means "including, without limitation." Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all references to a specific time shall refer to Houston, Texas time. The word "or" is disjunctive but not exclusive.
- (iii) For purposes of this Agreement, any and all decisions or other actions made or taken by the FRG Investors shall be made by those FRG Investors that hold a majority of the Common Stock on an as converted basis held by all FRG Investors.
- (iv) For purposes of this Agreement, "as converted basis" or similar references means, as it relates to the FRG Investors, the number of shares of Common Stock owned thereby assuming conversion of all Equity Securities of the Company held thereby into shares of Common Stock.
- (i) <u>Assignability; No Third-Party Rights</u>. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; <u>provided</u>, <u>however</u>, that, except in connection with a Transfer permitted by the terms of this Agreement, neither this Agreement nor any party's rights, interests or obligations hereunder may be assigned or delegated by any such party without the prior written consent of the other parties, and any attempted assignment or delegation of this Agreement or any of such rights, interests or obligations by any party without the prior written consent of the other parties shall be void and of no effect. Except as otherwise expressly provided for herein, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(j) Severability. Any term or provision of this Agreement (or part thereof) that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision (or part thereof) in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement (or part thereof) is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit such term or provision (or part thereof), to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision (or part thereof), and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision (or part thereof) with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

[Remainder of Page Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the introductory paragraph hereof.

## **COMPANY:**

CONN'S, INC.

By: /s/ Mark Prior

Name: Mark Prior

Title: Senior Vice President and General Counsel

## FRG INVESTORS:

FRANCHISE GROUP NEWCO BHF, LLC

By: /s/ Brian Kahn

Name: Brian Kahn

Title: President and Chief Executive Officer

FREEDOM VCM INTERCO HOLDINGS, INC.

By: /s/ Andrew Laurence

Name: Andrew Laurence Title: Vice President, Treasurer

[Signature Page to Investor Rights Agreement]

# EXHIBIT A

## **DEFINITIONS**

"13D Group" means any group of Persons formed for the purpose of acquiring, holding, voting or disposing of voting securities of the Company that would be required under Section 13(d) of the Exchange Act to file a statement on Schedule 13D with the SEC as a "person" within the meaning of Section 13(d)(3) of the Exchange Act.

"Beneficial Owner" means, as to any Person, that such Person together with such Person's Affiliates "beneficially owns" within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act; provided, however, that any Person shall be deemed to beneficially own any securities that such Person has the right to acquire, whether or not such right is exercisable within sixty (60) days or thereafter (including assuming conversion of all Senior Preferred Stock, if any, owned by such Person into Common Stock). For this purpose, any Person shall be deemed to "Beneficially Own," to have "Beneficial Ownership" of, or to be "Beneficially Owning," or the "Beneficial owner" of any such securities (which securities shall also be deemed "Beneficially Owned" by such Person).

"Change of Control" has the meaning set forth in the Certificate of Designations.

"Certificate of Designations" means the Certificate of Designations of Series A Convertible Preferred Stock of Conn's, Inc.

"Certificate of Incorporation" means the Certificate of Incorporation of the Company, as modified by (a) the Certificate of Amendment, dated June 3, 2004, (b) the Certificate of Amendment, dated May 30, 2012 (together with the Certificate of Correction thereto), and (c) the Certificate of Amendment, dated May 29, 2014, and as may be further amended from time to time in accordance with applicable law, its terms, the Investment Agreement and this Agreement.

"Common Stock" means the Non-Voting Common Stock and the common stock of the Company, par value \$0.01 per share.

"Event of Default" has the meaning set forth in the Certificate of Designation.

"Equity Securities" of any Person means, with respect to the Company (i) the Common Stock or other securities having the right to vote generally in any election of Directors, (ii) any options, warrants, convertible or exchangeable securities, stock-based performance units or other rights to acquire common shares or other securities having the right to vote generally in any election of Directors, (iii) the Senior Preferred Stock or (iv) any other rights that give the holder thereof any economic interest of a nature accruing to the holders of Common Stock or other securities having the right to vote generally in any election of Directors.

"Exchange Act" means the U.S. Securities Exchange Act of 1934.

"FRG Investors" has the meaning set forth in the first paragraph of this Agreement.

"Incumbent Directors" means (i) the Directors who are members of the Board as of the date of this Agreement and (ii) any Person who becomes a Director subsequent to the date of this Agreement whose election, nomination for election or appointment was approved (including by approval of the proxy statement of the Company in which such Person is named as a Director nominee) by a vote of at least a majority of the Directors who are Incumbent Directors as of such date of approval.

"Law" means any applicable federal, state, provincial, municipal, local or foreign statute, law, treaty, ordinance, regulation, rule, code, order or rule of common law.

"Mandatory Redemption" means the FRG Investors' right to require the Company to redeem shares of Senior Preferred Stock pursuant to the Certificate of Designations.

"NASDAQ" means the NASDAQ Global Select Market or its successor.

"Non-Voting Common Stock" means the non-voting common stock of the Company, par value \$0.01 per share.

"<u>Permitted Transferee</u>" means any transferee that receives Common Stock or Senior Preferred Stock from an FRG Investor pursuant to Section 2(a)(i).

"Person" means an individual, corporation, partnership, limited liability company, trust, estate, unincorporated organization, association or other legally recognized entity.

"Planning Transfer" means, with respect to any FRG Investor, as applicable thereto, (a) any executor, administrator or testamentary trustee of such FRG Investor's estate if such FRG Investor dies, (ii) any Person receiving Equity Securities held by such FRG Investor by will, intestacy laws or the laws of descent or survivorship, or (c) any trustee of a trust of which there are no principal beneficiaries other than such FRG Investor or one or more family members of such FRG Investor or other similar estate planning vehicle.

"Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of the date hereof, by and among the Company and the FRG Investors, as may be amended from time to time.

"Restricted Holders" means each of (i) the FRG Investors as of the Equity Closing, (ii) B. Riley Financial, Inc., (iii) Brian Kahn and (iv) each of their respective controlled Affiliates (except that, for purposes of this definition, the proviso in the definition of "Affiliates" in the Investment Agreement shall not apply to this definition of "Restricted Holders").

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933.

"Significant Holders" means (i) The Stephens Group, LLC and (ii) Stephens Investment Holdings, LLC and their respective permitted assignees.

"Strategic Transaction" means (i) a transaction in which a Person or any 13D Group acquires, directly or indirectly, (A) 50% or more of the voting securities of the Company, other than a transaction pursuant to which holders of voting securities of the Company immediately prior to the transaction own, directly or indirectly, 50% or more of the voting securities of the Company or any successor, surviving entity or direct or indirect parent of the Company immediately following the transaction or (B) properties or assets constituting 50% or more of the consolidated assets of the Company and its Subsidiaries or (ii) in any case not covered by clause (i), a transaction in which (A) the Company issues Equity Securities representing 50% or more of its total voting power, including by way of merger or other business combination with the Company or any of its Subsidiaries or (B) the Company engages in a merger or other business combination such that the holders of voting securities of the Company immediately prior to the transaction do not own more than 50% of the voting securities of the Company or any successor, surviving entity or direct or indirect parent immediately following the transaction.

"Subsidiary" means with respect to any Person, another Person of which 50% or more of the voting power of the equity securities or equity interests is owned, directly or indirectly, by such Person.

"Transfer" means any sale, pledge, hypothecation, assignment, encumbrance or other transfer or disposition of Equity Securities of the Company, and "Transferring" and "Transferred", "Transferring" and "Transferee" each have a correlative meaning.

"Termination Event" means the occurrence of any of the following events: (a) the Company enters into any definitive agreement providing for a Strategic Transaction, (ii) a tender or exchange offer which if consummated would constitute a Strategic Transaction is made for Equity Securities of the Company, (iii) the Incumbent Directors cease for any reason to constitute a majority of the Board, or (iv) the Required Purchaser Stockholder Approval is not received by the date that is thirty (30) days prior to the expiration of the nomination period for the first annual stockholder meeting of the Company following the date hereof.

#### **EXHIBIT B**

#### FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT to Investor Rights Agreement (this "IRA Joinder Agreement"), is made and entered into as of [•], by and among Conn's, Inc., a Delaware corporation (the "Company") and the undersigned (the "Joining Stockholder"), and relates to that certain Investor Rights Agreement, dated as of December 18, 2023, by and among (i) the Company, (ii) Franchise Group Newco BHF, LLC, a Delaware limited liability company ("FRG Newco") and (iii) Freedom VCM Interco Holdings, Inc., a Delaware corporation (together with FRG Newco and their respective permitted assignees, the "FRG Investors", and each, an "FRG Investor") (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "IRA Agreement"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the IRA Agreement.

WHEREAS, the Joining Stockholder is acquiring shares of [•]; and

WHEREAS, the Joining Stockholder has agreed to become a party to the IRA Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. <u>Agreement to be Bound</u>. The Joining Stockholder agrees that, upon the execution of this IRA Joinder Agreement, such Joining Stockholder shall become a party to the IRA Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of IRA Agreement, and such Joining Stockholder(s) shall be deemed an "FRG Investor" thereunder all purposes.
- 2. Notices. The address, facsimile number and email address to which notices delivered pursuant to the IRA Agreement may be sent to the Joining Stockholder is as follows:

Address: [•]

- 3. <u>Binding Effect</u>. This IRA Joinder Agreement shall be binding upon and shall insure to the benefit of, and be enforceable by, the Company, the FRG Investors, and the Joining Stockholder and their respective heirs, personal representatives, successors and assigns in accordance with the terms of the IRA Agreement.
- 4. <u>Severability.</u> If any provision of this IRA Joinder Agreement or the application of any provision hereof is declared to be illegal, invalid or otherwise unenforceable by a court or other judicial or administrative body of competent jurisdiction, the remainder of this Joinder agreement will remain in full force and effect.
- 5. <u>Counterparts</u>. This Joinder Agreement may be executed in two or more counterparts and by the parties in separate counterparts, each of which when so executed will be deemed to be an original, and all of which taken together will constitute one of the same instrument. Faxed signatures will be valid as originals.

6. Governing Law. This Joinder Agreement and all actions, proceedings or counterclaims (whether based on contract, tort or otherwise) arising out of or relating to this Joinder Agreement or the actions of the parties hereto in the negotiation, administration, performance and enforcement thereof, shall be governed by, and construed in accordance with, the laws of the State of Delaware, including its statute of limitations, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof that would cause the applications of laws of any jurisdiction other than the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Joinder Agreement to be duly executed as of the ate first set forth above.

CONN'S, INC.

By:

Name:
Title:

 $[\bullet]$ 

By:

Name: Title:

A-- 1 -

### REGISTRATION RIGHTS AGREEMENT

BY AND AMONG

CONN'S, INC.,

FRANCHISE GROUP NEWCO BHF, LLC,

AND

FREEDOM VCM INTERCO HOLDINGS, INC.

Dated as of December 18, 2023

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#### REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (the "**Agreement**") is entered into as of December 18, 2023, by and among Conn's, Inc., a Delaware corporation (the "**Company**"), Freedom VCM Interco Holdings, Inc., a Delaware corporation ("**Freedom VCM**") and Franchise Group Newco BHF, LLC, a Delaware limited liability company (together with Freedom VCM, the "**Investors**" and each, an "**Investor**"). Capitalized terms used but not defined elsewhere herein are defined in <u>Exhibit A</u> and if not defined herein then as defined in the Investment Agreement (as defined below).

Concurrently with this Agreement, the Company is entering into an Investment Agreement with the Investors, W.S. Badcock LLC (f/k/a W.S. Badcock Corporation) and Franchise Group, Inc. (as amended, supplemented or otherwise modified from time to time, the "Investment Agreement"), pursuant to which the Company agreed, subject to the terms and conditions thereof, to the consummation of the Contemplated Transactions in exchange for certain shares of a newly-created series of shares of senior preferred convertible stock, par value \$0.01 per share of the Company (the "Convertible Preferred Stock").

As a condition to each of the parties' obligations under the Investment Agreement, the Company and the Investors are entering into this Agreement for the purpose of granting certain registration and other rights to the Investors.

In consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## ARTICLE I RESALE SHELF REGISTRATION

Section 1.1. Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall use its reasonable best efforts to file and make effective immediately following the Issuer Stockholders Meeting (as defined in the Investment Agreement), a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act of all of the Registrable Securities on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders) (the "Resale Shelf Registration Statement" and such registration, the "Resale Shelf Registration"), and if the Company is a WKSI as of the filing date, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its reasonable best efforts to cause such Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof, but in any event prior to the date that is one hundred twenty (120) days after the Closing Date (as defined in the Investment Agreement).

Section 1.2. <u>Effectiveness Period</u>. Once declared effective, the Company shall, within two (2) Business Days thereof, file a prospectus supplement pursuant to Rule 424(b) of the Securities Act and, subject to the other applicable provisions of this Agreement, use its reasonable best efforts to cause the Resale Shelf Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Securities (the "Effectiveness Period").

Section 1.3. Subsequent Shelf Registration. If (i) any Shelf Registration ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, or (ii) the Company issues additional Registrable Securities to a Holder that are not covered by any previously filed Shelf Registration, the Company shall use its reasonable best efforts to, in the case of clause (i), promptly cause such Shelf Registration to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration), and in any event shall within thirty (30) days of such cessation of effectiveness, amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or, in the case of clause (i) or (ii), file a post-effective amendment to a previously filed registration statement or file an additional registration statement (each, a "Subsequent Shelf Registration") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration is filed, the Company shall use its reasonable best efforts to (a) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is ninety (90) days after such Subsequent Shelf Registration is filed and (b) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a Registration Statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such Registration Statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Holders in accordance with any reasonable method of distribution elected by the Holders.

Section 1.4. <u>Supplements and Amendments</u>. The Company shall supplement and amend any Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the Securities Act or as reasonably requested by the Holders covered by such Shelf Registration.

Section 1.5. <u>Subsequent Holder Notice</u>. If a Person becomes a Holder of Registrable Securities after a Shelf Registration Statement becomes effective under the Securities Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration (a "**Subsequent Holder Notice**"):

(a) if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Holder is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

- (b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its reasonable best efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 1.5(a) to be filed; and
- (c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).
- Section 1.6. <u>Underwritten Offering</u>. The Holders of Registrable Securities may on up to three (3) occasions after the Resale Shelf Registration Statement becomes effective deliver a written notice to the Company (with copy to the other Holders) specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration is intended to be conducted through an underwritten offering, so long as the anticipated gross proceeds of such underwritten offering is not less than ten million dollars (\$10,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities) (the "**Underwritten Offering**"). The Company will not be obligated to effect more than two (2) Underwritten Offerings under this <u>Section 1.6</u> during any twelve (12) month period. In the event of an Underwritten Offering:
- (a) The Holders of a majority of the Registrable Securities participating in the Underwritten Offering shall select the managing underwriter or underwriters to administer the Underwritten Offering; provided, that the choice of such managing underwriter or underwriters shall be subject to the written consent of the Company, which is not to be unreasonably withheld, conditioned or delayed.
- (b) Notwithstanding any other provision of this Section 1.6, if the managing underwriter or underwriters of a proposed Underwritten Offering advises the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in such Underwritten Offering exceeds the number which can be sold in such Underwritten Offering in light of market conditions, the Registrable Securities shall be included on a pro rata basis upon the number of securities that each Holder shall have requested to be included in such offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters.
- Section 1.7. <u>Take-Down Notice</u>. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if a Holder delivers a notice to the Company (a "**Take-Down Notice**") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a "**Shelf Offering**") and stating the number of Registrable Securities to be included in such Shelf Offering, then, subject to the other applicable provisions of this Agreement, the Company shall amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

#### ARTICLE II COMPANY REGISTRATION

- Section 2.1. Notice of Registration. If at any time or from time to time the Company shall determine to file a registration statement with respect to an offering (or to make an underwritten public offering pursuant to a previously filed registration statement) of its common stock, par value \$0.01 per share (the "Common Stock"), whether or not for its own account (other than (i) a registration statement on Form S-4, Form S-8 or any successor forms, (ii) a registration statement relating solely to employment benefit plans, (iii) a registration statement the primary purpose of which is to register debt securities, or (iv) a registration statement on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities), the Company will:
- (a) promptly give to each Holder written notice thereof, which notice shall be given, to the extent reasonably practicable, no later than five (5) Business Days prior to the filing or launch date (except in the case of an offering that is an "overnight offering", in which case such notice must given no later than two (2) Business Days prior to the filing or launch date); and
- (b) subject to <u>Section 2.2</u>, include in such registration or underwritten offering (and any related qualification under blue sky laws or other compliance) all the Registrable Securities specified in a written request or requests made within three (3) Business Days after receipt of such written notice from the Company by any Holder (except in the case of an offering that is an "overnight offering", in which case such notice must given no later than one (1) Business Day after receipt of such written notice from the Company).

Section 2.2. <u>Underwriting</u>. The right of any Holder to registration pursuant to <u>Section 1.6</u> or this <u>Article II</u> shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Registrable Securities in the underwriting to the extent provided herein. Each Holder proposing to distribute its securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into and perform such Holder's obligations under an underwriting agreement with the managing underwriter selected for such underwriting by the Company or by the stockholders of the Company who have the right to select the underwriters (such underwriting agreement to be in the form negotiated by the Company or such stockholders, as the case may be). Notwithstanding any other provision of this <u>Article II</u>, if the managing underwriter or underwriters of a proposed underwritten offering with respect to which Holders of Registrable Securities have exercised their piggyback registration rights advise the Board of Directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in the offering thereby and all other securities proposed to be sold in the offering exceeds the number which can be sold in such underwritten offering in light of market conditions, the Registrable Securities and such other securities to be included in such underwritten offering shall be allocated, (a) first, (i) in the event such offering was initiated by the Company, up to the total number of securities that the Company has requested to be included in such registration and (ii) in the event such offering was initiated by the Holders who have exercised their registration rights pursuant to <u>Section 1.6</u>, up to the total

number of securities that such Holders of such securities have requested to be included in such offering, (b) second, and only if all the securities referred to in clause (a) have been included, up to the total number of securities that the Holders and other holders of securities that have contractual rights to be included in such registration have requested to be included in such offering (pro rata based upon the number of securities that each of them shall have requested to be included in such offering) and (c) third, and only if all the securities referred to in clause (b) have been included, all other securities proposed to be included in such offering that, in the opinion of the managing underwriter or underwriters can be sold without having such adverse effect. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter or underwriters. Any securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

Section 2.3. Right to Terminate Registration. The Company or the holders of securities who have caused a registration statement to be filed as contemplated by this Article II, as the case may be, shall have the right to have any registration initiated by it or them under this Article II terminated or withdrawn prior to the effectiveness thereof, whether or not any Holder has elected to include securities in such registration.

## ARTICLE III ADDITIONAL PROVISIONS REGARDING REGISTRATION RIGHTS

- Section 3.1. <u>Registration Procedures</u>. In the case of each registration effected by the Company pursuant to <u>Article I</u> or <u>II</u>, the Company will keep each Holder participating in such registration reasonably informed as to the status thereof and, at its expense, the Company will:
- (a) prepare and file with the Commission a registration statement with respect to such securities in accordance with the applicable provisions of this Agreement, provided that no Holder shall be identified as an underwriter in any such registration statement without the prior written consent of such Holder;
- (b) prepare and file with the Commission such amendments, including post-effective amendments, and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;
- (c) furnish to the Holders participating in such registration and to their legal counsel copies of the registration statement proposed to be filed, and provide such Holders and their legal counsel the reasonable opportunity to review and comment on such registration statement;
- (d) furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as the such underwriters may reasonably request in order to facilitate the public offering of such securities;

- (e) use reasonable best efforts to notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the Company's knowledge of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 3.1(n), at the request of any such Holder, prepare promptly and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchaser of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing;
- (f) use reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; <u>provided</u>, <u>however</u>, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;
- (g) in the event that the Registrable Securities are being offered in an underwritten public offering, enter into and perform its obligations under an underwriting agreement on customary terms and in accordance with the applicable provisions of this Agreement;
- (h) in connection with an underwritten public offering, cause its officers to use their reasonable best efforts to support the marketing of the Registrable Securities covered by such offering (including participation in "road shows" or other similar marketing efforts);
- (i) if such securities are being sold through underwriters, (i) furnish, on the date that such Registrable Securities are delivered to the underwriters, an opinion, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and a "negative assurance letter," dated as of such date, of the legal counsel representing the Company for purposes of such registration, in form and substance as is customarily given to underwriters and (ii) furnish, on the date of the underwriting agreement and on the date that the Registrable Securities are delivered to the underwriters, a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;
- (j) use reasonable best efforts to list the Registrable Securities covered by such registration statement with any securities exchange on which the Common Stock is then listed;

- (k) in connection with a customary due diligence review, make available for inspection by the Holders, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Holders or underwriter (collectively, the "Offering Persons"), all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such registration statement, subject to customary confidentiality obligations to be agreed with the Offering Persons;
- (l) cooperate with the Holders and each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;
- (m) as promptly as is reasonably practicable notify the Holders (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to such registration statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or other federal or state governmental authority for amendments or supplements to such registration statement or related prospectus or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for such purpose, (iv) if at any time the Company has reason to believe that the representations and warranties of the Company or any of its subsidiaries contained in any agreement (including any underwriting agreement contemplated by Section 3.1(g) above) cease to be true and correct or (v) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose;
- (n) notwithstanding any other provision of this Agreement, the Company shall not be obligated to effect any Underwritten Offering or Shelf Offering within thirty (30) days prior to the Company's good faith estimate of the date of filing of a registration statement for an underwritten public offering of the Company's securities and for such a period of time after such a filing as the managing underwriters request, provided that such period shall not exceed ninety (90) days from the closing date of any such underwritten public offering and provided further that, for the avoidance of doubt, the Holders shall be entitled to the rights set forth in Section 2.1 with respect to any such underwritten offering; and
- (o) notwithstanding any other provision of this Agreement, if the Board of Directors of the Company has determined in good faith that the disclosure necessary for continued use of the prospectus and registration statement by the Holders would be materially detrimental to the Company, the Company shall have the right not to file or not to cause the effectiveness of any registration covering any Registrable Securities and to suspend the use of the prospectus and the registration statement covering any Registrable Security for such period of time as its use would be materially detrimental to the Company by delivering written notice of such suspension to all Holders listed on the Company's records; <u>provided</u>, <u>however</u>, that in any 12-month period the Company may exercise the right to such suspension not more than once. From and after the date of a notice of suspension under this <u>Section 3.1(o)</u>, each Holder agrees not to use the prospectus or registration statement until the earlier of (i) notice from the Company that such suspension has been lifted or (ii) the day following the sixtieth (60th) day of suspension, at which time the Company shall be required to lift such suspension.

Section 3.2. <u>Limitation on Subsequent Registration Rights</u>. From and after the date hereof, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company that would (i) allow such holder or prospective holder to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included; (ii) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder; or (iii) otherwise conflict with the rights granted to the Holders herein. As of the date of this Agreement, the Company hereby represents and warrants that it has entered into any Agreement with any holder or prospective holder of any securities of the Company that would (i) allow such holder or prospective holder to include such securities in any registration under the terms of this Agreement unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included; (ii) allow such holder to initiate a demand for registration of any securities held by such holder; or (iii) otherwise conflict with the rights granted to the Holders herein.

Section 3.3. Expenses of Registration. All Registration Expenses incurred in connection with any registration pursuant to Article I or II shall be borne by the Company. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the Holders of the registered securities included in such registration.

Section 3.4. <u>Information by Holders</u>. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders and their respective Affiliates, the Registrable Securities held by them and the distribution proposed by such Holder or Holders and their respective Affiliates as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under <u>Article I</u> or <u>II</u> are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will, and will cause their respective Affiliates to, cooperate with the Company in connection with the preparation of the applicable registration statement, and for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will and will cause their respective Affiliates to, provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and their respective Affiliates and such other information as may be required by applicable law to enable the Company to prepare such registration statement and the related prospectus covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof;

- (b) during such time as such Holder or Holders and their respective Affiliates may be engaged in a distribution of the Registrable Securities, such Holder or Holders will, and they will cause their respective Affiliates to, comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, and will cause their respective Affiliates to, among other things: (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws; (ii) distribute the Registrable Securities acquired by it solely in the manner described in the applicable registration statement; and (iii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders or their respective Affiliates, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree;
- (c) such Holder or Holders shall, and they shall cause their respective Affiliates to, permit the Company and its representatives and agents to examine such documents and records and will supply in a timely manner any information as they may be reasonably request to provide in connection with the offering or other distribution of Registrable Securities by such Holder or Holders; and
- (d) on receipt of written notice from the Company of the happening of any of the events specified in Section 3.1(m) or Section 3.1(o), or that requires the suspension by such Holder or Holders and their respective Affiliates of the distribution of any of the Registrable Securities owned by such Holder or Holders, then such Holders shall, and they shall cause their respective Affiliates to, cease offering or distributing the Registrable Securities owned by such Holder or Holders may recommence in accordance with the terms hereof and applicable law.
- Section 3.5. <u>Rule 144 Reporting</u>. With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that, for so long as a Holder owns Registrable Securities, the Company will use reasonable best efforts to:
  - (a) make and keep public information available, as those terms are understood and defined in Rule 144;
  - (b) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act; and
- (c) so long as a Holder owns any Restricted Securities, furnish to the Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

# ARTICLE IV INDEMNIFICATION

Section 4.1. Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities as to which registration or qualification or compliance under applicable "blue sky" laws has been effected pursuant to this Agreement, indemnify each Holder, each Holder's current and former officers, directors, partners and members, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Company Indemnified Parties"), against all expenses, claims, losses, damages and liabilities, joint or several, (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act, Exchange Act or state securities laws applicable to the Company in connection with any such registration, and the Company will reimburse each of the Company Indemnified Parties for any reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred. The indemnity agreement contained in this Section 4.1 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such loss, claim, damage, liability or action (a) to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by or on behalf of any Holder or (b) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act.

Section 4.2. <u>Indemnification by Holders</u>. To the extent permitted by applicable law, each Holder will, if identified as a selling stockholder as to which such registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly, the Company, each of its current and former directors, officers, partners and members, and each Person who controls the Company within the meaning of Section 15 of the Securities Act (collectively, the "**Holder Indemnified Parties**"), against all expenses, claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by such Holder of any rule or regulation promulgated under the Securities Act, Exchange Act or state securities law applicable to such Holder, and will reimburse each of the

Holder Indemnified Parties for any reasonable legal or any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use therein, provided, however, that in no event shall any indemnity under this Section 4.2 payable by a Holder exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. The indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed), nor shall the Holder be liable for any such loss, claim, damage, liability or action where such untrue statement or alleged untrue statement or omission or alleged omission was corrected in a final or amended prospectus, and the Company or the underwriters failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such loss, claim, damage or liability in any case in which such delivery is required by the Securities Act

Section 4.3. Notification. Each party entitled to indemnification under this Article IV (the "Indemnified Party") shall give written notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided, however, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld or delayed), and the Indemnified Party may participate in such defense at such party's expense; provided, further, however, that an Indemnified Party (together with all other Indemnified Parties) shall have the right to retain one (1) separate counsel, with the reasonable fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be reasonably inappropriate due to conflicting interests between such Indemnified Party and any other party represented by such counsel in such proceeding. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld, conditioned or delayed). The failure of any Indemnified Party to give notice as provided herein shall relieve the Indemnifying Party of its obligations under this Article IV, only to the extent that, the failure to give such notice is materially prejudicial or harmful to an Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. The indemnity agreements contained in this Article IV shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this Article IV shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have.

Section 4.4. Contribution. If the indemnification provided for in this Article IV is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any claim, loss, damage, liability or action referred to therein, then, subject to the limitations contained in Article IV, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such claim, loss, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the actions that resulted in such claims, loss, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact related to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were based solely upon the number of entities from whom contribution was requested or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 4.4. In no event shall any Holder's contribution obligation under this Section 4.4 exceed the amount by which the net proceeds actually received by such Holder from the sale of Registrable Securities included in such registration exceeds the amount of any other losses, expenses, settlements, damages, claims and liabilities that such Holder has been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission or violation. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

## ARTICLE V TERMINATION OF REGISTRATION RIGHTS; ASSIGNMENT

Section 5.1. <u>Termination of Registration Rights</u>. The rights of any particular Holder to cause the Company to register securities under <u>Articles I</u> and <u>II</u> shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities.

Section 5.2. <u>Assignment.</u> The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to any Permitted Transferee in connection with any permitted transfer, assignment or other conveyance of Registrable Securities (other than a transfer pursuant to a registration statement or under Rule 144 promulgated under the Securities Act); <u>provided, however</u>, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement.

#### ARTICLE VI MISCELLANEOUS.

Section 6.1. <u>Amendment</u>. This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by an authorized representative of each of the parties hereto.

Section 6.2. Waiver.

- (a) Except as expressly set forth herein to the contrary, no failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. The rights and remedies hereunder are cumulative and not exclusive of any rights or remedies that any party would otherwise have.
- (b) No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.
- Section 6.3. Expenses and Obligations. Except as otherwise provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the transactions contemplated hereby shall be borne solely and entirely by the party that has incurred such expenses.

Section 6.4. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the U.S. return receipt requested, upon receipt; (b) if sent by nationally recognized overnight air courier (such as Federal Express), two Business Days after mailing; (c) if sent by e-mail before 5:00 p.m. Eastern Time, when transmitted and receipt is confirmed; (d) if sent by e-mail after 5:00 p.m. Eastern Time and receipt is confirmed, on the following Business Day; or (e) if otherwise actually personally delivered, when delivered; provided, that such notices, requests, demands and other communications are delivered to the physical address, e-mail address or facsimile number set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

If to the Company, to:

Conn's, Inc.
2445 Technology Forest Blvd., Suite 800
The Woodlands, TX 77381
Attention: General Counsel
Email: Mark, Prior@conns.com

with a copy (which shall not constitute notice) to:

Sidley Austin LLP 1000 Louisiana Street, Suite 5900 Houston, TX 77002 Attention: Kevin Lewis

Email: klewis@sidley.com

and

Sidley Austin LLP 2021 McKinney Ave., Suite 2000 Dallas, TX 75201

Attention: Bill Howell; Ryan Scofield

Email: bhowell@sidley.com; rscofield@sidley.com

If to the Investors, to:

Franchise Group, Inc. 109 Innovation Court, Suite J Delaware, Ohio 43015

Attention: Tiffany McMillan-McWaters Email: <a href="mailto:tmcwaters@franchisegrp.com">tmcwaters@franchisegrp.com</a>

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019

Attention: Russell L. Leaf; Jared N. Fertman Email: <a href="ref:rleaf@willkie.com">rleaf@willkie.com</a>; <a href="fettman@willkie.com">fettman@willkie.com</a>; <a href="fettm

Section 6.5. Governing Law; Jurisdiction; Specific Performance; Remedies. This Agreement and all actions, proceedings or counterclaims (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of the parties hereto in the negotiation, administration, performance and enforcement thereof, shall be governed by, and construed in accordance with, the laws of the State of Delaware, including its statute of limitations, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof that would cause the applications of laws of any jurisdiction other than the State of Delaware. In any Legal Proceeding between any of the parties arising out of or relating to this Agreement or the transactions contemplated hereby: (a) each of the parties hereto irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware or, (solely if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any other state or federal courts within the State of Delaware) and any appellate court from any thereof; and (b) each of the parties hereto irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, any claim (i) that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason; (ii) that it or its property is exempt or

immune from jurisdiction of any such court or from any legal process commenced in such courts; and (iii) that (x) the claim, action, suit or other Legal Proceeding in any such court is brought in an inconvenient forum; (y) the venue of such claim, action, suit or other Legal Proceeding is improper; or (z) this Agreement or the subject matter hereof may not be enforced in or by such courts. Each of the parties hereto further agrees that, to the fullest extent permitted by applicable Legal Requirements, service of any process, summons, notice or document by U.S. registered mail to such Person's respective address set forth in Section 6.4 will be effective service of process for any claim, action, suit or other Legal Proceeding in the Court of Chancery of the State of Delaware or, to the extent required by Legal Requirements, any state or federal court in the State of Delaware, with respect to any matters to which it has submitted to jurisdiction as set forth in this paragraph. The parties hereto hereby agree that a final judgment in any such claim, suit, action or other Legal Proceeding will be conclusive, subject to any appeal, and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to specific performance and injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without the requirement for the posting of any bond, this being in addition to any other remedy to which they are entitled at law or in equity. Except as expressly set forth herein to the contrary, all rights and remedies existing under this Agreement are cumulative to, a

Section 6.6. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE PURSUANT TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING (WHETHER FOR BREACH OF CONTRACT, TORTIOUS CONDUCT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY ACKNOWLEDGES AND AGREES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) IT MAKES THIS WAIVER VOLUNTARILY; AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.6.

Section 6.7. Entire Agreement; Counterparts; Electronic Exchanges. This Agreement, including the schedules, exhibits and amendments hereto and thereto shall together constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this Agreement.

#### Section 6.8. Construction.

- (a) Each of the parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged between the parties shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted it is of no application and is hereby expressly waived.
- (b) All references in this Agreement to Exhibits, Schedules, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Schedules, Articles, Sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, subsections or other subdivisions, and shall be disregarded in construing the language contained therein. The words "this Agreement," "herein," "hereby," "hereunder" and "hereof" and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "this Section," "this subsection" and words of similar import, refer only to the Sections or subsections hereof in which such words occur. The word "including" (in its various forms) means "including, without limitation." Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all references to a specific time shall refer to Houston, Texas time. The word "or" is disjunctive but not exclusive.
- (c) In this Agreement, except as the context may otherwise require, references to: (i) any agreement (including this Agreement) or contract, are to the agreement or contract as amended, modified, supplemented, restated or replaced from time to time; (ii) any applicable Legal Requirement refers to such applicable Legal Requirement as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under such statute) and references to any section of any applicable Legal Requirement or other law include any successor to such section; and (iii) days mean calendar days.

Section 6.9. <u>Assignability</u>; <u>No Third-Party Rights</u>. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that, other than as expressly set forth in Section 5.2, neither this Agreement nor any party's rights, interests or obligations hereunder may be assigned or delegated by any such party without the prior written consent of the other parties, and any attempted assignment or delegation of this Agreement or any of such rights, interests or obligations by any party without the prior written consent of the other parties shall be void and of no effect. Except as otherwise expressly provided for herein, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 6.10. Severability. Any term or provision of this Agreement (or part thereof) that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision (or part thereof) in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement (or part thereof) is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit such term or provision (or part thereof), to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision (or part thereof), and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision (or part thereof) with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

(The next page is the signature page)

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first above written.

### **COMPANY:**

CONN'S, INC.

By: /s/ Mark Prior

Name: Mark Prior

Title: Senior Vice President and General Counsel

### **INVESTORS:**

FRANCHISE GROUP NEWCO BHF, LLC

By: /s/ Brian Kahn

Name: Brian Kahn Title: President and Chief Executive Officer

FREEDOM VCM INTERCO HOLDINGS, INC.

By: /s/ Andrew Laurence
Name: Andrew Laurence
Title: Vice President, Treasurer

[Signature Page to Registration Rights Agreement]

# EXHIBIT A DEFINED TERMS

- 1. The following capitalized terms have the meanings indicated:
- "Affiliate" of any Person means any Person, directly or indirectly, controlling, controlled by or under common control with such Person.
- "Automatic Shelf Registration Statement" means an "automatic shelf registration statement" as defined under Rule 405.
- "Business Day" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
  - "Commission" means the Securities and Exchange Commission.
- "Exchange Act" means the Securities Exchange Act of 1934, as amended, or any similar successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.
- "Holder" means (a) any Investor holding Registrable Securities and (b) any Permitted Transferee to which the rights under this Agreement have been transferred in accordance with Section 5.1.
- "Permitted Transferee" has the meaning given to such term in the Investors Rights Agreement, dated as of the date hereof, by and among, among other persons, the Company and the Investors (as may be amended, modified or otherwise supplemented).
- "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, other legal entity, or any government or governmental agency or authority.
- "register", "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.
- "Registration Expenses" means (a) all expenses incurred by the Company in complying with <u>Articles I</u> and <u>II</u>, including, without limitation, all registration, qualification, listing and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, blue sky fees and expenses, and the expense of any special audits incident to or required by any such registration; and (b) the reasonable fees and expenses of any one counsel to the Holders (and one local counsel, if necessary); <u>provided, however</u>, that, in the case of this clause (b), such fees and expenses shall not exceed \$75,000 with respect to any particular registration pursuant to <u>Article I</u> or <u>II</u>.

"Registrable Securities" means (a) any shares of non-voting common stock of the Company, par value \$0.01 per share, issued upon conversion of any shares of Convertible Preferred Stock, (b) any other shares of Common Stock issued in respect of preemptive rights of the Holders or acquired by the Holders in the open market or otherwise and (c) any Common Stock or other securities issued in respect of the securities described in clauses (a) or (b) above or this clause (c) upon any stock split, stock dividend, recapitalization, reclassification, merger, consolidation or similar event; provided, however, that the securities described in clauses (a), (b), and (c) above shall only be treated as Registrable Securities until the earliest of: (i) the date on which such security has been registered under the Securities Act and disposed of in accordance with an effective Registration Statement relating thereto; (ii) the date on which such security has been sold pursuant to Rule 144 (or another transaction that constitutes a sale under the Securities Act) and the security is no longer a Restricted Security; and (iii) the date on which such security shall have ceased to be outstanding.

"Restricted Securities" means any securities of the Company (including any Registrable Securities) required to bear a legend of the type described in Article II, Section 4 of the Certificate of Designations of the Nonvoting Convertible Preferred Stock of the Company.

"Rule 144" means Rule 144 promulgated under the Securities Act and any successor provision.

"Rule 405" means Rule 405 promulgated under the Securities Act and any successor provision.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Selling Expenses" means all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders.

"Shelf Registration" means the Resale Shelf Registration or a Subsequent Shelf Registration, as applicable.

"WKSI" means a "well known seasoned issuer" as defined under Rule 405.

2. The following terms are defined in the Sections of the Agreement indicated:

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# AMENDMENT NO. 3 TO FIFTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

This AMENDMENT NO. 3 TO FIFTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Amendment") is dated as of December 18, 2023, and is entered into by and among CONN'S, INC., a Delaware corporation, as parent and guarantor ("Parent"), CONN APPLIANCES, INC., a Texas corporation ("CAI"), CONN CREDIT I, LP, a Texas limited partnership ("CCI"), CONN CREDIT CORPORATION, INC., a Texas corporation ("CCCI"; and together with CAI and CCI, each an "Existing Borrower" and collectively, the "Existing Borrowers"), W.S. BADCOCK LLC, a Florida limited liability company (the "New Borrower" and, together with the Existing Borrowers, the "Borrowers" and each, a "Borrower"), the undersigned Guarantors (together with Parent and the Borrowers, the "Obligors" and each, an "Obligor"), the undersigned Lenders (the "Consenting Lenders") and JPMORGAN CHASE BANK, N.A., in its capacity as Agent for the Lenders (in such capacity, "Agent").

#### RECITALS

**WHEREAS**, the Existing Borrowers, Agent and the Lenders party thereto from time to time are parties to that certain Fifth Amended and Restated Loan and Security Agreement, dated as of March 29, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "Existing Loan Agreement" and, as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, including by this Amendment, the "Loan Agreement");

WHEREAS, pursuant to that certain Investment Agreement, dated as of December 18, 2023 (the "<u>Acquisition Agreement</u>" and the transaction contemplated thereby, the "<u>Blade Acquisition</u>"), by and among Parent, as the purchaser, and Franchise Group Newco BHF, LLC ("<u>Newco BHF</u>"), Freedom VCM Interco Holdings, Inc. ("<u>Freedom VCM</u>") and Franchise Group, Inc. ("<u>FRG</u>"), as the sellers, Parent will acquire, directly or indirectly, all of the issued and outstanding units representing limited liability company interests in the New Borrower from Newco BHF; and

WHEREAS, the Existing Borrowers have requested (a) that the Lenders consent to, *inter alia*, the Blade Acquisition and (b) certain amendments and modifications to the Existing Loan Agreement in connection with the Blade Acquisition, including, among other things, to extend the maturity date thereof and add the New Borrower as a borrower under the Loan Agreement, and, subject to the satisfaction (or waiver in accordance with the terms hereof) of the conditions set forth herein, Agent and the Lenders are willing to so amend the Existing Loan Agreement on the terms set forth herein.

**NOW**, **THEREFORE**, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned agrees as follows:

#### ARTICLE I DEFINITIONS

Section 1.1 <u>Definitions</u>. Initially capitalized terms used but not otherwise defined in this Amendment have the respective meanings given thereto in the Loan Agreement.

## ARTICLE II CONSENTS, AMENDMENTS AND AGREEMENTS

#### Section 2.1. Consents.

- (a) Agent and the Consenting Lenders consent to (i) the Blade Acquisition and the Term Loan Facility and each Term Loan Document (in each case as defined in **Exhibit A** hereto) and (ii) solely in respect of the Fiscal Quarter ending on October 31, 2023, the financial statements (and any other obligation in respect thereof) being delivered on December 18, 2023 and such obligations shall be satisfied upon the filing of such financial statements with the Securities and Exchange Commission and the delivery of a Compliance Certificate to Agent in respect of such Fiscal Quarter on such date.
- (b) On the Amendment No. 3 Effective Date (as defined below), Agent consents to the amendment of the Third Lien Term Loan Facility and each Third Lien Term Loan Document (in each case as defined in **Exhibit A** hereto).

Section 2.2. <u>Amendments to Existing Loan Agreement</u>. Each of the parties hereto agrees and consents that, effective as of the Amendment No. 3 Effective Date, the Existing Loan Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: <u>stricken text</u>) and to add the double-underlined text (indicated textually in the same manner as the following example: <u>double-underlined text</u>) in the form attached as **Exhibit A** hereto.

#### Section 2.3 Reduction of Revolver Commitments of Consenting Lenders.

Notwithstanding Section 2.1.4(b) of the Loan Agreement, the Borrowers and each of the Consenting Lenders agree that, as of the Amendment No. 3 Effective Date, the Revolver Commitments of the Consenting Lenders shall be permanently reduced and the outstanding Revolver Loans and participations in LC Obligations held by the Consenting Lenders shall be reallocated among the Lenders according to procedures determined by Agent in its reasonable discretion such that each Lender shall hold its applicable percentage of the outstanding Revolver Loans and participations in LC Obligations based on its Revolver Commitment set forth on **Schedule 1.1** hereto, which schedule supersedes and replaces Schedule 1.1 to the Existing Loan Agreement.

#### Section 2.4 Joinder of New Borrower.

Effective immediately upon the consummation of the Blade Acquisition, the Lenders hereby agree that, from and after the Amendment No. 3 Effective Date, the New Borrower shall become a borrower under the Loan Agreement and shall constitute a "Borrower" for all purposes thereof and of the other Loan Documents, with the same force and effect as if originally named therein as a Borrower. The New Borrower agrees that, by execution of this Amendment and effective as of the Amendment No. 3 Effective Date, the New Borrower hereby assigns and transfers to Agent, and hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all of the Collateral of the New Borrower (other than Excluded Collateral), whether now owned or hereafter acquired, and wherever located. On the Amendment No. 3 Effective Date, Schedules 7.1(j), 8.5, 8.7.1, 9.1.4, 9.1.5, 9.1.11, 9.1.16 to the Existing Loan Agreement are hereby supplemented by Schedules 7.1(j), 8.5, 8.7.1, 9.1.4, 9.1.5, 9.1.11 and 9.1.16 attached hereto, and Schedules 1.1(g) and 10.2.17 attached hereto are hereby added to the Loan Agreement.

## ARTICLE III CONDITIONS PRECEDENT

- Section 3.1 <u>Conditions Precedent to Signing</u>. The effectiveness of this Amendment (other than in respect of Sections 2.2, 2.3 and 2.4 hereof), is subject to satisfaction of the following condition precedent (the date on which such condition precedent is so satisfied, the "<u>Signing Effective Date</u>"):
- (a) The Obligors (other than New Borrower) and the Consenting Lenders shall have delivered to Agent, in such number as may be requested by Agent, executed counterparts of this Amendment.
- Section 3.2 <u>Conditions Precedent to Amendment</u>. The effectiveness of this Amendment in respect of Sections 2.2, 2.3 and 2.4 hereof, is subject to satisfaction (or waiver in accordance with Section 14.1.1 of the Loan Agreement) of the following conditions precedent (the first date on which such conditions precedent are so satisfied or waived, the "<u>Amendment No. 3 Effective Date</u>"):
- (a) The Signing Effective Date shall have occurred and the New Borrower shall have delivered to Agent, in such number as may be requested by Agent, executed counterparts of this Amendment.
- (b) The representations and warranties contained in **Article IV** hereof shall be true and correct in all material respects as of the Amendment No. 3 Effective Date as if made on the Amendment No. 3 Effective Date, except for such representations and warranties limited by their terms to a specific date and without duplication of any materiality qualifiers contained therein.
  - (c) No Default or Event of Default (after giving effect to this Amendment) shall have occurred and be continuing.
- (d) Agent shall have received a certificate of a Senior Officer of the Borrower Agent certifying as to the satisfaction of the conditions contained in **Sections 3.2(b)** and **3.2(c)** hereof and as to any other factual matters as may be reasonably requested by Agent.
- (e) Substantially concurrently with but after the consummation of the Blade Acquisition, the Borrowers shall have paid (i) to Agent all reasonable documented and out-of-pocket fees, costs, and expenses owed to and/or incurred by Agent arising in connection with this Amendment to the extent invoiced one (1) Business Day prior to the Amendment No. 3 Effective Date (including reasonable attorneys' fees and costs of Simpson Thacher & Bartlett LLP, as counsel to Agent) and (ii) to Agent and the Lenders all fees required to be paid by the Borrowers in connection with this Amendment.
- (f) Substantially concurrently with but after the consummation of the Blade Acquisition, Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral of the New Borrower, as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens, and that the New Borrower has no Debt for borrowed money outstanding as of the Amendment No. 3 Effective Date.
- (g) Agent shall have received a certificate from a Senior Officer of the Borrower Agent certifying that, as of the Amendment No. 3 Effective Date (after giving effect to the Blade Acquisition), the Borrowers and their Subsidiaries, taken as a whole on a consolidated basis, are Solvent.

- (h) Agent shall have received a certificate of a duly authorized officer of each Obligor (and in the case of New Borrower, substantially concurrently with but after the consummation of the Blade Acquisition) certifying (i) that attached copies of such Obligor's Organic Documents, as applicable, are true and complete, and in full force and effect, without amendment, except as shown, (ii) that an attached copy of resolutions authorizing the execution and delivery of the Amendment is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this Amendment, and (iii) to the title, name and signature of each Person authorized to sign the Amendment. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.
  - (i) Agent shall have received a customary written opinion of Sidley Austin LLP with respect to each Obligor.
- (j) Agent shall have received good standing certificates for each Obligor issued as of a recent date by the Secretary of State or other appropriate official of the applicable jurisdiction of organization.
- (k) Each Lender that has requested a Revolver Note shall have received a Revolver Note executed by the Borrowers (including the New Borrower).
- (I) Substantially concurrently herewith, the Blade Acquisition shall have been consummated, the Term Loan Facility shall have closed, and the Borrowers' Delayed Draw Term Loan and Security Agreement with Stephens Investments Holdings LLC (the "Stephens Facility") shall have been amended, restated, amended and restated, refinanced or replaced to, among other things, permit the Blade Acquisition and otherwise on terms acceptable to Agent and the Lenders party hereto (which shall include, among other things, an extension of the maturity date under the Stephens Facility through May 22, 2027).
- (m) Agent shall have been assigned the most recent field examinations and appraisals conducted in respect of the property and assets of the New Borrower under the existing FRG credit facility with JPMorgan Chase Bank, N.A. as administrative agent, which assignments shall be in form and substance reasonably acceptable to Agent.
- (n) Agent shall have received an appraisal in respect of the accounts receivable of the Borrowers from Vion, which appraisals shall be satisfactory to Agent in its sole discretion.
- (o) Borrower Agent shall have delivered to Agent, for further distribution to the Lenders, a thirteen-week cash flow forecast in form satisfactory to Agent in its sole discretion (the "Approved 13-Week Forecast"), which Approved 13-Week Forecast shall begin on December 10, 2023 and reflect, for the periods covered thereby, projected weekly disbursements, cash receipts, outstanding Obligations under the Credit Agreement and ending cash for each week covered by the Approved 13-Week Forecast.
- (p) (i) Agent shall have received, at least two (2) days prior to the Amendment No. 3 Effective Date, all documentation and other information regarding the Obligors requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Obligors at least ten (10) days prior to the Amendment No. 3 Effective Date, and (ii) to the extent any Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least two (2) days prior to the Amendment No. 3 Effective Date, any Lender (including the New Lender) that has requested, in a written notice to the Obligors at least ten (10) days prior to the Amendment No. 3 Effective Date, a Beneficial Ownership Certification in relation to each Obligor shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Amendment, the condition set forth in this clause (ii) shall be deemed to be satisfied).

- (q) Agent shall have received an executed supplement or amendment to the Sixth Amended and Restated Memorandum and Notice of Security Interest in Intellectual Property, dated as of February 23, 2023, from Parent to Agent, covering the Trademarks and Copyrights set forth on **Schedule 9.1.11**.
- (r) Agent shall have received an updated Borrowing Base Report, dated as of the Amendment No. 3 Effective Date, executed by a Senior Officer of Borrower Agent.

Agent is hereby authorized and directed to declare **Sections 2.2**, **2.3** and **2.4** of this Amendment to be effective when it has received documents confirming or certifying, to the satisfaction of Agent, compliance with the conditions set forth in this **Section 3.2** or the waiver of such conditions as permitted hereby. Such declaration shall be final, conclusive and binding upon all parties to the Loan Agreement (including as amended hereby) for all purposes. Each Lender that delivers its executed counterpart to this Amendment shall be deemed satisfied with the compliance with each condition contained herein that require the satisfaction, approval or consent of any Lender.

## ARTICLE IV REPRESENTATIONS AND WARRANTIES

Each Obligor hereby represents and warrants to Agent and each Lender, as of the Amendment No. 3 Effective Date, as follows:

Section 4.1 <u>Representations and Warranties</u>. The representations and warranties set forth in Section 9 of the Loan Agreement and in each other Loan Document are true and correct in all material respects (and in all respects with respect to any representations and warranties which are expressly qualified with materiality) on and as of the date hereof with the same effect as if made on and as of the date hereof, except to the extent such representations and warranties expressly relate solely to an earlier date.

- Section 4.2 No Defaults. After giving effect to this Amendment, no Default or Event of Default has occurred and is continuing.
- Section 4.3 <u>Authority</u>. The execution, delivery, and performance by each Obligor of this Amendment is within the powers and authority of each Obligor and has been duly authorized by each such Obligor (as applicable).
- **Section 4.4** Enforceability. This Amendment constitutes the legal, valid, and binding obligation of each Obligor, enforceable against each such Obligor in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles.

## ARTICLE V ADDITIONAL COVENANTS AND MISCELLANEOUS

Section 5.1 No Waiver; Loan Documents Unmodified; Ratification of Loan Documents. Except as expressly set forth in this Amendment, neither the execution by Agent or the Lenders of this Amendment, nor any other act or omission by Agent or the Lenders or their officers in connection herewith, shall be deemed a waiver by Agent or the Lenders of any Defaults or Events of Default which may exist, which may have occurred prior to the date of the effectiveness of this Amendment or which may occur in the future under the Loan Agreement and/or the other Loan Documents. Similarly, nothing contained in this Amendment shall directly or indirectly in any way whatsoever either impair, prejudice or otherwise

adversely affect Agent's or the Lenders' right at any time to exercise any right, privilege or remedy in connection with the Loan Documents with respect to any Default or Event of Default, amend or alter any provision of the Loan Agreement or the other Loan Documents (other than as expressly set forth herein), or constitute any course of dealing or other basis for altering any obligation of the Borrowers or any right, privilege, obligation or remedy of Agent or the Lenders under the Loan Agreement, the other Loan Documents or any other contract or instrument. To the extent applicable, each Obligor hereby (a) reaffirms, ratifies, and confirms its respective payment and performance obligations under the Loan Agreement and each of the other Loan Documents, in each case, to which such Person is a party, as may be amended hereby, and (b) agrees that its guarantee under the Guaranty, as applicable, shall remain in full force and effect with respect to the Obligations as amended hereby. Nothing contained in this Amendment shall in any way impair the validity or enforceability of the Loan Documents, as modified hereby, or alter, waive, annul, vary, affect, or impair any provisions, conditions, or covenants contained therein or any rights, powers, or remedies granted therein, except as otherwise specifically provided in this Amendment, each of which as modified hereby, shall remain in full force and effect. Subject to the terms of this Amendment, any lien and/or security interest granted to Agent in the Collateral set forth in the Loan Documents shall remain unchanged and in full force and effect and shall continue to secure the payment and performance of all of the Obligations. Nothing contained herein or in any other document delivered in connection with this Amendment shall constitute a novation of the Loan Agreement, any other Loan Document or the Obligations.

Section 5.2 Intercreditor Agreements. In connection with the Term Loan Facility and any amendment, restatement, amendment and restatement, refinancing or replacement of the Stephens Facility entered into in connection herewith, the Lenders hereby authorize and direct Agent to (a) enter into (i) a new ABL Intercreditor Agreement substantially in the form attached hereto as **Exhibit B**, (ii) an amendment and restatement of the currently effective Permitted ABS Intercreditor Agreement substantially in the form attached hereto as **Exhibit C** and (ii) an amendment and restatement of the Third Lien Intercreditor Agreement in respect of the Stephens Facility substantially in the form attached hereto as **Exhibit D** and (b) terminate the existing ABL Intercreditor Agreement (as defined in the Existing Loan Agreement) on the Amendment No. 3 Effective Date.

Section 5.3 <u>Parties, Successors and Assigns</u>. This Amendment shall be binding upon the parties hereto and their respective successors and assigns.

Section 5.4 <u>Counterparts</u>. This Amendment may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Amendment and/or any document to be signed in connection herewith and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be.

Section 5.5 <u>Headings</u>. The headings, captions, and arrangements used in this Amendment are for convenience only, are not a part of this Amendment, and shall not affect the interpretation hereof.

Section 5.6 Expenses of Agent. Without limiting the terms and conditions of the Loan Documents, the Borrowers, including the New Borrower, agree to pay on demand all reasonable, documented and out-of-pocket costs and expenses incurred by Agent in connection with the preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto, including without limitation, the reasonable, documented and out-of-pocket costs and fees of one legal counsel to Agent, in each case as contemplated by Section 3.4 of the Loan Agreement.

Section 5.7 <u>Choice of Law; Jury Trial Waiver; Consent to Forum.</u> WITHOUT LIMITING THE APPLICABILITY OF ANY OTHER PROVISION OF THE LOAN AGREEMENT, THE TERMS OF **SECTIONS 14.14**, **14.15** AND **14.16** OF THE LOAN AGREEMENT ARE INCORPORATED HEREIN BY REFERENCE, *MUTATIS MUTANDIS*.

**Section 5.8 <u>Total Agreement</u>.** This Amendment, the Existing Loan Agreement (as amended hereby) and all of the other Loan Documents (as may be amended hereby) shall constitute the entire agreement between the parties relating to the subject matter hereof, and shall not be changed or terminated orally.

Section 5.9 Effect of Amendments. The parties hereto hereby acknowledge and agree that each reference in the Loan Agreement to "this Agreement", "hereunder", "hereof", "herein", or words of like import shall mean and be a reference to the Existing Loan Agreement as amended hereby, and each reference to the Loan Agreement in any other document, instrument or agreement executed and/or delivered in connection with the Loan Agreement shall mean and be a reference to the Existing Loan Agreement as amended hereby.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been executed and delivered as of the date set forth above.

PARENT: CONN'S, INC., a Delaware corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

**EXISTING BORROWERS:** 

CONN APPLIANCES, INC.,

a Texas corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

**CONN CREDIT I, LP,** 

a Texas limited partnership

By: CAI HOLDING, LLC

a Delaware limited liability company,

its General Partner

By: CONN APPLIANCES, INC.

a Texas corporation, its Sole Member

By: \_/s/ Mark Prior

Name: Mark Prior

Title: Vice President, General Counsel and Secretary

### CONN CREDIT CORPORATION, INC.,

a Texas corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

[Conn's – Signature Page to Amendment No. 3 to Fifth Amended and Restated Loan and Security Agreement]

#### **OTHER OBLIGORS:**

### CAI HOLDING, LLC, a Delaware limited liability company

By: /s/ Mark Prior

Name: Mark Prior

Title: Vice President, General Counsel and Secretary

### CAI CREDIT INSURANCE AGENCY, INC., a Louisiana corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

### CONN LENDING, LLC., a Delaware limited liability company

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

### **NEW RTO, LLC**

a Delaware limited liability company

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

[Conn's - Signature Page to Amendment No. 3 to Fifth Amended and Restated Loan and Security Agreement]

**NEW BORROWER:** 

## W.S. BADCOCK LLC,

a Florida limited liability company

By: /s/ Timothy Santo

Name: Timothy Santo
Title: Interim Chief Financial Officer

[Conn's – Signature Page to Amendment No. 3 to Fifth Amended and Restated Loan and Security Agreement]

**AGENT**:

# JPMORGAN CHASE BANK, N.A.,

as Agent and a Lender

By: /s/ Andrew Rossman

Name: Andrew Rossman
Title: Executive Director

[Conn's – Signature Page to Amendment No. 3 to Fifth Amended and Restated Loan and Security Agreement]

LENDER:	MUFG Bank, LTD
	By: /s/ Erick Moore
	Name: Erick Moore
	Title: Vice President
LENDER:	REGIONS BANK
	By: /s/ Evie Krimm
	Name: Evire Krimm
	Title: Managing Director
LENDER:	DEUTSCHE BANK AG NEW YORK BRANCH
	By: /s/ Frank Fazio
	Name: Frank Fazio
	Title: Managing Director
	By: /s/ Phil Tancorra
	Name: Phil Tancorra
	Title: Director
LENDER:	ZIONS BANCORPORATION, N.A. DBA AMEGY BANK
	By: /s/ Mario Gagetta
	Name: Mario Gagetta
	Title: Vice President
LENDER:	REGIONS BANK
	By: /s/ Evie Krimm
	Name: Evire Krimm
	Title: Managing Director

[Conn's - Signature Page to Amendment No. 3 to Fifth Amended and Restated Loan and Security Agreement]

# Exhibit A Conformed Loan Agreement

[attached]

# FIFTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

Dated as of March 29, 2021

CONN'S, INC.,

as Parent and Guarantor

and

CONN APPLIANCES, INC., CONN CREDIT I, LP,

and

CONN CREDIT CORPORATION, INC.,

and W.S. BADCOCK LLC,

as Borrowers

CERTAIN FINANCIAL INSTITUTIONS,

as Lenders,

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent and Collateral Agent,

**REGIONS BANK, and** MUFG BANK, LTD. and REGIONS BANK, as Co-Syndication Agents,

JPMORGAN CHASE BANK, N.A.,

MUFG BANK, LTD. and REGIONS CAPITAL MARKETS, a division of REGIONS BANK,

**MUFG BANK, LTD.,** 

as Joint Lead Arrangers and Joint Bookrunners;

and

**CITIZENS BANK,** 

as Documentation Agent

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#### FIFTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

THIS FIFTH AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Agreement") is dated as of March 29, 2021, by and among CONN'S, INC., a Delaware corporation, as parent and guarantor ("Parent"), CONN APPLIANCES, INC., a Texas corporation ("CAI"), CONN CREDIT I, LP, a Texas limited partnership ("CCI"), and CONN CREDIT CORPORATION, INC., a Texas corporation ("CCCI"), and W.S. BADCOCK LLC, a Florida limited liability company ("Badcock", and together with CAI and, CCI and CCCI, each, a "Borrower" and collectively, the "Borrowers"), the financial institutions party to this Agreement from time to time as lenders (collectively, "Lenders"), and JPMORGAN CHASE BANK, N.A., a national banking association ("JPM"), as successor to Bank of America, N.A., in its capacity as Administrative Agent and Collateral Agent for the Lenders (in such capacity, "Agent").

### RECITALS:

WHEREAS, Borrowers, Agent and various lenders originally entered into that certain Loan and Security Agreement, dated as of August 14, 2008 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Original Loan Agreement") and certain other loan documents relating to the same.

WHEREAS, Borrowers, Agent and various lenders amended and restated the Original Loan Agreement in its entirety and entered into that certain Amended and Restated Loan and Security Agreement, dated as of November 30, 2010 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "First Amended and Restated Loan Agreement") and certain other loan documents relating to the same.

WHEREAS, Borrowers, Agent and various lenders amended and restated the First Amended and Restated Loan Agreement in its entirety and entered into that certain Second Amended and Restated Loan and Security Agreement, dated as of September 26, 2012 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Second Amended and Restated Loan Agreement") and certain other loan documents relating to the same.

WHEREAS, Borrowers, Agent and various lenders, amended and restated the Second Amended and Restated Loan Agreement in its entirety and entered into that certain Third Amended and Restated Loan and Security Agreement, dated as of October 30, 2015 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Third Amended and Restated Loan Agreement") and certain other loan documents relating to the same.

WHEREAS, Borrowers, Agent and various lenders, amended and restated the Third Amended and Restated Loan Agreement in its entirety and entered into that certain Fourth Amended and Restated Loan and Security Agreement, dated as of May 23, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Fourth Amended and Restated Loan Agreement"; and together with the Original Loan Agreement, First Amended and Restated Loan Agreement, Second Amended and Restated Loan Agreement and Third Amended and Restated Loan Agreement, the "Existing Loan Agreement") and certain other loan documents relating to the same.

**WHEREAS**, Borrowers have requested that Agent and Lenders amend and restate the Existing Loan Agreement in its entirety to, among other things, make available to Borrowers a revolving line of credit for loans and letters of credit in an aggregate amount not to exceed \$650,000,000, which extensions of credit Borrowers will use for the purposes permitted hereunder.

WHEREAS, Agent and Lenders have agreed to amend and restate the Existing Loan Agreement in its entirety in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, Lenders, Agent, Parent and Borrowers hereby agree to amend and restate the Existing Loan Agreement as follows:

#### SECTION 1. DEFINITIONS: RULES OF CONSTRUCTION

1.1 **<u>Definitions</u>**. As used herein, the following terms have the meanings set forth below:

13-Week Forecast: as defined in Section 10.1.16(a).

ABL Intercreditor Agreement: has the meaning assigned to such term in Amendment No. 2.that certain Intercreditor Agreement, dated as of the Amendment No. 3 Effective Date, among JPMorgan Chase Bank, N.A. and BRF Finance Co., LLC and acknowledged and agreed by Parent, CAI, CCI, CCCI, Badcock and each of Parent's Subsidiaries that are signatories thereto from time to time.

ABS Contract Portfolio: portfolio of Contracts subject to the Existing Securitization Facility and any other Permitted ABS Transaction.

ABS Excluded Leverage Ratio: the ratio, determined as of the end of any Fiscal Quarter for Parent and its Subsidiaries, on a consolidated basis, of (a) the result of (x) all items that would be included as liabilities on a balance sheet in accordance with GAAP (but excluding, for avoidance of doubt, any lease which is not treated as a Capital Lease in accordance with the definition of "Capital Lease", which exclusion shall be made by reducing the amount of such liabilities on the balance sheet by an amount equal to the remainder of (1) the sum of current and long term "operating leases" minus (2) deferred rent) as of the last day of such Fiscal Quarter (excluding Debt resulting from the Existing Securitization Facility and any other Permitted ABS Transaction), minus (y) Qualified Cash as of such date of measurement, to (b) Tangible Net Worth as of the last day of such Fiscal Quarter.

ABS Qualified Cash: as of any date of determination, the aggregate amount of cash of Parent and its Subsidiaries that is restricted pursuant to the Existing Securitization Facility or any other Permitted ABS Transaction as required under the applicable documents setting forth the terms of the Existing Securitization Facility or any other Permitted ABS Transaction.

Acquisition: a transaction or series of transactions resulting in (a) the acquisition of a business, division or substantially all assets of a Person; (b) the acquisition of record or beneficial ownership of 50% or more of the Equity Interests of a Person (including, in any event, any Investment in (x) any Subsidiary which increases Parent's interest, directly or indirectly, in such Subsidiary or (y) any joint venture for the purpose of increasing Parent's interest (directly or indirectly) in such joint venture); or (c) the merger, consolidation or combination of a Borrower or Subsidiary with another Person.

Adjusted Daily Simple SOFR: an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement

Adjusted Tangible Assets: all assets of Parent and Borrowers on a consolidated basis, except (a) patents, copyrights, trademarks, trade names, franchises, goodwill, and other similar intangibles; (b) assets constituting intercompany Accounts; (c) assets located and notes and receivables due from obligors domiciled outside the United States of America or Canada; and (d) fixed assets to the extent of any write-up in the book value thereof.

Adjusted Term SOFR Rate: for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, *plus* (b) 0.10%; <u>provided</u> that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

Administrative Questionnaire: an Administrative Questionnaire in a form supplied by Agent.

Affected Financial Institution: (a) any EEA Financial Institution or (b) any UK Financial Institution.

Affiliate: with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person; provided, that, subject to Section 10.2.17, none of Franchise Group Newco BHF, LLC, Freedom VCM Interco Holdings, Inc., any dealers or any of their respective affiliates shall be an Affiliate of Parent or any of its Subsidiaries.

Agent: as defined in the Preamble to this Agreement.

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

<u>Agent Professionals</u>: attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants (<u>including</u>, <u>for the avoidance of doubt</u>, <u>FTI Consulting</u>, <u>Inc. or one of its Affiliates</u>), and other professionals and experts retained by Agent.

Agreement: as defined in the Preamble to this Agreement.

Allocable Amount: as defined in Section 5.11.3(b).

Amendment No. 1: that certain Amendment No. 1 to Fifth Amended and Restated Loan Agreement, dated as of November 21, 2022, by and among Parent, the Borrowers, the other Obligors party thereto, Agent and the Lenders party thereto.

Amendment No. 1 Effective Date: as defined in Amendment No. 1.

Amendment No. 2: that certain Amendment No. 2 to Fifth Amended and Restated Loan Agreement, dated as of February 21, 2023, by and among Parent, the Borrowers, the other Obligors party thereto, Agent and the Lenders party thereto.

Amendment No. 2 Effective Date: as defined in Amendment No. 2.

Amendment No. 3: that certain Amendment No. 3 to Fifth Amended and Restated Loan Agreement, dated as of December 18, 2023, by and among Parent, the Borrowers (including Badcock), the other Obligors party thereto, Agent and the Lenders party thereto.

Amendment No. 3 Effective Date: as defined in Amendment No. 3.

Ancillary Document: as defined in Section 14.8.2.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the Patriot Act.

<u>Applicable Law</u>: all laws, rules, regulations and binding governmental guidelines applicable to the Person or matter in question, including all applicable statutory law, common law and equitable principles, as well as applicable provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities and all Consumer Finance Laws.

<u>Applicable Margin</u>: the margin set forth in the chart below, as determined by reference to the Leverage Ratio for the most recently ended Fiscal Quarter:

Level Leverage Ratio Base Rate Loans Lo	Revolver oans
1 $\leq 2.25x$ $\frac{1.502.00}{\%}$	<del>.50</del> 3.00%
$> 2.25 \le 3.00x$ $\frac{1.75}{2.25}\%$	<del>.75</del> 3.25%
$3 > 3.00x \le 3.75x$ $\frac{2.002.50}{}\%$	<del>.00</del> 3.50%
4 > $3.75x$ $\frac{2.25}{2.75}\%$ 3.	<del>.25</del> 3.75%

Changes in the Applicable Margin resulting from a change in the Leverage Ratio shall become effective on the first day of the calendar month following Agent's receipt of the financial statements pursuant to Section 10.1.2(a)(i), (a)(ii) or (b), as applicable, and Compliance Certificate pursuant to Section 10.1.2(d) with respect thereto. If any financial statement or Compliance Certificate has not been delivered within the time periods specified herein, then the Applicable Margin shall be determined as if Level 4 were applicable, from such day until the first day of the calendar month following the date Borrower delivers such financial statements and the related Compliance Certificate. For the avoidance of doubt, the Applicable Margin set forth above shall apply only on and after the Amendment No. 3 Effective Date; provided that the Applicable Margin shall be as set forth in Level 3 until the first day of the calendar month following Agent's receipt of the financial statements and Compliance Certificate for the Fiscal Quarter ending July 31, 2024.

Approved 13-Week Forecast: has the meaning assigned to such term in Amendment No. 3.

Approved Electronic Platform: as defined in Section 14.3.3.

Approved Fund: any entity that is owned or Controlled by a Lender or Affiliate of a Lender, and is engaged in making or investing in commercial loans in its ordinary course of activities.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a division or otherwise) of Property of an Obligor, including a disposition of Property in connection with a sale-leaseback transaction or synthetic lease.

Assignment and Acceptance: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit B** or otherwise satisfactory to Agent and, to the extent the Borrowers' consent in respect of the applicable assignment is necessary, the Borrower Agent.

Available Tenor: as of any date of determination and with respect to the then-current Benchmark (or component thereof), as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (e) of Section 3.6.

Availability: the Borrowing Base minus Revolver Usage.

Badcock: as defined in the Preamble to this Agreement.

Badcock Acquisition Agreement: that certain Investment Agreement, dated as of December 18, 2023 by and among, *inter alios*, Parent, as the purchaser, and Franchise Group Newco BHF, LLC and Franchise Group, Inc., as the sellers whereby Parent will acquire, directly or indirectly, all of the issued and outstanding units representing limited liability company interests in Badcock from Franchise Group Newco BHF, LLC.

Badcock Availability Reserve: the sum of (without duplication when taken into account with the CAI Availability Reserve or the CCI Availability Reserve, the Contract Advance Rate Amount, the Inventory Formula Amount or any of their respective component definitions) (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) the Sales Tax Reserve; (e) the aggregate amount of liabilities secured by Liens upon Collateral to the extent included in the Badcock Borrowing Base that are senior to Agent's Liens (but imposition of any such reserve shall not cure an Event of Default, if any, arising therefrom); (f) in the case of a failure of the Dealer Collateral Access Requirements, reserves covering amounts owed to dealers and impairment of Inventory held at dealer locations; and (g) such additional reserves, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time; provided that the Obligors shall have a period of 45 days (or such longer period as may be agreed in writing by Agent acting in its reasonable discretion) to satisfy the Dealer Collateral Access Requirements in respect of any Inventory (including Eligible Inventory and Eligible In-Transit Inventory) of Badcock held with dealers prior to the Agent implementing any reserve in respect of the Badcock Borrowing Base.

Badcock Borrowing Base: the Contract Advance Rate Amount applicable to Badcock (without duplication when taken into account with the Contract Advance Rate Amount applicable to each of CAI and CCI) plus the Inventory Formula Amount applicable to Badcock (without duplication when taken into account with the Inventory Formula Amount applicable to CAI) plus the Credit Card Account Formula Amount (without duplication when taken into account with the Credit Card Account Formula Amount applicable to CAI) minus any Badcock Availability Reserve.

Badcock Revolver Usage: (a) the aggregate amount of outstanding Revolver Loans under the Badcock Borrowing Base; plus (b) the aggregate Stated Amount of outstanding Letters of Credit under the Badcock Borrowing Base, except to the extent Cash Collateralized.

Badcock Manual Sweeping Accounts: the Deposit Accounts maintained by Badcock that are identified to Agent as "Manual Sweeping Accounts" on or after the Amendment No. 3 Effective Date, together with any such replacements or additional accounts of Badcock.

Badcock Store Accounts: as defined in Section 8.5.2.

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

<u>Bail-In Legislation</u>: (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).

Bank Product: any of the following products or services extended to Parent, a Borrower or any Subsidiary (other than any Securitization Subsidiary) of a Borrower: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) other banking products or services other than Letters of Credit, including the Existing Bank Products.

<u>Bank Product Reserve</u>: the aggregate amount of reserves established by Agent from time to time in its Permitted Discretion with respect to Secured Bank Product Obligations.

Bankruptcy Code: Title 11 of the United States Code.

Base Rate: for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two (2) U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; provided that for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.6 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 3.6(b)), then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

Base Rate Revolver Loan: a Revolver Loan that bears interest based on the Base Rate.

Benchmark: initially, with respect to any (a) RFR Revolver Loan, the Daily Simple SOFR or (b) Term Benchmark Revolver Loan, the Term SOFR Rate; <u>provided</u> that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR or Term SOFR Rate, as applicable, or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **clause (b)** of **Section 3.6**.

Benchmark Replacement: for any Available Tenor, the first alternative set forth in the order below that can be determined by Agent for the applicable Benchmark Replacement Date:

(1) the Adjusted Daily Simple SOFR;

(2) the sum of: (a) the alternate benchmark rate that has been selected by Agent and the Borrower Agent as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

Benchmark Replacement Adjustment: with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Agent and the Borrower Agent for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities in the United States at such time.

Benchmark Replacement Conforming Changes: with respect to any Benchmark Replacement and/or any Term Benchmark Revolver Loan, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Agent decides, in consultation with the Borrower Agent, may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as Agent decides, in consultation with the Borrower Agent, is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

Benchmark Replacement Date: with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; <u>provided</u>, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

Benchmark Transition Event: with respect to any Benchmark, the occurrence of one or more of the following events with respect to such thencurrent Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, <u>provided</u> that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

Benchmark Unavailability Period: with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.6** and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.6**.

Beneficial Ownership Certification: a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

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

Benefit Plan: 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."

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

Borrowed Money: with respect to any Obligor, without duplication, its (a) Debt of the type set forth in clause (a) of the definition of Debt; (b) Capital Leases; (c) Letter of Credit reimbursement obligations; and (d) Debt of the type set forth in clause (b) of the definition of Debt in respect of Debt described in clauses (a), (b) and (c) of this definition of Borrowed Money, in each case other than obligations owing to any Flooring Lender.

Borrower: as defined in the Preamble to this Agreement.

Borrower Agent: as defined in Section 4.4.

<u>Borrower Materials</u>: Borrowing Base Reports, Compliance Certificates and other information, reports, financial statements and other materials delivered by Borrowers hereunder, as well as other Reports and information provided by Agent to Lenders.

Borrowing: a group of Revolver Loans that are made or converted together on the same day and have the same interest option and, if applicable, Interest Period.

Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the aggregate amount of Revolver Commitments or (b) the sum of (i) the CCI Borrowing Base plus (ii) the CCI Borrowing Base plus (iii) the Badcock Borrowing Base minus (iv) the Term Loan Push-Down Reserve; provided that (x) on the Amendment No. 3 Effective Date, the CCI Borrowing Base and the CAI Borrowing Base shall be based on the component parts thereof as of October 31, 2023 (as updated weekly through and including December 16, 2023) and (y) on and after the Amendment No. 3 Effective Date and until delivery of the First Updated Badcock Report, the Badcock Borrowing Base will be based on the component parts of the Badcock Borrowing Base as of November 30, 2023. Notwithstanding anything to the contrary contained herein, all representations and warranties with respect to the Badcock Borrowing Base (or any component part thereof) and all Borrowing Base Reports in respect thereof shall be deemed true, correct and complete, and all covenants and agreements with respect to the Badcock Borrowing Base (or any component part thereof) and all Borrowing Base Reports in respect thereof shall be satisfied, from and after the Amendment No. 3 Effective Date to and until the First Updated Badcock Report.

Notwithstanding anything to the contrary in this Agreement, (a) no Reserves shall be established or increased except upon not less than three (3) Business Days' (or shorter period as agreed to by Borrower Agent) prior written notice to Borrower Agent, which notice shall include a reasonably detailed description of such Reserve being established (during which period (i) Agent shall, if requested, discuss any such Reserve or increase with Borrower Agent and (ii) Borrower Agent may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or increase thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser increase thereto, in a manner and to the extent reasonably satisfactory to Agent), and (b) the amount of any Reserve established by Agent, and any increase in the amount of any Reserve, shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such increase and (c) no Reserves established against all or any portion of the Borrowing Base shall be duplicative with any other Reserve

then applicable to the Borrowing Base. Notwithstanding clause (a) of the preceding sentence, (i) changes to the Reserves solely for purposes of correcting mathematical or clerical errors shall not be subject to such notice period; (ii) changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized shall not be subject to such notice period; (iii) no Default or Event of Default shall be deemed to result from the imposition of any Reserve for a period of three (3) Business Days (or shorter period as agreed to by Borrower Agent) following notice to Borrower Agent; (iii) the imposition of the Term Loan Push-Down Reserve shall not be subject to such notice period; and (iv) Borrowers shall not request any Revolver Loans or Letters of Credit and Agent, Lenders and Issuing Bank shall not be required to fund any Revolver Loan or issue any Letters of Credit hereunder during such period of three (3) Business Days (or shorter period as agreed to by Borrower Agent).

Borrowing Base Condition: as defined in Section 8.1.

Borrowing Base Report: a report of the Borrowing Base by Borrowers, in form satisfactory to Agent.

Business Day: means, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Houston, Texas; provided that, in addition to the foregoing, a Business Day shall be (a) in relation to RFR Revolver Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Revolver Loan, or any other dealings of such RFR Revolver Loan and (b) in relation to Revolver Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements or payments of any such Revolver Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Revolver Loans referencing the Adjusted Term SOFR Rate, any such day that is only a U.S. Government Securities Business Day.

<u>CAI</u>: as defined in the Preamble to this Agreement.

<u>CAI Availability Reserve</u>: the sum of (without duplication when taken into account with the CCI Availability Reserve or <u>Badcock Availability Reserve</u>, the Credit Card Account Formula Amount, the Inventory Formula Amount, the Contract Advance Rate Amount or any of their respective component definitions) (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) the Sales Tax Reserve; (e) the Gift Card Reserve; (f) the Customer Deposit Reserve; (g) the aggregate amount of liabilities secured by Liens upon Collateral to the extent included in the CAI Borrowing Base that are senior to Agent's Liens (but imposition of any such reserve shall not cure an Event of Default, if any, arising therefrom); and (h) such additional reserves, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time.

CAI Borrowing Base: the sum of the Credit Card Account Formula Amount applicable to CAI (without duplication when taken into account with the Credit Card Account Formula Amount applicable to Badcock), plus the Inventory Formula Amount applicable to CAI, plus the Contract Advance Rate Amount applicable to CAI (without duplication when taken into account with the Contract Advance Rate Amount applicable to CCI), minus any CAI Availability Reserve.

<u>CAIC</u>: CAI Credit Insurance Agency, Inc., a Louisiana corporation.

<u>CAIH</u>: CAI Holding, LLC, a Delaware limited liability company.

<u>CAI Revolver Usage</u>: (a) the aggregate amount of outstanding Revolver Loans under the CAI Borrowing Base; <u>plus</u> (b) the aggregate Stated Amount of outstanding Letters of Credit under the CAI Borrowing Base, except to the extent Cash Collateralized.

<u>Capital Expenditures</u>: for any period of calculation with respect to Parent and its Subsidiaries, the aggregate of all expenditures incurred by Parent and its Subsidiaries during such period that, in accordance with GAAP, are required to be classified as capital expenditures, including Capital Leases incurred; <u>provided</u> that the following items shall be excluded:

- (a) the purchase price of fixed or capital assets made with the proceeds of any combination of (A) used or surplus fixed or capital assets traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus fixed or capital assets;
- (b) expenditures made in connection with the replacement, substitution, restoration, upgrade, development or repair of assets to the extent financed with (x) insurance or settlement proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored, upgraded, developed or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced;
- (c) the purchase price of assets that are purchased simultaneously with the trade-in of existing assets to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such property for the property being traded in at such time;
- (d) the purchase price of property, plant or equipment or software in an amount equal to the identifiable proceeds of Asset Dispositions of fixed or capital assets;
- (e) expenditures that are accounted for as capital expenditures by Parent and its Subsidiaries that are actually paid for, or reimbursed to Parent and its Subsidiaries in cash or cash equivalents, by a Person other than Parent and its Subsidiaries;
  - (f) expenditures to the extent constituting any portion of an Acquisition (or Investment permitted hereunder);
  - (g) any capitalized interest expense reflected on a consolidated balance sheet of Parent and its Subsidiaries;
- (h) expenditures relating to the construction, acquisition, replacement, reconstruction, development, refurbishment, renovation or improvement of any property which has been transferred to a Person other than Parent and its Subsidiaries during the same Fiscal Year in which such expenditures were made pursuant to a sale and leaseback transaction to the extent of the cash proceeds received by Parent and its Subsidiaries pursuant to such Sale and Leaseback Transactionsale-leaseback transaction; or
- (i) expenditures financed with the proceeds of an issuance of Equity Interests of Parent so long as the proceeds of such issuance are received within 60 days of the applicable expenditure.

<u>Capital Lease</u>: any lease required to be capitalized for financial reporting purposes in accordance with GAAP. Notwithstanding anything to the contrary contained herein, any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2018, such lease shall not be considered a capital lease for purposes of any financial ratios, covenants and similar calculations and deliverables (other than, for the avoidance of doubt, financial statements, which shall be prepared in accordance with GAAP as in effect from time to time) under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith (and, for the avoidance of doubt, such adjustment shall be effected as set forth in the definitions of ABS Excluded Leverage Ratio and Leverage Ratio in the manner set forth therein).

Capital Lease Obligations: the obligations of any Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

CARES Act Tax Refund Claim: means, at any time of determination, the aggregate amount of refund claims of one or more of the Obligors resulting from (a) the application of 2020 Fiscal Year tax credits and net operating loss carrybacks to the taxable years ending January 31 of 2014, 2015, 2016, and/or 2019 as permitted pursuant to the Code and any similar rule of state or local law and (b) any claims for refunds of alternative minimum tax related to such net operating loss carrybacks, in each case, as further described on Schedule 1.1(c).

<u>CARES Act Tax Refund Proceeds</u>: cash proceeds actually received by any Obligor or any Affiliate thereof in respect of the CARES Act Tax Refund Claim.

<u>Cash Collateral</u>: cash delivered to Agent to Cash Collateralize any Obligations, and all interest, dividends, earnings and other proceeds earned thereon.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of Obligations, in an amount equal to (a) with respect to any Class of LC Obligations, (i) if prior to the Revolver Commitment Termination Date in respect of such Class, 100% of the aggregate LC Obligations of such Class and (ii) if on or after the Revolver Commitment Termination Date in respect of such Class, 102% of the aggregate LC Obligations (unless, with respect to the LC Obligations of the Non-Extending Class, the continuing Lenders have purchased participations in the LC Obligations of such Class in accordance with Section 2.3.3); (b) with respect to the Fronting Exposure of any Defaulting Lender (other than LC Obligations), 100% of the aggregate Fronting Exposure of such Defaulting Lender; and (c) in the case of Section 5.2, 100% of the outstanding LC Obligations. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 24 months of the date of acquisition, and overnight bank deposits, in each case which are issued by JPM or a commercial bank organized under the laws of the United States or any state or district thereof, rated A 1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by JPM or rated A 1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within 24 months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

<u>Cash Management Services</u>: services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

Cash Recovery Percent: the percent, calculated as of the end of the last day of each month, equal to the amount determined by dividing (a) the actual Gross Cash Collections received by Borrowers from payments made by Contract Debtors during the previous three (3) months by (b) the sum of the Gross Contract Payments outstanding as of the beginning of the first day of each of the previous three (3) months. The Cash Recovery Percent shall be calculated based on the Managed Contract Portfolio; provided, however, that if for a period of 18 months after the closing of any Permitted ABS Transaction that is not a "revolving" transaction entered into after the Closing Date at least 85% of the value of all Contracts of Borrowers that are eligible to be included in such Permitted ABS Transaction as of any Cut-Off Date of such Permitted ABS Transaction are not transferred to such Permitted ABS Transaction, then the Cash Recovery Percent shall be determined based on the lower of (i) the Cash Recovery Percent determined based on the Owned Contract Portfolio, and (ii) the Cash Recovery Percent determined based on the Managed Contract Portfolio.

CCCI: as defined in the Preamble to this Agreement.

CCI: as defined in the Preamble to this Agreement.

CCI Availability Reserve: the sum of (without duplication when taken into account with the CAI Availability Reserve or the Badcock Availability Reserve, the Contract Advance Rate Amount or any of their respective component definitions) (a) the Rent and Charges Reserve; (b) the Bank Product Reserve; (c) the Sales Tax Reserve; (d) the aggregate amount of liabilities secured by Liens upon Collateral to the extent included in the CCI Borrowing Base that are senior to Agent's Liens (but imposition of any such reserve shall not cure an Event of Default, if any, arising therefrom); and (e) such additional reserves, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time.

<u>CCI Borrowing Base</u>: the Contract Advance Rate Amount applicable to CCI (without duplication when taken into account with the Contract Advance Rate Amount applicable to CAI) <u>minus</u> any CCI Availability Reserve.

<u>CCI Revolver Usage</u>: (a) the aggregate amount of outstanding Revolver Loans under the CCI Borrowing Base; plus (b) the aggregate Stated Amount of outstanding Letters of Credit under the CCI Borrowing Base, except to the extent Cash Collateralized.

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

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

<u>Change of Control</u>: (a) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934), other than the Permitted Holders, shall at any time have acquired direct or indirect beneficial ownership of Equity Interests of Parent representing aggregate voting power for the election of directors of Parent (without regard to the happening of any contingency) representing

more than the greater of (i) 40% of such Equity Interests and (ii) the percentage of such Equity Interests owned by the Permitted Holders; (b) Parent ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in CAI; (c) CAI ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests of CCI-and, CCCI\_or Badcock; (d) Persons who were (i) directors of Parent on the Closing Date, (ii) nominated, appointed or approved for consideration for election by the board of directors of Parent or (iii) appointed or elected by directors who were directors of Parent on the Closing Date or were nominated, appointed, or approved as provided in clause (ii) above, cease to occupy a majority of the seats (excluding vacant seats) on the board of directors of Parent; or (e) all or substantially all of a Borrower's assets are sold or transferred, other than as permitted pursuant to Section 10.2.9-; provided that in no event shall Franchise Group Newco BHF, LLC, Freedom VCM Interco Holdings, Inc., each of their respective Affiliates or any a "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934) including any of the foregoing acquire direct or indirect beneficial ownership of Equity Interests of Parent representing aggregate voting power for the election of directors of Parent (without regard to the happening of any contingency) representing more than 49% of such Equity Interests.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses (but limited, in the case of attorneys' fees and expenses, to the reasonable and documented out-of-pocket fees, charges and disbursements of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent and, in the case of an actual or potential conflict of interest, one (1) additional firm of lead counsel to all affected Indemnitees, taken as a whole and, in each case, without duplication of attorneys' fees and expenses included in the definition of Claims)) at any time (including after Full Payment of the Obligations, or replacement of Agent, or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person in any way relating to (a) any Revolver Loans, Letters of Credit, Loan Documents, Borrower Materials, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, including the payment of principal, interest and fees, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) the exercise of any rights or remedies under any Loan Documents or Applicable Law, (e) the failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto, or (f) failure by any Obligor (directly or indirectly), Credit and Collection Guideline, Contract or Third Party Contract to comply with or otherwise satisfy any Consumer Finance Law in any respect.

Class: (a) when used with respect to Revolver Commitments, refers to whether such Revolver Commitments are Revolver Commitments sharing a common Revolver Termination Date and (b) when used with respect to Revolver Loans, LC Obligations or Borrowings, refers to whether such Revolver Loans, LC Obligations or Borrowings are Revolver Loans or Borrowings sharing a common Revolver Termination Date.

<u>Class C Retained Notes</u>: any (a) series of "Class C" notes issued, pursuant to a Permitted ABS Transaction, by a Securitization Subsidiary in favor of another Securitization Subsidiary (the "<u>Purchasing Securitization Subsidiary</u>") which shall (i) be subsequently transferred, through a contribution, dividend, distribution or otherwise, by such Purchasing Securitization Subsidiary to an Obligor (with no requirement for any cash consideration to be paid by such Obligor for such Class C Retained Notes, except to the extent any cash consideration is contemporaneously redistributed or contributed to such Obligor upon the payment of such cash consideration), (ii) have not been further subsequently sold or otherwise transferred by such Obligor to any other Person (other than an Obligor), and (iii) represent Debt of the issuing Securitization Subsidiary pursuant to the terms of the applicable Permitted ABS Transaction or (b) other note constituting a "Class C Retained Note" under the Term Loan Agreement.

<u>Class R Retained Notes</u>: any series of "Class R" notes issued, pursuant to a Permitted ABS Transaction, by a Securitization Subsidiary in favor of a Purchasing Securitization Subsidiary which represent equity interests of the issuing Securitization Subsidiary pursuant to the terms of the applicable Permitted ABS Transaction.

CLL: Conn Lending, LLC, a Delaware limited liability company.

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

<u>CME Term SOFR Administrator</u>: CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

Code: the Internal Revenue Code of 1986.

<u>Collateral</u>: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations; <u>provided</u> that "Collateral" shall not include any Excluded Collateral.

<u>Collateral Adjustment Percentage</u>: calculated as of the first day of each month, the sum of the Past Due Percent and the Net Charge-Off Percent. The Collateral Adjustment Percentage shall be calculated based on the higher of (x) the Collateral Adjustment Percentage determined based on the Owned Contract Portfolio, and (y) the Collateral Adjustment Percentage determined based on the Managed Contract Portfolio.

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

<u>Compliance Certificate</u>: a certificate in the form of **Exhibit D** in which Borrowers certify compliance with **Sections 10.2.3** and **10.3** and calculate the applicable level for the Applicable Margin.

Confidential Information: as defined in Section 10.1.1(c).

<u>Connection Income Taxes</u>: Other Connection Taxes that are imposed on or measured by net income (however denominated), or are franchise or branch profits Taxes.

<u>Consolidated Cash Balance</u>: the sum of the cash and Cash Equivalents of the Parent, Borrowers and their Subsidiaries (other than a Securitization Subsidiary) in the aggregate among all such Persons.

Consumer Finance Laws: all laws, rules, regulations, and binding governmental guidelines of any kind relating to the extension, securing or administration of consumer credit, whether relating to secured or unsecured credit, real or personal security, advertising, solicitation, marketing, underwriting, origination, documentation, brokering, purchase, assignment, administration, servicing, collection or other activities relating thereto, in each case applicable to the Person, including any of the foregoing relating to consumer protection, usury, privacy, discriminatory or predatory practices, or unfair, deceptive or abusive acts or practices, and specifically including the Federal Consumer Credit Protection Act, Federal Fair Credit Reporting Act, Fair and Accurate Credit Transactions Act, Equal Credit Opportunity Act, Fair Debt Collections Practices Act, Real Estate Settlement Procedures Act, Magnuson-Moss Warranty Act, Servicemember's Civil Relief Act, Gramm-Leach-Bliley Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, Federal Trade Commission Act, Consumer Financial Protection Bureau Regulations B, M, N, O P, V, X and Z, and Federal Reserve Board Regulations B and Z.

Contingent Obligation: any obligation of a Person (without duplication) guaranteeing or having the economic effect of guaranteeing any Debt, lease, dividend or other obligation ("primary obligations") of another obligor ("primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations entered into in connection with any transaction permitted or not restricted by this Agreement (other than such obligations with respect to Debt). The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

### Contract Advance Rate Amount: the lesser of clauses (a) and (b) set forth below:

(a) 80% of Net Eligible Contract Payments; provided, that such percentage shall be subject to reduction as of the first day of each month, based on the then existing Collateral Adjustment Percentage and Cash Recovery Percent (whichever results in a lower percentage), as follows:

(ai) the percentage above shall be reduced by 1% for each whole percentage or fraction thereof that the Collateral Adjustment Percentage exceeds 22%; and

(bii) the percentage above shall be reduced by 1% for each incremental range of the Cash Recovery Percent, beginning with 4.79%, as illustrated by the table set forth below:

Cash Recovery Percent	Contract Advance Rate Amount
Less than or equal to 4.79% but greater than 4.74%	79% of Net Eligible Contract Payments
Less than or equal to 4.74% but greater than 4.69%	78% of Net Eligible Contract Payments
Less than or equal to 4.69% but greater than 4.64%	77% of Net Eligible Contract Payments
Less than or equal to 4.64% but greater than 4.59%	76% of Net Eligible Contract Payments
Less than or equal to 4.59% but greater than 4.54%	75% of Net Eligible Contract Payments
Less than or equal to 4.54% but greater than 4.49%	74% of Net Eligible Contract Payments
Less than or equal to 4.49% but greater than 4.44%	73% of Net Eligible Contract Payments
Less than or equal to 4.44% but greater than 4.39%	72% of Net Eligible Contract Payments

Less than or equal to 4.39% but greater than 4.34%

Less than or equal to 4.34% but greater than 4.29%

Less than or equal to 4.29% but greater than 4.25%

To fine Eligible Contract Payments

69% of Net Eligible Contract Payments

The Cash Recovery Percent table shall continue to be reduced in exact increments as set forth above

The Contract Advance Rate Amount table shall continue to be reduced by 1% for each incremental reduction of the Cash Recovery Percent

(b) 80% of the net fair market value of the Owned Contract Portfolio as set forth in the most recent appraisal of the Owned Contract Portfolio performed by an appraiser approved by and on terms reasonably satisfactory to Agent.

Notwithstanding the above, the portion of the Contract Advance Rate Amount supported by Eligible Revolving Contracts shall at no time exceed 10% of the CCI Borrowing Base.

<u>Contract Debtor</u>: each Person who is obligated to a Borrower to perform any duty under or to make any payment pursuant to the terms of a Contract.

<u>Contracts</u>: all of each Borrower's now owned and hereafter acquired loan agreements, accounts, revolving credit agreements, retail installment sale contracts, consumer loans, Instruments, notes, documents, chattel paper, and all other forms of obligations owing to such Borrower, including any collateral for any of the foregoing, including all rights under any and all security documents and merchandise returned to or repossessed by such Borrower, in each case excluding any Third Party Contract.

<u>Control</u>: the possession, directly or indirectly, of the power to direct or cause the direction of a Person's management or policies, whether through the ability to exercise voting power, by contract or otherwise.

<u>Corresponding Tenor</u>: with respect to any Available Tenor, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

Covenant Relief Period: the period commencing on the Amendment No. 1 Effective Date and ending on the earlier of (a) the date on which the Borrowers deliver financial statements and a Compliance Certificate in accordance with the relevant provisions of Section 10.1.2(b) and 10.1.2(d) demonstrating compliance with Sections 10.3.1, 10.3.2 and 10.3.3, 10.3.4 (if applicable) and 10.3.5 as of the end of the Fiscal Quarter ending April 30, 2024 and (b) the date which is ten (10) Business Days after Agent receives (i) written notice from Borrower Agent electing to terminate the Covenant Relief Period, which notice may not be delivered prior to November 1, 2023, and (ii) projections demonstrating future compliance with Sections 10.3.1, 10.3.2 and 10.3.3 for each Fiscal Quarter ending on or prior to January 31, 2025 (which projections will be prepared by Borrower Agent in good faith, it being recognized that projections are subject to uncertainties, many of which are beyond the control of the Parent and its Subsidiaries):2025.

<u>Credit and Collection Guidelines</u>: <u>Borrowers'as the context requires, the guidelines applicable to the (a) Borrowers (other than Badcock) or (b) Badcock, in each case, which state the credit criteria used by <u>Borrowers such Borrower</u> in extending credit to Contract Debtors and the collection criteria used by <u>Borrowers such Borrower</u> in collection of amounts due from <u>Contract Debtors</u>.</u>

<u>Credit Card Account</u>: Accounts and all Payment Intangibles together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Borrower resulting from charges by a retail customer of a Borrower on credit or debit cards in connection with the sale of goods by a Borrower, or services performed by a Borrower, in each case in the Ordinary Course of Business.

Credit Card Account Formula Amount: 90% of the Value of Eligible Credit Card Accounts.

<u>Credit Card Agreements</u>: with respect to each Borrower, all agreements now or hereafter entered into by such Borrower with any Credit Card Issuer or any Credit Card Processor.

<u>Credit Card Issuers</u>: any Person (other than a Borrower) who issues or whose members issue credit cards, including, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., VISA, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards approved by Agent in its Permitted Discretion.

<u>Credit Card Processors</u>: with respect to each Borrower, any servicing or processing agent or any financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of such Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

<u>Curative Equity</u>: common equity contributions made to Parent which Parent contributes as additional common equity contributions to any Borrower and which is designated "Curative Equity" by Borrower Agent under **Section 10.4** at the time it is contributed.

<u>Customer Deposit Reserve</u>: as of any measurement date, a reserve equal to the aggregate amount of deposits paid by the customers of any Borrower for the purchase of goods.

Customs Broker Agreement: an agreement, in form and substance reasonably satisfactory to Agent, among an Obligor, a customs broker or other carrier, Agent and Term Loan Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory or other property for the benefit of Agent and Term Loan Agent, and agrees, upon notice from Agent (or Term Loan Agent, as applicable), to hold and dispose of the subject Inventory and other property solely as directed by Agent (or Term Loan Agent, as applicable).

<u>Cut-Off Date</u>: with respect to any pool of Contracts to be transferred to a Securitization Subsidiary pursuant to a Permitted ABS Transaction on any date, the date specified in the documentation with respect to such pool.

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

<u>Daily Simple SOFR</u>: for any day (a "<u>SOFR Rate Day</u>"), a rate per annum equal to SOFR for the day (such day "<u>SOFR Determination Date</u>") that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

Dealer Collateral Access Requirements: Badcock (or any other applicable Borrower) has executed and delivered to Agent an agreement between Badcock (or such other applicable Borrower) and a dealer that provides that (i) all Inventory has been provided to such dealer on consignment, (ii) Borrower or its designee (including any person designated as a third party beneficiary of such agreement) may enter onto the premises of such dealer to inspect, remove, sell or otherwise dispose of the Inventory from such premises without interference by, and free of all liens, claims and demands of, such dealer and (iii) any lender who may from time to time be providing financing to such Borrower secured by such Inventory shall be an intended third-party beneficiary of such agreement (and thereby deemed a designee of Borrower); provided that this shall be deemed to be satisfied if both (x) Badcock (or such other applicable Borrower) and the applicable dealer have entered into a dealer agreement that contains language substantially consistent with the provisions above and (y) the applicable Borrower shall have (I) delivered a written notice (which shall include notice by electronic means to the extent permitted by the applicable dealer agreement) to the applicable dealer that such Borrower has irrevocably designated Agent as an express third-party beneficiary of the applicable dealer agreement, that Agent irrevocably has all of the rights of such a beneficiary under such dealer agreement and that such Borrower retains all right, title and interest in and to the Inventory subject to such dealer agreement and (II) provided written evidence (including by electronic means) to Agent of such delivery.

<u>Debt</u>: as to any Person at a particular time, without duplication, all of the following, to the extent included as indebtedness or liabilities (excluding footnotes) in accordance with GAAP:

- (a) all indebtedness of such Person for borrowed money and all indebtedness of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) the maximum amount of all Contingent Obligations of such Person in respect of the Debt of any other Person of the type set forth in clauses (a), (c), (d) and (f) of this definition of "Debt" which are monetary obligations once they become primary obligations;
  - (c) net obligations of such Person under any Hedging Agreement;
- (d) all obligations of such Person to pay the deferred purchase price of property (other than (i) trade accounts payable and accrued liabilities, in each case in the Ordinary Course of Business and (ii) earn out obligations until such obligations appear in the liabilities section of the balance sheet and have not been paid within 60 days of the date when due);
- (e) Debt of the type set forth in clauses (a), (c), (d) and (f) of this definition of "Debt" (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse but, in the case of limited recourse indebtedness, the amount of such Debt shall be deemed equal to the lesser of the aggregate unpaid amount of such Debt and the fair market value (as reasonably estimated by the Borrower Agent) of the encumbered property;
  - (f) all obligations of such Person in respect of Capital Leases; and
- (g) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock).

For all purposes hereof, (i) the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person and (ii) Debt shall not include (A) amounts owed to Flooring Lenders on account of flooring arrangements paid in the Ordinary Course of Business (B) Permitted Convertible Notes Hedging Agreements, (C) the endorsement of negotiable instruments for collection in the ordinary course of business, (D) prepaid or deferred revenue in the ordinary course of business and (E) any obligations that have been defeased in accordance with the agreements or instruments governing such obligations or where an amount in cash and cash equivalents equal to the aggregate principal amount of such obligations has been deposited with (or pledged for the benefit of) the holders of such obligations (or any trustee or agent acting on their behalf). The amount of any net obligation under any Hedging Agreement on any date shall be deemed to be the swap termination value thereof as of such date.

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

<u>Default Rate</u>: for any Obligation under the Loan Documents (including, to the extent permitted by law, interest not paid when due), 2% plus the highest level of interest set forth in the Applicable Margin grid.

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations hereunder, and such failure is not cured within two (2) Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or generally under other credit facilities, or has made a public statement to that effect; (c) has failed, within three (3) Business Days following request by Agent or any Borrower, to confirm in a manner satisfactory to Agent and Borrowers that such Lender will comply with its prospective funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or Bail-In Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate, disavow, disaffirm or otherwise to reject any contracts or agreements made with such Lender.

<u>Deposit Account Control Agreements</u>: the deposit account control agreements executed by each institution maintaining a Deposit Account for a Borrower, in favor of Agent as security for the Obligations; <u>provided</u> that it is understood and agreed that no Deposit Account Control Agreement shall be required for Excluded Accounts.

<u>Designated Jurisdiction</u>: a country or territory that is the target of a Sanction- (as of the Amendment No. 3 Effective Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea Region of Ukraine and the non-government controlled Zaporizhzhia and Kherson regions of Ukraine, Cuba, Iran, North Korea and Syria).

<u>Disqualified Stock</u>: means, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior Full Payment of the Obligations that are accrued and payable), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the

scheduled payment of dividends in cash or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the <u>latest</u> Revolver Termination Date in effect at the time of issuance thereof (<u>provided</u>, that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock). Notwithstanding the foregoing: (i) any Equity Interests issued to any employee or to any plan for the benefit of employees of the Borrowers or the Subsidiaries or by any such plan to such employees shall not constitute Disqualified Stock solely because they may be required to be repurchased by any Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability and (ii) any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

<u>Distribution</u>: (a) any payment of a distribution, interest or dividend on any Equity Interest and (b) any purchase, redemption, or other acquisition or retirement for value of any Equity Interest, excluding any distribution related to equity compensation plans of Parent and its Subsidiaries.

**Dollars**: lawful money of the United States.

<u>Dominion Accounts</u>: special accounts established by Borrowers at JPM, any Lender or other banks reasonably acceptable to Agent, over which Agent has "springing" exclusive control for withdrawal purposes.

<u>Dominion Trigger Period</u>: the period (a) commencing on the day that (i) an Event of Default occurs; (ii) average Availability during any month is less than 10% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve); or (iii) Availability is at any time less than 7.5% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), and (b) ending on the day on which, during the preceding 60 consecutive days, (x) no Event of Default has existed, (y) average Availability during any month during such period (as reflected in the Loan Account) has at all times been greater than 12.5% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve).

<u>EBITDA</u>: for any period of measurement, determined on a consolidated basis for Parent and its Subsidiaries derived from financial statements prepared in accordance with GAAP, net income, calculated before

- (a) interest expense,
- (b) provision for taxes, including, without limitation, foreign, federal, state, local, franchise, excise and similar taxes, foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations, and including pursuant to any tax sharing arrangements),
  - (c) depreciation and amortization expense,
  - (d) stock based compensation,
  - (e) gains or losses arising from the sale of assets (other than the bulk sale of Contracts) outside the Ordinary Course of Business,
- (f) any extraordinary, unusual or non-recurring gains or losses (in each case, to the extent included in determining net income and including any book loss reserve with respect to Contracts),

- (g) any non-cash asset write-offs relating to construction in process,
- (h) any other non-cash charges, losses or expenses (other than the book loss reserve with respect to Contracts),
- (i) [reserved],
- (j) [reserved],
- (k) any increases in loss reserve resulting solely from a Borrower's repurchase of Contracts subject to a Permitted ABS Transaction occurring after such Permitted ABS Transaction has been deconsolidated from Parent and its Subsidiaries financial statements prepared in accordance with GAAP.
  - (l) any gain or loss from the Ordinary Course of Business sale of residual interests of cash flows subject to a Permitted ABS Transaction,
- (m) business optimization expenses and restructuring charges and reserves (which, for the avoidance of doubt, shall include retention, severance, systems establishment costs, excess pension charges, contract termination costs (including future lease commitments) and costs to consolidate facilities and relocate employees); <u>provided</u> that with respect to each business optimization expense or restructuring charge or reserve, Borrower Agent shall have delivered to Agent a certificate of a Senior Officer of Borrower Agent specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve, as the case may be; <u>provided further</u> that the aggregate amount added back to EBITDA pursuant to this clause (m), in any period shall not exceed 20% of the EBITDA for such period (prior to giving effect to any such add back),
- (n) fees, costs and expenses incurred directly in connection with any transaction, including any equity issuance or offering, Investment, acquisition, disposition, Asset Disposition, recapitalization or incurrence, repayment, amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extension and refinancing of Debt, including such fees, costs and expenses related to this Agreement, the Term Loan Agreement, the Third Lien Term Loan Agreement, the Blade Acquisition (as defined in Amendment No. 3), any Existing Securitization Facility, any other Permitted ABS Transaction, any Permitted HY Notes, any Permitted Convertible Notes or any Refinancing Debt (in each case, (A) not prohibited under this Agreement and (B) whether or not consummated) during such period,
- (o) to the extent reimbursable by third parties pursuant to indemnification provisions, insurance or similar contract, other transaction fees, costs and expenses, <u>provided</u> that Borrower Agent in good faith expects to receive reimbursement for such fees, costs and expenses within the next 4 Fiscal Quarters,
  - (p) costs of legal settlement, fines, judgments or orders,
  - (q) any unrealized losses in the fair market value of any Hedging Agreements,
- (r) (A) any charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholder agreement or any distributor equity plan or agreement and (B) any charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of equity interests held by management, in each case under this clause (B), to the extent such charges, costs, expenses, accruals or reserves are funded with the net cash proceeds of any issuance of Equity Interests, and

(s) the proceeds of business interruption insurance, in an amount not to exceed the earnings for the applicable period that such proceeds are intended to replace; <u>provided</u> that the Borrowers in good faith expect to receive such business interruption proceeds within the next 4 Fiscal Quarters.

EEA Financial Institution: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses (a) or (b) and is subject to consolidated supervision with its parent.

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

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

<u>Electronic Signature</u>: 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.

<u>Electronic System</u>: any electronic system, including e-mail, e-fax, web portal access for such Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

Eligible Assignee: (a) a Lender, an Affiliate of a Lender or an Approved Fund; (b) an assignee approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed) and Agent; or (c) during an Event of Default, any assignee acceptable to Agent in its discretion.

Eligible Contracts: Contracts fulfilling the following requirements:

- (a) such Contract is owned by a Borrower and such Borrower has good title to such Contract;
- (b) except as otherwise agreed by Agent, the Contract complies in all material respects with all of Borrowers' representations and warranties contained herein relating to such Contracts;
  - (c) no payment due under the Contract is more than 60 days contractually delinquent;
- (d) no Borrower has during the term of any Contract granted to the Contract Debtor more than six extensions of time (each no longer than 30 days) for the payment of any sum due under the Contract;
- (e) the Contract or payments due thereunder are not subject to any defense, counterclaim, offset, discount, or allowance other than discounts provided in connection with promotional credit, such as same as cash offerings or deferred interest programs (to the extent of such defense, counterclaim, offset, discount, or allowance);
  - (f) the terms of the Contract and all related documents and Instruments comply in all material respects with all Requirement of Law;

- (g) the Contract Debtor is not an Affiliate or an employee of an Obligor;
- (h) the Contract (i) conforms to the <u>applicable</u> Credit and Collection Guidelines <u>of such Borrower</u> in all material respects and (ii) has conformed at the time of origination in all material respects to <u>Borrowers's uch Borrower's</u> then-applicable underwriting standards (taking into account the permissible exceptions therein);
- (i) the Contract Debtor is not subject to an active or pending Insolvency Proceeding under federal law or any similar proceeding under state law:
- (j) the first scheduled payment pursuant to the terms of the Contract is, or was, due within 45 days following the execution of the Contract and all other payments are scheduled to be made on the same date of each month thereafter;
  - (k) the payment schedule for such Contract is fully amortizing on a monthly basis;
  - (1) with respect to installment Contracts only, the original term of the Contract is not more than 48 months;
- (m) repayment of the Contract is secured by a first priority interest in any merchandise sold in connection therewith, the merchandise subject to such Contract has been delivered and such merchandise has not been repossessed by a Borrower or returned by the Contract Debtor to a Borrower;
- (n) to the extent that the balance of the Contract includes sums representing the financing of "service maintenance plans," such plans are in compliance with all applicable Consumer Finance Laws, including any and all special insurance laws relating thereto;
  - (o) the Contract is not a Modified Contract;
  - (p) the Contract is originated or acquired in the Ordinary Course of Business; and
  - (q) Agent has a first priority perfected Lien in the Contract.

Notwithstanding the above, Eligible Contracts shall not include Contracts which do not satisfy other criteria determined by Agent in its Permitted Discretion.

### Eligible Credit Card Accounts: Credit Card Accounts fulfilling the following requirements:

- (a) such Credit Card Account is owned by a Borrower and such Borrower has good title to such Credit Card Account;
- (b) such Credit Card Account constitutes a "Payment Intangible" or an "Account" (as defined in the UCC) and such Credit Card Account has not been outstanding for more than five (5) Business Days or such longer period as may be approved by Agent;
  - (c) [reserved];
  - (d) [reserved];
- (e) such Credit Card Account is subject to a properly perfected first priority Lien in favor of Agent (it being the intent that chargebacks in the ordinary course by the Credit Card Processor shall not be deemed violative of this clause);

(	f)	[reserved]	:
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- (g) [reserved];
- (h) [reserved];
- (i) [reserved];
- (j) such Credit Card Account has been earned by performance and originated in the Ordinary Course of Business; and
- (k) such Credit Card Account has not been disputed, is without recourse, and with respect to which no claim, counterclaim, offset, or chargeback has been asserted (to the extent of such claim, counterclaim, offset, or chargeback) (it being the intent that chargebacks in the ordinary course by the Credit Card Processor shall not be deemed violative of this clause).

Notwithstanding the above, Eligible Credit Card Accounts shall not include Credit Card Accounts due from Credit Card Issuers or Credit Card Processors (other than Visa, Mastercard, American Express, Diners Club and Discover) which Agent determines in its Permitted Discretion are unlikely to be collected.

Eligible In-Transit Inventory: as of any date of determination (without duplication of other Eligible Inventory), Inventory:

- (a) (i) that has been delivered to a carrier in a foreign port or foreign airport for receipt by an Obligor in the United States within sixty (60) days of the date of determination, but which has not yet been received by an Obligor or (ii) that has been delivered to a carrier in the United States for receipt by an Obligor in the United States within five (5) Business Days of the date of determination, but which has not yet been received by an Obligor;
  - (b) for which the purchase order is in the name of an Obligor and title has passed to an Obligor;
- (c) except as otherwise agreed by Agent, for which the document of title or waybill reflects an Obligor as consignee (along with delivery to an Obligor or its customs broker of the documents of title, to the extent applicable, with respect thereto);
- (d) as to which Agent has control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement); provided, that this clause (d) shall not be applicable to Inventory of Badcock for a period of 45 days (or such longer period as may be agreed in writing by Agent acting in its reasonable discretion) following the Amendment No. 3 Effective Date:
- (e) that is insured in accordance with the provisions of this Agreement and the other Loan Documents, including, without limitation marine cargo insurance; and
  - (f) that otherwise is not excluded from the definition of "Eligible Inventory";

provided that Agent may, upon notice to the Borrowers, exclude any particular Inventory from the definition of "Eligible In-Transit Inventory" in the event that Agent determines that such Inventory is subject to any Person's right or claim which is (or is capable of being) senior to, or *pari passu* with, the Lien of Agent, or may otherwise adversely impact the ability of Agent to realize upon such Inventory; <u>provided, further,</u> that, as of any date of determination, the aggregate amount of the Borrowing Base attributable to Eligible In-Transit Inventory and Eligible Letter of Credit Inventory shall not exceed 10% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve)\$15,000,000.

#### Eligible Inventory: Inventory fulfilling the following requirements:

- (a) such Inventory is finished goods or raw materials, and not work-in-process, packaging or shipping materials, labels, samples, bags, replacement parts or manufacturing supplies;
- (b) such Inventory is neither held on consignment <u>(other than Inventory in the possession of dealers)</u>, nor subject to any deposit or down payment;
  - (c) such Inventory is in new and saleable condition and is not damaged, defective, shopworn or otherwise unfit for sale;
- (d) such Inventory is not obsolete or unmerchantable, and does not constitute returned or repossessed goods (in each case, without duplication of items included in the determined NOLV Percentage or Inventory Reserve);
- (e) such Inventory is in compliance in all material respects with all standards imposed by any Governmental Authority and has not been acquired from a Person subject to any Sanction or any specially designated nationals list maintained by OFAC;
- (f) except as otherwise agreed by Agent, such Inventory complies in all material respects with the representations and warranties herein relating to such Inventory;
- (g) such Inventory is subject to (i) Agent's duly perfected, first priority Lien and (ii) no other Lien other than Permitted Liens (and is not subject to any warehouse receipt or other negotiable Document in which Agent does not have a first priority Lien);
- (h) such Inventory (other than any Eligible Letter of Credit Inventory and Eligible In-Transit Inventory) is within the continental United States, is not in transit (except between locations of Borrowers, so long as (i) the aggregate amount of the Borrowing Base attributable to such Inventory shall not exceed the lesser of (A) 5% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) attributable to Inventory and (B) \$15,000,000 and (ii) such Inventory is in transit for no longer than 10 Business Days), is not consigned to any Person (other than Inventory in the possession of dealers) and is not located in a clearance center or service center;
- (i) such Inventory is not subject to any License or other arrangement that restricts such Borrower's or Agent's right to dispose of such Inventory, unless Agent has received an appropriate Lien Waiver;
- (j) such Inventory (other than any Eligible Letter of Credit Inventory and Eligible In-Transit Inventory) is not located (i) on leased premises or in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate Rent and Charges Reserve has been established in Agent's Permitted Discretion or (ii) at a location owned or leased by a dealer, other than Inventory for which the Borrowers have met the Dealer Collateral Access Requirements or an appropriate Reserve has been established in Agent's Permitted Discretion;
  - (k) such Inventory is reported net of shrinkage accrual;

- (1) such Inventory is reflected in the details of a current perpetual inventory report of Borrowers; and
- (m) such Inventory is insured in compliance with the provisions of Section 8.7.2 hereof: and
- (n) such Inventory is owned by a Borrower and such Borrower has good title to such such Inventory free and clear of all Liens other than Permitted Liens.

Notwithstanding the above, Eligible Inventory shall not include Inventory which do not satisfy other criteria determined by Agent in its Permitted Discretion.

Eligible Letter of Credit Inventory: as of any date of determination (without duplication of other Eligible Inventory), Inventory:

- (a) (i) that has been delivered to a carrier in a foreign port or foreign airport for receipt by an Obligor in the United States within sixty (60) days of the date of determination, but that has not yet been received by an Obligor, or (ii) that has been delivered to a carrier in the United States for receipt by an Obligor in the United States within five (5) Business Days of the date of determination, but which has not yet been received by an Obligor;
- (b) the purchase order for which is in the name of an Obligor, title has passed to an Obligor and the purchase of which is supported by a Letter of Credit issued under either this Agreement or otherwise permitted hereunder having an initial expiry, subject to the proviso hereto, within 120 days after the date of initial issuance of such Letter of Credit; <u>provided</u> that ninety percent (90%) of the maximum Stated Amount of all such Letters of Credit shall not, at any time, have an initial expiry greater than ninety (90) days after the original date of issuance of such Letters of Credit;
- (c) for which the document of title or waybill reflects an Obligor as consignee (along with delivery to an Obligor or its customs broker of the documents of title, to the extent applicable, with respect thereto); <u>provided, that this clause (c) shall not be applicable to Inventory of Badcock for a period of 45 days (or such longer period as may be agreed in writing by Agent acting in its reasonable discretion) following the Amendment No. 3

  Effective Date;</u>
- (d) as to which Agent has control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement);
- (e) that is insured in accordance with the provisions of this Agreement and the other Loan Documents, including, without limitation marine cargo insurance; and
  - (f) that otherwise is not excluded from the definition of "Eligible Inventory";

provided that Agent may, upon notice to the Borrowers, exclude any particular Inventory from the definition of "Eligible Letter of Credit Inventory" in the event that Agent determines that such Inventory is subject to any Person's right or claim which is (or is capable of being) senior to, or *pari passu* with, the Lien of Agent, or may otherwise adversely impact the ability of Agent to realize upon such Inventory; <u>provided</u>, <u>further</u>, that, as of any date of determination, the aggregate amount of the Borrowing Base attributable to Eligible In-Transit Inventory and Eligible Letter of Credit Inventory shall not exceed 10% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve)\$15,000,000.

Eligible Revolving Contract: Eligible Contract under which the applicable Contract Debtor may borrow, repay and re-borrow up to the credit limit thereunder.

<u>Enforcement Action</u>: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

Environmental Laws: Applicable Laws (including programs, permits and guidance promulgated by regulators) relating to public health in respect of exposure to hazardous materials (other than occupational safety and health regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

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

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

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

Equity Interest Pledge Agreement: (a) each pledge agreements executed by Parent, CAIH, CLL and/or any other Obligor in favor of Agent on the Closing Date (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, including by Amendment No. 2) and (b) thereafter, any other pledge agreement (including a joinder to an existing Equity Interest Pledge Agreement) in form and substance reasonably acceptable to Agent, in each case, granting a security interest in the Equity Interests in each of such grantor's Subsidiaries in favor of Agent for the benefit of the Secured Parties.

ERISA: the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

#### ERISA Event:

- (a) Reportable Event with respect to a Pension Plan;
- (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;
- (c) complete or partial withdrawal of an Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization;

- (d) filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the institution of proceedings by the PBGC to terminate a Pension Plan;
  - (e) determination that a Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA;
- (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan;
- (g) imposition of any liability on an Obligor or ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; or
- (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

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

Event of Default: as defined in **Section 11.1**.

Excluded Accounts: any Deposit Account or Securities Account that is (i) a Badcock Store Account, (ii) exclusively used for Tax and Trust Funds or to hold funds constituting collateral for Permitted Liens of the type described in Section 10.2.2, (iii) used to service Third Party Contracts or to hold the proceeds of Third Party Contracts or (iii) containing not more than \$10,000 at any time.

Excluded Assets: (i) motor vehicles subject to certificate-of-title statutes; (ii) Excluded Accounts; (iii) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" (or equivalents thereof) with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law and (iv) any property to the extent that such grant of a security interest of the type otherwise created hereby (A) is prohibited by any Applicable Law, (B) requires a consent not obtained of any Governmental Authority pursuant to such Law or (C) is prohibited by a negative pledge or anti-assignment provision or gives rise to any type of right of termination or default remedy under any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except, in each case, to the extent that such Law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Applicable Law (including Sections 9-406, 9-407, 9-408 or 9 409 of the UCC).

Notwithstanding the foregoing to the contrary, in no event shall any assets included in the determination of the Borrowing Base or the Term Loan Borrowing Base be deemed to be Excluded Assets.

Excluded Collateral: (i) any Excluded Assets, (ii) the Equity Interests of any Foreign Subsidiary to the extent such Equity Interests exceed 65% of the voting power of all classes of Equity Interests of such Foreign Subsidiary entitled to vote and (iii) the Equity Interests of a Subsidiary of a Foreign Subsidiary; provided that no asset shall constitute Excluded Collateral to the extent a Lien or security interest therein is granted to secure the Debt under the Term Loan Facility.

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

Excluded Taxes: (a) Taxes imposed on or measured by a Recipient's net income (however denominated), franchise Taxes and branch profits Taxes (i) as a result of such Recipient being organized under the laws of, or having its principal office or applicable Lending Office located in, the jurisdiction imposing such Tax, or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Revolver Loan or Revolver Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.10**; and (d) U.S. federal withholding Taxes imposed pursuant to FATCA.

Existing Bank Products: Bank Products provided by (a) Agent and/or its Affiliates in existence on the Closing Date and (b) under the Existing Loan Agreement and in existence on the Closing Date consisting of those listed on **Schedule 1.1E(1)**.

Existing Letters of Credit: the issued and outstanding letters of credit as set forth in Schedule 1.1E(2).

Existing Loan Agreement: as defined in the recitals to this Agreement.

Existing Securitization Facilities: (a) the transaction established pursuant to that certain Note Purchase Agreement, dated October 9, 2020, by and among Conn Appliances, Inc., Conn's Receivables Funding 2020-A, LLC, Conn Appliances Receivables Funding, LLC, Conn's, Inc. and the Initial Purchasers (as defined therein); (b) the transaction established pursuant to that certain Note Purchase Agreement, dated November 17, 2021, by and among Conn Appliances, Inc., Conn's Receivables Funding 2021-A, LLC, Conn Appliances Receivables Funding, LLC, Conn's, Inc. and the Initial Purchasers (as defined therein); and (c) the transaction established pursuant to that Note Purchase Agreement, dated July 14, 2022, by and among the Initial Purchasers (as defined therein), Conn Appliances, Inc., Conn's Inc., Conn Appliances Receivables Funding, LLC, and Conn's Receivables Funding 2022-A, LLC and (d) the transaction established pursuant to that Note Purchase Agreement, dated August 7, 2023, by and among the Initial Purchasers (as defined therein), Conn Appliances, Inc., Conn's Inc., Conn Appliances Receivables Funding, LLC, and Conn's Receivables Funding 2023-A, LLC; provided that any reference in this Agreement to "the Existing Securitization Facility" shall be a reference to any of the foregoing.

Extraordinary Expenses: all reasonable and documented out-of-pocket costs, expenses or advances that Agent may incur during the existence an Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor in accordance with the terms of this Agreement and the other applicable Loan Documents, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any

lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances in each case in accordance with this Agreement. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses; provided, that, notwithstanding the foregoing or anything to the contrary contained herein (a) attorneys' fees and expenses shall be limited to the reasonable and documented out-of-pocket fees, charges and disbursements of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent and, in the case of any actual or potential conflict of interest, one (1) additional counsel to all Lenders, taken as a whole and (b) Extraordinary Expenses shall be subject to the limitations set forth herein including the limitations on inspections and appraisals set forth in Section 10.1.1.

<u>FATCA</u>: Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practice adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

<u>Federal Funds Effective Rate</u>: for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; <u>provided</u> that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

Fee Letter: one or more fee letter agreements between Agent and Borrowers dated as of even date herewith.

FILO Tranche: as defined in Section 2.2.

First Amended and Restated Loan Agreement: as defined in the recitals to this Agreement.

First Updated Badcock Report: as defined in Section 8.1.

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

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

<u>Fixed Charge Coverage Ratio: at any date, the ratio of (a) EBITDA minus Unfinanced Capital Expenditures to (b) Fixed Charges, all calculated for the period of four consecutive fiscal quarters ended on such date (or, if such date is not the last day of a Fiscal Quarter, ended on the last day of the Fiscal Quarter most recently ended prior to such date).</u>

Fixed Charges: for any period, without duplication, cash Interest Expense, plus Rentals, plus regularly scheduled principal payments on Debt for borrowed money actually made (which shall exclude any Debt to trade creditors or under vendor financing programs, principal payments on Revolver Loans and, for the avoidance of doubt, any mandatory (but in any event including any scheduled amortization payments), non-regularly scheduled prepayments or repayments), plus expenses for Taxes paid in cash, plus Distributions paid in cash, plus Capital Lease Obligation payments, all calculated for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

Floor: the benchmark rate floor, if any, provided in this Agreement on and after the Amendment No. 1 Effective Date (as of the execution of Amendment No. 1, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt the Floor for each of Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR shall be 0.00%.

<u>Flooring Intercreditor Agreement</u>: each intercreditor agreement entered into by Agent and a Flooring Lender, prior to the Amendment No. 2 Effective Date and, following the Amendment No. 2 Effective Date, each intercreditor agreement entered into by a Flooring Lender, Agent and, if applicable, the Term Loan Agent, in each case in form and substance reasonably satisfactory to Agent.

Flooring Lender: any lender which provides financing for the purchase of Inventory by a Borrower.

FLSA: the Fair Labor Standards Act of 1938.

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

Forecasting Period: as defined in Section 10.1.16(b).

Foreign Lender: any Lender that is not a U.S. Person.

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

<u>Foreign Subsidiary</u>: a Subsidiary of Parent that is a "controlled foreign corporation" under Section 957 of the Code, such that a guaranty by such Subsidiary of the Obligations or a Lien on the assets of such Subsidiary to secure the Obligations would result in material tax liability to Borrowers.

<u>Fronting Exposure</u>: a Defaulting Lender's interest in LC Obligations, Swingline Loans and Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

Full Payment: with respect to any Obligation (a) the full cash payment thereof (other than contingent obligations for which no claim or demand has been made), including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are LC Obligations or contingent in nature (other than contingent obligations (other than LC Obligations) for which no claim or demand has been made), Cash Collateralization thereof (or delivery of a standby letter of credit reasonably acceptable to Agent in its discretion, in the amount of required Cash Collateral). A Full Payment of Revolver Loans shall not be deemed to have occurred unless all Revolver Commitments related to such Revolver Loans are terminated or have expired.

<u>GAAP</u>: generally accepted accounting principles in effect in the United States from time to time. If Borrower Agent notifies Agent that it is required to report under the International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto ("<u>IFRS</u>") or has elected to do so through an early adoption policy, upon the execution and effectiveness of an amendment hereof in accordance therewith to accommodate such change in accordance with **Section 1.2**, "GAAP" means international financial reporting standards pursuant to IFRS, it being understood and agreed that all financial statements shall be prepared in accordance with IFRS.

Gift Card Reserve: a reserve equal to 50% of the face amount of gift cards which are issued by a Borrower and are outstanding as of any measurement date.

Governmental Approval: any authorization, consent, approval, license or exemption of, or any registration or filing with, any Governmental Authority.

<u>Governmental Authority</u>: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, or regulatory authority (including the Consumer Financial Protection Bureau, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

Gross Cash Collections: total Contracts payments received from Contract Debtors and applied to such Contracts during any applicable period.

Gross Contract Payments: as of the date of determination, (i) with respect to an interest-bearing Contract, the outstanding balance thereof including all accrued but unpaid interest, fees and other charges (including administrative fees and escrow fees but excluding late charges), owing by the Contract Debtor, and (ii) with respect to a precomputed Contract, the outstanding balance thereof, including all unearned interest, fees, and other charges (including administrative fees and escrow fees but excluding late charges), owing by the Contract Debtor.

Guarantor Payment: as defined in Section 5.11.3(b).

<u>Guarantors</u>: Parent, CAIH, CAIC, CLL, RTO and each other Person who guarantees payment or performance of the Obligations pursuant to the Guaranty.

<u>Guaranty</u>: (a) the guaranty agreement executed by the Guarantors in favor of Agent on the Closing Date (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, including by Amendment No. 2) and (b) thereafter, any other guaranty (including a joinder to any existing Guaranty) in form and substance reasonably acceptable to Agent.

Hedging Agreement: any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one (1) or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or credit spread transaction, repurchase transaction, reserve repurchase transaction, securities lending transaction, weather index transaction, spot contracts, fixed price physical delivery contracts, or any similar transaction or any combination of these transactions, in each case whether or not exchange traded; <u>provided</u> that no phantom stock or other employee benefit or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management or consultants of Parent, Borrowers or any of their Subsidiaries shall be a Hedging Agreement.

Increased Reporting Period: at any time after (a) an Event of Default occurs, (b) average Availability during any month is less than 12.5% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), or (c) Availability (as reflected in the Loan Account) is less than 10% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) at any time for four or more consecutive days. When in place, such Increased Reporting Period shall be deemed continuing so long as (i) such Event of Default has not been waived, and/or (ii) if the Increased Reporting Period arises as a result of Borrowers' failure to achieve Availability as required hereunder, until average Availability during any month has exceeded 15% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) for ninety (90) consecutive days, in which case an Increased Reporting Period shall no longer be deemed to be continuing for purposes of this Agreement; provided that an Increased Reporting Period shall be deemed continuing (even if an Event of Default is no longer continuing and/or Availability exceeds the required amount for ninety (90) consecutive days) at all times after an Increased Reporting Period has occurred and been discontinued on two (2) occasions after the Closing Date.

<u>Indemnified Taxes</u>: (a) Taxes, other than Excluded Taxes, imposed on or relating to any payment of an Obligation; and (b) to the extent not otherwise described in clause (a), Other Taxes.

<u>Indemnitees</u>: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and JPM Indemnitees.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

<u>Intellectual Property</u>: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all Licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

<u>Intellectual Property Claim</u>: any claim or assertion (whether in writing, by suit or otherwise) that a Borrower's or its Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Interest Coverage Ratio: the ratio, determined as of the end of any Fiscal Quarter on a consolidated basis for Parent and its Subsidiaries (including EBITDA and Interest Expense under the Existing Securitization Facility and any other Permitted ABS Transactions whether or not consolidated in Parent's financial statements), of (a) EBITDA divided by 2 in the case of **Section 10.3.1(a)** and **4** in the case of **Section 10.3.1(b)** to (b) Interest Expense.

Interest Expense: with respect to Parent and its Subsidiaries on a consolidated basis, for any period of measurement, the interest expense (net of interest income to the extent not included in the calculation of EBITDA) for such period in each case paid or payable in cash (excluding (i) the amortization of debt discounts, (ii) the amortization of all closing fees incurred with respect to the initial closing of, any amendment to, or redemption or termination of (a) an Existing Securitization Facility or any other Permitted ABS Transaction, (b) any Permitted HY Notes or any Permitted Convertible Notes, (c) the Loan Documents and (d) any other documents evidencing Debt payable in connection with the incurrence of Debt to the extent included in interest expense, and (iii) backup servicing fees, field exam and other non-interest

expenses but only if such expenses are otherwise deducted from ordinary operating expenses or the definition of EBITDA for covenant calculation purposes, and including (x) commissions, discounts and other fees and charges incurred in respect of letters of credit, (y) the portion of any payments or accruals with respect to Capital Leases allocable to interest expense and (z) net payments and receipts (if any) pursuant to interest rate Hedging Agreements).

Interest Payment Date: (a) with respect to any Base Rate Loan (other than a Swingline Loan) of a given Class, the first day of each month and the Revolver Commitment Termination Date in respect of such Class, (b) with respect to any RFR Revolver Loan of a given Class, (i) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (ii) the Revolver Commitment Termination Date in respect of such Class, (c) with respect to any Term Benchmark Revolver Loan of a given Class, the last day of each Interest Period applicable to the Borrowing of which such Term Benchmark Revolver Loan is a part and, in the case of a Term Benchmark Borrowing 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 Revolver Commitment Termination Date in respect of such Class and (d) with respect to any Swingline Loan of a given Class, the day that such Loan is required to be repaid and the Revolver Termination Date in respect of such Class.

Interest Period: as defined in **Section 3.1.3**.

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

<u>Inventory Formula Amount</u>: the lesser of (i) 33.33% of the Revolver Commitments then in effect; or (ii) 90% of the NOLV Percentage of the Value of Eligible Inventory.

Inventory Reserve: reserves established by Agent in its Permitted Discretion to reflect factors that may negatively impact the Value of Eligible Inventory and are not reflected in the determination of the NOLV Percentage and without duplication of items addressed in the eligibility criterion of Eligible Inventory. Without limiting the generality of the foregoing, Inventory Reserves may include (but are not limited to) reserves based on change in salability, obsolescence, seasonality, theft, imbalance, change in composition or mix, markdowns and vendor chargebacks.

<u>Investment</u>: as to any Person, an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests of another Person, or a loan or advance of money, or capital contribution to, another Person.

IRS: the United States Internal Revenue Service.

<u>Issuing Bank</u>: JPM, Regions Bank, MUFG Bank, LTD. and any other Lender acceptable to Borrower Agent including any Lending Office of JPM or such Lender, or any replacement issuer appointed pursuant to **Section 2.3.4**.

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

JPM: as defined in the Preamble to this Agreement.

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

<u>Junior Lien Debt</u>: Debt (including the Term Loan Obligations) secured by Liens that are contractually subordinated to the Liens securing the Obligations pursuant to the terms of a customary intercreditor agreement or other lien subordination agreement in form and substance reasonably satisfactory to Agent.

LC Application: an application by Borrower Agent to Issuing Bank for issuance of a Letter of Credit, in form and substance satisfactory to Issuing Bank and Agent.

LC Conditions: upon giving effect to issuance of a Letter of Credit, (a) the conditions in **Section 6.2** are satisfied; (b) total LC Obligations do not exceed the Letter of Credit Subline, Revolver Usage does not exceed the Borrowing Base, CAI Revolver Usage does not exceed the CAI Borrowing Base and CCI Revolver Usage does not exceed the CCI Borrowing Base; (c) the Letter of Credit and payments thereunder are denominated in Dollars or other currency reasonably satisfactory to Agent and Issuing Bank; and (d) the form of the proposed Letter of Credit is reasonably satisfactory to the Issuing Bank.

LC Documents: all documents, instruments and agreements (including LC Requests and LC Applications) delivered by Borrowers or any other Person to Issuing Bank or Agent in connection with any Letter of Credit.

LC Obligations: the sum of (a) all amounts owing by Borrowers for any drawings under Letters of Credit; and (b) the Stated Amount of all outstanding Letters of Credit.

LC Request: a request for issuance of a Letter of Credit, to be provided by Borrower Agent to Issuing Bank in form reasonably satisfactory to Agent and Issuing Bank.

LCT Election: as defined in Section 1.8.

LCT Test Time: as defined in Section 1.8.

Legal Action: any judicial action, suit, or proceeding at law, in equity, or before any Governmental Authority.

 $\underline{\text{Lender Indemnitees}} : \underline{\text{Lenders}} \underline{\text{each Lender and its Affiliates and its}} \text{ and their } \underline{\underline{\text{respective}}} \text{ officers, directors, employees, } \underline{\text{Affiliates,}} \text{ agents and attorneys.}$ 

<u>Lenders</u>: lenders party to this Agreement, including Agent in its capacity as a provider of Swingline Loans and any Person who hereafter becomes a "<u>Lender</u>" pursuant to an Assignment and Acceptance, in each case including any Lending Office of any Lender.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by Agent, a Lender or Issuing Bank by notice to Borrower Agent and, if applicable, Agent.

<u>Letter of Credit</u>: any standby or documentary letter of credit, foreign guaranty, documentary bankers acceptance or similar instrument issued by Issuing Bank for the account or benefit of a Borrower or Affiliate of a Borrower.

Letter of Credit Subline: means, at any time, an amount equal to the lesser of (a) \$40,000,000, as such amount may be increased to an amount not to exceed \$100,000,000 to the extent requested by the Borrower Agent and consented to by any Issuing Bank (with notice to Agent) that is willing to provide a Letter of Credit in excess of the then existing Letter of Credit Subline, and (b) the aggregate amount of the Revolver Commitments as in effect at such time. The Letter of Credit Subline is part of, and not in addition to, the Revolver Commitments.

Leverage Ratio: the ratio, determined as of the end of any Fiscal Quarter for Parent and its Subsidiaries, on a consolidated basis, of (a) the result of (i) all items that would be included as liabilities on a balance sheet in accordance with GAAP (but excluding, for avoidance of doubt, any lease which is not treated as a Capital Lease in accordance with the definition of "Capital Lease", which exclusion shall be made by reducing the amount of such liabilities on the balance sheet by an amount equal to the remainder of (1) the sum of current and long term "operating leases" minus (2) deferred rent) as of the last day of such Fiscal Quarter (including debt under the Existing Securitization Facility and any other Permitted ABS Transactions whether or not included as a liability on the balance sheet), minus (ii) the sum of Qualified Cash and ABS Qualified Cash as of such date of measurement to (b) Tangible Net Worth as of the last day of such Fiscal Quarter.

<u>License</u>: any written license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or <u>dispositionAsset Disposition</u> of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

<u>Lien</u>: with respect to any asset, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as the foregoing)), in each case, relating to such asset and in the nature of security.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis à vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

<u>Limited Condition Transaction</u>: means (a) any Permitted Acquisition that the Parent or one or more of its Subsidiaries has contractually committed to consummate, the terms of which do not condition the Parent's or its Subsidiary's, as applicable, obligations to close such Permitted Acquisition on the availability of third-party financing and (b) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Debt requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

<u>Limited Repurchase Obligations</u>: any obligation of a Person that is a seller of Contracts directly or indirectly to a Securitization Subsidiary to repurchase such Contracts arising as a result of a breach of a representation, warranty or covenant, including as a result of a Contract or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

<u>Liquidity</u>: the sum of, as of any date of determination, (a) cash and Cash Equivalents of Parent and the Borrowers which are not subject to any Liens other than the Liens permitted under **Section 10.2.2(a)**, (c), (i), (x) and (ee), plus (b) Availability.

Loan Account: the loan account established by each Lender on its books pursuant to Section 5.8.

<u>Loan Documents</u>: this Agreement, Other Agreements, Security Documents and the Flooring Intercreditor Agreements and each other agreement or instrument designated by the Borrower Agent and Agent as a "Loan Document".

Loan Year: each 12-month period commencing on the Closing Date or an anniversary thereof.

Managed Contract Portfolio: the Owned Contract Portfolio and ABS Contract Portfolio.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: (a) a material adverse effect on the business, operations, Properties or financial condition of Obligors, taken as a whole; (b) a material adverse effect on the validity or enforceability of the Loan Documents or the rights or remedies of Agent and the Lenders thereunder, taken as a whole; or (c) a material adverse impairment of the ability of the Obligors, collectively, to perform any obligations under the Loan Documents, including repayment of any Obligations, or on the ability of Agent or any Lender to enforce or collect any Obligations under the Loan Documents or to realize upon any Collateral.

<u>Material Contract</u>: any agreement or arrangement to which any Obligor is a party (other than the Loan Documents) (a) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (b) that relates to Debt with an aggregate outstanding principal amount of \$35,000,000 or more.

Modified Contract: a Contract which, at any time, was in payment default for more than 60 days and such payment default was cured by execution of a new Contract in order to adjust, amend, or reduce the payment terms of the original Contract.

Moody's: Moody's Investors Service, Inc.

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

Net Balance: as of the date of determination, the Gross Contract Payments of a Contract less all unearned interest owing by the Contract Debtor.

Net Charge-Off: for any period, the aggregate amount of all unpaid payments due under Contracts which have been charged off during such period, as reduced by the amount of unearned interest, unearned insurance, accrued but unpaid interest, unpaid late charges, repossession recoveries, cash recoveries and amounts recovered in cash from other third parties, with respect to Contracts which had been charged off during previous periods or during such period.

Net Charge-Off Percent: the percent, calculated as of the last day of each month, equal to the (a) aggregate amount of Net Charge-Offs for the 3 preceding months then ended <u>multiplied by</u> 4, <u>divided by</u> (b) the sum of the Net Balance owing under all Contracts outstanding during the trailing 3 months then ended, <u>divided by</u> 3.

Net Eligible Contract Payments: as of the date of determination, the remainder of (a) the Gross Contract Payments owing under all Eligible Contracts, minus (b) the sum of (i) the aggregate amount, to the extent included within the definition of Gross Contract Payments, of all unearned interest, fees, and charges applicable to the Eligible Contracts and (ii) the unearned insurance commissions, in each case, as presented on the books and records of Borrowers.

<u>Net Proceeds</u>: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by a Borrower or any of its Subsidiaries in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed.

NOLV Percentage: the net orderly liquidation value of Inventory, expressed as a percentage of the Value of such Inventory, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrowers' Inventory performed by an appraiser and on terms reasonably satisfactory to Agent.

Non-Consenting Lender: any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders, or all affected Lenders, or Supermajority Lenders in accordance with the terms of **Section 14.1.1** and (ii) has been approved by the Required Lenders.

No. 3. Non-Extending Class: refers to the Revolver Commitments, Revolver Loans and/or Obligations of the Lenders that are not party to Amendment

Notice of Borrowing: a request by Borrower Agent for a Borrowing of Revolver Loans, in form reasonably satisfactory to Agent.

Notice of Conversion/Continuation: a request by Borrower Agent for conversion or continuation of any Revolver Loan as a Term Benchmark Revolver Loan, in form reasonably satisfactory to Agent.

NYFRB: the Federal Reserve Bank of New York.

NYFRB Rate: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

NYFRB's Website: the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

Obligations: all (a) principal of and premium, if any, on the Revolver Loans, (b) LC Obligations and other obligations of Obligors with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under the Loan Documents, (d) Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, in each case, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: each Borrower, Guarantor or other Person that is liable for payment of any Obligations or that has granted a Lien on its assets in favor of Agent to secure any Obligations.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Ordinary Course of Business; the ordinary course of business of any Borrower or any of its Subsidiaries or consistent with past practices,

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, 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 Person.

Original Loan Agreement: as defined in the recitals to this Agreement.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: each Revolver Note, LC Document, Fee Letter, Permitted ABS Intercreditor Agreement, the ABL Intercreditor Agreement or other subordination or intercreditor agreement entered into by Agent in connection with Debt permitted under Section 10.2.1(b)(i) or, if applicable, Section 10.2.1(aa) and Liens permitted under Section 10.2.2(cc).

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Revolver Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 13.4(c)).

Overadvance: as defined in Section 2.1.5.

Overnight Bank Funding Rate: for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

Owned Contract Portfolio: portfolio of Contracts subject to Agent's Lien pursuant to the Security Documents.

Parent: as defined in the Preamble to this Agreement.

Participant: as defined in Section 13.2.1.

Past Due Percent: the percent, calculated as of the beginning of the first day of each month, equal to (a) the aggregate amount of Gross Contract Payments owing under all Contracts (excluding Contracts charged-off), as to which any portion of an installment due thereunder is more than 30 days past due as determined on a contractual basis as of the last day of the month immediately preceding the date of calculation, <u>divided by</u> (b) the aggregate amount of Gross Contract Payments owing under all Contracts (excluding Contracts charged-off) as of the last day of the month immediately preceding the date of calculation.

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment: as defined in Section 12.9.2.

Payment Conditions: with respect to (a) any Permitted Distribution, incurrence of Debt, payment of Debt, Permitted Acquisition or other Investment permitted hereunder, so long as immediately before and after giving effect thereto, (i) no Event of Default exists and (ii) the sum of (A) Qualified Cash plus (B) Availability is greater than 25% of the sum of (a) Qualified Cash plus (b) the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) and (b) in the case of a Permitted Distribution, so long as (i) immediately before and after giving effect thereto, no Event of Default exists and (ii) financial statements and Compliance Certificates delivered by Parent to Agent pursuant to Section 10.1.2 for the most recent Fiscal Quarter ended reflect that Parent has achieved, on a Pro Forma Basis, an Interest Coverage Ratio of greater than or equal to 1.75:1.00 for the trailing two (2) Fiscal Quarters ending immediately prior to giving effect to such Distribution or payment.

Payment Item: each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

Payment Notice: as defined in Section 12.9.2.

PBGC: the Pension Benefit Guaranty Corporation.

<u>Pension Funding Rules</u>: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in, for plan years ending prior to the Pension Protection Act of 2006 effective date, Section 412 of the Code and Section 302 of ERISA, both as in effect prior to such act, and thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

<u>Pension Plan</u>: any employee pension benefit plan (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

<u>Permitted ABS Agent</u>: with respect to a Permitted ABS Transaction, the entity acting as trustee, collateral agent or other secured party or pledgee under such Permitted ABS Transaction.

<u>Permitted ABS Documents</u>: the Permitted ABS Financing Agreements, the Permitted ABS Purchase Agreements and all documents, instruments and agreements executed in connection therewith.

<u>Permitted ABS Financing Agreement</u>: an agreement entered into in connection with a Permitted ABS Transaction, including an indenture, by and between a Securitization Subsidiary and a Permitted ABS Agent, whereby a Securitization Subsidiary grants a security interest in, or deposits into trust, Contracts.

<u>Permitted ABS Intercreditor Agreement</u>: an intercreditor agreement by and among Permitted ABS Agent, Agent and, if applicable, Term Loan Agent.

<u>Permitted ABS Purchase Agreement</u>: any agreement by and between one or more Borrowers and a Securitization Subsidiary in connection with a Permitted ABS Transaction for the purpose of effecting one or more transfers of Contracts.

Permitted ABS Transaction: (A) any Existing Securitization Facility or (B) any other transaction pursuant to which a direct or indirect Subsidiary of Parent acquires or has the right to acquire by capital contribution or sale Contracts originated or acquired by one or more Borrowers or other direct or indirect Subsidiaries of Parent or a Borrower, which such Subsidiary acquires or has the right to acquire either (i) from time to time or (ii) in one or more contemporaneous transfers that taken together constitute one transaction, in either case for the purpose of pooling such assets and pledging or granting a security interest in such pool to secure indebtedness (whether in the form of a term or revolving loan or the issuance of securities, certificates or notes, including term notes or variable funding notes) or depositing such pool with a trustee for the purpose of issuing certificates or other instruments representing a beneficial interest in the assets of a trust, in each case so long as:

- (a) on each day on which a Borrower transfers a pool of Contracts thereunder, after giving effect to such transfer and any prepayment of the aggregate principal amount of Revolver Loans, the Revolver Usage shall not exceed the Borrowing Base;
- (b) such transactions are entered into without recourse to any Obligor, other than Limited Repurchase Obligations and customary representations, warranties, covenants and indemnities made in connection with such transactions;
  - (c) such transaction is on current market terms for facilities of such type (as reasonably determined by Borrowers);
- (d) upon the closing of such transaction or within 10 days (or such later date as shall be reasonably acceptable to Agent) thereafter, Agent has received all of the material documentation related to such transaction; and
  - (e) in the case of any Permitted ABS Transaction entered into after the Closing Date:
- (i) if (and only if) a Dominion Trigger Period exists before or would exist, after giving effect to any transfer of a pool of Contracts under such transaction, the net cash proceeds of such Permitted ABS Transaction payable to the Borrowers shall be used to repay an aggregate principal amount of Revolver Loans outstanding in an amount equal to the net cash proceeds of such Permitted ABS Transaction received by the Borrowers;

(ii) if such Permitted ABS Transaction is a "revolving" transaction, for each transfer of a pool of Contracts thereunder, Agent has received (x) evidence reasonably acceptable to it that such pool of Contracts is randomly selected as of the related Cut-Off Date from the Contracts owned by the Obligors that are eligible to be advanced against under such Permitted ABS Transaction at such time (it being understood that, for purposes of determining whether such pool of Contracts is randomly selected, any Securitized Contracts with respect to any other Permitted ABS Transaction that are assigned and transferred to a Borrower upon the termination of such Permitted ABS Transaction shall be disregarded) and (y) a pro forma Borrowing Base Report; and

(iii) if such Permitted ABS Transaction is not a "revolving" transaction, (x) if fewer than 85% of the Contracts owned by the Obligors at such time that are eligible to be contributed or sold to a Securitization Subsidiary as part of such Permitted ABS Transaction are contributed or sold to a Securitization Subsidiary as part of such Permitted ABS Transaction, Agent has received evidence reasonably acceptable to it that (A) the pool of Contracts to be transferred pursuant to such Permitted ABS Transaction is randomly selected as of the related Cut-Off Date from the Contracts owned by the Obligors that are eligible to be advanced against under such Permitted ABS Transaction (it being understood that, for purposes of determining whether such pool of Contracts is randomly selected, any Securitized Contracts with respect to any other Permitted ABS Transaction that are assigned and transferred to a Borrower upon the termination of such Permitted ABS Transaction shall be disregarded) or (B) immediately after giving effect to such Permitted ABS Transaction the characteristics of the pool of Contracts (excluding delinquent and charged-off Contracts and Contracts that are not eligible to be advanced against under the terms of such Permitted ABS Transaction) that remain part of the Collateral shall, in Agent's reasonable determination, remain consistent in all material respects with the pool of Contracts (excluding delinquent and charged-off Contracts and Contracts that are not eligible to be advanced against under the terms of such Permitted ABS Transaction) that was part of the Collateral as it existed immediately prior to such Permitted ABS Transaction and (y) Borrower Agent shall deliver to Agent a pro forma Borrowing Base Report.

#### Permitted Acquisition: any Acquisition as long as:

- (a) the assets, business or Person being acquired is located or organized within the United States;
- (b) the Acquisition is consensual;
- (c) the Payment Conditions are satisfied with respect to such Acquisition;
- (d) Obligors are in compliance with the financial covenants set forth in Section 10.3 after giving effect to such Acquisition on a Pro Forma Basis; and
- (e) Parent delivers to Agent a certificate stating that the Acquisition is a "Permitted Acquisition" and demonstrating compliance with the foregoing requirements.

## Permitted Asset Disposition: an Asset Disposition that is:

- (a) a sale of Inventory in the Ordinary Course of Business;
- (b) a disposition an Asset Disposition of Equipment (other than those set forth in clause (e) below), that, in the aggregate during any 12-month period, has a book value of \$20,000,000 or less;

- (c) a disposition an Asset Disposition of Inventory or Property that is obsolete, worn out, unmerchantable or otherwise unsalable in the Ordinary Course of Business;
  - (d) a termination of a lease of real or personal Property that is not necessary for the Ordinary Course of Business;
- (e) a disposition an Asset Disposition of any Borrower's Real Estate and related Equipment affixed thereto in connection with a sale or sale-leaseback transaction;
  - (f) a Permitted Contract Transfer;
  - (g) an exchange of like property for use in a similar business of Parent and its Subsidiaries;
  - (h) a sale, lease, assignment, sublease, license or sublicense of any real or personal property in the Ordinary Course of Business;
- (i) exercise of termination rights under any lease, sublease, license, sublicense, concession or other agreement or pursuant to buy/sell arrangements under any joint venture or similar agreement or arrangement;
- (j) the grant in the Ordinary Course of Business of any licenses or sublicenses of Intellectual Property (including, for the avoidance of doubt, licenses or sublicenses of Intellectual Property to dealers in the Ordinary Course of Business);
- (k) a discount of Inventory or notes receivable or the conversion of accounts receivable to notes receivable in the Ordinary Course of Business;
- (l) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind;
  - (m) a disposition in connection with the outsourcing of services in the Ordinary Course of Business;
  - (n) termination or unwinding of Hedging Agreements not resulting in an Event of Default pursuant to Section 11.1(f);
- (o) a sale or other disposition of Equity Interests under any compensation plan or agreement and other sales of Equity Interests which do not result in a Change of Control;
- (p) an Asset Disposition constituting a merger, combination, consolidation, liquidation, wind-up, dissolution or the disposition of all or substantially all of the assets of any Borrower or its Subsidiaries, in each case as permitted under Section 10.2.9(a);
- (q) sales of accounts receivable in connection with the collection, settlement or compromise thereof or in an Insolvency Proceeding of the relevant account debtor, in each case, in the Ordinary Course of Business;
- (r) to the extent constituting a disposition an Asset Disposition, a Permitted Distribution or Investments permitted by the definition of "Restricted Investment" (other than clause (m) of the definition of "Restricted Investment");

- (s) a disposition an Asset Disposition of cash and Cash Equivalents in the Ordinary Course of Business; and
- (t) approved in writing by the Required Lenders, such approval not to be unreasonably withheld, delayed or conditioned.

#### Permitted Contingent Obligations: Contingent Obligations:

- (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business;
- (b) arising from Hedging Agreements permitted hereunder;
- (c) existing on the Closing Date, and any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing which does not increase the amount of such Contingent Obligation except by an amount equal to accrued and unpaid interest, penalties and premiums (including tender premiums) and defeasance costs, in each case on the primary obligation, and fees, commissions and expenses related to any such amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing of the Contingent Obligation and the underlying primary obligation;
- (d) incurred in the Ordinary Course of Business with respect to bids, trade contracts (other than for Borrowed Money), leases (other than Capital Leases), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including Debt in respect of letters of credit, bank guarantees or similar instruments in lieu of such items to support the issuance thereof);
- (e) arising from agreements of Parent and its Subsidiaries providing for indemnification, adjustment of purchase or acquisition price or similar obligations (including without limitation earn-out obligations), in each case, incurred or assumed in connection with any acquisition or Asset Disposition of any business or assets (including Equity Interests of Subsidiaries) of any Subsidiary of Parent permitted by Section 10.2.5 or Section 10.2.6, other than Contingent Obligations of Debt incurred by any Person acquiring all or any portion of such business or assets for the purpose of financing such acquisition;
  - (f) arising under the Loan Documents and the Term Loan Documents;
- (g) relating to indemnification, guaranty or repurchase obligations arising under Permitted ABS Documents or Third Party Contract sales; and
- (h) (i) all other Contingent Obligations in an aggregate amount not to exceed \$30,000,000 at any time outstanding and (ii) any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing which does not increase the outstanding principal amount thereof except by an amount equal to accrued and unpaid interest, penalties and premiums (including tender premiums) and defeasance costs on the underlying obligation, and fees, commissions and expenses related to such any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing.

<u>Permitted Contract Transfer</u>: (a) a sale or other transfer by a Borrower to a Securitization Subsidiary of Contracts pursuant to the Permitted ABS Purchase Agreement, (b) a sale or other transfer of Contracts between Borrowers in connection with a Permitted ABS Transaction, (c) a sale or other transfer of Contracts between two (2) Securitization Subsidiaries in connection with a Permitted ABS Transaction, (d) a capital contribution of Contracts by a Borrower to a Securitization Subsidiary in connection with a Permitted ABS Transaction with the consent of Agent and (e) the granting by a Securitization Subsidiary to a Permitted ABS Agent of a security interest in Contracts subject to a Permitted ABS Transaction.

Permitted Convertible Notes: senior and/or subordinated convertible debt securities of Parent (a) that are unsecured, (b) that may be guaranteed by any or all of the Subsidiaries of Parent, including, without limitation, any Borrower, (c) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common stock of the Company, cash or a combination thereof as the Company may elect or (iii) an acceleration upon an event of default will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement), (d) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by Parent in good faith) and (e) have a scheduled maturity date at least 91 days later than the latest Revolver Termination Date (as in effect on the date of issuance of the Permitted Convertible Notes).

Permitted Convertible Notes Hedging Agreements: (a) a Hedging Agreement pursuant to which Parent acquires a call or a capped call option requiring the counterparty thereto to deliver to Parent shares of common Equity Interests of Parent, the cash value of such shares or a combination thereof from time to time upon exercise of such option and (b) if entered into by Parent in connection with any Hedging Agreement described in clause (a) above, a Hedging Agreement pursuant to which Parent issues to the counterparty thereto warrants to acquire common Equity Interests of Parent, in each case, entered into by Parent in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes; provided that the terms, conditions and covenants of each such Hedging Agreement shall be such as are typical and customary for hedging agreements of such type (as determined by Parent in good faith).

Permitted Discretion: a determination made by Agent in the exercise of its reasonable credit judgment, exercised in good faith in accordance with customary business practices for comparable asset-based lending transactions in the retail and consumer finance industry, as applicable to the relevant component of the Borrowing Base and as it relates to the establishment of reserves or eligibility criteria, shall require that the amount of any such reserve or category of ineligibility so established or the effect of any adjustment shall, as it relates to a reasonable quantification (as reasonably determined by Agent in good faith) of the incremental dilution of the Borrowing Base attributable to such contributing factors and, as it relates to an ineligible category, be reasonably related (as reasonably determined by Agent in good faith) to facts or circumstances discovered by Agent after the Closing Date or a material change in facts or circumstances that existed and were discovered by Agent prior to the Closing Date.

# Permitted Distribution:

- (a) Distributions declared and made by Parent or any of its Subsidiaries solely for the purpose of making, or permitting Parent to make, payments on account of obligations owed under any Permitted HY Notes and Permitted Convertible Notes which payments are permitted to be made under **Section 10.2.8(c)**;
  - (b) Distributions payable solely in Equity Interests of Parent;
  - (c) Distributions consisting of or constituting a Permitted Tax Distribution;

- (d) Distributions consisting of issuances of Equity Interests deemed to occur upon the exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;
- (e) Distributions by Borrowers, or by Borrowers to Parent to enable Parent, to purchase or redeem fractional shares (or cash payments in lieu thereof) of Equity Interests in connection with the exercise of warrants, options, other rights to acquire Equity Interests or other securities convertible or exchangeable for Equity Interests of Parent;
- (f) Distributions as shall be necessary to allow Parent to pay (i) operating expenses in the Ordinary Course of Business and other corporate overhead, legal, accounting and other professional fees and expenses (including, without limitation, those owing to third parties plus any customary indemnification claims made by directors, officers, employees, members of management or consultants of Parent), (ii) fees and expenses related to any debt or equity offering, Investment or acquisition permitted hereunder (in each case, whether or not successful), (iii) franchise or similar taxes and other fees and expenses required in connection with the maintenance of its existence and its ownership of Borrower, (iv) the consideration to finance any Investment permitted hereunder (provided that such Distribution under this clause (f)(iv) shall be made substantially concurrently with the closing of such Investment), (v) customary salary, bonus, severance, indemnification obligations and other fees, benefits or expense reimbursements payable to directors, officers, employees, members of management and consultants of Parent and any payroll, social security or similar taxes thereof, (vi) any incremental state or local income or franchise tax (net of any federal income tax benefits, as determined in good faith by Parent) payable by Parent as a result of any Permitted Distribution to such entity permitted hereby, and (vii) any amounts permitted to be paid pursuant to clauses (b), (c), (d), (e) and (g) of Section 10.2.17;
- (g) Distributions made or expected to be made by Borrowers in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management or consultants of Parent or any of its Subsidiaries (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of the foregoing) and any repurchases of Equity Interests in consideration of such payments including demand repurchases in connection with the exercise of stock options;
- (h) Distributions made within 60 days after the date of declaration thereof, if at the date of declaration such Distribution would have complied with the provisions of this Agreement;
  - (i) Distributions made by any Subsidiary of CAI to the holders of its Equity Interests on a pro rata basis according to their interests; and
- (j) so long as the Covenant Relief Period is not in effect, other Distributions which satisfy the Payment Conditions as of the date such Distribution is paid.

Permitted Holders: (a) Franchise Group Newco BHF, LLC, (b) Freedom VCM Interco Holdings, Inc., (c) each of the respective Affiliates or any a "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934) of the Persons listed in clauses (a) and (b) and (c) the shareholders of Parent that, as of the Closing Date, own more than 12.5% of the Equity Interest of Parent, in each case, including their respective Affiliates, and any Person with whom such shareholders or their Affiliates form a "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934).

Permitted HY Notes Indenture: an indenture to be entered into in respect of any Permitted HY Notes between Parent and an indenture trustee.

Permitted HY Notes: senior or senior subordinated notes issued by Parent after the Closing Date with the following terms and conditions:

- (a) the obligations of Parent or any other Person (including guarantees by any Obligor) to repay such Debt are unsecured; and
- (b) no principal payments are required to be paid with respect thereto prior to the date which is 91 days after the <u>latest</u> Revolver Termination Date other than principal payments which are required to be paid after acceleration of such Debt and principal payments due in connection with customary asset sale or change of control provisions.

Permitted Liens: as defined in Section 10.2.2.

<u>Permitted Originator Notes</u>: one or more promissory notes made by a Securitization Subsidiary or a Borrower, as a purchaser of Contracts in a Permitted Contract Transfer, in favor of a Borrower or any Subsidiary of a Borrower, as a seller of Contracts in a Permitted Contract Transfer, evidencing that portion of the purchase price represented by Debt incurred by such purchaser in connection with its purchase of Contracts and related assets from such seller.

<u>Permitted Purchase Money Debt</u>: Purchase Money Debt and Capital Leases of Borrowers and its Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate outstanding principal amount does not exceed \$50,000,000 at any time.

<u>Permitted Securitization Hedging Transaction</u>: any Hedging Agreement with respect to any series of notes issued by a Securitization Subsidiary pursuant to a Permitted ABS Transaction.

<u>Permitted Tax Distributions</u>: for each taxable year or portion thereof with respect to which Parent, any Borrower and/or any of its Subsidiaries are members (or constituent parts) of a consolidated, combined, unitary or similar income or franchise tax group for U.S. federal and/or applicable state or local income or franchise Tax purposes of which Parent is the common parent (a "<u>Tax Group</u>"), aggregate distributions to Parent to pay the portion of any consolidated, combined, unitary or similar U.S. federal, state or local income and franchise Taxes (as applicable) of such Tax Group for such taxable year that are attributable to the income of the Subsidiaries of Parent; <u>provided</u> that (i) the amount of such dividends or other distributions for any taxable year or portion thereof shall not exceed the amount of such Taxes that the Subsidiaries would have paid had the Subsidiaries been a stand-alone corporate taxpayer (or a stand-alone corporate group).

<u>Person</u>: any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

<u>Plan</u>: an employee benefit plan (as defined in Section 3(3) of ERISA) maintained by any Obligor or any Subsidiary of an Obligor for its employees, or to which any Obligor or any Subsidiary of an Obligor is required to contribute on behalf of its employees.

Prime Rate: the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Board of Governors in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Agent) or any similar release by the Board of Governors (as determined by Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

Pro Forma Basis: as to any calculation of the Interest Coverage Ratio, the Leverage Ratio or the Fixed Charge Coverage Ratio or other financial ratio or metric for any events as described below that occur subsequent to the commencement of any relevant measurement period (the "Reference Period") for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred after giving effect thereto (it being understood and agreed that (x) unless otherwise specified for the calculation of any such financial ratio or metric, such Reference Period shall be deemed to be the relevant measurement period for such financial ratio or metric ending on the last day of the most recently ended Fiscal Quarter of Parent for which financial statements are available and such pro forma adjustments shall be excluded to the extent already accounted for in the calculation of EBITDA for such period and (y) if any Person that became a Subsidiary or was merged, amalgamated or consolidated with or into a Borrower or any Subsidiary of Parent shall have experienced any event requiring adjustments pursuant to this definition, then such calculation shall give pro forma effect thereto for such period as if such event occurred at the beginning of such period): (i) in making any determination of EBITDA, pro forma effect shall be given to any Asset Disposition of a Subsidiary of Parent or line of business, to any Acquisition, any discontinued operation or any operational change in each case that occurred during the Reference Period (or, in the case of determinations made with respect to any action the taking of which hereunder is subject to compliance on a Pro Forma Basis or otherwise with any ratio (any such action, a "Restricted Action") occurring during the Reference Period or thereafter and through and including the date of such determination) and (ii) in making any determination on a Pro Forma Basis, (x) all Debt (including Debt incurred or assumed and for which the financial effect is being calculated, whether incurred under this Agreement or otherwise, but excluding normal fluctuations in revolving Debt incurred for working capital purposes) incurred or permanently repaid, returned, redeemed or extinguished during the Reference Period (or, in the case of determinations made with respect to any Restricted Action, occurring during the Reference Period or thereafter and through and including the date of such determination) shall be deemed to have been incurred or repaid, returned, redeemed or extinguished at the beginning of such period (it being understood that for purposes of any calculation of any ratio and or financial metric, the use of proceeds of any such Debt shall be taken into account in such calculation) and (y) Interest Expense of such Person attributable to (A) interest on any Debt, for which pro forma effect is being given as provided in the preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of determination as if such rate had been actually in effect during the period for which pro forma effect is being given taking into account any interest hedging arrangements applicable to such Debt, (B) any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a Senior Officer of Parent or Borrower Agent to be the rate of interest implicit in such Capital Lease in accordance with GAAP and (C) interest on any Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered 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 Parent or any Subsidiary may designate.

Pro forma calculations made pursuant to the definition of the term "Pro Forma Basis" shall be determined in good faith by a Senior Officer of Parent or Borrower Agent and, for any fiscal period ending on or prior to the date that is 12 months following the date of any such Acquisition, Asset Disposition, discontinued operation or operational change, may include adjustments to reflect operating expense reductions and other operating improvements or synergies reasonably expected to result from such Acquisition, Asset Disposition, discontinued operation or operational change and for purposes of determining compliance with the such adjustments may reflect additional operating expense reductions and other additional operating improvements and synergies that (x) would be includable in pro forma financial

statements prepared in accordance with Regulation S-X under the Securities Act (other than cost savings and synergies that are only permitted under Regulation S-X as "Management's Adjustments" by virtue of the amendments adopted on May 21, 2020 by the Securities & Exchange Commission) and (y) such other adjustments not includable in Regulation S-X under the Securities Act (or which are included as "Management's Adjustments" by virtue of the amendments adopted on May 21, 2020 by the Securities & Exchange Commission), in each case, for which substantially all of the steps necessary for the realization thereof have been taken or are reasonably anticipated by Borrower to be taken in the next 12-month period following the consummation thereof and, are estimated on a good faith basis by Parent or Borrower Agent; provided, however that the aggregate amount of any such adjustments pursuant to clause (y) shall not exceed (together with the aggregate add backs to EBITDA pursuant to clause (m) of the definition of EBITDA with respect to the applicable period) 20% of the EBITDA of Parent and its Subsidiaries for any such period (prior to giving effect to any such add backs).

<u>Pro Rata</u>: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such Lender's Revolver Commitments; or (b) following termination of the Revolver Commitments, by dividing the amount of such Lender's Revolver Loans and LC Obligations by the aggregate amount of all outstanding Revolver Loans and LC Obligations.

<u>Properly Contested</u>: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect; and (e) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

<u>Property</u>: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: as defined in Section 2.1.6.

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

<u>Purchase Money Debt</u>: Debt incurred for the payment of the acquisition, construction, repair, replacement, additions, accessions and/or improvements (including any industrial revenue bond, industrial development bond and similar financings) incurred prior to or within two hundred seventy (270) days after the acquisition, construction, repair, replacement, addition, accession and/or improvement of the respective asset in order to finance such acquisition, construction, repair, replacement, addition, accession and/or improvement or to reimburse the costs thereof.

<u>Purchase Money Lien</u>: a Lien that secures Purchase Money Debt, encumbering only the fixed or capital assets acquired with such Debt (and any construction, repairs, replacements, additions, accessions and improvements thereto, any proceeds thereof or of the foregoing) or constituting a Capital Lease (it being understood that individual financings that constitute Purchase Money Debt or a Capital Lease provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates).

Qualified Cash: as of any date of determination, the aggregate amount of unrestricted cash of Parent and its Subsidiaries that (i) is subject to a first priority Lien (subject only to Permitted Liens set forth in Section 10.2.2(i)) in favor of Agent for the benefit of Secured Parties and (ii) if not maintained in a Deposit Account or a Securities Account with Agent, is subject to (x) a Deposit Account Control Agreement if maintained in a Deposit Account and (y) a Securities Account Control Agreement if maintained in a Securities Account.

Qualified ECP: an Obligor with total assets exceeding \$10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such act.

Qualified Equity Interests: any Equity Interest other than Disqualified Stock.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property and any buildings, structures, parking areas or other improvements thereon.

Recipient: Agent, Issuing Bank, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation under the Loan Documents.

Reference Time: with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting, (2) if the RFR Revolver Loan for such Benchmark is Daily Simple SOFR, then four (4) Business Days prior to such setting or (3) if such Benchmark is none of the Term SOFR Rate or Daily Simple SOFR, the time determined by Agent in its reasonable discretion.

Refinancing Conditions: the following conditions for Refinancing Debt:

- (a) the Refinancing Debt is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced (plus an amount necessary to pay all accrued and unpaid interest, penalties, premiums (including tender premiums) thereon and defeasance costs, and the fees, commissions and expenses related to such extension, renewal or refinancing) unless (i) such excess is otherwise permitted to be incurred under **Section 10.2.1** or (ii) the excess is used to repay the outstanding Revolver Loans and, at the election of Required Lenders, the Revolver Commitments are reduced by the amount of the repayment (and if no Revolver Loans are outstanding, at the election of Required Lenders, the Revolver Commitments are reduced by the excess);
- (b) in respect of Sections 10.2.1 (m) and (bb) and Section 10.2.1(i) (as it relates to Refinancing Debt in respect of Debt incurred under Sections 10.2.1(m) and (bb)), it has a final maturity no sooner than and a weighted average life no less than the Debt being extended, renewed or refinanced;
- (c) if the Debt being extended, renewed, or refinanced is subordinated to the Obligations such Debt being extended, renewed or refinanced is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced;
- (d) the representations, covenants and defaults applicable to it are not materially less favorable to Borrowers than those applicable to the Debt being extended, renewed or refinanced or such terms are current market terms (as determined by Borrower Agent);
  - (e) no additional Lien is granted to secure it except to the extent otherwise permitted by Section 10.2.2; and

(f) no additional Person is obligated on such Debt to the extent otherwise permitted under Section 10.2.1.

Refinancing Debt: Debt that is the result of an extension, renewal, refinancing or replacement of Debt permitted under Section 10.2.1(b), (c), (d), (e), (h), (k), (m), (aa) and (bb), including any expenses and premiums in connection therewith and under Section 10.2.1(i) in respect of the foregoing or any prior Refinancing Debt.

Regulatory Event: (a) a "Level One Regulatory Event", which shall mean the formal commencement by written notice by any Governmental Authority of any Legal Action against any of Borrowers or any of their Subsidiaries, or to the knowledge of Borrowers, any servicer or asset manager of their respective or collective portfolios of Contracts or Third Party Contracts owned or serviced by a Borrower or its Subsidiary, denying its authority to originate, hold, own, service, collect or enforce any category or group of Contracts or such Third Party Contracts, in each case that would reasonably be expected to have a material adverse effect on the business or financial condition of Borrowers and their Subsidiaries taken as a whole, which Legal Action is not released or terminated within 180 calendar days of commencement thereof; or (b) a "Level Two Regulatory Event", which shall mean the issuance or entering of any stay, cease and desist order, injunction, temporary restraining order, or other judicial or non-judicial sanction (other than the imposition of a monetary fine), against any of Borrowers or any of their Subsidiaries, or to the knowledge of Borrowers, any servicer or asset manager of their respective or collective portfolios of Contracts or Third Party Contracts owned or serviced by a Borrower or its Subsidiary, for material violations of Applicable Law regarding the originating, holding, pledging, collecting, servicing or enforcing of any Contracts or such Third Party Contracts, in each case that would reasonably be expected to have a material adverse effect on the business or financial condition of Borrowers and their Subsidiaries taken as a whole.

Reimbursement Date: as defined in Section 2.3.2.

Related Parties: as to any Person, its officers, directors, employees, Affiliates, agent and attorneys.

Relevant Governmental Body: the Board of Governors or the NYFRB, or a committee officially endorsed or convened by the Board of Governors or the NYFRB or, in each case, any successor thereto.

Relevant Rate: (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate or (ii) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

Rentals: means, for any period, the aggregate fixed amounts payable by Parent and its Subsidiaries under any operating leases, calculated on a consolidated basis for the Parent and its Subsidiaries for such period in accordance with GAAP.

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

Report: as defined in Section 12.2.3.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30-day notice period has been waived.

Required Lenders: Lenders holding more than 50% of (a) the aggregate outstanding Revolver Commitments; or (b) after termination of the Revolver Commitments, the aggregate outstanding Revolver Loans, LC Obligations and other Obligations under the Loan Documents; provided, that Revolver Commitments, Revolver Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation.

Requirement of Law: as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator 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.

Reserve: the CAI Availability Reserve, the CCI Availability Reserve, the Badcock Availability Reserve and their respective component parts including, without limitation, the Inventory Reserve, Rent and Charges Reserve, Bank Product Reserve, Sales Tax Reserve, Gift Card Reserve, and Customer Deposit Reserve.

Resolution Authority: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Restricted Investment: any Investment by Parent, a Borrower or any of their Subsidiaries, other than:

- (a) Investments in its Subsidiaries to the extent existing on the Closing Date;
- (b) Investments (i) by the Obligors in Subsidiaries that are Obligors, (ii) by any non-Obligor in an Obligor or any other Subsidiary and (iii) other than during the Covenant Relief Period (except with respect to Investments in any Securitization Subsidiary) by any Obligor in any non-Obligor in an outstanding amount not to exceed \$10,000,000 at any time;
  - (c) Cash Equivalents;
  - (d) Permitted Originator Notes;
- (e) Investments by CAI which are consistent with the corporate investment policy of CAI from time to time in effect, as approved by Agent (such approval not to be unreasonably withheld);
- (f) Investments (i) in and by a Securitization Subsidiary permitted under a Permitted ABS Transaction and (ii) other Investments in a Securitization Subsidiary in the form of (x) a direct investment in cash, (y) the purchase of any securities issued by a Securitization Subsidiary (whether by tender offer or otherwise) or (z) the transfer of any pool of Contracts by any Borrower to a Securitization Subsidiary (which may be in exchange for an underperforming pool of Contracts), in each case so long as (A) immediately before and after giving effect to such other Investment, no Event of Default exists, (B) the financial statements and Compliance Certificates delivered by Parent to Agent pursuant to Section 10.1.2 for the most recent Fiscal Quarter ended reflect that Parent is in compliance with the applicable financial covenants set forth in Section 10.3 measured on a Pro Forma Basis for such Fiscal Quarter and (C) the aggregate amount of such Investments under this clause (f)(ii) (and with respect to clause (f)(ii)(z) above, following the application of the Contract Advance Rate Amount in measuring the amount of any such Investment) do not exceed \$50,000,000 at any time outstanding;
- (g) Investments for the purpose of funding the repurchase of Contracts which are subject to (i) a Permitted ABS Transaction from a Securitization Subsidiary or (ii) such securitization arrangements entered into by Badcock on or prior to the Amendment No. 3 Effective Date and set forth on Schedule 1.1(g), in each case, so long as immediately before and after giving effect to each such repurchase, no Event of Default exists;

- (h) so long as the Covenant Relief Period is not in effect and EBITDA on a Pro Forma Basis is equal to or greater than \$170,000,000, Permitted Acquisitions;
- (i) Investments arising out of the receipt by Borrowers or any Subsidiary of promissory notes and other non-cash consideration for any Asset Dispositions permitted under **Section 10.2.6**;
- (j) accounts receivable, notes receivable, security deposits and prepayments arising and trade credit granted in the Ordinary Course of Business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers made in the Ordinary Course of Business;
  - (k) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 10.2.5;
- (l) Investments received in connection with the bankruptcy or reorganization of any Person, or settlement of obligations of, or other disputes with or judgments against, or foreclosure or deed in lieu of foreclosure with respect to any Lien held as security for an obligation, in each case in the Ordinary Course of Business;
- (m) Investments consisting of Debt, Liens, capital expenditures, Permitted Distributions, Asset Dispositions, payments and repurchases of Debt, fundamental change transactions, and affiliate transactions permitted under Section 10.2.1 (other than Section 10.2.1(v)), 10.2.2, 10.2.3, 10.2.4, 10.2.8, 10.2.9 and 10.2.17 (other than Section 10.2.17(k));
- (n) Investments by Borrowers or any Subsidiary in an outstanding aggregate amount (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) not to exceed \$10,000,000 at any time (plus any returns, profits, distributions and similar amounts, repayments of loans and the release of guarantees in respect of Investments theretofore made by it pursuant to this clause (n)); provided, that during the Covenant Relief Period, Investments pursuant to this clause (n) shall be limited to \$1,000,000 in the aggregate for such period;
- (o) Investments in the Ordinary Course of Business consisting of (i) endorsements for collection or deposit or (ii) customary trade arrangements with customers;
- (p) Investments made in the Ordinary Course of Business in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees in the Ordinary Course of Business:
- (q) Investments made by any Subsidiary that is not an Obligor to the extent such Investments are made with the proceeds received by such Subsidiary from an Investment made by an Obligor in such Subsidiary which is permitted hereunder;
- (r) any Investment upon the satisfaction the Payment Conditions with respect thereto; <u>provided</u> that during the Covenant Relief Period this <u>clause (r)</u> shall not be utilized for any Acquisition;

- (s) Investments in connection with Hedging Agreements, in each case entered into in the Ordinary Course of Business and not for speculative purposes (it being agreed that the Permitted Convertible Notes Hedging Agreements and any Permitted Securitization Hedging Transaction are permitted);
- (t) advances to any director, officer, employee, member or management or consultant for salary, travel expenses, commissions and similar items in the Ordinary Course of Business in an aggregate amount outstanding at any time not to exceed \$5,000,000;
  - (u) prepaid expenses and extensions of trade credit made in the Ordinary Course of Business;
  - (v) deposits with financial institutions permitted hereunder;
  - (w) loans made by a Borrower to a Contract Debtor pursuant to a Contract entered into in the Ordinary Course of Business;
  - (x) loans made pursuant to any Permitted Originator Note; and
- (w) Investments in the form of payments required to be made on and after the Amendment No. 1 Effective Date pursuant to that certain Asset Purchase Agreement, dated as of March 11, 2022, among, *inter alios*, RTO, as buyer, and Tempoe, LLC, a Delaware limited liability company, as seller, in an amount not to exceed \$7,500,000 in the aggregate.

Restrictive Agreement: any agreement that prohibits, restricts or imposes any condition upon (a) the ability of Borrowers or any their respective Subsidiaries to create, incur or permit to exist any Lien upon any of its property to secure the Obligations, or (b) the ability of any Subsidiary of Borrowers to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to Borrowers or any other Subsidiary.

Reuters: as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

Revolver Commitment: for any Lender, its obligation to make Revolver Loans and to participate in LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, or as hereafter determined pursuant to each Assignment and Acceptance to which it is a party. "Revolver Commitments" means the aggregate amount of such commitments of all Lenders which, as of the Closing Amendment No. 3 Effective Date, is \$650,000,000,000.

Revolver Commitment Termination Date: with respect to any Class of Revolver Commitments, the earliest to occur of (a) the Revolver Termination Date with respect to such Class; (b) the date on which Borrowers terminate the Revolver Commitments pursuant to Section 2.1.4; or (c) the date on which the Revolver Commitments are terminated pursuant to Section 11.2.

<u>Revolver Exposure</u>: as to any Lender at any time, without duplication, the aggregate principal amount at such time of its outstanding Revolver Loans (including its participation in Swingline Loans) and such Lender's participation in LC Obligations at such time.

Revolver Loan: any loan made pursuant to **Section 2.1** or as a Swingline Loan.

Revolver Note: a promissory note to be executed by Borrowers in favor of a Lender in the form of **Exhibit A**, which shall be in the amount of such Lender's Revolver Commitment and shall evidence the Revolver Loans made by such Lender.

Revolver Termination Date: (a) with respect to the Non-Extending Class, March 29, 2025 and, (b) with respect to all other Classes of Revolver Commitments, December 18, 2026 and (c) with respect to any FILO Tranche, the maturity date applicable to such FILO Tranche as specified in the applicable amendment implementing such FILO Tranche.

Revolver Usage: (a) the aggregate amount of outstanding Revolver Loans; <u>plus</u> (b) the aggregate Stated Amount of outstanding Letters of Credit, except to the extent Cash Collateralized.

RFR Borrowing: as to any Borrowing, the RFR Revolver Loans comprising such Borrowing.

RFR Revolver Loan: a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

Royalty: all royalties, fees, expense reimbursement and other amounts payable by a Borrower under a License.

RTO: New RTO, LLC, a Delaware limited liability company.

S&P: Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc.

<u>Sales Tax Reserve</u>: a reserve equal to 100% of the aggregate sales tax obligations of Borrowers as set forth in Borrowers' books and records as of any measurement date which have not been prepaid by Borrowers.

Sanction: any 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, or (b) the United Nations Security Council, the European Union, any European Union member state or His Majesty's Treasury of the United Kingdom or other relevant sanctions authority in each case having jurisdiction over any Borrower or its Subsidiaries.

Second Amended and Restated Loan Agreement: as defined in the recitals to this Agreement.

Secured Bank Product Notice: written notice from Borrower Agent and the applicable Secured Bank Product Provider to Agent, in form reasonably satisfactory to Agent, within 30 days (or such longer period as shall be acceptable to Agent and Borrower Agent) following the later of the Closing Date or creation of the applicable Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13**.

Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to Bank Products to a Secured Bank Product Provider; provided, that Secured Bank Product Obligations of an Obligor shall not include (i) its Excluded Swap Obligations or (ii) any Bank Product unless designated in writing (it being acknowledged that any Existing Bank Products and Bank Products with Agent or any Affiliate of Agent shall not require such written notice except in the case of Permitted Securitization Hedging Transactions) by the Borrower Agent and the relevant Secured Bank Product Provider as a Secured Bank Product Obligation.

Secured Bank Product Provider: (a) JPM or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product (i) on the Closing Date and which has delivered a Secured Bank Product Notice to Agent prior to the Closing Date or (ii) after the Closing Date, and with respect to which such provider and Borrower Agent delivers a Secured Bank Product Notice; provided, that no Secured Bank Product Notice shall be required with respect to any Bank Products provided by JPM or any of its Affiliates.

Secured Parties: Agent, Issuing Bank, Lenders and Secured Bank Product Providers.

<u>Securities Account Control Agreements</u>: the account control agreements executed by each institution maintaining a Securities Account for a Borrower, in favor of Agent as security for the Obligations; <u>provided</u> that it is understood and agreed that no Securities Account Control Agreement shall be required for Excluded Accounts.

Securitization Subsidiary: one or more direct or indirect Subsidiaries of Parent formed for the purposes of entering into a Permitted ABS Transaction including Conn Appliances Receivables Funding, LLC, Conn's Receivables Funding I, LP, Conn's Receivables Funding I GP, LLC, Conn's Receivables, LLC, Conn's Receivables Warehouse, LLC, Conn's Receivables Funding 2021-A, LLC, Conn's Receivables 2021-A Trust, Conn's Receivables Funding 2022-A, LLC, and Conn's Receivables 2022-A Trust.

Securitized Contracts: the Contracts and related assets which are subject to a Permitted ABS Transaction.

<u>Security Agreement</u>: (a) the security agreement executed by each Guarantor on the Closing Date (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, including by Amendment No. 2) and (b) thereafter, any other security agreement (including a joinder to any existing Security Agreement) reasonably acceptable to Agent, in each case, pursuant to which such Guarantor shall grant to Agent a Lien (for the benefit of the Secured Parties) in all of such Guarantor's assets.

<u>Security Documents</u>: the Guaranty, each Security Agreement, Deposit Account Control Agreements, Securities Account Control Agreements, Equity Interest Pledge Agreement, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations, or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent.

<u>Senior Officer</u>: the chairman of the board, president, chief executive officer, chief financial officer (or other officer holding a similar role), chief operating officer, treasurer or assistant treasurer of a Borrower or, if the context requires, an Obligor.

<u>Settlement Report</u>: a report summarizing Revolver Loans and participations in LC Obligations outstanding as of a given settlement date, allocated to Lenders on a Pro Rata basis in accordance with their Revolver Commitments.

SOFR: a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator: the NYFRB (or a successor administrator of the secured overnight financing rate).

<u>SOFR Administrator's Website</u>: the NYFRB's website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

SOFR Determination Date: has the meaning specified in the definition of "Daily Simple SOFR".

SOFR Rate Day: has the meaning specified in the definition of "Daily Simple SOFR".

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "Fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Specified Financial Covenants: as defined in Section 10.4.1.

<u>Specified Obligor</u>: an Obligor that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to **Section 5.11**).

Stated Amount: at any time the amount available to be drawn under a Letter of Credit, including any automatic increase in such amount provided by such Letter of Credit or the related LC Documents; <u>provided</u> that, other than with respect to calculation and payment of fees, with respect to any Letter of Credit that, by its terms or the terms of any related LC Documents, provides for one or more automatic increases in the available amount thereof, the Stated Amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

<u>Subordinated Debt</u>: Debt incurred by a Borrower <u>(other than Debt among Parent and its Subsidiaries)</u> that is expressly subordinate and junior in right of payment to the Obligations and has a maturity no shorter than, at the time of such incurrence or issuance, ninety-one (91) days after the <u>latest</u> Revolver Termination Date and has subordination terms reasonably satisfactory to Agent.

<u>Subsidiary</u>: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a direct or indirect Subsidiary or Subsidiaries of Parent.

<u>Supermajority Lenders</u>: Lenders holding more than 66 2/3% of (a) the aggregate outstanding Revolver Commitments; or (b) after termination of the Revolver Commitments, the aggregate outstanding Revolver Loans, LC Obligations and other Obligations under the Loan Documents; <u>provided</u>, that Revolver Commitments, Revolver Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation.

<u>Swap Obligations</u>: with respect to an Obligor, its obligations under an agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

Swingline Lender: JPM (including any Lending Office of JPM).

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

Tangible Net Worth: at any date, an amount equal to: (i) the net book value (after deducting related depreciation, obsolescence, amortization, valuation and other proper reserves) at which the Adjusted Tangible Assets of a Person would be shown on a balance sheet at such date in accordance with GAAP, less (ii) the amount at which such Person's liabilities would be shown on such balance sheet, and including as liabilities all reserves for contingencies and other potential liabilities, in each case, in accordance with GAAP.

Tax and Trust Funds: cash, cash equivalents or other assets comprised solely of

- (a) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Person's employees in the current period (which may be monthly or quarterly, as applicable),
- (b) all taxes required to be collected, remitted or withheld in the current period (which may be monthly or quarterly, as applicable) (including, without limitation, federal and state withholding taxes (including the employer's share thereof)) and
- (c) any other funds which such Person holds in trust or as an escrow or fiduciary for another Person (which is not an Obligor) in the ordinary course of business.

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

Tax Materials: any materials (together with all supplements or other modifications thereto) related to the CARES Act Tax Refund Claim prepared by any third party for any Obligor or any of its Subsidiaries on or prior to the Amendment No. 23 Effective Date.

<u>Term Benchmark</u>: when used in reference to any Revolver Loan or Borrowing, refers to whether such Revolver Loan, or the Revolver Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

Term Benchmark Revolver Loan: a Revolver Loan that bears interest based on the Term Benchmark Rate.

Term Loan Agent: as defined in the definition of "Term Loan Facility".

Term Loan Agreement: as defined in the definition of "Term Loan Facility".

<u>Term Loan Borrowing Base</u>: the "Borrowing Base" under and as defined in the Term Loan Agreement, as in effect on the Amendment No. 22 Effective Date or as modified from time to time in accordance with the ABL Intercreditor Agreement.

Term Loan Documents: the "Loan Documents" under and as defined in the Term Loan Agreement.

Term Loan Facility: the senior secured term loan facility established pursuant to that certain Term Loan and Security Agreement, dated as of the Amendment No. 23 Effective Date (as the same may be amended, restated, amended and restated, supplemented, modified, replaced, increased, renewed, extended or refinanced from time to time in accordance with the ABL Intercreditor Agreement, the "Term Loan Agreement"), by and among the Borrowers, Pathlight Capital LPBRF Finance Co., LLC, as agent (the "Term Loan Agent"), and the lenders and other parties party thereto from time to time.

<u>Term Loan Obligations</u>: the "Obligations" under and as defined in the Term Loan Agreement, as in effect on the Amendment No. 23 Effective Date or as modified from time to time in accordance with the ABL Intercreditor Agreement.

Term Loan Overadvance: an "Overadvance" under and as defined in the Term Loan Agreement.

Term Loan Push-Down Reserve: has the meaning assigned to it in the ABL Intercreditor Agreement.

Term Loan Push-Down Reserve Correction Notice: has the meaning assigned to it in the ABL Intercreditor Agreement.

Term SOFR Determination Day: has the meaning assigned to it under the definition of "Term SOFR Reference Rate".

Term SOFR Rate: with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

Term SOFR Reference Rate: for any day and time (such day, the "Term SOFR Determination Day"), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

Third Amended and Restated Loan Agreement: as defined in the recitals to this Agreement.

Third Lien Agent: the "Agent" under and as defined in the Third Lien Term Loan Agreement.

Third Lien Intercreditor Agreement: that certain Amended and Restated Third Lien Intercreditor Agreement, dated as of the Amendment No. 3

Effective Date, among JPMorgan Chase Bank, N.A., BRF Finance Co., LLC and Stephens Investments Holdings LLC and acknowledged and agreed by Parent, CAI, CCI, CCCI, Badcock and each of Parent's Subsidiaries that are signatories thereto from time to time.

Third Lien Term Loan Agreement: as defined in the definition of "Third Lien Term Loan Facility"

Third Lien Term Loan Documents: the "Loan Documents" under and as defined in the Third Lien Term Loan Agreement.

Third Lien Term Loan Facility: the senior secured delayed draw term loan facility established pursuant to that certain Delayed Draw Term Loan and Security Agreement, dated as of July 31, 2023 (as the same may be amended, restated, amended and restated, supplemented, modified, replaced, increased, renewed, extended or refinanced from time to time in accordance with the Third Lien Intercreditor Agreement, the "Third Lien Term Loan Agreement"), by and among Parent, CAI, CCI, CCCI, the other Obligors party thereto from time to time, the Lenders and Stephens Investments Holdings LLC.

Third Lien Term Loan Obligations: the "Obligations" under and as defined in the Third Lien Term Loan Agreement, as in effect on the Amendment No. 3 Effective Date or as modified from time to time in accordance with the Third Lien Intercreditor Agreement.

Third Party Contracts: any loan agreement, account, revolving credit agreement, retail installment sale contract, consumer loan, Instrument, note, document, chattel paper, and all other forms of obligations owing to any Borrower or any Subsidiary of a Borrower, including any collateral for any of the foregoing, including all rights under any and all security documents, in each case which does not satisfy the credit criteria under the Credit and Collection Policy Guidelines and is intended to be sold to a third party in the Ordinary Course of Business promptly following the execution thereof (and delivery of the product financed thereby); provided, that (x) any purchase and sale agreement related to such Third Party Contract shall provide that such Third Party Contract shall be purchased by such third party within two (2) Business Days of its origination and the applicable Borrower or Subsidiary shall take commercially reasonable efforts to consummate such sale within two (2) Business Days of origination and (y) the aggregate outstanding balance of Third Party Contracts owned by Borrowers and their Subsidiaries shall at no time exceed \$1,000,000.

Threshold Amount: \$25,000,000.

<u>Transferee</u>: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

<u>UCC</u>: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

<u>UK Financial Institutions</u>: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

<u>UK Resolution Authority</u>: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

Unadjusted Benchmark Replacement: the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

<u>U.S. Government Securities Business Day:</u> 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>Unfinanced Capital Expenditures: for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Debt (other than Revolver Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolver Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).</u>

Unused Line Fee Percentage: for any day, a percentage equal to (a) 0.25% per annum if the average daily balance of Revolver Loans and Stated Amount of Letters of Credit during the immediately preceding quarter is greater than 66% of the Revolver Commitments, (b) 0.375% per annum if the average daily balance of Revolver Loans and Stated Amount of Letters of Credit during the immediately preceding quarter is greater than 66% of the Revolver Commitments, (b) 0.50% per annum if the average daily balance of Revolver Loans and Stated Amount of Letters of Credit during the immediately preceding quarter is greater than 33% of the Revolver Commitments but equal to or less than 66% of the Revolver Commitments, and (c) 0.500.625 % per annum if the average daily balance of Revolver Loans and Stated Amount of Letters of Credit during the immediately preceding quarter is equal to or less than 33% of the Revolver Commitments.

U.S. Government Securities Business Day: 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>U.S. Person</u>: "United States Person" as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in Section 5.10.2(b)(iii).

<u>Value</u>: (a) for Inventory, its value determined on the basis of the lower of cost or market, calculated on a moving weighted average cost basis, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates; and (b) for a Credit Card Account, its face amount.

# Variance Report: as defined in Section 10.1.16(b).

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

- 1.2 Accounting Terms. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that if Borrower Agent notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Agent notifies Borrower Agent that Agent requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith and, if an amendment is requested by Borrower Agent or Agent, then Borrower Agent and Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to Agent or the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed).
- 1.3 <u>Uniform Commercial Code</u>. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "<u>Account</u>", "<u>Account Debtor</u>", "<u>Chattel Paper</u>", "<u>Commercial Tort Claim</u>", "<u>Deposit Account</u>", "<u>Document</u>", "<u>Equipment</u>", "<u>General Intangibles</u>", "<u>Goods</u>", "<u>Instrument</u>", "<u>Investment Property</u>", "<u>Letter-of-Credit Right</u>", "<u>Securities Account</u>" and "<u>Supporting Obligation</u>".
- 1.4 Certain Matters of Construction. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders and the neuter form. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan Document, the parties agree that the rule of ejusdem generis shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement (including any Loan Document and any Organic Document) include any amendments, restatements, amendments and restatements, supplements, modifications, replacements, renewals, extensions and refinancings from time to time (to the extent permitted or not restricted by the Loan Documents); (c) any section means, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and permitted assigns; and (f) time of day means Central time (daylight or standard, as applicable). All determinations (including calculations of the Borrowing Base, the Term Loan Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time (as adjusted in accordance with the terms hereof). No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to a Borrower's "knowledge" or words of similar import means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained in good faith and diligent performance of his or her duties. The use of the phrase "subject to" as used in connection with Permitted Liens or otherwise and the permitted existence of any Permitted Liens or any other Liens in this Agreement or any other Loan Document shall not be interpreted to expressly or impliedly subordinate any Liens granted in favor of Agent and the other Secured Parties as there is no intention to subordinate the Liens granted in favor of Agent and the other Secured Parties, expect as expressly set forth in this Agreement or such other Loan Documents.

- 1.5 <u>Payment and Performance</u>. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.
- 1.6 <u>Compliance with this Agreement</u>. For purposes of determining the permissibility of any action, change, transaction or event that by the terms of the Loan Documents requires a calculation of any financial ratio or test, such financial ratio or test shall be calculated at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.
- 1.7 <u>Classification</u>. For purposes of determining compliance at any time with Sections 10.2.1, 10.2.2, 10.2.4, 10.2.5, 10.2.6, 10.2.8, 10.2.9, 10.2.14, and 10.2.17 (and, in each case, any definition used therein) in the event that any Debt, Lien, Distribution, Restricted Investment, Asset Disposition, payment, prepayment, redemption, repurchase, retirement, defeasance or acquisition, merger, combination, consolidation, liquidation, winding up or dissolution, Restrictive Agreement, or Affiliate transaction meets the criteria of more than one (1) of the categories of transactions or items permitted pursuant to any clause of such Sections 10.2.1, 10.2.2, 10.2.4, 10.2.5, 10.2.6, 10.2.8, 10.2.9, 10.2.14, and 10.2.17 (and, in each case, any definition used therein), Borrowers, in their sole discretion, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one (1) category.

### 1.8 Certain Calculations.

- (a) Subject to the immediately succeeding clauses (b) and (c) and **Section 1.6** above, notwithstanding anything to the contrary contained herein, financial ratios and tests (including the Interest Coverage Ratio, the Leverage Ratio, the Fixed Charge Coverage Ratio and the ABS Excluded Leverage Ratio) pursuant to this Agreement shall be calculated in the manner prescribed by the definition of "Pro Forma Basis."
- (b) Notwithstanding anything to the contrary herein (including in connection with any calculation made on a Pro Forma Basis), to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including the Interest Coverage Ratio, the Leverage Ratio, the Fixed Charge Coverage Ratio and the ABS Excluded Leverage Ratio and the component definitions of any of the foregoing), (ii) the absence of a Default or Event of Default or Event of Default) or (iii) the making of any representation or warranty, in each case as a condition to (A) the consummation of any transaction in connection with any acquisition or similar Investment (including the assumption or incurrence of Debt), (B) the making of any Distribution and/or (C) the making of any restricted Debt payment, in each case in connection with a Limited Condition Transaction, at the election of Borrowers (the "LCT Election"), the determination of whether the relevant condition is satisfied may be made at the time (the "LCT Test Time") of (or on the basis of the financial statements for the most recently ended fiscal period at the time of) the execution of the definitive agreement with respect to such Limited Condition Transaction. If Borrowers have made an LCT Election, then, in connection with any calculation of any financial ratio or test (other than with respect to determining the Applicable Margin and actual (as opposed to pro forma) compliance with the Financial Covenants) following such LCT Test Time and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the definitive agreement with respect thereto is terminated, any such financial ratio or test shall be calculated (and tested) on a Pro Forma Basis assuming such Limited Condition Transaction and other subject transactions in connection therewith have been consummated.

- (c) Notwithstanding anything to the contrary contained in this **Section 1.8** or otherwise, for purposes of determining actual compliance with the financial covenants set forth in **Section 10.3**, any such adjustments shall only include events that occurred during the relevant measurement period for such financial covenant.
- 1.9 Interest Rates; Benchmark Notification. The interest rate on a Revolver Loan 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, Section 3.6(b) provides a mechanism for determining an alternative rate of interest. Agent will promptly notify the Borrower Agent, pursuant to Section 3.6(d), of any change to the reference rate upon which the interest rate on a Loan is based. However, Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, 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, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability (it being understood that this sentence does not limit Agent's obligation to make any determination or calculation of such reference rate as expressly required to be made by Agent pursuant to the terms of this Agreement). Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate 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. 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 referenced 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.
- 1.10 <u>Divisions</u>. 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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

# **SECTION 2. CREDIT FACILITIES**

### 2.1 Revolver Commitment.

2.1.1 Revolver Loans. Each Lender agrees, severally on a Pro Rata basis up to its Revolver Commitment, on the terms set forth herein, to make Revolver Loans to Borrowers from time to time until the Revolver Commitment Termination Date in respect of the applicable Class of Revolver Commitments (provided that, for the avoidance of doubt, all Classes of Revolver Commitments shall be treated as one Class for purposes of the foregoing, the Borrowers must borrow on a Pro Rata basis from all Lenders based on their Pro Rata share of the aggregate Revolver Commitments and each Lender shall make Revolver Loans to the Borrowers based on its Pro Rata share of the aggregate Revolver Commitments). The Revolver Loans may be repaid and reborrowed as provided herein. In no event shall Lenders have any obligation to honor a request for a Revolver Loan (xw) by CAI if the CAI Revolver Usage would exceed the CAI Borrowing Base, (yx) by Badcock if the Badcock Revolver Usage would exceed the Borrowing Base or (z) by any Borrower if the Revolver Usage would exceed the Borrowing Base.

- 2.1.2 <u>Revolver Notes</u>. The Revolver Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any Lender, Borrowers shall deliver a Revolver Note to such Lender.
- 2.1.3 <u>Use of Proceeds</u>. The proceeds of Revolver Loans shall be used by Borrowers solely (a) to pay fees and transaction expenses associated with the closing of this credit facility; (b) to pay Obligations in accordance with this Agreement; and (c) for working capital and other lawful corporate purposes of Borrowers and their Subsidiaries. No Borrower shall, directly or, to its knowledge, indirectly, use any Letter of Credit or Revolver Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Revolver Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the target of any Sanction; or (ii) in any manner that would result in a violation of a Sanction by such Person.

### 2.1.4 Voluntary Reduction or Termination of Revolver Commitments.

- (a) The Revolver Commitments of a given Class shall terminate on the Revolver Commitment Termination Date in respect of such Class, unless sooner terminated in accordance with this Agreement. Upon at least three (3) Business Day's (or such shorter period of time as may be reasonably acceptable to Agent and which advance notice may be waived by Agent in its sole discretion) prior written notice to Agent, Borrowers may, at their option, terminate the Revolver Commitments and this Agreement. Any notice of termination given by Borrowers shall be irrevocable; provided that such notice may state that such notice is conditioned upon the effectiveness of other credit facilities or transactions, in which case such notice may be revoked by Borrowers (by notice to Agent on or prior to the specified effective date) if such condition is not satisfied. Unless such notice is revoked, on the date specified in such notice of termination, Borrowers shall make Full Payment of all Obligations under the Loan Documents.
- (b) The Borrowers may permanently reduce the Revolver Commitments, on a Pro Rata basis for each Lender, upon at least three (3) Business Day's (or such shorter period of time as may be reasonably acceptable to Agent and which advance notice may be waived by Agent in its sole discretion) prior written notice to Agent, which notice shall specify the amount of the reduction and shall be irrevocable once given; provided that Borrowers may not permanently reduce the Revolver Commitments to an amount less than \$250,000,000. Each reduction shall be in a minimum amount of \$25,000,000, or an increment of \$5,000,000 in excess thereof.
- 2.1.5 Overadvances. If the CAI Revolver Usage exceeds the CAI Borrowing Base, CCI Revolver Usage exceeds the CCI Borrowing Base, Badcock Revolver Usage exceeds the Badcock Borrowing Base or Revolver Usage exceeds the Borrowing Base (in each case, an "Overadvance"), the excess amount shall be payable by Borrowers within the time period set forth in Section 5.2.1, but all such Revolver Loans shall nevertheless constitute an Obligation secured by the Collateral entitled to all benefits of the Loan Documents. Agent may require Lenders to fund Base Rate Revolver Loans that cause or constitute an Overadvance and to forbear from requiring Borrowers to cure an Overadvance, (a) unless its authority has been revoked in writing by Required Lenders, as long as the total Overadvance does not exceed \$15,000,000 in the aggregate and does not continue for more than 30 consecutive days and (b) if Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery, the Overadvance (i) is not increased by more than \$5,000,000, and (ii) does not continue for more than 30 consecutive days. In no event shall Revolver Loans be made that would cause the Revolver

Usage to exceed the aggregate Revolver Commitments. The making or existence of any Overadvance shall not create nor constitute a Default or an Event of Default; it being understood that funding or continuance of an Overadvance shall not constitute a waiver by Agent or Lenders of any Event of Default then existing. No Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.6 <u>Protective Advances</u>. Agent shall be authorized, in its sole discretion, at any time that any conditions in **Section 6** are not satisfied, to make Base Rate Revolver Loans (a) up to an aggregate amount not to exceed at any time the lesser of (i) the aggregate Revolver Commitments, and (ii) the outstanding amount of \$15,000,000, if Agent deems such Revolver Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including costs, fees and expenses (such Revolver Loans are referred to herein as "<u>Protective Advances</u>"). Each Lender shall participate in each Protective Advance on a Pro Rata basis. Required Lenders may at any time revoke Agent's authority to make further Protective Advances by written notice to Agent. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive.

# 2.2 Increase in Revolver Commitments.

2.2.1 The Borrowers may request an increase in Revolver Commitments (including, after the Amendment No. 23 Effective Date and the Discharge of Term Loan Obligations (as defined in the ABL Intercreditor Agreement), through the establishment of a separate FILO Tranche, which may be in the form of term loans) from time to time upon notice to Agent, as long as (a) the requested increase is in a minimum amount of \$10,000,000 and, subject to Section 2.2.2 with respect to any FILO Tranche, is offered on the same terms as existing Revolver Commitments, other than in respect of fees specified by Borrowers, (b) total aggregate increases in the Revolver Commitments pursuant to this Section do not exceed \$300,000,000, and (c) no more than six (6) (or such greater number as shall be reasonably acceptable to Agent) such increases are requested during the term of this Agreement. Agent shall promptly notify Lenders of the requested increase and, within five (5) Business Days thereafter, each Lender shall notify Agent if and to what extent such Lender commits to increase its Revolver Commitment. Any Lender not responding within such period shall be deemed to have declined an increase. If Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional Revolver Commitments and become Lenders hereunder. Agent may allocate, in its discretion and with the consent of Borrower Agent, the increased Revolver Commitments among committing Lenders and, if necessary, Eligible Assignees. Total Revolver Commitments shall be increased by the requested amount (or such lesser amount committed by Lenders and Eligible Assignees) on a date agreed upon by Agent and Borrower Agent, provided that the conditions set forth in Section 6.2(a) and (b) are satisfied or waived by the Lenders providing such Revolver Commitment increase at such time. On the effective date of an increase, the Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among Lenders, and settled by Agent as necessary, in accordance with Lenders' adjusted shares of such Revolver Commitments. Notwithstanding the foregoing or anything to the contrary contained in the Loan Documents (including Section 14.1), but subject to Section 2.2.2, if the rate of interest, the Unused Line Fee or similar fee or interest rate applicable to the increase in Revolver Commitments exceeds the rate of interest, the Unused Line Fee or similar fee or interest rate of the existing Revolver Loans, (i) the Borrowers may, at the sole option of Borrower Agent, decline such increase in the Revolver Commitments or (ii) the rate of interest and/or fees on the existing Revolver Loans shall be increased to match that applicable to the increased Revolver Commitment without the consent of any Person, other than the Lenders and other Persons providing the relevant increased Revolver Commitment, Agent and the Borrowers. Any amendment hereto for such increase or addition shall be in form and substance satisfactory to Agent and the Borrowers and shall only require the written signatures of Agent, the Borrowers and the Lender(s) being added or increasing their Revolver Commitment.

2.2.2 After the Amendment No. 23 Effective Date and the Discharge of Term Loan Obligations (as defined in the ABL Intercreditor Agreement), the increased Revolver Commitments may be in the form of a separate "first-in, last-out" or "last-out" tranche (a "FILO Tranche") with interest rate margins, rate floors, upfront fees, funding discounts and original issue discounts, in each case to be agreed upon (which, for the avoidance of doubt, shall not require any adjustment to the Applicable Margin of other Revolver Loans) among the Borrowers and the Lenders providing the FILO Tranche so long as (a) any Revolver Loans and related Obligations in respect of the FILO Tranche are not to be guaranteed by any Person other than the applicable Guarantors and are not secured by any assets other than Collateral, (b) as between (x) the Revolver Loans (other than the FILO Tranche) and (y) the FILO Tranche, all proceeds from the liquidation or other realization of the Collateral or application of funds in accordance with Section 5.6 shall be applied, first to obligations owing under, or with respect to, the Revolver Loans (other than the FILO Tranche) and second to the FILO Tranche; (c) the Borrowers may not prepay Revolver Loans under the FILO Tranche or terminate or reduce the commitments in respect thereof at any time that other Revolver Loans (including Swingline Loans) and/or any LC Obligations described in clause (a) of the definition thereof (unless Cash Collateralized or otherwise provided for in a manner reasonably satisfactory to Agent) are outstanding, except to the extent permitted by Section 10.2.8(a); (d) the Required Lenders (calculated as including the FILO Tranche) shall control exercise of remedies in respect of the Collateral; (e) no changes affecting the priority status of the Revolver Commitments (other than the FILO Tranche) vis-à-vis the FILO Tranche may be made without the consent of the Required Lenders under the Revolver Commitments, other than such changes which affect only the FILO Tranche; (f) the final maturity of any FILO Tranche shall not occur, and no FILO Tranche shall require mandatory commitment reductions prior to, the latest Revolver Termination Date (other than with respect to any FILO Tranche) as in effect when such FILO Tranche is first added to the Agreement; and (g) except as otherwise set forth in this Section 2.2.2, the terms of any FILO Tranche are not materially less favorable to the Borrowers than those hereunder (including, without limitation, the inclusion of any additional financial or other material covenant) without the consent of Agent.

### 2.3 Letter of Credit Facility.

- 2.3.1 <u>Issuance of Letters of Credit</u>. Issuing Bank agrees to issue Letters of Credit from time to time until the <u>latest</u> Revolver Commitment Termination Date, on the terms set forth herein, including the following:
- (a) Each Borrower acknowledges that Issuing Bank's issuance of any Letter of Credit is conditioned upon Issuing Bank's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Issuing Bank shall have no obligation to issue any Letter of Credit unless (i) Issuing Bank receives a LC Request and LC Application prior to 9:00 a.m., at least three (3) Business Days prior to the requested date of issuance (which shall be a Business Day); (ii) each LC Condition is satisfied and (iii) if a Defaulting Lender exists and the Fronting Exposure of such Defaulting Lender in respect of such Letter of Credit cannot be reallocated to non-Defaulting Lenders pursuant to **Section 4.2**, Borrower shall have Cash Collateralized the applicable Fronting Exposure as set forth in **Section 2.3.3**. If, in sufficient time to act, Issuing Bank receives written notice from Agent or Required Lenders that a LC Condition has not been satisfied, Issuing Bank shall have no obligation to issue the requested Letter of Credit (or any other) until such notice is withdrawn in writing by the Required Lenders or until Required Lenders have waived such condition in accordance with this Agreement. Prior to receipt of any such notice, Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.
- (b) Letters of Credit may be requested by a Borrower to support working capital and other lawful corporate purposes. Increase, renewal or extension of a Letter of Credit shall be treated as an issuance of a new Letter of Credit, except that Issuing Bank may require a new LC Application in its reasonable discretion.

- (c) The Borrowers assume all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with any Letter of Credit, none of Agent, Issuing Bank or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Bank, Agent or any Lender, including any act or omission of a Governmental Authority. Issuing Bank shall be fully subrogated to the rights and remedies of any beneficiary whose claims against any Borrower are discharged with proceeds of a Letter of Credit. The rights and remedies of Issuing Bank under the Loan Documents shall be cumulative.
- (d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Issuing Bank uses legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence of agents and attorneys-in-fact selected with reasonable care.
- (e) All Existing Letters of Credit shall be deemed to have been issued pursuant to this Agreement, and from and after the Closing Date shall be subject to and governed by the terms and conditions set forth herein.
- (f) Notwithstanding the foregoing or anything to the contrary contained in the Loan Documents, Agent, Issuing Bank and/or Lender, as applicable, shall confirm that Documents and certificates required to be submitted in connection with any Letter of Credit, on their face, comply with the terms of such Letter of Credit as may be required by the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance of the applicable Letter of Credit or the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc., as applicable.

# 2.3.2 Reimbursement; Participations.

(a) If an Issuing Bank honors any request for payment under a Letter of Credit, such Issuing Bank shall give written notice of such payment to Agent and Borrower Agent, and Borrowers shall pay to Issuing Bank (i) to the extent Borrower Agent receives written notice from the relevant Issuing Bank by 9:00 a.m., on the date of such payment, on the same day and (ii) otherwise, on the immediately succeeding Business Day ("Reimbursement Date"), the amount paid by Issuing Bank under such Letter of Credit, together with interest at the interest rate for Base Rate Revolver Loans from the Reimbursement

Date until payment by Borrowers. Subject to the rights of Borrowers' under **Section 2.3.2(d)**, the obligation of Borrowers to reimburse Issuing Bank for any payment made under a Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that Borrowers may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Borrowers shall be deemed to have requested a Borrowing of Base Rate Revolver Loans in an amount necessary to pay all amounts due Issuing Bank on any Reimbursement Date and each Lender shall fund its Pro Rata share of such Borrowing whether or not the Revolver Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in **Section 6.2** are satisfied.

- (b) Each Lender hereby irrevocably and unconditionally purchases from Issuing Bank, without recourse or warranty, an undivided Pro Rata participation in all LC Obligations outstanding from time to time. Issuing Bank is issuing Letters of Credit in reliance upon this participation. If Borrowers do not make a payment to Issuing Bank when due hereunder, Agent shall promptly notify Lenders and each Lender shall within one (1) Business Day after such notice pay to Agent, for the benefit of Issuing Bank, the Lender's Pro Rata share of such payment. Upon request by a Lender, Issuing Bank shall provide copies of Letters of Credit and LC Documents in its possession at such time.
- (c) The obligation of each Lender to make payments to Agent for the account of Issuing Bank in connection with Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; any waiver by Issuing Bank of a requirement that exists for its protection (and not a Borrower's protection) or that does not materially prejudice a Borrower; any honor of an electronic demand for payment even if a draft is required; any payment of an item presented after a Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to any Letter of Credit, Collateral, LC Document or Obligor. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.
- (d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any Letter of Credit or LC Document except as a result of its gross negligence, willful misconduct or bad faith.
- 2.3.3 <u>Cash Collateral</u>. Subject to **Section 2.1.5**, at Agent's or Issuing Bank's request, Borrowers shall Cash Collateralize (a) the Fronting Exposure of any Defaulting Lender which has not been reallocated to non-Defaulting Lenders as set forth in **Section 4.2.1** or Cash Collateralized pursuant to **Section 4.2.2**, and (b) if an Event of Default exists or the Revolver Commitment Termination Date has occurred, all outstanding Letters of Credit; <u>provided that, upon the occurrence of the Revolver Termination Date in respect of the Non-Extending Class, each Lender with a Revolver Commitment on and after such date shall automatically and without further action be deemed to have purchased an undivided Pro Rata participation in all LC Obligations outstanding at such time but only to the extent that such reallocation</u>

does not cause the aggregate Revolver Exposure of any Lender to exceed such Lender's Revolver Commitment. If Borrowers fail to provide any Cash Collateral as required hereunder, Lenders may (and shall upon direction of Agent) advance, as Revolver Loans, the amount of Cash Collateral required (whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied).

- 2.3.4 Resignation of Issuing Bank. Issuing Bank may resign at any time upon notice to Agent and Borrowers, and any resignation of Agent hereunder shall automatically constitute its concurrent resignation as Issuing Bank. From the effective date of its resignation, Issuing Bank shall have no obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall otherwise have all rights and obligations of an Issuing Bank hereunder relating to any Letter of Credit then outstanding and issued by it prior to such date. A replacement Issuing Bank may be appointed by written agreement among Agent, Borrower Agent and the new Issuing Bank. From and after the effective date of any such replacement, (a) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (b) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require.
- 2.3.5 <u>Inconsistencies with LC Documents</u>. In the event of any conflict or inconsistency between terms and conditions contained in both this Agreement and in any LC Document (as distinguished from additional terms contained in the LC Documents covering matters not addressed in this Agreement, as to which this provision shall not apply), the terms and conditions of this Agreement shall control.
- 2.3.6 <u>Issuing Bank Reports to Agent</u>. Unless otherwise agreed by Agent, Issuing Bank (other than Agent) shall, in addition to its notification obligations set forth elsewhere in this Section, report in writing to Agent and/or any Affiliate of Agent designated by it (i) periodic activity (for such period or recurrent periods as shall be requested by Agent) in respect of Letters of Credit issued by Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the Stated Amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which Issuing Bank honors any request for payment under a Letter of Credit, the date and amount of such payment, (iv) on any Business Day on which any Borrower fails to reimburse Issuing Bank pursuant to **Section 2.3.2(a)**, the date of such failure and the amount owed pursuant to **Section 2.3.2(a)**, and (v) on any other Business Day, such other information as Agent shall reasonably request as to the Letters of Credit issued by Issuing Bank.

### SECTION 3. INTEREST, FEES AND CHARGES

# 3.1 Interest.

# 3.1.1 Rates and Payment of Interest.

(a) The Obligations under the Loan Documents shall bear interest (i) if a Base Rate Revolver Loan, on the outstanding principal amount thereof at a rate per annum equal to the Base Rate in effect from time to time, plus the Applicable Margin; (ii) if a Term Benchmark Revolver Loan, on the outstanding principal amount thereof at the Adjusted Term SOFR Rate for the applicable Interest Period, plus the Applicable Margin; (iii) if an RFR Revolver Loan, on the outstanding principal amount thereof at a rate per annum equal to the Adjusted Daily Simple SOFR, plus the Applicable Margin; and (iv) if any other Obligation under the Loan Documents (including, to the extent permitted by law, interest not paid when due) to the extent not paid when due, at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Revolver Loans. Interest shall accrue from the date the Revolver Loan is advanced or the Obligation is payable, until paid by Borrowers. If a Revolver Loan is repaid on the same day made, one day's interest shall accrue.

- (b) During an Insolvency Proceeding with respect to any Borrower, or during any other Event of Default if Agent or Required Lenders in their discretion so elect, Obligations under the Loan Documents shall bear interest at the Default Rate (whether before or after any judgment), payable on demand.
- (c) Interest accrued on the Revolver Loans shall be due and payable in arrears, (i) on each Interest Payment Date and (ii) on the Revolver Commitment Termination Date in respect of such Class of Revolver Loans. Interest accrued on any Secured Bank Product Obligations shall be due and payable as provided in the applicable agreements between the relevant Secured Bank Product Provider and the relevant Obligor.
- (d) If due to inaccurate reporting in any Borrower Materials, prior to the Revolver Termination Date in respect of the applicable Class of Revolver Loans, it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrowers shall promptly pay to Agent, for the ratable benefit of Lenders (for the account of the Lenders that hold the Revolving CreditRevolver Commitments and Revolver Loans at the time such payment is received, regardless of whether those Lenders held the Revolving CreditRevolver Commitments and the Revolver Loans during the relevant period), an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrowers under this Section shall be due promptly on demand and, for the avoidance of doubt, such deficiency shall be due and payable within three (3) Business Days of the date of such demand and no Default or Event of Default shall be deemed to have occurred with respect to such deficiency prior to such date; provided that upon payment of any such deficiency by the Borrowers, no Lender (including Lenders who held the applicable Revolving CreditRevolver Commitments and Revolver Loans during the relevant period) shall have any claim against any Obligor as a result of the failure to pay the proper margin and fees originally.

# 3.1.2 Application of SOFR to Outstanding Revolver Loans.

- (a) The Borrowers may on any Business Day, elect to convert any portion of the Base Rate Revolver Loans to, or to continue any Term Benchmark Revolver Loan at the end of its Interest Period as, a Term Benchmark Revolver Loan. During the existence of any Event of Default, Agent may (and shall, at the direction of Required Lenders), declare that no Revolver Loan may be made, converted to or continued as a Term Benchmark Revolver Loan.
- (b) To convert or continue Revolver Loans as Term Benchmark Revolver Loans, Borrower Agent shall give Agent a Notice of Conversion/Continuation, no later than 10:00 a.m. at least three (3) Business Days (or such shorter period agreed by Agent) before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Revolver Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, upon the expiration of any Interest Period for any Term Benchmark Revolver Loans, Borrowers shall have failed to deliver a Notice of Conversion/Continuation, they shall be deemed to have elected to convert such Revolver Loan into a Base Rate Revolver Loan.

- 3.1.3 <u>Interest Periods</u>. The Borrowers shall select an interest period ("<u>Interest Period</u>") of one month, three months or six months to apply to each Term Benchmark Revolver Loan; <u>provided</u>, that:
- (a) the Interest Period shall begin on the date the Revolver Loan is made or continued as, or converted into, a Term Benchmark Revolver Loan, and shall expire on the numerically corresponding day in the calendar month at its end;
- (b) if any Interest Period begins on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day; and
  - (c) no Interest Period <u>in respect of any Class of Revolver Loans</u> shall extend beyond the Revolver Termination Date <u>in respect of</u>

# 3.2 <u>Fees</u>.

such Class.

- 3.2.1 <u>Unused Line Fee</u>. The Borrowers shall pay to Agent, for the Pro Rata benefit of Lenders (other than any Defaulting Lender), a fee equal to the Unused Line Fee Percentage times the amount by which the Revolver Commitments (other than the Revolver Commitments of Defaulting Lenders) exceed the average daily Revolver Usage during any month. Such fee shall be payable monthly in arrears, on the first day of each month and on the Revolver Commitment Termination Date in respect of such Class of Revolver Commitments.
- 3.2.2 LC Facility Fees. The Borrowers shall pay (a) to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Applicable Margin in effect for Term Benchmark Revolver Loans times the average daily Stated Amount of Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to each Issuing Lender, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each Letter of Credit issued by such Issuing Lender, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to each Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit issued by such Issuing Lender, which charges shall be paid as and when incurred.
- 3.2.3 <u>Agent Fees</u>. In consideration of arrangement and syndication of the Revolver Commitments and other services provided hereunder, Borrowers shall pay to Agent the fees described in the Fee Letter.
- 3.3 <u>Computation of Interest, Fees, Yield Protection</u>. All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed (including the first day but excluding the last day), based on a year of 360 days, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under Section 3.2 are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate setting forth in reasonable detail the calculation of the amount or amounts payable by Borrowers under Section 3.4, 3.6, 3.7, 3.9 or 5.9, submitted to Borrower Agent by Agent or the affected Lender, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error; provided that such certificate from each such Lender or Issuing Bank shall contain a certification to Borrowers that such Lender or Issuing Bank is generally requiring reimbursement for the relevant amounts from similarly situated borrowers under comparable syndicated credit facilities. The Borrowers shall pay such amounts to the appropriate party within 30 days following receipt of the certificate.

- 3.4 Reimbursement Obligations. The Borrowers shall pay all Extraordinary Expenses within 30 days of receipt of an invoice (in reasonable detail and accompanied by backup documentation). The Borrowers shall also reimburse Agent within 30 days of receipt of an invoice (in reasonable detail and accompanied by backup documentation) for all reasonable and documented out-of-pocket (a) legal, examination and appraisal fees and expenses (in the case of legal fees and expenses, fees and expenses of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent) incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any modification thereof; (bii) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (eiii) subject to the limits of Section 10.1.1(b), any examination or appraisal with respect to any Obligor or Collateral by Agent's personnel or a third party (including any insurance review): and (b) fees and expenses of FTI Consulting, Inc. or one of its Affiliates employed by Agent or with which Agent may consult from time to time pursuant to that certain Engagement Contract dated as of December 15, 2023, among FTI Consulting, Inc., the Administrative Agent and Parent.
- 3.5 <u>Illegality</u>. If any Lender reasonably determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Term Benchmark Revolver Loans, or to determine or charge interest based on the Term Benchmark, then, on written notice thereof by such Lender to Agent and Borrower Agent, any obligation of such Lender to make or continue Term Benchmark Revolver Loans or to convert Base Rate Revolver Loans to Term Benchmark Revolver Loans, shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, Borrowers shall prepay or, if applicable, convert all Term Benchmark Revolver Loans of such Lender to Base Rate Revolver Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Revolver Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Revolver Loans. Upon any such prepayment or conversion, Borrowers shall also pay accrued interest on the amount so prepaid or converted.

# 3.6 Alternate Rate of Interest.

- (a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 3.6:
- (i) Agent reasonably determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate or the Term SOFR Rate, as applicable (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or
- (ii) Agent is advised by the Required Lenders that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate or the Term SOFR Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period or (B) at any time, Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing;

then Agent shall give notice thereof to the Borrower Agent and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark (which Agent agrees to deliver promptly when such circumstances cease to exist), any Notice of Borrowing for, or any request for the conversion of any Revolver Loan to, or continuation of any Revolver Loan as, a Term Benchmark Revolver Loan shall instead be deemed to be a Notice of Borrowing for, or a request for conversion to or continuation of, as applicable, (1) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 3.6(a)(i) or (ii) above or (2) a Borrowing of Base Rate Loans if the Adjusted Daily Simple SOFR also is the subject of Section 3.6(a)(i) or (ii) above. Furthermore, if any Term Benchmark Revolver Loan or RFR Revolver Loan is outstanding on the date of the Borrower's receipt of the notice from Agent referred to in this Section 3.6(a) with respect to a Relevant Rate applicable to such Term Benchmark Revolver Loan or RFR Revolver Loan, then until Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark (which Agent agrees to deliver promptly when such circumstances cease to exist), (1) any Term Benchmark Revolver Loan shall on the last day of the Interest Period applicable to such Loan, be converted by Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 3.6(a)(i) or (ii) above or (y) a Borrowing of Base Rate Loans if the Adjusted Daily Simple SOFR also is the subject Section 3.6(a)(i) or (ii) above, on such day, and (2) any RFR Revolver Loan shall on and from such day be converted by Agent to, and shall constitute, a Base Rate Revolver Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedging Agreement shall be deemed not to be a "Loan Document" for purposes of this **Section 3.6**), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, Agent, in consultation with the Borrower, will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) Agent will promptly notify the Borrower Agent and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, or any Lender (or group of Lenders) pursuant to this **Section 3.6**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this **Section 3.6**.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Revolver Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) a Borrowing of Base Rate Loans if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate. Furthermore, if any Term Benchmark Revolver Loan or RFR Revolver Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Revolver Loan or RFR Revolver Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 3.6, (1) any Term Benchmark Revolver Loan shall on the last day of the Interest Period applicable to such Loan, be converted by Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) a Borrowing of Base Rate Loans if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Revolver Loan shall on and from such day be converted by Agent to, and shall constitute a Base Rate Revolver Loan.

# 3.7 Increased Costs; Capital Adequacy.

- 3.7.1 Increased Costs Generally. If any Change in Law shall:
- (a) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or Issuing Bank;
- (b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Revolver Loan, Letter of Credit, Revolver Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or
- (c) impose on any Lender or Issuing Bank or the applicable offshore interbank market any other condition affecting this Agreement or any other Loan Document or any Term Benchmark Revolver Loans made by such Lender or any Letter of Credit, participation in LC Obligations;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, maintaining, converting or continuing any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to a Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by a Lender or Issuing Bank hereunder (whether of principal, interest or any other amount) then, within 30 days of receipt of a certificate of the type specified in **Section 3.3** from such Lender or Issuing Bank, as applicable, Borrowers will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered.

- 3.7.2 <u>Capital Requirements</u>. If a Lender or Issuing Bank determines that a Change in Law affecting such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Revolver Commitments, or the Revolver Loans made by, or participations in LC Obligations or Swingline Loans held by such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender, Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then from time to time within 30 days of receipt of a certificate of the type specified in Section 3.3, Borrowers will pay to such Lender or Issuing Bank, as the case may be, such additional amounts as will compensate it or such Lender's or Issuing Bank's holding company for the reduction suffered.
- 3.7.3 <u>Compensation</u>. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender or Issuing Bank for any increased costs or reductions suffered more than 90 days (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender or Issuing Bank notifies Borrower Agent of the applicable Change in Law and of such Lender's or Issuing Bank's intention to claim compensation therefor.

3.8 <u>Mitigation</u>. If any Lender gives a notice under Section 3.5 or requests compensation under Section 3.7, or if Borrowers are required to pay any Indemnified Taxes or additional amounts with respect to a Lender under Section 5.9, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to it or unlawful. The Borrowers shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

### 3.9 Funding Losses.

- 3.9.1 If for any reason (a) any Borrowing, conversion or continuation of a Term Benchmark Revolver Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a Term Benchmark Revolver Loan occurs on a day other than the end of its Interest Period, (c) Borrowers fail to repay a Term Benchmark Revolver Loan when required hereunder, or (d) a Lender (other than a Defaulting Lender) is required to assign a Term Benchmark Revolver Loan prior to the end of its Interest Period pursuant to Section 13.4, then Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to Borrower Agent and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.
- 3.9.2 With respect to RFR Revolver Loans, if (a) the payment of any principal of any RFR Revolver Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (b) Borrowers fail to repay an RFR Revolver Loan when required hereunder or (c) a Lender (other than a Defaulting Lender) is required to assign an RFR Revolver Loan other than on the Interest Payment Date applicable thereto pursuant to **Section 13.4**, then, in any such event, then Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to Borrower Agent and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.
- 3.10 Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law ("maximum rate"). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations under the Loan Documents or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations under the Loan Documents.

### SECTION 4. LOAN ADMINISTRATION

- 4.1 Manner of Borrowing and Funding Revolver Loans.
  - 4.1.1 Notice of Borrowing.

- (a) To request Revolver Loans, Borrower Agent shall give Agent a Notice of Borrowing no later than (i) 11:00 a.m. on the requested funding date, in the case of Base Rate Revolver Loans, and (ii) 12:00 noon, at least three (3) Business Days (or such shorter period agreed by Agent) prior to the requested funding date, in the case of Term Benchmark Revolver Loans. Notices received by Agent after such time shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) which Borrower is requesting a Revolver Loan, (B) the amount of the Borrowing, (C) the requested funding date (which must be a Business Day), (D) whether the Borrowing is to be made as a Base Rate Revolver Loan or Term Benchmark Revolver Loan, and (E) in the case of a Term Benchmark Revolver Loan, the applicable Interest Period (which shall be deemed to be one month if not specified).
- (b) Unless payment is otherwise made by Borrowers, the due date of any Obligation under the Loan Documents (whether principal, interest, fees or other charges under the Loan Documents, including Extraordinary Expenses, LC Obligations and Cash Collateral but, for purposes of clarity, excluding Secured Bank Product Obligations unless otherwise agreed by the Borrower Agent and the Secured Bank Product Provider in writing) shall be deemed to be a request for a Base Rate Revolver Loan on the due date in the amount due and the Loan proceeds shall be disbursed as direct payment of such Obligation. In addition, Agent may, at its option, charge such amount against any Deposit Account (other than an Excluded Account) of a Borrower maintained with Agent or any of its Affiliates.
- (c) If a Borrower maintains a disbursement account with Agent or any of its Affiliates, then presentation for payment of a Payment Item in the account when there are insufficient funds to cover it shall be deemed to be a request for a Base Rate Revolver Loan on the presentation date, in the amount of the Payment Item. Proceeds of such Loan may be disbursed directly to the account.
- 4.1.2 Funding by Lenders. Agent shall promptly notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 12:00 noon on the proposed funding date for a Base Rate Revolver Loan or by 3:00 p.m. two (2) Business Days before a proposed funding of a Term Benchmark Revolver Loan. Each Lender shall fund its Pro Rata share of a Borrowing in immediately available funds not later than 2:00 p.m. on the requested funding date, unless Agent's notice is received after the time provided above, in which case Lender shall fund by 1:00 p.m. on the next Business Day; provided that Swingline Loans shall be made as provided in Section 4.1.3. Subject to its receipt of such amounts from Lenders, Agent shall disburse the Borrowing proceeds in a manner directed by Borrower Agent. Unless Agent receives (in sufficient time to act) written notice from a Lender that it will not fund its Pro Rata share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to Borrowers. If a Lender's share of a Borrowing or of a settlement under Section 4.1.3(b) is not received by Agent, then Borrowers agree to repay to Agent on demand the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to such Borrowing; provided that such Lender shall continue to be a Defaulting Lender and Borrowers payments hereunder shall not constitute a waiver or release of claims of Borrowers against such Lender. Agent, a Lender or Issuing Bank may fulfill its obligations under Loan Documents through one or more Lending Offices, and this shall not affect any obligation of Obligors under the Loan Documents or with respect to any Obligations.

# 4.1.3 Swingline Loans; Settlement.

(a) To fulfill any request for a Base Rate Revolver Loan hereunder, Agent may in its discretion advance Swingline Loans to Borrowers, up to an aggregate outstanding amount not to exceed 20% of the Revolver Commitments. Each Swingline Loan shall constitute a Revolver Loan for all purposes, except that payments thereon shall be made to Agent for its own account until settled with or funded by Lenders hereunder. The obligation of Borrower to repay Swingline Loans shall be evidenced by the records of Agent and need not be evidenced by any promissory note.

- (b) Settlement of Revolver Loans, including Swingline Loans, among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly, unless the settlement amount is de minimis), on a Pro Rata basis in accordance with the Settlement Report delivered by Agent to Lenders. Each Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such Lender's Pro Rata share of the outstanding principal amount of the applicable Loan with respect to which settlement is requested to such account of Agent as Agent may designate, not later than 1:00 p.m. on such settlement date. Between settlement dates, Agent may in its discretion apply payments on Revolver Loans to Swingline Loans, regardless of any designation by Borrowers or anything herein to the contrary. Each Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all Swingline Loans outstanding from time to time until settled. If a Swingline Loan cannot be settled among Lenders, whether due to an Obligor's Insolvency Proceeding or for any other reason, each Lender shall pay the amount of its participation in the Loan to Agent, in immediately available funds, within one (1) Business Day after Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in Section 6 are satisfied.
- 4.1.4 Notices. The Borrowers may request, convert or continue Revolver Loans, select interest rates or transfer funds based on telephonic or electronic instructions to Agent. The Borrowers shall confirm each such request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, as applicable. Neither Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of Agent acting on its understanding of telephonic or electronic instructions from a Person believed in good faith to be a Person authorized to give such instructions on a Borrower's behalf.
  - 4.2 **<u>Defaulting Lender</u>**. Notwithstanding anything herein to the contrary:
- 4.2.1 Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to Revolver Loans and Letters of Credit (including existing Swingline Loans, Protective Advances and LC Obligations), all or any part of such Defaulting Lender's participation in LC Obligations and Swingline Loans shall be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata shares (calculated without regard to such Defaulting Lender's Revolver Commitment) but only to the extent that such reallocation does not cause the aggregate Revolver Exposure of any non-defaulting Lender to exceed such non-defaulting Lender's Revolver Commitment. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as specifically provided in Section 14.1.1(c).
- 4.2.2 <u>Payments; Fees</u>. Any payment of principal, interest, fees or other amounts received by Agent for the account of a Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XI or otherwise, and including any amounts made available to Agent by that Defaulting Lender pursuant to **Section 9.06**), shall be applied at such time or times as may be determined by Agent as follows:

*first*, to the payment of any amounts owing by that Defaulting Lender to Agent hereunder;

second, to the payment on a Pro Rata basis of any amounts owing by that Defaulting Lender to any applicable Issuing Banks and Swingline Lenders hereunder;

*third*, if so reasonably determined by Agent or the Borrower Agent or reasonably requested by the applicable Issuing Bank or Swingline Lender, to be held as Cash Collateral at a rate of 100% of the Fronting Exposure of such Defaulting Lender;

fourth, to the funding of any Revolver Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agent;

fifth, if so determined by Agent or Borrower, to be held in a deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Revolver Loans under this Agreement and to Cash Collateralize any Issuing Bank's Fronting Exposure with respect to such Defaulting Lender;

sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or any Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement;

*seventh*, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and

eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if (x) such payment is a payment of the principal amount of any Revolver Loans or LC Obligations in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Revolver Loans or LC Obligations were made at a time when the conditions set forth in Section 6.2 were satisfied or waived, such payment shall be applied solely to pay the Revolver Loans of, and LC Obligations owed to, all non-Defaulting Lenders on a Pro Rata basis prior to being applied to the payment of any Revolver Loans of, or LC Obligations owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to Cash Collateralize pursuant to this Section 4.2.2 shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Revolver Commitment shall be disregarded for purposes of calculating the Unused Line Fee Percentage under Section 4.2.2. To the extent any LC Obligations owing to a Defaulting Lender are reallocated to other Lenders, Letter of Credit fees attributable to such LC Obligations under Section 3.2.2 shall be paid to such other Lenders. Agent shall be paid all Letter of Credit fees attributable to LC Obligations that are not Cash Collateralized by a Person on behalf of Borrowers or reallocated to such other non-Defaulting Lenders. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender and its unfunded Revolver Commitment shall be disregarded for purposes of calculating the unused line fee under Section 3.2.1. If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under Section 3.2.2 shall be paid to such Lenders. Except to the extent the LC Obligations of a

4.2.3 <u>Status; Cure</u>. The Borrowers, Agent and Issuing Bank may agree in writing that a Lender has ceased to be a Defaulting Lender subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral) Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Revolver Commitments and Revolver Loans, and the Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among Lenders and settled by Agent (with

appropriate payments by the reinstated Lender, including its payment of breakage costs for reallocated Term Benchmark Revolver Loans) in accordance with the readjusted Pro Rata shares; <u>provided</u> that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of a Borrower while that Lender was a Defaulting Lender. Unless expressly agreed by Borrowers, Agent and Issuing Bank, no reallocation of Revolver Commitments and Revolver Loans to non-Defaulting Lenders or reinstatement of a Defaulting Lender shall constitute a waiver or release of claims of any party hereunder against a Defaulting Lender as a result of such Lender having been a Defaulting Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

- 4.3 <u>Number and Amount of Term Benchmark Revolver Loans</u>; <u>Determination of Rate</u>. Each Borrowing of Term Benchmark Revolver Loans when made shall be in a minimum amount of \$5,000,000, or an increment of \$1,000,000 in excess thereof. No more than 8 Borrowings (or such greater number as is acceptable to Agent) of Term Benchmark Revolver Loans may be outstanding at any time, and all Term Benchmark Revolver Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose. Upon determining the Adjusted Term SOFR Rate for any Interest Period requested by Borrowers, Agent shall promptly notify Borrowers thereof by telephone or electronically and, if requested by Borrowers, shall confirm any telephonic notice in writing.
- 4.4 Borrower Agent. Each Borrower hereby designates CAI ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Revolver Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, delivery of Borrower Materials required to be delivered by Borrowers hereunder, payment of Obligations, requests for waivers, amendments or other modifications, accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice or communication with a Borrower hereunder to Borrower Agent on behalf of such Borrower. Each of Agent, Issuing Bank and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking by Borrower Agent shall be binding upon and enforceable against such Borrower.
- 4.5 **One Obligation**. The Revolver Loans, LC Obligations and other Obligations constitute one general obligation, on a joint and several basis, of Borrowers and are secured by Agent's Lien on all Collateral; provided, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.
- 4.6 <u>Effect of Termination</u>. Until Full Payment of all Obligations under the Loan Documents, all undertakings of Borrowers contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. **Sections 2.3**, 3.4, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2, this Section and each indemnity (and related provisions (including the obligation to return any payments to which an indemnitee was not entitled to payment)) or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations subject to the limitations set forth in such Sections, if any.

### **SECTION 5. PAYMENTS**

5.1 General Payment Provisions. All payments or prepayments of Obligations under the Loan Documents shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes (except as provided in Section 5.9), and in immediately available funds, prior to 2:00 p.m. (or such later time as Agent may agree in its reasonable discretion) on the due date or the date fixed for any prepayment hereunder. Any amounts received after such time may, at the discretion of Agent, be deemed made on the next Business Day for purposes of calculating interest thereon. Except as expressly provided herein, all such payments shall be made to Agent at its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois 60603. Any payment of a Term Benchmark Revolver Loan prior to the end of its Interest Period or of any RFR Revolver Loan prior to the Interest Payment Date in respect thereof shall be accompanied by all amounts due under Section 3.9. Any prepayment of Revolver Loans shall be applied first to Base Rate Revolver Loans, then to RFR Revolver Loans and finally to Term Benchmark Revolver Loans.

# 5.2 Repayment of Revolver Loans.

- 5.2.1 Revolver Loans of any Class shall be due and payable in full on the Revolver Commitment Termination Date in respect of such Class, unless payment is sooner required hereunder. Revolver Loans may be prepaid from time to time, without penalty or premium; provided that voluntary prepayments may be made on a non-pro rate basis to the extent that a FILO Tranche is outstanding; provided, further, that voluntary prepayments shall not be applied to any last-out facility on a greater than pro-rate basis as compared to any non-last out facility, and any voluntary prepayments of any last-out facility shall only be made if the Payment Conditions are satisfied after giving pro forma effect thereto. Subject to Section 2.1.5, if an Overadvance exists at any time, Borrowers shall, within three (3) Business Days after any Borrower receives written notice thereof from Agent, repay Revolver Loans in an amount sufficient to reduce Revolver Usage to an amount that does not exceed the Borrowing Base (and thereafter, if any excess remains, Cash Collateralize outstanding LC Obligations in an amount equal to such excess).
- 5.2.2 In the event and on such occasion that (a) If on any day Revolver Usage exceeds (a) the aggregate Revolver Commitments or (b) (i) during the period commencing on the Amendment No. 3 Effective Date and ending on August 31, 2024, \$400,000,000, (ii) during the period commencing on September 1, 2024 and ending on October 31, 2024, \$375,000,000, (iii) during the period commencing on November 1, 2023 until the expiration of the Covenant Relief Period, Revolver Usage exceeds \$325,000,000,000 and ending on December 31, 2024, \$350,000,000 and (iv) on or after January 1, 2025, \$300,000,000, then the Borrowers shall, on the immediately succeeding Business Day, repay Revolver Loans in an amount sufficient to reduce Revolver Usage to an amount that (x) does not exceed the aggregate Revolver Commitments or (y) and does not exceed \$325,000,000, asthe applicable amount specified in clause (b) (and thereafter, if any excess remains or Availability continues to be less than required by the preceding clauses (xa) or (b) due to outstanding LC Obligations, Cash Collateralize such outstanding LC Obligations in an amount equal to such excess or until the Borrowers have satisfied such Availability requirement). Notwithstanding anything to the contrary contained herein, neither this Section 5.2.2 nor any other provision of this Agreement may be amended or modified if the effect of such amendment or modification would be to lower the minimum Availability required hereby, in each case without the consent of the Supermajority Lenders.
- 5.3 <u>Curative Equity</u>. Within one (1) Business Day of the date of receipt by any Borrower of the proceeds of any Curative Equity pursuant to **Section 10.4**, such Borrower shall prepay the outstanding principal of the Revolver Loans in accordance with **Section 5.1** in an amount equal to 100% of such proceeds, net of any reasonable out-of-pocket expenses incurred in connection with the issuance of such Curative Equity.

#### 5.4 Reserved.

5.5 Marshaling; Payments Set Aside. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers is made to Agent, Issuing Bank or any Lender, or if Agent, Issuing Bank or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person in any Insolvency Proceeding, then to the extent of such recovery, the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

# 5.6 Application and Allocation of Payments.

- 5.6.1 <u>Application</u>. Subject to **Section 5.6.2**, payments made by Borrowers hereunder shall be applied (a) first, to Obligations under the Loan Documents then due and owing, if any; (b) second, to other Obligations specified by Borrowers; and (c) third, as determined by Agent in its discretion.
- 5.6.2 <u>Post-Default Allocation</u>. Notwithstanding anything in any Loan Document to the contrary, during the existence of an Event of Default under **Section 11.1(j)**, or during any other Event of Default at the discretion of Agent or Required Lenders, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows:

first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent;

second, to all other amounts owing to Agent, including Swingline Loans, Protective Advances, and Revolver Loans and participations that a Defaulting Lender has failed to settle or fund;

third, to all amounts owing to Issuing Bank (other than Cash Collateralization of undrawn Letters of Credit);

fourth, to all Obligations (other than Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Lenders;

fifth, to all Obligations (other than Secured Bank Product Obligations) constituting interest;

sixth, to all Revolver Loans, and to Secured Bank Product Obligations arising under Hedging Agreements (including Cash Collateralization thereof) up to the amount of Reserves existing with respect to such Hedging Agreements;

seventh, to Cash Collateralize all LC Obligations;

eighth, to all other Secured Bank Product Obligations;

ninth, to all remaining Obligations; and

LAST, to Borrowers.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in each category. Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from a Secured Bank Product Provider. If the provider fails to deliver the calculation within five days following request, Agent may assume the amount is zero. The allocations in this Section are solely to determine the priorities among Secured Parties and may be changed by agreement of affected Secured Parties without the consent of any Obligor. No Obligor has any right to direct the application of payments or Collateral proceeds subject to this Section 5.6.2.

- 5.6.3 <u>Erroneous Application</u>. Agent shall not be liable for any application of amounts made by it in good faith and, subject to **Section 12.9.2**, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been paid shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).
- 5.7 **Dominion Account**. The ledger balance in the main Dominion Account as of the end of a Business Day shall be applied to the Obligations at the beginning of the next Business Day, during any Dominion Trigger Period. Any resulting credit balance shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Event of Default exists.
- 5.8 Account Stated. Agent shall maintain, in accordance with its customary practices, loan account(s) (collectively, the "Loan Account") evidencing the Debt of Borrowers hereunder, and each Borrower confirms that such arrangement shall have no effect on the joint and several character of its liability for the Obligations. Any failure of Agent to record anything in a Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries made in a Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in a Loan Account is provided to any Person for verification (or inspected in the case of any Person other than Borrowers), the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt (or inspection, as applicable) that specific information is subject to dispute; provided that payment by Borrowers to Agent of any amounts owed hereunder which are under dispute by Borrowers shall not be deemed a waiver of Borrowers' right to continue such dispute.

# 5.9 **Taxes**.

- 5.9.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.
- (a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Agent in its discretion) requires the deduction or withholding of any Tax from any such payment by Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding based on information and documentation provided pursuant to **Section 5.10**.
- (b) If Agent or any Obligor is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) Agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

- (c) If Agent or any Obligor is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.
- 5.9.2 <u>Payment of Other Taxes</u>. Without limiting the foregoing, Borrowers shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

#### 5.9.3 Tax Indemnification.

- (a) Each Borrower shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any penalties, interest and reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Borrower shall indemnify and hold harmless Agent against any amount that a Lender or Issuing Bank fails for any reason to pay to Agent as required pursuant to this Section. Each Borrower shall make payment within 30 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrowers by a Lender or Issuing Bank (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.
- (b) Each Lender and Issuing Bank shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender or Issuing Bank (but only to the extent Borrowers have not already paid or reimbursed Agent therefor and without limiting Borrowers' obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender and Issuing Bank shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender or Issuing Bank by Agent shall be conclusive absent manifest error.
- 5.9.4 Evidence of Payments. If Agent or an Obligor pays any Taxes pursuant to this Section, then upon request and as soon as practicable after payment, Agent shall deliver to Borrower Agent or Borrower Agent shall deliver to Agent, respectively, a copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment or other evidence of payment reasonably satisfactory to Agent or Borrower Agent, as applicable.

- 5.9.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender or Issuing Bank, nor have any obligation to pay to any Lender or Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of a Lender or Issuing Bank. If a Recipient determines in its discretion that it has received a refund of any Taxes as to which it has been indemnified by Borrowers or with respect to which a Borrower has paid additional amounts pursuant to this Section, it shall pay Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrowers agree, upon request by the Recipient if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to Borrowers if such payment would place the Recipient in a less favorable net after-Tax position than it 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. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its taxes that it deems confidential) available to any Obligor or other Person.
- 5.9.6 <u>Survival</u>. Each party's obligations under **Sections 5.9** and **5.10** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender or Issuing Bank, the termination of the Revolver Commitments, and the repayment, satisfaction, discharge or Full Payment of any Obligations under the Loan Documents.

# 5.10 Lender Tax Information.

- 5.10.1 Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrowers and Agent properly completed and executed documentation reasonably requested by Borrowers or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrowers or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrowers or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in Sections 5.10.2(a), (b) and (d)) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.
  - 5.10.2 <u>Documentation</u>. Without limiting the foregoing, if any Borrower is a U.S. Person,
- (a) Any Lender that is a U.S. Person shall deliver to Borrowers and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), executed originals of IRS Form W 9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;
- (b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of originals as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), whichever of the following is applicable:

- (i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
  - (ii) executed originals of IRS Form W 8ECI;
- (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3) (A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code ("U.S. Tax Compliance Certificate"), and (y) executed originals of IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable; or
- (iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; <u>provided</u>, <u>however</u>, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct or indirect partner;
- (c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of Borrowers or Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers or Agent to determine the withholding or deduction required to be made; and
- (d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrowers and Agent at the time(s) prescribed by law and otherwise as reasonably requested by Borrowers or Agent, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for them to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.
- 5.10.3 <u>Redelivery of Documentation</u>. If any form or certification previously delivered by a Lender pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrowers and Agent in writing of its inability to do so.

### 5.11 Nature and Extent of Each Borrower's Liability.

5.11.1 Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Lenders the prompt payment and performance of, all Obligations, except its Excluded Swap Obligations. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Full Payment of the Obligations under the Loan Documents, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Obligations or any action, or the absence of any action, by Agent or any Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any Lender against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Obligations under the Loan Documents.

# 5.11.2 Waivers.

- (a) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations under the Loan Documents and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is a Borrower. It is agreed among each Borrower, Agent and Lenders that the provisions of this Section 5.11 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Revolver Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.
- (b) During the continuance of an Event of Default, Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this Section 5.11. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Agent may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 5.11, notwithstanding that any present or future law or court decision may have the effect of reducing the amount o

### 5.11.3 Extent of Liability; Contribution.

- (a) Notwithstanding anything herein to the contrary, each Borrower's liability under this **Section 5.11** shall not exceed the greater of (i) all amounts for which such Borrower is primarily liable, as described in clause (c) below, and (ii) such Borrower's Allocable Amount.
- (b) If any Borrower makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, ratably based on their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 5.11** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law
- (c) This Section 5.11.3 shall not limit the liability of any Borrower to pay or guarantee Revolver Loans made directly or indirectly to it (including Revolver Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support its business, Secured Bank Product Obligations incurred to support its business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Revolver Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of Revolver Loans and Letters of Credit to such Borrower based on that calculation.
- (d) Each Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section 5.11 voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations under the Loan Documents. Each Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.
- 5.11.4 <u>Joint Enterprise</u>. Each Borrower has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated

group. The Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. The Borrowers acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

5.11.5 <u>Subordination</u>. Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of all Obligations under the Loan Documents.

### **SECTION 6. CONDITIONS PRECEDENT**

- 6.1 <u>Conditions Precedent to Initial Revolver Loans</u>. In addition to the conditions set forth in <u>Section 6.2</u>, Lenders shall not be required to fund any requested Revolver Loan, issue any Letter of Credit, or otherwise extend credit to Borrowers hereunder, until the date ("<u>Closing Date</u>") that each of the following conditions has been satisfied:
- (a) Revolver Notes shall have been executed by Borrowers and delivered to each Lender that requests issuance of a Revolver Note. This Agreement, the Guaranty, the Security Agreement, the Equity Interest Pledge Agreement and the Fee Letter (or reaffirmations thereof) requested by Agent shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor (to the extent a party thereto) shall be in compliance with all terms thereof.
- (b) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral, as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.
- (c) Agent shall have received certificates from a Senior Officer of Parent and each Borrower certifying that, after giving effect to the initial Revolver Loans and transactions hereunder, (i) it is Solvent; (ii) no Default or Event of Default exists; and (iii) the representations and warranties set forth in **Section 9** are true and correct.
- (d) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.
  - (e) Agent shall have received a written opinion of Sidley Austin LLP with respect to each Obligor.
- (f) Agent shall have received copies of the charter documents of each Obligor, certified as of a recent date by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization. Agent shall have received good standing certificates for each Obligor, issued as of a recent date by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.

- (g) No material adverse change in the financial condition of any Obligor or in the quality, quantity or value of any Collateral shall have occurred since January 31, 2020.
- (h) The Borrowers shall have paid all fees and expenses due and payable to Agent and Lenders on the Closing Date, including, to the extent invoiced at least two (2) Business Days prior to the Closing Date, reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the Borrowers hereunder.
- (i) Agent shall have received a copy of the current Credit and Collection Guidelines in effect on the Closing Date (which may, in the case of Confidential Information, be redacted).
  - (j) Agent shall have received an updated Borrowing Base Report prepared as of February 28, 2021.
- 6.2 <u>Conditions Precedent to All Credit Extensions</u>. Agent, Issuing Bank and Lenders shall in no event be required to make any credit extension hereunder (excluding (i) with respect to any increased Revolver Commitments or additional Revolver Commitments in respect of a FILO Tranche, (ii) Loans required to be made by Lenders in respect of unpaid drawings on existing Letters of Credit pursuant to **Section 2.2.2** and (iii) settlements and participations in respect of Swingline Loans pursuant to **Section 4.1.3**) or issue Letters of Credit on any date, if the following conditions are not satisfied on such date and upon giving effect thereto:
- (a) No Default or Event of Default (including, for purposes of this Section 6.2(a), a Financial Covenant Default (as defined in the ABL Intercreditor Agreement) exists;
- (b) The representations and warranties of each Obligor in the Loan Documents are true and correct in all material respects (and in all respects with respect to any representations and warranties which are expressly qualified with materiality) on the date of, and upon giving effect to, such credit extension (except for representations and warranties that relate solely to an earlier date); and
  - (c) With respect to a Letter of Credit issuance, all LC Conditions are satisfied.

Each request (or deemed request) by a Borrower for any credit extension shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of the credit extension.

### **SECTION 7. COLLATERAL**

- 7.1 **Grant of Security Interest**. To secure the prompt payment and performance of all Obligations, each Borrower hereby assigns and transfers to Agent, and hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all of the following Property of such Borrower (other than Excluded Collateral), whether now owned or hereafter acquired, and wherever located:
  - (a) all Contracts and all Third Party Contracts;
  - (b) all Accounts including Credit Card Accounts;
  - (c) all Chattel Paper, including electronic chattel paper;

- (d) all Commercial Tort Claims, including those shown, as of the Closing Date, on Schedule 9.1.16;
- (e) all Deposit Accounts;
- (f) all Documents;
- (g) all General Intangibles, including Intellectual Property and the CARES Act Tax Refund Claim;
- (h) all Goods, including Inventory, Equipment and fixtures;
- (i) all Instruments;
- (j) all Investment Property, including the Equity Interests of each Borrower in its Subsidiaries set forth on **Schedule 7.1(j)** and all Class C Retained Notes;
  - (k) all Letter-of-Credit Rights;
  - (l) all Supporting Obligations;
- (m) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, including any Cash Collateral;
- (n) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (o) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

Each Contract and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor directly or indirectly from the sale of the securities in a Permitted ABS Transaction on account of such Contract becoming a Securitized Contract) shall be released from Agent's security interest automatically upon becoming a Securitized Contract without further action by Agent or any other Person. Each Third Party Contract and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor on account of the sale thereof) shall be released from Agent's security interest automatically upon being sold to a third party in accordance with the terms of the Loan Documents without further action by Agent or any other Person. Each Class C Retained Note and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor on account of the sale thereof) shall be released from Agent's security interest automatically upon being sold to a third party in accordance with Section 10.2.6(b) without further action by Agent or any other Person. Agent shall execute a release evidencing the foregoing upon any Borrower's request; provided that only Agent or its designee may file any UCC-3 financing statements in connection with the foregoing (which Agent agrees to do promptly upon Borrower Agent's request). If a Securitized Contract is transferred from a Securitization Subsidiary back to a Borrower (other than a defaulted Securitized Contract being transferred back solely for tax rebate purposes), it shall cease being a Securitized Contract upon such transfer back and, together with its related security shall again constitute Collateral hereunder.

### 7.2 Lien on Deposit Accounts; Cash Collateral.

- 7.2.1 <u>Deposit Accounts</u>. To further secure the prompt payment and performance of all Obligations, each Borrower hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all amounts credited to any Deposit Account of such Borrower (other than Excluded Accounts), including any sums in any blocked or lockbox accounts (if any) or in any accounts into which such sums are swept. Each Borrower authorizes and directs each bank or other depository to deliver to Agent all balances in each such Deposit Account maintained by such Borrower with such depository for application to the Obligations then outstanding promptly following the receipt by such bank or other depository institution of a notice of such Dominion Trigger Period. Each Borrower irrevocably appoints Agent as such Borrower's attorney-in-fact to collect such balances to the extent any such delivery is not so made.
- 7.2.2 <u>Cash Collateral</u>. At the request of Borrower Agent, any Cash Collateral may be invested in Cash Equivalents (so long as no Event of Default exists). Cash Collateral may be invested, at Agent's discretion, but Agent shall have no responsibility for any investment or loss. As security for its Obligations, each Borrower hereby grants to Agent a security interest in and Lien upon all Cash Collateral delivered hereunder from time to time, whether held in a segregated cash collateral account or otherwise. All Cash Collateral and related deposit accounts shall be under the sole dominion and control of Agent and, subject to **Section 12.2**, no Borrower shall have any right to any Cash Collateral until the earlier of (a) the date on which the circumstances giving rise to the need for such Cash Collateralization no longer exist, (b) Full Payment of all Obligations in respect of which such Cash Collateral was posted and (c) a determination is made by the party for whose benefit such Cash Collateral was posted that it no longer requires the Cash Collateral.
  - 7.3 Reserved.
  - 7.4 Reserved.
  - 7.5 Other Collateral.
- 7.5.1 Commercial Tort Claims. Borrowers shall promptly notify Agent in writing if any Borrower has a Commercial Tort Claim (other than, as long as no Event of Default exists, a Commercial Tort Claim for less than \$5,000,000), and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority Lien (subject only to Permitted Liens arising by , and which have priority by, operation of law) in favor of Agent for the benefit of the Secured Parties.
- 7.5.2 Certain After-Acquired Collateral. The Borrowers (a) shall promptly notify Agent if a Borrower obtains an interest in any Deposit Account (other than an Excluded Account) and (b) shall notify Agent concurrently with the delivery of any Compliance Certificate delivered pursuant to Section 10.1.1(d)(i) or by such other notice or at such later date as is acceptable to Agent, if, during the most recently ended Fiscal Quarter to which such Compliance Certificate relates, any Borrower obtains any interest in Collateral (other than Contracts and related assets) consisting of Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights (provided that, notwithstanding the foregoing, the Borrowers shall notify Agent promptly but in any event within ten (10) Business Days if any Borrower obtains any interest in Collateral of a type described in this clause (b) with a fair market value in excess of \$15,000,000 individually or in the aggregate) and, in each case, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority Lien (subject to Permitted Liens) on such Collateral, including obtaining any appropriate possession or control agreement. If any Collateral included in the Borrowing Base is in the possession of a third party, at Agent's reasonable request, Borrowers shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent.

- 7.5.3 <u>Limitations</u>. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Borrowers relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.
- 7.5.4 <u>Further Assurances</u>. All Liens granted to Agent for the benefit of the Secured Parties under the Loan Documents are for the benefit of Secured Parties. Promptly upon request, Borrowers shall deliver such instruments and agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Borrower authorizes Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of such Borrower, or words to similar effect, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.
- 7.6 **Contract Legend**. If such Contract is tangible chattel paper and has not become a Securitized Contract, Borrowers shall promptly following the execution or receipt of a Contract stamp or type in on the Contract the following:
  - "This instrument or agreement is assigned as collateral to JPMorgan Chase Bank, N.A."
  - or for so long as the Term Loan Obligations remain outstanding, the following:
- "This instrument or agreement is assigned as collateral to JPMorgan Chase Bank, N.A, as agent for secured parties under an asset based revolving credit facility and Pathlight Capital LPBRF Finance Co., LLC, as agent for secured parties under an asset based term credit facility".

#### SECTION 8. COLLATERAL ADMINISTRATION

8.1 Collateral Reports. By the 20th day of each month, Borrowers shall deliver to Agent (and Agent shall promptly deliver same to Lenders)
(a) a Borrowing Base Report prepared as of the close of business of the previous month; provided that the NOLV Percentage to be applied to the Value of Eligible Inventory shall be the NOLV Percentage set forth in the most recent appraisal of Inventory satisfactory to Agent, a copy of which has been delivered to the Borrowers (provided, that Borrowing Base Reports shall be delivered weekly by the third (3rd) Business Day of each week during (x) an Increased Reporting Period; it being understood that Eligible Contracts, Eligible Inventory, the CAI Availability Reserve and, the CCI Availability Reserve shall be provided by Borrower on a monthly basis at all times and (y) a Covenant Relief Period), which report shall be substantially in the form of the illustrative report provided to Agent on September 30, 2022 or such other form as may be reasonably satisfactory to Agent, (b) an aggregate list of Borrowers' Contracts, aged in 30 day contractual delinquency intervals and separately identifying the revolving Contracts; (c) a calculation of the Past Due Percent, the Cash Recovery Percent, Collateral Adjustment Percentage, the Net Charge-Off Percent; (d) an Inventory turn report of Borrowers' Inventory; (e) a listing of each Borrower's Inventory by location, specifying the amount of Inventory at each location; (f) the summary balances of Borrowers' Owned Contract Portfolio and ABS Contract Portfolio and delinquent balances of such portfolios; (g) a calculation of the Term Loan Push-Down Reserve; and (h) a certificate of an officer of Borrower Agent certifying as to the accuracy and completeness in all material respects of the foregoing, provided, further, that notwithstanding the foregoing, no such Borrowing Base Report delivered pursuant to this Section 8.1 shall be required to update such forgoing information set forth in the Borrowing Base Report delivered on the Amendment No. 3

the date that is 20 Business Days after the Amendment No. 3 Effective Date (the "First Updated Badcock Report"). All calculations of Availability in any Borrowing Base Report shall originally be made by Borrowers and certified by a Senior Officer; provided, that Agent may from time to time review and adjust any such calculation, in its Permitted Discretion, to the extent the calculation is not made in accordance with this Agreement (or, in the case of the Term Loan Push Down Reserve, this Agreement and the ABL Intercreditor Agreement), does not accurately reflect the CAI Availability Reserve, the CCI Availability Reserve, the Badcock Availability Reserve or any other Reserve then in effect or the Term Loan Push Down Reserve and/or to correct the Term Loan Push-Down Reserve pursuant to a Term Loan Push-Down Reserve Correction Notice delivered by Term Loan Agent to Agent in accordance with the ABL Intercreditor Agreement.

In the event that any Obligor or any Subsidiary shall engage in a transaction or a series of related transactions (other than sales of Inventory in the ordinary course of business or Asset Disposition of Contracts in connection with any Permitted ABS Transaction) which result in (i) the Asset Disposition or other transfer of assets (including pursuant to the sale of Equity Interests in a Subsidiary, or a merger, liquidation, amalgamation, division, contribution of assets, Equity Interests or Indebtedness Debt or otherwise) included in the determination of the Borrowing Base, or (ii) the exclusion and/or removal of assets which were included in the determination of the Borrowing Base (including, as a result of the application of the eligibility criteria) in an aggregate amount for any single or series of related transactions (or other applicable events) in excess of \$10,000,000, then prior to or concurrently with the consummation of any such transaction or series of related transactions (or the occurrence of any other applicable events), the Borrower Agent shall deliver to Agent an updated Borrowing Base Report reflecting such transactions or series of related transactions (or other applicable events) as of the date of the most recently delivered Borrowing Base Certificate, and demonstrating that no Overadvance or other Event of Default shall result from such transaction or series of related transactions (or other applicable events) (the foregoing, the "Borrowing Base Condition").

### 8.2 Administration of Contracts.

8.2.1 Contracts. (a) The Borrowers hereby represent and warrant to Agent and Lenders with respect to the Contracts included in the Borrowing Base, that: (i) each such Contract represents a bona fide obligation of the Contract Debtor, enforceable in accordance with its terms (except to the extent enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability); (ii) each existing Contract is for a liquidated amount payable by the Contract Debtor thereon on the terms set forth in the Contract therefor or in the schedule thereof delivered to Agent, without any offset, deduction, defense (including the defense of usury), or counterclaim (other than to the extent taken into account in the definition of Eligible Contracts); (iii) to the extent any Contract is in tangible form, there is only one original "Corporate Copy" counterpart and one original "Store Copy" counterpart of such Contract executed by the Contract Debtor and any copies of such original are clearly marked as copies; (iv) the signatures of all Contract Debtors are genuine and, to the knowledge of Borrowers, each Contract Debtor had the legal capacity to enter into and execute such documents on the date thereof; (v) each Borrower maintains policies and procedures designed to achieve compliance with Consumer Finance Laws; and (vi) Borrowers have complied, in all material respects, with all requirements of Applicable Law with respect to all such Contracts and related transactions; and have originated or acquired, serviced, collected and otherwise administered all Contracts and conducted Borrowers' business, in each case in accordance with the Credit and Collection Guidelines and, in all material respects, all applicable Consumer Finance Laws. Notwithstanding anything else to the contrary, the failure of Borrowers to satisfy any of the representations and warranties of this Section 8.2.1(a)(i) through (iv) with respect to Contracts resulting in an adjustment (in the aggregate) to the Borrowing Base of \$5,000,000 or less shall not constitute a breach or Event of Default under this Agreement or any Loan Document but shall instead result in such materially affected Contracts being excluded from the determination of, or other appropriate adjustments to, the Borrowing Base.

- (b) The Borrowers shall not grant any discount, credit or allowance to any such Contract Debtor without Agent's prior written consent, except for discounts, credits and allowances made or given in the Ordinary Course of Business or in compliance with the Credit and Collection Guidelines.
- (c) Except as provided in Borrowers' Credit and Collection Guidelines and with respect to their "direct loan program", Borrowers shall not accept any note or other instrument (except a check or other instrument for the immediate payment of money) with respect to any Contract without Agent's written consent (such consent not to be unreasonably conditioned, withheld, delayed or denied). If Agent consents to the acceptance of any such instrument (which consent shall not be required in the case of the Borrowers' "direct loan program"), it shall be considered as evidence of the Contract and not payment thereof and Borrowers will promptly deliver such instrument to Agent (other than notes in connection with the "direct loan program"), endorsed by the applicable Borrower to Agent in a manner reasonably satisfactory in form and substance to Agent. Regardless of the form of presentment, demand, notice of protest with respect thereto, the Contract Debtor shall remain liable thereon until such Instrument is paid in full.
- (d) Agent may rely, in determining which Contracts are Eligible Contracts, on all statements and representations made by Borrowers with respect thereto.
- (e) The Borrowers hereby represent and warrant to Agent and Lenders with respect to the Third Party Contracts (i) each Borrower maintains policies and procedures designed to achieve compliance with Consumer Finance Laws; and (ii) Borrowers have complied, in all material respects, with all requirements of Applicable Law with respect to all such Third Party Contracts originated by it and, at the time this representation and warranty is made, then serviced, collected or otherwise administered by it and related transactions and have originated, serviced, collected and otherwise administered all Third Party Contracts, in each case in accordance with all applicable Consumer Finance Laws in all material respects.

# (f) [Reserved.]

- (g) If the Contract is in electronic format, (i) none of the Borrowers or a custodian or vaulting agent thereof has communicated an "authoritative copy" (as such term is used in Section 9-105 of the UCC) to any Person other than a Borrower or an Affiliate of a Borrower (which, in the case of an Affiliate of a Borrower, is a Person to whom such Borrower has delegated its duties or has entered into a subservicing arrangement and, in any case, is a Person who has agreed to hold such "authoritative copy" in trust for such Borrower (or its assigns)) and (ii) that is maintained by a custodian or vaulting agent, Borrower shall, upon request by Agent, use commercially reasonable efforts to cause such custodian or vaulting agent to enter into a control agreement with Agent, which shall be in form and substance satisfactory to Agent. If the Contract is in print format, Borrowers shall keep such Contract at the chief executive office or other safe and secure location as designated by Borrower Agent to Agent from time to time.
- 8.2.2 <u>Taxes</u>. If any collections received from payments made by Contract Debtors includes charges for any Taxes, Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge Borrowers therefor; <u>provided</u>, that neither Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.

- 8.2.3 <u>Contract Verification</u>. In connection with the conduct of any field examination, Agent shall have the right, in the name of Agent, any designee of Agent or any Borrower, to verify the validity, amount or any other matter relating to any Contracts by mail, telephone or otherwise. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.
- 8.2.4 Maintenance of Dominion Account. The Borrowers shall maintain Dominion Accounts pursuant to lockbox or other arrangements reasonably acceptable to Agent. The Borrowers shall obtain an agreement (in form and substance reasonably satisfactory to Agent) from each lockbox servicer (if any) and Dominion Account bank, establishing Agent's control over and Lien in the lockbox (if any) or Dominion Account, which may be exercised by Agent during any Dominion Trigger Period, requiring prompt deposit of all remittances received in the lockbox (if any) to a Dominion Account. If a Dominion Account is not maintained with JPM, Agent may, during any Dominion Trigger Period, require prompt transfer of all funds in such account to a Dominion Account maintained with JPM promptly following the receipt of a notice of such Dominion Trigger Period by the applicable bank or depository institution where such account is maintained. Agent and Lenders assume no responsibility to Borrowers for any lockbox arrangement (if any) or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.
- 8.2.5 <u>Proceeds of Collateral</u>. The <u>Subject to Section 10.1.15</u>, the Borrowers shall request in writing that all payments on Contracts or otherwise relating to Collateral included in the Borrowing Base are made (a) directly to a Dominion Account (or a lockbox relating to a Dominion Account, if any) or (b) to a <u>Badcock Store Account in accordance with Section 8.5.2</u>. If any Borrower or its Subsidiary receives cash or Payment Items with respect to any such Collateral, it shall hold same in trust for Agent, and promptly deposit same into a Dominion Account; <u>provided</u>, that payments on Securitized Contracts may be remitted to and held by the Securitization Subsidiary, its agents or the related Permitted ABS Agent and payments on any Third Party Contract may be remitted to and held by the purchaser of such Third Party Contract or its trustee, agent or other representatives and, in each case, shall not be subject to the requirements set forth above.

# 8.3 Administration of Inventory.

- 8.3.1 <u>Records and Reports of Inventory</u>. Each Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form reasonably satisfactory to Agent, on such periodic basis as Agent may request. Each Borrower shall conduct a physical inventory at each of its locations at least once per calendar year <u>(excluding locations that have not been open for more than twelve months)</u>.
- 8.3.2 <u>Returns of Inventory</u>. No Borrower shall return any Inventory included in the Borrowing Base to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; and (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds \$15,000,000; and (d) any payment received by a Borrower in excess of the aggregate amount of \$15,000,000 in any month for a return is promptly remitted to Agent for application to the Obligations.
- 8.3.3 <u>Acquisition and Sale</u>. To Borrowers' knowledge, each Borrower's Inventory included in the Borrowing Base is produced, in all material respects, in accordance with the FLSA.

# 8.4 Administration of Equipment.

- 8.4.1 Reserved.
- 8.4.2 Reserved.
- 8.4.3 <u>Condition of Equipment</u>. The Equipment is in good operating condition and repair, and all necessary replacements and repairs have been made so that its value and operating efficiency are preserved at all times, reasonable wear and tear and casualty and condemnation excepted.

### 8.5 Administration of Deposit Accounts and Securities Accounts.

8.5.1 Deposit Accounts and Securities Accounts. Schedule 8.5 lists, as of the Amendment No. 2 Effective Date, all Deposit Accounts and Securities Accounts maintained by Borrowers (other than Badcock), including Dominion Accounts. Each Borrower shall take all actions necessary to establish Agent's first priority Lien (subject, as to priority, to Permitted Liens set forth in Section 10.2.2(i)) on each Deposit Account and Securities Account (in each case, other than an Excluded Account) and, shall, subject to Section 10.1.15, cause all Deposit Accounts and Securities Accounts (in each case, other than Excluded Accounts) to be subject to control agreements. A Borrower shall be the sole account holder of each such Deposit Account or Securities Account and shall not allow any Person (other than Agent, Term Loan Agent, if applicable, and the applicable depository bank or securities intermediary) to have control over such Deposit Accounts, Securities Accounts or any Property deposited therein. The Borrowers shall promptly notify Agent of any opening or closing of a Deposit Account or Securities Account (in each case, other than an Excluded Account).

8.5.2 Badcock Store Accounts. Schedule 8.5 lists, as of the Amendment No. 3 Effective Date, all Deposit Accounts and Securities

Accounts maintained by Badcock, and identifies each of the Deposit Accounts established by Badcock that are used solely for receiving store receipts from any store owned or leased and operated by a dealer (together with any other Deposit Accounts at any time established or used by Badcock for receiving such store receipts from any such dealer-operated store location, each individually, a "Badcock Store Account" and, collectively, the "Badcock Store Accounts"). Subject to Section 10.1.15, all funds deposited into any Badcock Store Account shall be sent by wire transfer or other electronic funds transfer on each Business Day to a Dominion Account of a Borrower except for (a) nominal amounts which are required to be maintained in such Badcock Store Accounts under the terms of the arrangements with the bank at which such Badcock Store Account is maintained or (b) funds deposited in Badcock Manual Sweeping Accounts, which shall be sent to a Dominion Account of a Borrower not less than twice every month (and which amounts shall not in the aggregate exceed at any one time (x) \$5,000,000 for the period commencing on the Amendment No. 3 Effective Date through and including January 17, 2024 and (b) thereafter, \$1,000,000, except (i) to the extent from time to time additional amounts may be held in Badcock Store Accounts on Saturday, Sunday or other days where the applicable depositary bank is closed, which additional amounts are to be, and shall be, transferred on the next Business Day to a Dominion Account of a Borrower, and (ii) as Agent may otherwise agree).

# 8.6 Administration of Credit Card Accounts; CARES Act Tax Refund Claim; Class C Retained Notes.

8.6.1 Credit Card Agreements. Schedule 8.6.1 is a list of all Credit Card Agreements as of the Closing Date.

8.6.2 <u>CARES Act Tax Refund Claim</u>. (i) All information provided to the Lenders in respect of the CARES Act Tax Refund Claim shall be true and correct in all material respects as of the Amendment No. 23 Effective Date, and without limiting the foregoing, the Borrowers shall promptly notify Agent and the Lenders in writing of any material change to such information, (ii) except as disclosed to the Agent, as of the Amendment No. 23 Effective Date, there has been no materially adverse developments with respect to the assumptions upon which any Tax Materials rely, (iii) as of the Amendment No. 23 Effective Date, all claims or amended returns or other forms making claims for the CARES Act Tax Refund Claim available to the Obligors (and any Subsidiary filing as a part of a consolidated, combined or unitary Tax group), to the knowledge of the Senior Officers responsible for pursuing such claim, have been appropriately filed and/or executed, (iv) except as disclosed to Agent, as of the Amendment No. 23 Effective Date, neither the Parent nor any of its Subsidiaries has been audited or received notice of initiation thereof by any governmental taxing authority for any tax period for which the applicable statute of limitations for assessment of taxes remains open and (v) as of the Amendment No. 23 Effective Date, all such claims or amended returns or other forms reflect the anticipated receipt by the Borrowers of not less than the CARES Act Tax Refund Claim as reflected on Schedule 1.1(c).

8.6.3 Class C Retained Notes. As of the Amendment No. 23 Effective Date, the Borrowers do not hold any Class C Retained Notes. The Borrowers hereby represent and warrant, as of the Amendment No. 23 Effective Date, and, as applicable, agree with Agent and Lenders that, at any time any Class C Retained Notes are included in the determination of the Term Loan Borrowing Base: (i) the ABS Contract Portfolio transferred pursuant to the applicable Permitted ABS Transaction governing such Class C Retained Notes as of the applicable cutoff date satisfied, in all material respects, the eligibility requirements for such receivables as set forth in the applicable Permitted ABS Documents (which eligibility requirements are customary for Permitted ABS Transactions) or have or will be repurchased in accordance with Permitted ABS Documents; (ii) to the extent that the servicer of the applicable ABS Contract Portfolio is a Borrower or an Affiliate thereof, such servicer will comply in all material respects with the Credit and Collection Guidelines and all other covenants of the servicer under the applicable Permitted ABS Documents (including with respect to the collection and disbursement of receivables for the ABS Contract Portfolio), except to the extent any non-compliance does not give rise to a "Servicer Default" under the applicable Permitted ABS Documents; and (iii) the Borrowers will furnish to the Agent from time to time such information in its (or its Affiliates') possession available to other noteholders under the applicable Permitted ABS Documents as Agent may reasonably request.

# 8.7 General Provisions.

8.7.1 <u>Location of Collateral</u>. All tangible items of Collateral, other than Inventory in transit, Collateral out for repair, Inventory consigned by the Borrowers or their Subsidiaries to a third party and Collateral such as laptops, phones, mobile hotspots and similar devices utilized by directors, officers, employees and consultants, shall at all times be kept by Borrowers at the business locations set forth in **Schedule 8.7.1** (as such Schedule may be updated by Borrowers from time to time at the time of the delivery of a quarterly Compliance Certificate (it being understood that no violation of this provision shall be deemed to occur as a result of any Collateral being maintained at a new business location not previously set forth in **Schedule 8.7.1**, so long as such Schedule is updated to include such new business location in connection with the next succeeding delivery of a quarterly Compliance Certificate or by such other notice or at such later date as is acceptable to Agent)), except that Borrowers may (a) make sales or other <u>dispositions Asset Dispositions</u> of Collateral in accordance with **Section 10.2.6**; and (b) move Collateral to another location not listed on **Schedule 8.7.1** upon ten (10) Business Days' prior written notice to Agent (or upon such shorter period as Agent may agree in its sole discretion).

### 8.7.2 Insurance of Collateral; Condemnation Proceeds.

- (a) Each Borrower shall maintain insurance with respect to the Collateral, in such amounts, with insurers and against such risks as are customarily maintained by similarly situated businesses operating in the same or similar locations. All proceeds under each policy (other than insurance with respect to business interruption, eyber security, workers' compensation and similar insurance and directors and officers liability policies) shall name Agent as an additional insured or lender loss payee, as applicable. Unless Agent shall agree otherwise, each such policy shall include satisfactory endorsements to the extent available (i) showing Agent as lender loss payee; (ii) requiring 30 days' prior written notice to Agent in the event of cancellation of the policy for any reason except 10 days' notice shall be given for cancellation due to non-payment of premium; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Borrower or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. From time to time upon Agent's reasonable request, Borrowers shall deliver to Agent the certified copies of its insurance policies. If any Borrower fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Borrowers therefor. Each Borrower agrees to deliver to Agent, promptly as rendered, copies of all claims reports made to insurance companies with respect to Collateral included in the Borrowing Base, in each case in excess of \$10,000,000. While no Event of Default exists, Borrowers may settle, adjust or compromise any insurance claim, as long as the proceeds of any insurance with respect to Collateral included in the Borrowing Base are delivered to Agent. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise such claims.
- (b) Any proceeds of insurance (other than proceeds from business interruption, eyber security, workers' compensation and similar insurance and directors and officers liability insurance) and any awards arising from condemnation of any Collateral shall be paid to Agent and shall be deposited in the Dominion Account.
- (c) After Agent's receipt of any insurance proceeds or condemnation awards relating to any loss or destruction of Equipment or Real Estate, Borrowers may use such proceeds or awards to repair or replace such Equipment or Real Estate as long as (i) no Event of Default exists and is continuing; (ii) such repair or replacement is promptly undertaken and concluded and (iii) the repaired or replaced Property is free of Liens, other than Permitted Liens.
- 8.7.3 <u>Protection of Collateral</u>. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Borrowers. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Borrowers' sole risk.
- 8.7.4 <u>Defense of Title to Collateral</u>. Each Borrower shall at all times defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

### 8.8 Power of Attorney.

Each Borrower hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Borrower's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Agent, or Agent's designee, may (but shall have no obligation to), without notice and in either its or a Borrower's name, but at the cost and expense of Borrowers:

- (a) Endorse a Borrower's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control for deposit in a Dominion Account; and
- (b) During the continuance of an Event of Default, with respect to any Collateral (i) send notices to Contract Debtors of the assignment of their Contracts, demand and enforce payments on Contracts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Contract; (ii) settle, adjust, modify, compromise, discharge or release any claims with respect to amounts due on Contracts or other Collateral, or any legal proceedings brought to collect on Contracts or other Collateral, (iii) collect, liquidate, and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (iv) prepare, file and sign a Borrower's name to a proof of claim or other document in a bankruptcy of a Contract Debtor, or to any notice, assignment or satisfaction of Lien or similar documents; (v) receive, open and dispose of mail addressed to a Borrower, and notify postal authorities to deliver any such mail to an address designated by Agent; (vi) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Contract, Inventory or other Collateral; (vii) use a Borrower's stationery and sign its name to verifications of Contract and notices to Contract Debtors; (viii) use information contained in any data processing, electronic, or other information systems relating to Collateral; (ix) make and adjust claims under insurance policies; (x) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which a Borrower is a beneficiary; (xi) following three (3) Business Days' written notice to Borrower Agent, exercise any voting or other rights under or with respect to any Investment Property; and (xii) take all other lawful actions as Agent deems appropriate to fulfill any Borrowers' obligations under the Loan Documents.
- (c) All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

### SECTION 9. REPRESENTATIONS AND WARRANTIES

- 9.1 General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make available the Revolver Commitments, Revolver Loans and Letters of Credit, Parent and each Borrower represents and warrants that:
- 9.1.1 Organization and Qualification. Parent and its Subsidiaries are duly organized, validly existing and in good standing under the laws of the jurisdiction of their organization, except where the failure to be so organized or validly existing (other than in the case of a Borrower) or in good standing could not reasonably be expected to have a Material Adverse Effect. Parent and its Subsidiaries are duly qualified, authorized to do business and in good standing in each other jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect. No Obligor is an EEA Financial Institution.
- 9.1.2 Power and Authority. Each Obligor is duly authorized to execute, deliver and perform its obligations under the Loan Documents to which it is a party. The execution, delivery and performance by each Obligor of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or organizational action, and do not (a) require any consent or approval of any holders of Equity Interests of any Obligor, other than those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a default under any Applicable Law or Material Contract; or (d) result in or require the imposition of any Lien (other than Permitted Liens) on any Property of any Obligor, except, in the case of clauses (c) and (d), for any contravention, violation or imposition of a Lien as could not reasonably be expected to result in a Material Adverse Effect.

- 9.1.3 Enforceability. Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable against such Obligor in accordance with its terms, except as enforceability may be limited by bankruptcy, fraudulent transfer, insolvency, reorganization, moratorium, administration or similar laws relating to, limiting or otherwise affecting creditors' rights or by equitable principles or principles of public order relating to enforceability.
- 9.1.4 <u>Capital Structure</u>. **Schedule 9.1.4** sets forth, as of the Closing Date, for each Subsidiary of Parent, its name, its jurisdiction of organization and its authorized and issued Equity Interests. Parent or its applicable Subsidiary has good title to its Equity Interests in its Subsidiaries, subject only to Agent's Lien and Permitted Liens, and all such Equity Interests are duly issued, fully paid and non-assessable. As of the Closing Date, except as set forth in **Schedule 9.1.4**, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Subsidiaries of Parent.
- 9.1.5 <u>Corporate Names; Locations</u>. During the five years preceding the Closing Date, except as shown on **Schedule 9.1.5**, neither Parent nor any of its Subsidiaries has been known as or used any corporate, fictitious or trade names, has been the surviving corporation of a merger or combination, or has acquired any substantial part of the assets of any Person. As of the Closing Date, the chief executive offices and other places of business of Parent and its Subsidiaries are shown on **Schedule 8.7.1**.
- 9.1.6 <u>Title to Properties; Priority of Liens</u>. Each of Parent and its Subsidiaries has good and indefeasible title to (or valid leasehold interests in) all of its Real Estate, and good title to all of its personal Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except Permitted Liens and minor defects in title to its Real Estate that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purpose or that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of Parent and its Subsidiaries has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, in each case other than Permitted Liens. Subject to actions required to be taken by Agent, including the filing of UCC-1 financing statements, all Liens of Agent in the Collateral will be duly perfected, first priority Liens, subject only to Permitted Liens.
- 9.1.7 Financial Statements. The consolidated balance sheets, and related statements of income, cash flow and shareholder's equity, of Parent and its Subsidiaries that have been delivered to Agent and Lenders, have been prepared in accordance with GAAP, and fairly present the financial positions and results of operations of Parent and its Subsidiaries at the dates and for the periods indicated, subject, in the case of certain interim statements, to the absence of footnotes and normal year-end adjustments. All projections pertaining to Parent and its Subsidiaries heretofore delivered to Agent and Lenders by or on behalf of the Obligor have been prepared in good faith, based on assumptions believed to be reasonable in light of the circumstances at such time, it being understood that (a) whether or not such projections are in fact achieved will depend upon future events which are beyond the control of Parent or any of its Subsidiaries, (b) no assurance can be given that such projections will be realized, (c) actual results may vary from the projections and such variations may be material and (d) the projections should not be regarded as a representation by Parent or any of its Subsidiaries or their management that the projected results will be achieved. Since October 31, 2022, there has been no change in the financial condition of Parent or any of its Subsidiaries (when taken as a whole) that could reasonably be expected to have a Material Adverse Effect. As of the Amendment No. 23 Effective Date, the Borrowers and their Subsidiaries, taken as a whole on a consolidated basis, are Solvent.

9.1.8 Reserved.

9.1.9 <u>Taxes</u>. Parent and each of its Subsidiaries have filed all federal and other material tax returns that it is required by Applicable Law to file, and has paid, caused to be paid or made provision for the payment of, all material Taxes upon it, its income and its Properties that are due and payable, except in each case to the extent constituting Permitted Liens.

### 9.1.10 Reserved.

- 9.1.11 Intellectual Property. Each of Parent and its Subsidiaries owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others except for any such failure to own or have rights, conflict or infringement that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There is no pending or, to Parent's or any Borrower's knowledge, Intellectual Property Claim threatened in writing with respect to Parent, any of its Subsidiaries or any of their Intellectual Property which could reasonably be expected to result in a Material Adverse Effect. All material federally registered Intellectual Property owned, used or licensed by, or otherwise subject to any interests of, Parent or its Subsidiaries is shown on Schedule 9.1.11 (as such Schedule may be updated by Borrowers from time to time at the time of the delivery of a Compliance Certificate in accordance with Section 10.1.2). It is understood and agreed that the representation and warranty set forth in this Section 9.1.11, as it relates to items disclosed on Schedule 9.1.11, shall be deemed not to have been breached to the extent any information set forth on such Schedule changes, so long as such Schedule is updated to reflect such changes in connection with the next succeeding delivery of a quarterly Compliance Certificate or by such other notice or at such later date as is acceptable to Agent.
- 9.1.12 Governmental Approvals. Each of Parent and its Subsidiaries have, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. To each Borrowers' knowledge, all necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Parent and its Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, in each case except where the failure to have such license, permit or certificate or noncompliance could not reasonably be expected to have a Material Adverse Effect.
- 9.1.13 <u>Compliance with Laws</u>. Each of Parent and its Subsidiaries has duly complied, and its Properties and business operations are in compliance, in all material respects with all Applicable Law (including all Consumer Finance Laws), except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There are no citations, notices or orders of material non-compliance issued to Parent or any of its Subsidiaries under any Applicable Law, except as could not reasonably be expected to result in a Material Adverse Effect.
- 9.1.14 Compliance with Environmental Laws. Except as disclosed on **Schedule 9.1.14**, to Parent's or any Borrower's knowledge, neither Parent's nor any of its Subsidiaries' past or present operations, Real Estate or other Properties are subject to any federal, state or local investigation to determine whether any remedial action is needed to address any Environmental Release that could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Subsidiaries has received any Environmental Notice that could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Subsidiaries has knowledge of any facts or conditions that would reasonably be expected to result in any material contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or, to Parent's or any Borrower's knowledge, previously owned, leased or operated by it, in each case which could reasonably be expected to result in a Material Adverse Effect.

- 9.1.15 <u>Burdensome Contracts</u>. Neither Parent nor any of its Subsidiaries is a party or subject to any contract, agreement or charter restriction that could reasonably be expected to have a Material Adverse Effect.
- 9.1.16 <u>Litigation</u>. Except as shown on Schedule 9.1.16, there are no proceedings or investigations pending or, to Parent's or any Borrower's knowledge, threatened in writing against Parent or its Subsidiaries, or any of their businesses, operations or Properties that (a) as of the Closing Date, relate to any Loan Documents or transactions contemplated thereby or (b) could reasonably be expected to have a Material Adverse Effect. Neither Parent nor its Subsidiaries are in default with respect to any order, injunction or judgment of any Governmental Authority that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.
  - 9.1.17 No Defaults. No event or circumstance has occurred or exists that constitutes a Default or Event of Default.
- 9.1.18 <u>ERISA</u>. Except as could not reasonably be expected, whether individually or in the aggregate, to result in a Material Adverse Effect:
- (a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code, and other federal and state laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter has been submitted to the IRS with respect thereto and, to the knowledge of Borrowers, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Obligor and ERISA Affiliate has met all applicable requirements under the Code, ERISA and the Pension Protection Act of 2006, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Plan.
- (b) There are no pending or, to the knowledge of Borrowers, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. To the knowledge of the Borrowers, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.
- (c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60% (iii) no Obligor or ERISA Affiliate has incurred any liability to the PBGC except for the payment of premiums, and no premium payments are due and unpaid; (iv) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; and (v) no Pension Plan has been terminated by its plan administrator or the PBGC such that there remains material liability in connection therewith.
- (d) With respect to any Foreign Plan, (i) all employer contributions required by law or by the terms of the Foreign Plan have been made and (ii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.
- 9.1.19 <u>Trade Relations</u>. There exists no actual or threatened termination, limitation or modification of any business relationship between Parent or its Subsidiaries and any customer or supplier, or any group of customers or suppliers, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

9.1.20 <u>Labor Relations</u>. Except as described on **Schedule 9.1.20**, as of the Closing Date, neither Parent nor its Subsidiaries are party to or bound by any collective bargaining agreement. There are no material grievances, disputes or controversies with any union or other organization of Parent or its Subsidiaries' employees that could reasonably be expected to have a Material Adverse Effect, or, to any Borrower's knowledge, any asserted or threatened strikes, material work stoppages or material demands for collective bargaining that could reasonably be expected to have a Material Adverse Effect.

#### 9.1.21 Reserved.

- 9.1.22 Not a Regulated Entity. No Obligor is an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940.
- 9.1.23 <u>Margin Stock</u>. Neither Parent nor its Subsidiaries are engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Revolver Loan proceeds or Letters of Credit will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose in any manner that would result in a violation of Regulations T, U or X of the Board of Governors.
- 9.1.24 OFAC. No Borrower, Subsidiary or, to the knowledge of any Borrower, any director, officer, employee, agent or representative thereof, is or is owned or controlled by any individual or entity that is currently the target of any Sanction or is located, organized or resident in a Designated Jurisdiction.
- 9.1.25 Benefit Plans. Parent and each Borrower represents and warrants as of the Closing Date that Parent nor any of its Subsidiaries is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Revolver Loans, the Letters of Credit or the Revolver Commitments.
- 9.1.26 <u>Beneficial Ownership Certification</u>. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.
- 9.2 <u>Complete Disclosure</u>. As of the Closing Date only, none of the written reports, Loan Documents, financial statements, certificates or other written information (other than any projections, pro formas, budgets, and other forward-looking information and information of a general economic or industry nature) concerning Parent and its Subsidiaries furnished by or at the direction of any Obligor to Agent and the Lenders prior to the Closing Date in connection with the negotiation of this Agreement or any other Loan Document, when taken as a whole, contains, as of the date furnished, any material misstatement of fact or omits to state any material fact necessary to make the statements therein not materially misleading in light of the circumstances under which such statements were made.

#### SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1 Affirmative Covenants. As long as any Revolver Commitments are outstanding and the Full Payment of the Obligations has not occurred, Parent and each Borrower shall, and shall cause each of their Subsidiaries to:

### 10.1.1 Inspections; Appraisals.

(a) Permit Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice and during normal business hours, to visit and inspect the Properties of the Obligors, inspect, audit and make extracts from Obligors' books and records, and discuss with its

officers, employees, agents, advisors and independent accountants Obligors' business, financial condition, assets and results of operations (it being understood that a representative of Parent shall be allowed to be present in any discussions with independent accountants). Lenders may participate in any such visit or inspection, at their own expense. None of Agent, any Issuing Bank or Lenders shall have any duty to any Obligor to make any inspection, nor shall Agent have any obligation to (but Agent may) share any results of any inspection, appraisal or report with any Obligor. The Borrowers acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them. No Borrowing Base calculation shall include Collateral acquired in an Acquisition or otherwise outside the Ordinary Course of Business until completion of applicable field examinations and appraisals (which shall not be included in the limits provided in Section 10.1.1(b)) satisfactory to Agent and delivery to Agent of any material documents related to such Acquisition (and Agent agrees to use commercially reasonable efforts to complete such field examinations and/or appraisals within 90 days of the consummation of such acquisition).

- (b) Reimburse Agent for all its reasonable out-of-pocket charges, costs and expenses in connection with (i) examinations of Obligors' books and records or any other financial or Collateral matters as it deems appropriate, up to two (2) times per Loan Year (provided that, except with respect to examinations conducted during the Covenant Relief Period, if at all times during such Loan Year, Availability measured as of each month-end (as reflected in the Loan Account) is greater than or equal to 30% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), Borrowers shall be obligated to only reimburse Agent for one (1) such examination conducted during such Loan Year); and (ii) appraisals of Inventory up to two (2) times per Loan Year (provided, that if at all times during any Loan Year, the Inventory Formula Amount is less than 10% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) and Availability measured as of each month-end (as reflected in the Loan Account) is greater than 10% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), Borrowers shall be obligated to only reimburse Agent for one (1) such appraisal conducted during such Loan Year); and (iii) up to one (1) physical appraisal of accounts receivable per Loan Year and, at Agent's discretion, quarterly desktop appraisals of accounts receivable; provided, that if an examination or appraisal is initiated during the existence of an Event of Default, all charges, costs and expenses therefor shall be reimbursed by Borrowers without regard to such limits. Subject to and without limiting the foregoing, Parent and Borrowers shall pay Agent's then standard charges for each day that an employee of Agent or its Affiliates is engaged in any examination activities, and shall pay the standard charges of its internal appraisal group.
- (c) Notwithstanding anything to the contrary contained in the Loan Documents (and other than information relating to the CARES Act Tax Refund Claim required to be delivered under **Section 10.1.3(b)**), none of Parent, Borrowers and any of their Subsidiaries shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of such Person or any of its Subsidiaries or any of their respective customers and/or suppliers, (ii) in respect of which disclosure to Agent or any Lender (or any of their respective representatives) is prohibited by any Applicable Law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which Parent, Borrowers or any Subsidiary owes confidentiality obligations to any third party, including dealers (information of the type set forth in clauses (i) through (iv) collectively, "Confidential Information").
- 10.1.2 <u>Financial and Other Information</u>. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent (<u>provided</u>, that the documents required to be delivered pursuant to **clauses (a)**, (b) and (h) below shall be deemed to have been delivered on the date on which such documents are posted on the Securities and Exchange Commission's website at www.sec.gov):

(a) as soon as available, and in any event no later than (i) 90 days after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders' equity for such Fiscal Year, on a consolidated basis for Parent and its Subsidiaries, which consolidated statements shall be audited and certified by a firm of independent certified public accountants of nationally recognized standing selected by Parent or otherwise acceptable to Agent (which audit shall be without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (except for any such qualification pertaining to the maturity of any Debt occurring within 15 months of the relevant audit or any breach or anticipated breach of any financial covenant)), and shall set forth in comparative form corresponding figures for the preceding Fiscal Year; and (ii) 60 days after the end of each Fiscal Year, internal management financial statements (balance sheet, statement of income, and cash flow statement) as of the end of such Fiscal Year, on a consolidated basis for Parent and its Subsidiaries; provided, that the financial statements delivered pursuant to this clause (ii) shall be delivered to Agent for informational purposes only and the calculation of the Applicable Margin in the manner described in the definition thereof;

(b) as soon as available, and in any event no later than 45 days after the end of each Fiscal Quarter that is not the last (or 60 days solely with respect to the Fiscal Quarter of a Fiscal Yearending January 31, 2024), unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income and cash flow for such Fiscal Quarter and for the portion of the Fiscal Year then elapsed, on a consolidated basis for Parent and its Subsidiaries (excluding Badcock in respect of any Fiscal Quarter ending prior to April 30, 2024), setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer (or other officer holding a similar role) of Parent as prepared in accordance with GAAP and fairly presenting in all material respects the financial position and results of operations of Parent and its Subsidiaries on a consolidated basis as of such date and for such Fiscal Quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(c) as soon as available, and in any event within 30 days after the end of each month that is not the last month of a Fiscal Year or Fiscal Quarter, internal management financial statements (balance sheet, statement of income, and cash flow statement) as of the end of such month, on a consolidated basis for Parent and its Subsidiaries (excluding Badcock in respect of any such month ending prior to April 30, 2024), setting forth in comparative form corresponding figures for (i) the preceding Fiscal Year and (ii) such period set forth in the projections delivered pursuant to Section 10.1.2(f) hereof, in each case on a month-to-date and year-to-date basis with respect to profit and loss and cash flow statements, in each case certified by the chief financial officer (or other officer holding a similar role) of Parent as prepared in accordance with its normal internal, interim reporting practices;

(d) within the time frame specified for the delivery of financial statements under clauses (a)(i), (a)(ii) and (b) above, (i) a Compliance Certificate executed by the chief financial officer (or other officer holding a similar role) of Parent; provided, that the Compliance Certificate delivered with the financial statements pursuant to clause (a)(ii) shall be delivered to Agent for informational purposes and the calculation of the Applicable Margin in the manner described in the definition thereof only and (ii) a copy of the Credit and Collection Guidelines if changes have been made since the Closing Date or the date of the most recent delivery of the Credit and Collection Guidelines (which Credit and Collection Guidelines may, in the case of Confidential Information, be redacted);

(e) together with the financial statements delivered pursuant to Section 10.1.2(a)(i), a copy of the final management letters (if any) submitted to Borrowers by their accountants in connection with such financial statements, if any;

- (f) not later than 60 days after the commencement of each Fiscal Year, projections of Parent's consolidated balance sheets, results of operations, cash flow and Availability for such Fiscal Year, month by month;
- (g) at Agent's reasonable request, a listing of each Borrower's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent;
- (h) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that Parent or any Borrower has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that Parent or any Borrower files with any Governmental Authority, except the Securities and Exchange Commission (which shall be deemed to have been delivered when filed), or any securities exchange; and copies of any press releases or other statements made available by Parent or a Borrower to the public concerning material changes to or developments in the business of Parent or such Borrower;
  - (i) evidence as to Borrowers' compliance with Consumer Finance Laws as reasonably requested by Agent from time to time;
- (j) during the Covenant Relief Period, with each Borrowing Base Report (and such other times as reasonably requested by Agent), Borrowers shall provide to Agent (i) a calculation of Liquidity, it being understood that, for the avoidance of doubt, the Borrowers shall maintain the Liquidity required pursuant to Section 10.3.4 at all times during the Covenant Relief Period notwithstanding that the Borrowers may only be providing Agent with a calculation of Liquidity on a weekly basis and (ii) a statement of the Consolidated Cash Balance for the most recently ended week, together with such information as Agent may reasonably request; and
- (k) such other reports and information (financial or otherwise) as Agent may reasonably request (in its reasonable discretion or at the reasonable request of any Lender) from time to time in connection with any Collateral or the financial condition or business of any Obligor.

Information required to be delivered pursuant to this **Section 10.1.2** shall be deemed to have been delivered if such information, or one or more annual or quarterly reports containing such information, shall have been posted by Agent on SyndTrak, IntraLinks or a similar site to which Agent and the Lenders have been granted access or shall be available on the website of the Securities and Exchange Commission at http://www.sec.gov or on the website of Parent. Information required to be delivered pursuant to this **Section 10.1.2** may also be delivered by electronic communications pursuant to procedures approved by Agent. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

# 10.1.3 Notices.

(a) <u>General</u>. Notify Agent and Lenders in writing, promptly after a Senior Officer of Borrower Agent obtains knowledge thereof, of any of the following that affects an Obligor: (a) the commencement of any proceeding or investigation which would reasonably be expected to have a Material Adverse Effect; (b) any default under or termination of a Material Contract; (c) the existence of any Default or Event of Default; (d) the occurrence of any event (including any Intellectual Property Claim, violation or asserted violation of Applicable Law (including ERISA, OSHA, FLSA and Environmental Laws), an Environmental Release, ERISA Event or Regulatory Event) that would reasonably be expected to have a Material Adverse Effect; (e) any judgment in an amount exceeding the Threshold Amount; (f) any written allegation, claim, fact or circumstance indicating that any Third Party Contract, Contract

originated by it or, at the time of such event, then serviced, collected or otherwise administered by it, Credit and Collection Guidelines, act, omission or business practice of Parent, any Obligor or any Subsidiary violates or fails to comply with any Consumer Finance Law and which allegation, claim, fact or circumstance claims damages in excess of the Threshold Amount; and (g) except with respect to transactions under Section 10.2.6(c)(iv), the sale of any Inventory on consignment or approval or any other basis under which the customer may return or require a Borrower to repurchase such Inventory other than returns or repurchases in the Ordinary Course of Business.

- (b) <u>CARES Act Tax Refund Claim</u>. Promptly (but in any event within two (2) Business Days following the occurrence thereof or, in the case of clause (ix), Agent's request therefor), together with true and complete copies thereof (as applicable), deliver to Agent and Lenders written notice of:
  - (i) the receipt by any Obligor of written notice of any rejection by the IRS or any other Governmental Authority (including the Joint Committee on Taxation) of the CARES Act Tax Refund Claim or any request by the IRS or any other Governmental Authority (including the Joint Committee on Taxation) for the applicable Obligors to remit CARES Act Tax Refund Proceeds;
    - (ii) any material revision to the Obligors' calculation with respect to the CARES Act Tax Refund Claim;
  - (iii) the filing any forms or any amended income tax return with the IRS with respect to the CARES Act Tax Refund Claim, or of any amendment or supplemental filing with respect thereto;
    - (iv) the receipt by any Obligor or any of its Affiliates of any portion of the CARES Act Tax Refund Proceeds;
  - (v) the receipt by any Obligor or any of its Affiliates of any written claim made by the IRS or any other Governmental Authority (including the Joint Committee on Taxation) with respect to setoff against any portion of the CARES Act Tax Refund Proceeds;
  - (vi) any Obligor's knowledge of any Change in Law that could reasonably be expected to materially affect the amount of the CARES Act Tax Refund Claim;
    - (vii) any supplement or updates to any Tax Materials; and
  - (viii) any other material development in respect of the CARES Act Tax Refund Claim that has resulted or would reasonably be expected to result in a reduction in the anticipated aggregate amount of the CARES Act Tax Refund Claim or material adverse impairment of the ability of the Obligors, collectively, to collect the CARES Act Tax Refund Claim; and
  - (ix) any other documents, instruments, agreements or information that is available to the Obligors as Agent may reasonably request with respect to the CARES Act Tax Refund Claim or the CARES Act Tax Refund Proceeds.
- (c) <u>Class C Retained Notes</u>. At any time that any Class C Retained Notes are included in the calculation of the Term Loan Borrowing Base, within one (1) Business Day following the delivery of any written notice or other written communication to the holders of any such Class C Retained Notes, deliver to Agent copies thereof.

- (d) <u>Term Loan Events</u>. Notify Agent and Lenders in writing, together with true and complete copies thereof (as applicable), of each amendment, supplement, modification, waiver, consent or forbearance in respect of the Term Loan Documents, and of any material notices received from any lender or Term Loan Agent of, under or with respect to the Term Loan Obligations, to the extent not otherwise provided to Agent under the Loan Documents. Borrower Agent shall deliver to Agent from time to time upon its request the "Borrowing Base Report" delivered to Term Loan Agent from time to time.
- 10.1.4 <u>Landlord and Storage Agreements</u>. Upon request, provide Agent with copies of all existing agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.
- 10.1.5 Compliance with Laws. Comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws with which the Borrowers and their Subsidiaries shall comply in all material respects) or maintain could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if an Environmental Release which could reasonably be expected to result in a Material Adverse Effect requiring remediation under Environmental Laws occurs at or on any Properties of Parent or its Subsidiaries, Parent, the relevant Borrower or the applicable Subsidiary shall act, or shall cause the legally responsible party to act, in each case promptly and diligently to investigate and report to Agent and, as required by Environmental Laws, to all appropriate Governmental Authorities the extent of, and to undertake or cause the legally responsible party to undertake appropriate and necessary remedial action to address such Environmental Release as required by applicable Environmental Laws.
- 10.1.6 <u>Taxes</u>. (a) Pay and discharge all material Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are not overdue by more than 30 days or (i) such Taxes are being Properly Contested or (ii) the failure to pay such Taxes could not reasonably be expected to result in a Material Adverse Effect.
- (b) (i) Timely file all claims or amended returns making claims for the maximum amount of CARES Act Tax Refund Claim available under Applicable Law to the Obligors (and any Subsidiary filing as a part of a consolidated, combined or unitary Tax group) as reasonably determined by the Borrowers and (ii) take such other actions as the Agent may reasonably request in respect of the CARES Act Tax Refund Claim.
- 10.1.7 <u>Insurance</u>. Maintain insurance with insurers with respect to the Properties and business of Borrowers and its Subsidiaries of such type, in such amounts, and with such coverages and deductibles as are customary for companies similarly situated and operating in the same or similar locations.
- 10.1.8 <u>Licenses</u>. Except as could not reasonably be expected to result in a Material Adverse Effect: keep each License affecting any Collateral (including the manufacture, distribution or <u>disposition Asset Disposition</u> of Inventory) or any other material Property of Borrowers and its Subsidiaries in full force and effect; notify Agent, upon its request, of any modification to any such License; pay all Royalties when due; and notify Agent of any default or breach asserted by any Person to have occurred under any such License.
- 10.1.9 <u>Future Subsidiaries</u>. Promptly notify Agent upon any Person becoming a Subsidiary of Parent and, if such Person is not a Foreign Subsidiary or a Securitization Subsidiary, cause it to guaranty the Obligations in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall reasonably require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all assets of such Person.

10.1.10 Reserved.

10.1.11 Reserved.

- 10.1.12 <u>Charge-Off Policy</u>. The Borrowers shall establish and implement a policy for charging off the unpaid balance of its delinquent Contracts as set forth in the Credit and Collections Guidelines.
- 10.1.13 <u>Loss Reserve</u>. Parent and its Subsidiaries shall maintain, on a consolidated basis, loss reserves at all times during the term of the Agreement in amounts required to be maintained under GAAP.
- 10.1.14 <u>Beneficial Ownership Regulation</u>. Promptly following any request therefor, provide information and documentation reasonably requested by Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation.
- 10.1.15 <u>Control Agreements</u>. Within 9060 days of the <u>Closing Amendment No. 3 Effective</u> Date (or such later date as may be agreed by Agent in its reasonable discretion), the <u>Borrowers Badcock</u> shall cause all Deposit Accounts and Securities Accounts of <u>Badcock</u> (other than Excluded Accounts) maintained as of the <u>Closing Amendment No. 3 Effective</u> Date to be subject to a control agreement. From time to time upon request by Agent, the Borrowers shall deliver to Agent a list of all Deposit Accounts and Securities Accounts (including Excluded Accounts) maintained by the Obligors, which list shall identify the account owner, the depositary bank, the account number and type of account and indicate whether such Deposit Account or Securities Account is subject to a control agreement in favor of Agent or an Excluded Account and the basis therefor.

# 10.1.16 13-Week Forecasts and Variance Reports.

(a) Commencing on the third Business Day of the first full calendar month ending after the Amendment No. 3 Effective Date, and thereafter, no later than the third Business Day of each calendar month, Borrower Agent shall deliver to Agent, for distribution to the Lenders, a thirteen-week cash flow forecast in substantially the same form as the Approved 13-Week Forecast or other form reasonably satisfactory to Agent (each, including the Approved 13-Week Forecast, a "13-Week Forecast"), which 13-Week Forecast shall reflect, for the periods covered thereby, projected weekly disbursements, cash receipts, outstanding Obligations under the Credit Agreement and ending cash for each week covered by such 13-Week Forecast.

(b) Borrower Agent shall deliver to Agent, for further distribution to the Lenders, commencing on January 3, 2024, and on the third Business Day of every other week thereafter, a variance report (each a "Variance Report") comparing (i) for the two-week period most recently ended, the actual cash flow results against anticipated cash flow results set forth under the 13-Week Forecast covering such two-week period and (ii) the actual cash flow results for the period covered by the most recently delivered 13-Week Forecast against anticipated cash flow results set forth under such 13-Week Forecast on a cumulative basis from the start of the thirteen-week period covered by such 13-Week Forecast (each such period referred to in clauses (i) and (ii), a "Forecasting Period"), in each case of clauses (i) and (ii), with a narrative description of any line item variances in excess of fifteen percent (15%) for such Forecasting Period.

Agent in its reasonable discretion), the Borrowers shall have initiated the process of providing updated field examinations in respect of the Obligors' books and records and other financial or collateral matters as Agent deems appropriate, which such field examinations shall be reimbursable by the Borrowers and in addition to the examinations permitted to be conducted and required to be reimbursed pursuant to Section 10.1.1(b) but otherwise conducted in accordance with the limitations set forth in Section 10.1.1.

- 10.2 <u>Negative Covenants</u>. As long as any Revolver Commitments are outstanding and the Full Payment of the Obligations has not occurred, Parent and each Borrower shall not, and shall not permit any of its Subsidiaries to:
  - 10.2.1 Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:
    - (a) the Obligations;
- (b) (i) Subordinated Debt; and (ii) unsecured Debt of Parent or its Subsidiaries so long as, in the case of this clause (b)(ii), after giving effect to such Debt, Parent shall be in Pro Forma Compliance with the covenants set forth in **Section 10.3.2** and **10.3.3** and such Debt shall have a maturity no earlier than the date that is 91 days after the <u>latest</u> Revolver Termination Date;
  - (c) Permitted Purchase Money Debt;
- (d) Debt (other than the Obligations) outstanding (or pursuant to commitments outstanding) on the <u>(i)</u> Closing Date <u>or (ii) solely</u> with respect to Badcock, the Amendment No. 3 Effective Date;
- (e) Debt that is assumed or acquired in connection with any Acquisition permitted hereunder or the acquisition of any asset or group of assets so long as (i) such Debt was not incurred in contemplation of such Acquisition or acquisition of assets and (ii) either does not exceed (x) \$25,000,000 in the aggregate outstanding at any time or (y) after giving effect to each such assumption or acquisition of such Debt, the Payment Conditions are satisfied;
  - (f) Permitted Contingent Obligations;
- (g) Debt owed to a Flooring Lender; <u>provided</u>, that such Flooring Lender has entered into a Flooring Intercreditor Agreement with respect to such Debt;
- (h) Debt incurred for the acquisition of Real Estate by an Obligor so long as the purchase price of such Real Estate does not exceed the fair market value of the Real Estate at the time of its acquisition (as determined by the Borrower Agent in good faith) and the Debt incurred in connection therewith does not exceed 100% of the purchase price (including fees, costs and expenses, prepaid interest and similar items in connection therewith) of such Real Estate; <u>provided</u>, that the aggregate outstanding Debt permitted under this **subsection (h)** does not at any time exceed \$30,000,000;
  - (i) Refinancing Debt as long as each Refinancing Condition is satisfied with respect to such Refinancing Debt;

- (j) Debt incurred by a Securitization Subsidiary pursuant to one or more Permitted ABS Transactions so long as at or prior to the initial transfer of Contracts under any such transaction, the applicable Permitted ABS Agent has entered into a Permitted ABS Intercreditor Agreement;
  - (k) Debt incurred under Permitted Originator Notes;
  - (l) [Reserved];
  - (m) Debt evidenced by the Permitted Convertible Notes or by the Permitted HY Notes;
  - (n) Debt in the form of guarantees by Parent or any of its Subsidiaries of Debt permitted under this Section 10.2.1;
- (o) obligations of Parent or any of its Subsidiaries under any Hedging Agreements not entered into for speculative purposes (including any Hedging Agreement entered into by any Securitization Subsidiary in connection with a Permitted ABS Transaction and by Parent or any Subsidiary in connection with any Permitted Securitization Hedging Transaction);
- (p) (i) Debt incurred in the Ordinary Course of Business in respect of netting services, overdraft protections, employee credit card programs, Bank Products and otherwise in connection with Deposit Accounts and Securities Accounts and (ii) Debt incurred in connection with letters of credit, bankers' acceptances, bank guarantees, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, warehouse receipts or similar facilities, in each case incurred or undertaken in the Ordinary Course of Business;
- (q) Debt among Parent and its Subsidiaries; <u>provided</u> that (i) Debt of any Subsidiary that is not an Obligor owing to any Obligor shall be permitted under **Section 10.2.5** (other than under clause (m) of the definition of "Restricted Investments") and (ii) Debt of the Obligors owing to any Subsidiary that is not an Obligor shall be expressly subordinated to the Obligations under the Loan Documents on terms reasonably acceptable to Agent (it being understood that such subordination terms shall permit the repayment of interest and/or principal with respect to such Debt in the absence of notification by Agent during the existence of an Event of Default that such payments shall no longer be made);
- (r) Debt consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the Ordinary Course of Business;
- (s) Debt incurred by Parent and its Subsidiaries representing (i) deferred compensation to directors, officers, employees, members of management and consultants of Parent and its Subsidiaries in the Ordinary Course of Business or in connection with any Permitted Acquisition or any Investment permitted hereby and (ii) deferred purchase price or other similar arrangements in connection with any Permitted Acquisition or any Investment permitted hereby;
- (t) Debt arising out of the creation of any Lien (other than for Liens securing debt for Borrowed Money) permitted under **Section 10.2.2**;
- (u) Debt incurred in the Ordinary Course of Business in respect of obligations of Parent and its Subsidiaries to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;

- (v) Debt incurred by Parent and its Subsidiaries representing Investments permitted under the definition of "Restricted Investment";
- (w) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the Ordinary Course of Business to the extent that they are permitted to remain unfunded under Applicable Law;
- (x) Debt owed to (including obligations in respect of letters of credit, bank guarantees or similar instruments for the benefit of) any Person providing workers' compensation, securing unemployment insurance and other social security laws or regulation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other similar obligations to Parent or any Subsidiary:
  - (y) Debt supported by a Letter of Credit, in a principal amount not in excess of the Stated Amount of such Letter of Credit;
- (z) Debt in respect of any letter of credit issued in favor of any Issuing Bank or Swingline Lender to support any Defaulting Lender's participation in Letters of Credit issued, or Swingline Loans made hereunder;
  - (aa) Debt with an aggregate principal amount not exceeding \$75,000,000,000 in the aggregate outstanding at any time;
- (bb) the (i) Term Loan Obligations in an aggregate principal amount not to exceed the amount permitted under the ABL Intercreditor Agreement and (ii) Third Lien Term Loan Obligations in an aggregate principal amount not to exceed the amount permitted under the Third Lien Intercreditor Agreement; and
- (cc) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Debt described in paragraphs (a) through (bb) above (including any of the foregoing to the extent capitalized and added to the principal amount thereof as permitted by the Term Loan Agreement).
  - 10.2.2 Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "Permitted Liens"):
- (a) any Lien (i) created under the Loan Documents and (ii) on cash or deposits granted in favor of any Swingline Lender or any Issuing Bank hereunder to Cash Collateralize any Defaulting Lender's participation in Letters of Credit issued, or Swingline Loans made, under this Agreement, as applicable;
  - (b) Purchase Money Liens securing Permitted Purchase Money Debt;
- (c) Liens for Taxes that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, (i) which are being Properly Contested or (ii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;
- (d) statutory Liens arising in the Ordinary Course of Business including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the Ordinary Course of Business and securing obligations that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, (i) which are being Properly Contested or (ii) are subject to a Lien Waiver, or (iii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

- (e) (i) Liens incurred or pledges or deposits made in the Ordinary Course of Business to secure the performance of bids, trade contracts (other than for Borrowed Money), leases (other than Capital Leases), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, including those incurred to secure health, safety and environmental obligations in the Ordinary Course of Business or arising as a result of progress payments under government contracts and (ii) obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support payment of the items set forth in clause (i) of this **Section 10.2.2(e)**;
  - (f) Liens arising in the Ordinary Course of Business that are subject to Lien Waivers;
- (g) Liens arising by virtue of a judgment or judicial order against Parent or its Subsidiaries, or any Property of Parent or its Subsidiaries, not constituting an Event of Default;
- (h) (i) easements, rights-of-way, restrictions, trackage rights, leases (other than in respect of Capital Lease Obligations Leases), licenses, special assessments, covenants or other agreements of record, and other similar charges or encumbrances on Real Estate, that do not secure any Borrowed Money and do not materially interfere with the Ordinary Course of Business and (ii) Liens and other matters disclosed in any mortgagee title policy and any replacement, modification, extension or renewal of such Lien;
- (i) (i) contractual rights of set-off (A) relating to the establishment of depository relationships with banks not given in connection with the issuance of Borrowed Money, (B) relating to pooled deposit, sweep accounts and netting arrangements of Parent and its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the Ordinary Course of Business, and (C) relating to purchase orders and other agreements entered into with customers of Parent and its Subsidiaries in the Ordinary Course of Business and (ii) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights (including overdraft protection);
- (j) Liens in favor of a Flooring Lender so long as such Liens do not attach to any assets of a Borrower other than the Inventory floored by such Flooring Lender (which may include Liens on all Inventory of a given manufacturer, brand or line which is floored by such Person, provided that all such Inventory of a given manufacturer, brand or line are excluded (up to the aggregate amount of the obligations owing to such Flooring Lender) from the determination of the Borrowing Base) and the proceeds and products thereto;
  - (k) Liens securing only the Real Estate owned by a Borrower to secure Debt permitted under Section 10.2.1(h);
- (l) existing Liens shown on **Schedule 10.2.2**, and any refinancing, modification, replacement, renewal or extension thereof; <u>provided</u>, that the Lien does not extend to any additional property other than after-acquired property that is affixed to or incorporated in the property covered by such Lien and the proceeds and products thereof;
- (m) Liens on the Equity Interests of Parent which are held by Parent, to the extent such Equity Interests are deemed to be Margin Stock;

- (n) Liens on the Securitized Contracts of a Securitization Subsidiary and Liens on the assets of a Securitization Subsidiary, in each case, in favor of a Permitted ABS Agent and subject to a Permitted ABS Intercreditor Agreement;
- (o) Security interests as described in 9-109(a)(3) of the UCC created in connection with sales of accounts, chattel paper, payment intangibles or promissory notes permitted by or not otherwise prohibited by this Agreement or any other Loan Document;
- (p) any interest or title of a lessor, sublessor, licensor or sublicensee under any leases, subleases, licenses or sublicenses entered into by Parent or any Subsidiary in the Ordinary Course of Business;
- (q) (i) leases, subleases, licenses or sublicenses of property in the Ordinary Course of Business or (ii) rights reserved to or vested in any Person by the terms of any lease, license, franchise, grant or permit held by Parent or any Subsidiary or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof;
- (r) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (s) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Parent or the Subsidiaries in the Ordinary Course of Business and (ii) arising by operation of law under Article 2 of the Uniform Commercial Code;
  - (t) Liens on insurance policies and the proceeds thereof securing the financing of Debt permitted pursuant to Section 10.2.1(r)(i);
- (u) ground leases in the Ordinary Course of Business in respect of Real Estate on which facilities owned or leased by Parent or any Subsidiary are located;
- (v) Liens securing obligations under Hedging Agreements permitted by **Section 10.2.1(o)** (including any Hedging Agreement entered into by any Securitization Subsidiary in connection with a Permitted ABS Transaction and by Parent or any Subsidiary in connection with any Permitted Securitization Hedging Transaction);
- (w) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;
  - (x) Liens deemed to exist in connection with permitted repurchase obligations or set-off rights;
- (y) Liens securing Debt permitted under **Section 10.2.1(e)**; <u>provided</u>, however, such Liens are not created or incurred in connection with, or in contemplation of, such acquisition and such Liens shall be limited to all or part of the same assets (including after acquired property to the extent it would have been subject to a Lien in respect of the arrangements under which such Liens arose) that secured the obligations to which the original Liens relate (plus improvements on such Property);
- (z) Liens securing obligations in respect of letters of credit, banker's acceptances, bank guarantees or similar instruments permitted under **Sections 10.2.1(p)**, (x) and (z);

- (aa) Liens (i) solely on any cash earnest money deposits or cash equivalents in connection with any letter of intent or purchase agreement or otherwise in connection with any escrow arrangements with respect to any Permitted Acquisition or other Investment permitted hereunder and (ii) consisting of an agreement to dispose of any property in a transaction permitted hereunder;
- (bb) Liens arising from precautionary UCC financing statements (or similar filings under Applicable Law) regarding operating leases or consignment or bailee arrangements;
- (cc) other Liens with respect to property or assets of Parent or any of its Subsidiaries; <u>provided</u> that the aggregate principal amount of the Debt or other obligations secured by such Liens does not exceed \$50,000,000 at any time outstanding; <u>provided</u>, <u>further</u>, that if such Liens attach to any Collateral included in the Borrowing Base, such Liens will be subject to an intercreditor agreement in form and substance satisfactory to Agent;
- (dd) Liens on cash or cash equivalents pledged to defease or otherwise satisfy and discharge any Debt or other obligations that are permitted or not prohibited hereunder; and
- (ee) Liens in favor of (i) Term Loan Agent securing the Term Loan Obligations to the extent permitted under Section 10.2.1(bb) and to the extent such Liens are subject to the ABL Intercreditor Agreement: and (ii) Third Lien Agent securing the Third Lien Term Loan Obligations to the extent permitted under Section 10.2.1(bb) and to the extent such Liens are subject to the Third Lien Intercreditor Agreement; and

(ff) Liens arising out of a sale-leaseback transaction permitted hereunder; and

(gg) Liens filed against dealers (excluding Parent or its Subsidiaries) with respect to property or assets of Parent of any of its

# Subsidiaries.

- 10.2.3 <u>Capital Expenditures</u>. Make Capital Expenditures in excess of \$100,000,000 in the aggregate during any period of four (4) consecutive Fiscal Quarters, measured as at the end of each Fiscal Quarter.
- 10.2.4 <u>Distributions</u>. Declare or make any Distributions, except Permitted Distributions (subject to the satisfaction of the Borrowing Base Condition, if applicable). Notwithstanding the foregoing, to the extent any such Distribution is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through the Distribution of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to Section 11.3) in favor of Agent.
- 10.2.5 <u>Restricted Investments</u>. Make any Restricted Investment. Notwithstanding the foregoing, to the extent any Investment that is permitted hereunder (subject to the satisfaction of the Borrowing Base Condition, if applicable) is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through an Investment of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to Section 11.3) in favor of Agent.

- 10.2.6 <u>Disposition of Assets</u>. Make any Asset Disposition, except (subject to the satisfaction of the Borrowing Base Condition, if applicable):
- (a) (i) a Permitted Asset Disposition and (ii) to the extent constituting an Asset Disposition of the assets subject to thereto, any Hedging Agreement permitted under Section 10.2.1;
- (b) (i) Asset Dispositions to effect a Permitted ABS Transaction, (ii) the sale to any third party of the Class C Retained Notes in the ordinary course of business or consistent with past practice; <u>provided</u> that, until the Discharge of Term Loan Obligations (as defined in the ABL Intercreditor Agreement), so long as no Default or Event of Default shall then exist or would result therefrom, and (ii) after all Debt has been repaid under a Permitted ABS Transaction, any distribution to a Borrower of the remaining ABS Contract Portfolio of the applicable Securitization Subsidiary related to such Permitted ABS Transaction;
- (c) a transfer of Property by (i) an Obligor to a Borrower or any other Obligor, (ii) by a Subsidiary that is not an Obligor to an Obligor or any other Subsidiary—or, (iii) by an Obligor to a non-Obligor, in each case to the extent permitted by the definition of "Restricted Investments" or (iv) an Obligor to a dealer in the Ordinary Course of Business;
  - (d) an Asset Disposition of Margin Stock by Parent;
  - (e) the disposition Asset Disposition of charged-off receivables in the Ordinary Course of Business;
- (f) dispositions an Asset Disposition of Property subject to casualty, condemnation or similar proceedings (including in lieu thereof) upon receipt of the Net Proceeds therefor;
- (g) dispositions an Asset Disposition of Real Estate and related assets in the Ordinary Course of Business in connection with relocation activities for directors, officers, employees, members of management, or consultants of Parent and the Subsidiaries;
- (h) the transfer or abandonment of Intellectual Property rights no longer used or useful in the business in accordance with the reasonable business judgement of Borrower Agent; and
- (i) (i) so long as no Default or Event of Default is continuing or would arise therefrom, Dispositions as of the earlier of the date of execution of the definitive documentation for any Asset Disposition (so long as such Asset Disposition is consummated within 120 days of such date) and the date of such Asset Disposition, an Asset Disposition of other assets and property in exchange for reasonably equivalent value, provided that (A) any such Disposition shall be made for fair market value, (B) with respect to any such Asset Disposition of assets included in the Borrowing Base, such Asset Disposition shall be made for cash consideration in an amount not less than the amount advanced against such assets under the Borrowing Base, as applicable, and in connection with any Asset Disposition in excess of \$10,000,000, the Borrower shall deliver an updated Borrowing Base Certificate, and (EB) such Asset Disposition shall not result in an Overadvance or a Term Loan Overadvance.

Notwithstanding the foregoing, to the extent any such <u>Asset</u> Disposition is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through the <u>Asset</u> Disposition of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to **Section 11.3**) in favor of Agent.

### 10.2.7 Reserved.

### 10.2.8 Restrictions on Payment of Certain Debt.

- (a) Make any payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to any Subordinated Debt or Junior Lien Debt, except:
  - (i) regularly scheduled payments of principal and interest, and payment of fees, expenses and indemnities, but only to the extent permitted or not restricted under any subordination agreement or intercreditor agreement relating to such Debt (including the ABL Intercreditor Agreement);
  - (ii) payments made in respect of a Permitted Originator Note subject to any subordination provisions in respect of such Permitted Originator Note;
  - (iii) in the case of the Term Loan Obligations, any payment made in respect of (A) the CARES Act Tax Refund Proceeds (together with any prepayment premium required to be paid in respect thereof) and (B) during a Dominion Trigger Period, following the application of the ledger balance in the main Dominion Account to the Obligations in accordance with Section 5.7 on any Business Day, Term Loan Obligations in an amount not to exceed the remaining ledger balance in such Dominion Account on such Business Day;
  - (iv) the conversion of any such Subordinated Debt or Junior Lien Debt to, or payment with the proceeds of, Equity Interests (other than Disqualified Stock);
  - (v) additional payments and prepayments in respect of the Subordinated Debt or Junior Lien Debt with net proceeds from the incurrence of Subordinated Debt, Junior Lien Debt or other unsecured Debt permitted hereunder;
    - (vi) payments made with the proceeds of Refinancing Debt in respect of such Subordinated Debt or Junior Lien Debt;
  - (vii) payments of, and cash payments due upon conversion with respect to, any Permitted Convertible Notes in accordance with the terms thereof; and
  - (viii) other than during the Covenant Relief Period, additional cash payments and prepayments so long as, in each case, the Payment Conditions are satisfied.
- (b) Make any payment with respect to a Permitted ABS Transaction other than (i) payments made with the proceeds of the Securitized Contracts of the corresponding Permitted ABS Transaction; (ii) payments made in connection with the repurchase of Contracts which are permitted under clause (g) of the definition of Restricted Investments; (iii) payments so long as immediately before and after giving effect to any such repayment no Default or Event of Default exists and immediately after giving effect thereto Availability exceeds the greater of (x) \$40,000,000 and (y) 10.0% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) then in effect; (iv) payments using the proceeds of Investments permitted under clause (f)(ii) of the definition of Restricted Investments and (v) payments in respect of Permitted Originator Notes.

- (c) Make any principal payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to unsecured Debt (including the Permitted HY Notes <u>but excluding Debt among Parent and its Subsidiaries</u>), except:
  - (i) regularly scheduled payments of principal and scheduled payments at maturity;
- (ii) principal payments made with the proceeds of the incurrence of other unsecured Debt, Permitted HY Notes, and Subordinated Debt permitted hereunder;

### (iii) [reserved];

- (iv) the conversion of any such Debt to, or payment with the proceeds of, Equity Interests (other than Disqualified Stock);
- (v) payments made with the proceeds of Refinancing Debt in respect of such unsecured Debt;
- (vi) principal payments of, and cash payments due upon conversion with respect to, any Permitted Convertible Notes in accordance with the terms thereof; and
- (vii) other than during the Covenant Relief Period, if the outstanding principal amount of such unsecured Debt is (A) greater than \$15,000,000, any other principal payments with respect to such Debt so long as the Payment Conditions are satisfied with respect to each such payment and (B) \$15,000,000 or less, immediately before and after giving effect to such payment, no Event of Default exists.
- (d) Make any payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to any Debt among Parent and its Subsidiaries that is expressly subordinate and junior in right of payment to the Obligations unless such payment is permitted pursuant to the subordination agreement or subordination terms applicable thereto.

### 10.2.9 Fundamental Changes.

(a) Merge, combine or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions, except (i) Parent and its Subsidiaries may engage in Permitted Acquisitions, (ii) any non-Obligor Subsidiary may be merged into or consolidated with, or transfer all or substantially all of its property to, (1) any Borrower or Guarantor (other than Parent), so long as such Borrower or such Guarantor is the surviving entity or the surviving entity assumes the Obligations in a manner satisfactory to Agent, or (2) another non-Obligor Subsidiary, (iii) any Borrower or Guarantor (other than Parent) may merge into or consolidate with any Borrower so long as a Borrower is the surviving entity or the surviving entity assumes the Obligations in a manner satisfactory to Agent, (iv) any Guarantor (other than Parent) may merge into or consolidate with any other Guarantor (other than Parent) and (v) any Subsidiary may liquidate or dissolve so long as (1) such Subsidiary determines in good faith that such liquidation or dissolution is in its best interest, (2) a Borrower shall only liquidate or dissolve with or into another Borrower with at least one Borrower surviving and (3) a Guarantor shall only liquidate or dissolve into an Obligor or such liquidation or dissolution is an Investment permitted hereunder.

- (b) Without providing Agent at least thirty (30) days' prior written notice thereof (or such shorter period as Agent may agree), (i) change its name (ii) change its charter or other organizational identification number or (iii) change its entity type or state of organization.
  - 10.2.10 Reserved.
- 10.2.11 Organic Documents. Except as required by Applicable Law, amend, modify or otherwise change any of its Organic Documents as in effect on the Closing Date in a manner that would reasonably be expected to be materially adverse to the rights or interests of Agent or Lenders.
  - 10.2.12 Reserved.
- 10.2.13 <u>Accounting Changes</u>. Change its Fiscal Year without the consent of Agent; <u>provided</u> that the Borrowers and the Subsidiaries may change their fiscal year end to align to that of Parent.
  - 10.2.14 Restrictive Agreements. Become a party to any Restrictive Agreement, except Restrictive Agreements as follows:
- (a) in effect on the Closing Date (or, with respect to Badcock, the Amendment No. 3 Effective Date) and any replacements, renewals, extensions, refinancings, refundings or exchanges of or any amendment, restatement, amendment and restatement, supplement or other modification expanding the scope of, such restriction or condition, in each case, so long as not done so in a manner materially adverse to the Lenders taken as a whole;
- (b) relating to secured Debt permitted hereunder (including any Refinancing Debt in respect thereof), as long as the restrictions apply only to collateral for such Debt (other than the Collateral);
  - (c) constituting customary restrictions on assignment in leases and other contracts;
  - (d) the Permitted HY Note Indentures (as amended as permitted hereunder);
- (e) any guaranty by any Subsidiary of Parent of Parent's obligations under any Permitted HY Notes as permitted under **Section 10.2.1(n)**;
  - (f) pursuant to any Loan Document;
- (g) pursuant to any Permitted ABS Documents entered into by a Securitization Subsidiary or any Organic Document of any Securitization Subsidiary;
  - (h) restrictions and conditions imposed by Applicable Law;
- (i) in the case of any Subsidiary that is not a wholly-owned Subsidiary, restrictions and conditions imposed by its organizational documents or any related joint venture or similar agreement;

- (j) customary restrictions and conditions contained in agreements relating to Asset Dispositions pending such Asset Disposition; provided such restrictions and conditions apply only to the Person and/or assets subject to such Asset Disposition and such sale is permitted hereunder;
- (k) restrictions and conditions that were binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as the agreements providing for such restrictions and conditions were not entered into in contemplation of such Person becoming a Subsidiary;
  - (1) restrictions and conditions imposed by agreements relating to non-Obligor Subsidiaries;
  - (m) customary provisions in joint venture agreements and other similar agreements entered into in connection with any joint venture;
- (n) restrictions on cash or other deposits imposed by suppliers and customers under contracts entered into in the Ordinary Course of Business;
  - (o) customary net worth provisions contained in Real Estate leases entered into by Parent or any of its Subsidiaries; and
- (p) the Term Loan Agreement and related Loan Documents (as defined in the Term Loan Agreement), in each case, as amended as permitted by the ABL Intercreditor Agreement.

### 10.2.15 Reserved.

- 10.2.16 <u>Conduct of Business</u>. Engage in any lines of business, other than as a conducted on the Closing Date any activities incidental, ancillary or reasonably related thereto (including providing proprietary credit solutions for customers).
- 10.2.17 <u>Affiliate Transactions</u>. Enter into or be party to any transaction with an Affiliate (with Franchise Group Newco BHF, LLC, Freedom VCM Interco Holdings, Inc. and any of their respective Affiliates being treated as Affiliates of Parent and its Subsidiaries for purposes of this Section 10.2.17) except:
- (a) transactions among Parent and its Subsidiaries on the one hand and the Secured Parties on the other hand contemplated by the Loan Documents;
- (b) payment of reasonable compensation to officers and employees for services actually rendered, and loans and advances permitted under this Agreement;
  - (c) payment of customary directors' fees and indemnities;
  - (d) transactions solely among Obligors to the extent permitted or not restricted hereunder;
- (e) transactions with Affiliates (i) that were consummated prior to the Closing Date or (ii) in existence on or prior to the Amendment No. 3 Effective Date or arising out of the transactions contemplated by the Badcock Acquisition Agreement and set forth on Schedule 10.2.17 and, in each case, any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect;

- (f) transactions with Affiliates no less favorable than would be obtained in a comparable arm's-length transaction with a non-
- Affiliate;
- (g) entry into a Permitted ABS Purchase Agreement, any other Permitted ABS Documents, and Permitted Originator Notes and all transactions contemplated thereunder;
- (h) entry into a guaranty of any Permitted HY Notes or Permitted Convertible Notes facility as permitted under **Section 10.2.1** and all transactions contemplated thereunder;
- (i) servicing agreements and administration agreements, and all transactions contemplated thereunder, entered into in connection with a Permitted ABS Transaction;
  - (i) transactions solely among non-Obligor Subsidiaries;
- (k) any Investment not prohibited by the definition of "Restricted Investment" or any merger, consolidation or combination not prohibited by **Section 10.2.9**;
- (l) (i) any employment or severance agreements or arrangements entered into by Borrowers or any of the Subsidiaries in the Ordinary Course of Business, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers, directors, members of management or consultants, and (iii) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract or arrangement and transactions pursuant thereto;
  - (m) any purchase by Parent of or contributions to, the Equity Interests of Borrowers;
- (n) transactions among Borrowers and the Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the Ordinary Course of Business;
- (o) transactions with customers, clients, suppliers or joint ventures for the purchase or sale of goods and services entered into in the Ordinary Course of Business; and
  - (p) Distributions permitted under Section 10.2.4-; and
- (g) for the avoidance of doubt, the transactions under the Term Loan Documents and the Third Lien Term Loan Documents, in each case, as amended, amended and restated, supplemented, waived or otherwise modified to the extent such modification or waiver is not prohibited by the ABL Intercreditor Agreement, the Third Lien Intercreditor Agreement or Section 10.2.20 or Section 10.2.23 hereof.

# 10.2.18 Reserved.

10.2.19 Amendments to Subordinated Debt and Permitted HY Notes. Amend, supplement or otherwise modify any document, instrument or agreement relating to any Subordinated Debt or Permitted HY Notes, if, in any case, such modification (a) increases the principal balance of such Debt except as permitted by Section 10.2.1; (b) accelerates the date on which any installment of principal is due; (c) shortens the final maturity date (except to a date that is no earlier than 91 days after the latest Revolver Termination Date); or (d) in the case of Subordinated Debt, results in the Obligations not being fully benefited by any subordination provisions thereof (it being understood that this Section 10.2.19 is not intended to restrict any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extension and refinancing of Subordinated Debt or Permitted HY Notes that is otherwise not restricted under this Agreement or the applicable subordination agreement).

- 10.2.20 Amendments to Term Loan Documents. Notwithstanding anything to the contrary contained herein, in no event shall Amend, restate, amend and restate, supplement, modify, replace, increase, renew, extend or refinance the Term Loan Agreement or the Term Loan Documents be amended, restated, amended and restated, supplemented, modified, replaced, increased, renewed, extended or refinanced in contravention of the ABL Intercreditor Agreement; provided that to the extent that the terms of any amendment, supplement or other modification to the Term Loan Agreement are materially less favorable to the Obligors than the terms of the Term Loan Agreement as in effect on the Amendment No. 23 Effective Date, then such amendment, supplement or other modification shall be deemed incorporated into this Agreement (which amendment, supplement or other modification shall occur automatically upon notice from Agent and the Obligors to the Lenders and the other Secured Parties).
- 10.2.21 <u>Class R Retained Notes</u>. Permit any transfer, sale or other <u>disposition Asset Disposition</u> of the Class R Retained Notes to any Person (other than Parent or any Subsidiary thereof).
- 10.2.22 Amendment to Permitted ABS Documents. Permit any amendment, supplement or other modification in the Permitted ABS Documents, if such amendment, supplement or modification would be materially adverse to the interests of the Secured Parties; it being understood that no amendment, supplement, or other modification is adverse if (x) such amendment, supplement, or modification is permitted under the applicable Permitted ABS Intercreditor Agreement or (y) after giving effect to such amendment, supplement or other modification, the transactions under such Permitted ABS Documents as of the date of such amendment, supplement or other modification constitute a Permitted ABS Transaction.
- 10.2.23 Amendments to Third Lien Term Loan Facility. (a) Amend, restate, amend and restate, supplement, modify, replace, increase, renew, extend or refinance the Third Lien Term Loan Agreement or any Third Lien Term Loan Documents in contravention of the Third Lien Intercreditor Agreement or (b) prepay, reduce or voluntarily terminate, as applicable, the aggregate amount of the outstanding term loans and undrawn commitments under the Third Lien Term Loan Facility below \$50,000,000 unless EBITDA on a Pro Forma Basis is equal to or greater than \$185,000,000 and Liquidity (calculated on a trailing six-month basis and after giving effect to such prepayment, reduction or voluntary termination) shall be no less than \$100,000,000.
- 10.3 <u>Financial Covenants</u>. As long as any Revolver Commitments are outstanding and the Full Payment of the Obligations has not occurred, in the case of <u>Sections 10.3.1</u>, 10.3.2 <u>and</u>, 10.3.3, <u>10.3.4</u>, and <u>10.3.7</u>. Parent shall on a consolidated basis with its Subsidiaries, and, in the case of <u>Sections 10.3.4</u>, 10.3.5 and 10.3.6, Parent and/or the Borrowers, as applicable, shall:
- 10.3.1 <u>Minimum Interest Coverage Ratio</u>. Other than with respect to the Fiscal Quarter ended October 31, 2022 and any Fiscal Quarter ending during the Covenant Relief Period but before prior to April 30, 2024 2025, maintain an Interest Coverage Ratio of at least (a) 1.50:1.00, measured on a trailing two Fiscal Quarter basis and (b) 1.00:1.00 measured for each Fiscal Quarter, in each case as of the last day of each Fiscal Quarter.
- 10.3.2 <u>Maximum Leverage Ratio</u>. Maintain a Leverage Ratio not greater than 4.50:1.00, measured quarterly as of the last day of each Fiscal Quarter.
- 10.3.3 <u>Maximum ABS Excluded Leverage Ratio</u>. Maintain an ABS Excluded Leverage Ratio not greater than 2.50:1.00, measured quarterly as of the last day of each Fiscal Quarter.

10.3.4 Minimum Liquidity. At all times during the Covenant Relief Period, maintain Liquidity in an amount greater than (a) \$125,000,000 through October 31, 2023 and (b) on and after November 1, 2023, \$112,500,000.

10.3.4 Fixed Charge Coverage Ratio. Commencing with the most recent Fiscal Quarter for which the Parent's consolidated financial statements have been delivered prior to the date on which Availability is less than 20% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), maintain a Fixed Charge Coverage Ratio of no less than 1.00:1.00, measured quarterly as of the last day of each Fiscal Quarter for so long as such covenant is in effect. Once such covenant is in effect, compliance with the covenant will be discontinued on the first day immediately succeeding the last day of the Fiscal Quarter which includes the 30th consecutive day on which Availability remains in excess of 20% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve).

10.3.5 Minimum Availability. At all times during the Covenant Relief Period, maintain Maintain Availability of no less than the greater of (a) 2517.5 % of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) and (b) \$75,000,000.100,000,000; provided that, for purposes of this Section 10.3.5, commencing on January 1, 2025, Availability shall be calculated giving pro forma effect to the reduction of the Revolver Commitments to occur on the Revolver Termination Date in respect of the Non-Extending Class.

10.3.6 <u>Anti-Cash Hoarding</u>. As of the end of any day during the Covenant Relief Period <u>Business Day</u>, if there shall be Revolver Loans then outstanding and the Consolidated Cash Balance exceeds \$\frac{100,000,000}{25,000,000}\$, apply such amounts in excess of \$\frac{100,000,000}{25,000,000}\$ within two (2) Business Days to prepay the outstanding principal balance of the Revolver Loans (without premium or penalty). Amounts prepaid pursuant to this **Section 10.3.6** may be reborrowed in accordance with **Section 2.1**.

10.3.7 Minimum EBITDA. As of the last day of each Fiscal Quarter, commencing with the Fiscal Quarter ending January 31, 2024, have EBITDA of no less than (a) \$50,000,000, measured on a trailing two Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending July 31, 2024; (b) \$90,000,000, measured on a trailing three Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending October 31, 2024; (c) \$125,000,000, measured on a trailing four Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending January 31, 2025; (d) \$150,000,000, measured on a trailing four Fiscal Quarter basis commencing with the Fiscal Quarter ending April 30, 2024 and ending on the last day of the Fiscal Quarter ending April 30, 2025; and (e) for each four Fiscal Quarter period ending on or after July 31, 2025, \$175,000,000, measured on a trailing four Fiscal Quarter basis.

#### 10.4 Curative Equity.

10.4.1 Subject to the limitations set forth in **Section 10.4.6**, Borrowers may cure an Event of Default arising out of a breach of any of the financial covenants set forth in **Sections 10.3.1**, 10.3.2 10.3.2, 10.3.3, 10.3.4 and 10.3.3 10.3.7 (the "Specified Financial Covenants") (as the case may be) by way of an investment of Curative Equity prior to the date on which the Compliance Certificate is delivered to Agent pursuant to **Section 10.1.2(d)** in respect of the Fiscal Quarter with respect to which any such breach occurred; provided, that Borrowers' right to so cure an Event of Default shall be contingent on the timely delivery of such Compliance Certificate as required under **Section 10.1.2(d)**.

- 10.4.2 The Borrowers shall promptly notify Agent of their receipt of any proceeds of Curative Equity and shall apply the same to the payment of the Obligations in the manner specified in **Section 5.3**.
- 10.4.3 Subject to the limitations set forth in **Section 10.4.6**, any investment of Curative Equity shall be in an amount that is sufficient to cause Parent and its Subsidiaries to be in compliance with all of the Specified Financial Covenants as at the last day of the most recently ended month or Fiscal Quarter (as the case may be), calculated for such purpose as if such amount were additional EBITDA and increase in Tangible Net Worth, and a decrease in total liabilities, as necessary, of Parent and its Subsidiaries as at such date and had been included in the financial calculations of Parent and its Subsidiaries on such date.
- 10.4.4 In the Compliance Certificate delivered pursuant to Section 10.1.2(d) in respect of the month end or Fiscal Quarter end (as the case may be) on which Curative Equity is used to cure any breach of the Specified Financial Covenants, Borrowers shall (i) include evidence of its receipt of Curative Equity proceeds, and (ii) set forth a calculation of the financial results and balance sheet of Parent and its Subsidiaries as at such month end or Fiscal Quarter end (as the case may be) (including for such purposes the proceeds of such Curative Equity as either deemed EBITDA for such month end or Fiscal Quarter end (as the case may be), or increased Tangible Net Worth and decreased total liabilities for such month end or Fiscal Quarter end (as the case may be), as if received on such date), which shall confirm that on a pro forma basis taking into account the application of Curative Equity proceeds, Parent and its Subsidiaries would have been in compliance with the Specified Financial Covenants (as at such date).
- 10.4.5 Upon delivery of a Compliance Certificate pursuant to **Section 10.1.2(d)** conforming to the requirements of this Section, any Event of Default that is continuing from a breach of any of the Specified Financial Covenants shall be deemed cured with no further action required by the Lenders. In the event Borrowers do not cure all financial covenant violations as provided in this **Section 10.4**, the existing Event of Default shall continue unless waived by the Required Lenders in writing.
- 10.4.6 Notwithstanding the foregoing, (i) Borrowers' rights under this **Section 10.4** may be exercised not more than two times during the term of this Agreement, and (ii) the amount of each investment of Curative Equity may not be less than \$1,000,000 or greater than \$20,000,000.
- 10.5 Contract Forms. The Borrowers shall not include in the Borrowing Base Contracts which are not on the printed forms previously approved in writing by Agent, and Borrowers shall not change or vary the printed forms of such Contracts in any material adverse manner without Agent's prior written consent not to be unreasonably withheld, delayed or conditioned, unless such change or variation is required by any Requirement of Law or recommended by counsel to Borrowers. Agent may reasonably withhold its consent until Agent receives a reasonably satisfactory opinion of Borrowers' counsel regarding compliance of the revised form of Contract with any Requirement of Law.

10.6 Reserved.

### SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.1 Events of Default. Each of the following shall be an "Event of Default" hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

- (a) A Borrower fails to pay (i) principal on any Revolver Loan when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any interest, fees or other amounts due under this Agreement within three (3) Business Days of the date due;
- (b) Any representation or warranty of an Obligor made in connection with any Loan Document or any certificate or instrument required to be furnished in connection with or pursuant to any Loan Document is incorrect or misleading in any material respect when given;
- (c) A Borrower breaches or fail to perform any covenant contained in Section 8.2.4, 8.2.5, 8.6.2, 10.1.1, 10.1.3, 10.1.6(b)(i), 10.1.17, 10.2 and 10.3;
- (d) An Obligor breaches or fails to (i) deliver a Borrowing Base Report required to be delivered pursuant to **Section 8.1** within three (3) Business Days of the date such Borrowing Base Report was required to be delivered, (ii) comply with **Section 7.6** and such failure is not cured within ten (10) Business Days or (iii) comply with **Section 10.1.16** and such failure is not cured within five (5) Business Days or (iv) perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives written notice thereof from Agent, whichever is sooner;
- (e) (i) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; (ii) an Obligor denies in writing or contests the validity or enforceability of any Loan Documents; (iii) other than with respect to items of Collateral with a value not exceeding \$5,000,000 in the aggregate, any Lien granted to Agent ceases to be a valid and perfected Lien (or ceases to have the priority of such Lien ceases to be in full force and effect) (to the extent perfection is required hereunder or under any other Loan Document), except to the extent that any such loss of (x) validity, perfection or priority results from the failure of Agent to maintain possession os of Collateral requiring perfection through control or to file or record any document delivered to it for filing or recording possession or the failure to file UCC financing continuation statements or (y) priority is related to a Permitted Lien; or (iv) any Loan Document ceases to be in full force or effect for any reason (other than in accordance with its terms or a waiver or release by Agent and Lenders);
- (f) Any material breach or default of an Obligor occurs under (i) any Hedging Agreement or (ii) any instrument or agreement to which it is a party or by which it or any of its Properties is bound, in each case relating to any Debt (other than the Obligations) constituting Term Loan Obligations or with an aggregate outstanding principal amount in excess of the Threshold Amount (including the documents related to the Permitted ABS Documents) and beyond the period of grace, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach, in each case (x) unless such Debt has been paid in full or the failure has been waived or otherwise cured prior to the acceleration of the Obligations under the Loan Documents, (y) with respect to such Debt consisting of obligations under Hedging Agreements, termination events or equivalent events relating to the breach by Parent, any Borrower or any Subsidiary of the terms thereof and (z) this clause (f) shall not apply to secured Debt that becomes due as a result of the voluntary sale, transfer of the property or assets subject to such Debt or as a result of an event not constituting a Change of Control under this Agreement and such Debt is paid when due or prior to acceleration of the Obligations;
- (g) Any final judgment or order for the payment of money is entered against an Obligor in an amount that exceeds, individually or cumulatively with all such unsatisfied judgments or orders against all Obligors, the Threshold Amount (net of insurance coverage therefor that has not been denied by the insurer), and there is a period of 60 consecutive days during which (i) such judgment or order is not discharged, satisfied, vacated or bonded pending appeal or (ii) a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect;

- (h) A loss, theft, damage or destruction occurs with respect to any Collateral included in the Borrowing Base if the amount not covered by insurance exceeds, in the aggregate, the Threshold Amount;
- (i) An Obligor suffers the loss, revocation or termination any material license or permit which is necessary for the continued operation of a material part of such Obligor's business and such loss, revocation or termination could reasonably be expected to have a Material Adverse Effect, an Obligor agrees to or commences any liquidation, dissolution or winding up of its affairs; or an Obligor is not Solvent;
- (j) An Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any of the business of an Obligor; or an Insolvency Proceeding is commenced against an Obligor and the Obligor consents to institution of the proceeding (it being understood that any involuntary Insolvency Proceeding, petition or appointment described in this clause (j) shall not constitute an Event of Default unless such proceeding, petition or appointment shall continue undismissed for 60 days or an order for relief is entered in the proceeding, petition or appointment);
- (k) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; (ii) an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or (iii) any event similar to the foregoing occurs or exists with respect to a Foreign Plan, but, in each case in this clause (k) only if such occurrence or event would either individually or in the aggregate reasonably be expected to result in an Obligor or the Obligors incurring a liability which would have a Material Adverse Effect;
- (l) An Obligor or any of its Senior Officers is criminally indicted or convicted for (i) a felony committed in the conduct of the Obligor's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any Collateral with an aggregate fair market value in excess of \$10,000,000;
  - (m) A Change of Control occurs;
  - (n) A Level Two Regulatory Event has occurred; or
- (o) The provisions of the ABL Intercreditor Agreement or the subordination provisions of the documents evidencing or governing the subordination of any Subordinated Debt (with an aggregate outstanding principal amount in excess of the Threshold Amount) (together with the provisions of the ABL Intercreditor Agreement, the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Junior Lien Debt or the Subordinated Debt; or (ii) any Obligor shall disavow in writing the effectiveness, validity or enforceability of the ABL Intercreditor Agreement.
- 11.2 Remedies upon Default. Upon the occurrence and during the continuance of an Event of Default described in Section 11.1(j) with respect to any Borrower, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Revolver Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its sole discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

- (a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;
- (b) terminate, reduce or condition any Revolver Commitment, adjust the Borrowing Base, CAI Borrowing Base, or CCI Borrowing Base or Badcock Borrowing Base;
- (c) require Obligors to Cash Collateralize LC Obligations or other Obligations under the Loan Documents that are contingent or not yet due and payable, and, if Obligors fail promptly to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and
- (d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrowers to assemble Collateral, at Borrowers' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Borrower, Borrowers agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Borrower agrees that 10 days' notice of any proposed sale or other disposition Asset Disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable so long as otherwise conducted in accordance with Applicable Law. Agent shall have the right to conduct such sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.
- (e) So long as a Level Two Regulatory Event is continuing, Agent shall have the right to immediately substitute a third party acceptable to Agent as servicer or asset manager of Borrowers' respective or collective portfolios of Contracts, and upon and after such substitution, such replacement servicer shall be entitled to receive a commercially reasonable fee for such services; <u>provided</u>, that upon the cure of such Event of Default, Borrowers shall be reinstated as such servicer or asset manager as promptly as practicable.
- 11.3 <u>License</u>. For the purpose of enabling Agent to exercise rights and remedies under this Agreement at such time as Agent shall be lawfully entitled to exercise such rights and remedies under this Agreement, except as is prohibited by an existing and enforceable anti-assignment provision of any license of Intellectual Property Rights (and solely with respect to the Intellectual Property Rights subject to such license, and other than to the extent that any such term would be rendered ineffective pursuant to the UCC or any other Applicable Law or principles of equity), Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of Royalty or other compensation to any Person) any or all Intellectual Property of Borrowers, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral.

11.4 Setoff. At any time during the existence of an Event of Default, Agent, Issuing Bank, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, Issuing Bank, such Lender or such Affiliate (other than, for the avoidance of doubt, Tax and Trust Funds) to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have. Each Lender and the Issuing Bank agrees to promptly notify the Borrowers and Agent after any such setoff and application.

### 11.5 Remedies Cumulative; No Waiver.

- 11.5.1 <u>Cumulative Rights</u>. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations under the Loan Documents.
- 11.5.2 <u>Waivers</u>. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Revolver Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Except as provided in **Section 10.4**, any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

### **SECTION 12. AGENT**

# 12.1 Appointment, Authority and Duties of Agent.

12.1.1 <u>Appointment and Authority.</u> Each Secured Party appoints and designates JPM as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute, deliver and perform its obligations as Agent under each Loan Document, including any intercreditor or subordination agreement (including the ABL Intercreditor Agreement and any other intercreditor or subordination agreement in respect of any Permitted HY Notes and with the purchaser of (or any trustee, agent or representative for the purchaser of) any Third Party

Contract), and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. Agent alone is authorized to determine eligibility and applicable advance rates under the Borrowing Base, whether to impose or release any reserve, or whether any conditions to funding or issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment. No Secured Party (other than Agent) shall have any right individually to take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise.

- 12.1.2 <u>Duties</u>. The title of "Agent" is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.
- 12.1.3 <u>Agent Professionals</u>. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care
- 12.1.4 <u>Instructions of Required Lenders.</u> The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

### 12.2 Agreements Regarding Collateral and Borrower Materials.

12.2.1 <u>Lien Releases; Care of Collateral</u>. Agent will release (and the Secured Parties authorize Agent to release) any Lien on any Collateral (a) upon Full Payment of the Obligations under the Loan Documents; (b) that is the subject of a <u>disposition or an Asset Disposition or Lien</u> that Borrowers certify in writing is a Permitted Asset Disposition or a <u>disposition Asset Disposition permitted by Section 10.2.6</u> (and Agent may rely conclusively on such certificate without further inquiry); (c) that does not constitute a material part of the Collateral (as agreed by Agent and Borrower); (d) to the extent required by the ABL Intercreditor Agreement; or (e) subject to Section 14.1, with the consent of Required Lenders.

Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

- 12.2.2 <u>Possession of Collateral</u>. Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.
- 12.2.3 Reports. Agent shall promptly provide to Lenders, when complete, any field examination, audit or appraisal report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders by providing access to them on the Approved Electronic Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrowers' books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants in accordance with the requirements of Section 13), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Approved Electronic Platform or otherwise.
- 12.3 Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, email or other electronic means) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person (including, for the avoidance of doubt, in connection with Agent's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page). Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.
- 12.4 Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in Section 6, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party (other than Agent) agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations) or assert any rights relating to any Collateral.

- 12.5 **Ratable Sharing**. If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.2**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against a Deposit Account or Securities Account without Agent's prior consent.
- 12.6 Indemnification. EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.
- 12.7 Limitation on Responsibilities of Agent. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Contract Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

### 12.8 Successor Agent and Co-Agents.

12.8.1 Resignation; Successor Agent. Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrowers. If Agent is a Defaulting Lender, Borrower Agent or the Required Lenders may, if permitted by Applicable Law, remove such Agent by written notice to Borrowers and Agent. Required Lenders may appoint a successor to replace the resigning or removed Agent that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Event of Default exists pursuant to Section 11.1(a) or (j)) Borrowers. If no successor is appointed by the effective date of Agent's resignation or removal, then on such date, Agent may appoint a successor acceptable to it in its discretion and the Borrowers (provided no Event of Default exists pursuant to Section 11.1(a) or (j)) (which shall be a Lender unless no Lender accepts the role) or in the absence of such appointment, Required Lenders automatically assume all rights and duties of Agent, the successor Agent shall thereupon succeed to and become vested with all the powers and duties

of the retiring Agent without further act. The retiring or removed Agent shall be discharged from its duties hereunder on the effective date of its resignation or removal, but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or Claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including the indemnification set forth in **Sections 12.6** and **14.2**, and all rights and protections under this **Section 12**. Any successor to JPM by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.8.2 <u>Co-Collateral Agent</u>. If allowed under Applicable Law, Agent may appoint, subject to the approval of Borrower (such approval not to be unreasonably withheld or delayed) a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such separate agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

## 12.9 Acknowledgments of Lenders and Secured Parties.

12.9.1 Each Lender and each Issuing Bank acknowledges and agrees that it has, independently and without reliance upon Agent, any other Lenders or Issuing Banks, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Revolver Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Revolver Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender or Issuing Bank, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

12.9.2 (a) Each Lender and each Issuing Bank hereby agrees that (i) if Agent notifies such Lender or Issuing Bank that Agent has determined in its sole discretion that any funds received by such Lender or Issuing Bank from Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender or Issuing Bank (whether or not known to such Lender or Issuing Bank), and demands the return of such Payment (or a portion thereof), such Lender or Issuing Bank shall promptly, but in no event later than one (1) Business Day thereafter, return to Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Bank to the date such amount is repaid to Agent at the greater of the NYFRB Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (ii) to the extent permitted by Applicable Law, such Lender or Issuing Bank shall not assert, and hereby waives, as to Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of Agent to any Lender or Issuing Bank under this Section 12.9.2 shall be conclusive, absent manifest error.

- (b) Each Lender and each Issuing Bank hereby further agrees that if it receives a Payment from Agent or any of its Affiliates (i) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (ii) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender or Issuing Bank agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender or Issuing Bank shall promptly notify Agent of such occurrence and, upon demand from Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Bank to the date such amount is repaid to Agent at the greater of the NYFRB Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect.
- (c) The Borrowers and each other Obligor hereby agrees that (i) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender or Issuing Bank that has received such Payment (or portion thereof) for any reason, Agent shall be subrogated to all the rights of such Lender or Issuing Bank with respect to such amount if any, under and pursuant to the terms of this Agreement and (ii) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Obligor, except, in each case, to the extent such erroneous Payment (or any portion thereof) is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds of the Borrower or any other Obligor.
- (d) Each party's obligations under this **Section 12.9.2** shall survive the resignation or replacement of Agent or any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Revolver Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

### 12.10 Remittance of Payments and Collections.

- 12.10.1 Remittances Generally. Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 12:00 noon, on a Business Day, then payment shall be made by the Secured Party by 2:00 p.m., on such day, and if request is made after 12:00 noon, then payment shall be made by 12:00 noon, on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents
- 12.10.2 <u>Failure to Pay.</u> If any Secured Party fails to deliver when due any amount payable by it to Agent hereunder, such amount shall bear interest, from the due date until paid in full, at the greater of the NYFRB Rate or the rate determined by Agent as customary for interbank compensation for two (2) Business Days and thereafter at the Default Rate for a Base Rate Revolver Loans. In no event shall Borrowers be entitled to credit for any interest paid by a Secured Party to Agent, nor shall a Defaulting Lender be entitled to interest on amounts held by Agent pursuant to **Section 4.2**.

- 12.10.3 <u>Recovery of Payments</u>. If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, on demand, its share of the amounts required to be returned.
- 12.11 <u>Individual Capacities</u>. As a Lender, JPM shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include JPM in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Contract Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.
- 12.12 <u>Titles</u>. Each Lender, other than JPM, that is designated in connection with this credit facility as an "Arranger," "Bookrunner" or "Agent" of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.
- 12.13 <u>Bank Product Providers</u>. Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including Sections 5.6, 12, 14.3.3 and 14.16, and agrees to hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations.
- 12.14 No Third Party Beneficiaries. This Section 12 is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations under the Loan Documents. Other than with respect to Sections 12.1, 12.2, 12.4, 12.5, 12.8, 12.9, 12.11 and 12.15, this Section 12 does not confer any rights or benefits upon Borrowers or any other Person. As between Borrowers and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

# 12.15 Lender Representations and Warranties.

- (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, Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Obligor, that at least one of the following is and will be true:
  - (i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Revolver Loans, the Letters of Credit or the Revolver Commitments,

- (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Revolver Loans, the Letters of Credit, the Revolver 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 Revolver Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Revolver Loans, the Letters of Credit, the Revolver Commitments and this Agreement satisfies the requirements of subsections (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 Revolver Loans, the Letters of Credit, the Revolver Commitments and this Agreement, or
- (iv) such other representation, warranty and covenant as may be agreed in writing between Agent, in its sole discretion, and such Lender.
- (b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Obligor, that:
  - (i) none of Agent or the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),
  - (ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolver Loans, the Letters of Credit, the Revolver Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other Person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),
  - (iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolver Loans, the Letters of Credit, the Revolver Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),
  - (iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolver Loans, the Letters of Credit, the Revolver Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Revolver Loans, the Letters of Credit, the Revolver Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to Agent or the Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Revolver Loans, the Letters of Credit, the Revolver Commitments or this Agreement.

(c) Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Revolver Loans, the Letters of Credit, the Revolver Commitments and this Agreement, (ii) may recognize a gain if it extended the Revolver Loans, the Letters of Credit or the Revolver Commitments for an amount less than the amount being paid for an interest in the Revolver Loans, the Letters of Credit or the Revolver Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Revolver Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, Agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS

13.1 <u>Successors and Assigns</u>. This Agreement shall be binding upon and inure to the benefit of Borrowers, Agent, Lenders, Secured Parties and their respective successors and permitted assigns, except that (a) no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents other than as set forth in **Section 10.2.9**; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Revolver Loan or Swingline Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

# 13.2 Participations.

13.2.1 Permitted Participants; Effect. Subject to Section 13.3.3, any Lender may sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Revolver Loans and Revolver Commitments for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.9 unless Borrowers agree otherwise in writing.

- 13.2.2 <u>Voting Rights</u>. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Revolver Loan or Revolver Commitment in which such Participant has an interest, postpones the Revolver Commitment Termination Date <u>in respect of the applicable Class of Revolver Loans or Revolver Commitments</u> or any date fixed for any regularly scheduled payment of principal, interest or fees on such Revolver Loan or Revolver Commitment, or releases any Borrower, Guarantor or substantially all of the Collateral.
- 13.2.3 <u>Participant Register</u>. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in Revolver Commitments, Revolver Loans (and stated interest) and LC Obligations. Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code.
- 13.2.4 <u>Benefit of Setoff</u>. Each Participant shall have a right of set-off pursuant to **Section 11.4** in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off pursuant to **Section 11.4** with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.
- 13.2.5 <u>Increased Costs/Break Funding/Taxes</u>. A Participant shall not be entitled to receive any greater payment under **Section 3.7**, **3.9**, **5.9** or **5.10** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent expressly acknowledging such Participant may receive a greater benefit. A Participant shall not be entitled to the benefits of **Section 5.9** and **5.10** to the extent such Participant fails to comply with **Section 5.10.1** as though it were a Lender.

# 13.3 Assignments.

13.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$10,000,000 (unless otherwise agreed by Agent and the Borrower Agent, each in their discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Revolver Commitments retained by the transferor Lender is at least \$10,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver to Agent (i) an Assignment and Acceptance or (ii) to the extent applicable, an agreement incorporating an Assignment and Acceptance by reference pursuant to an Approved Electronic Platform as to which Agent and the parties to the Assignment and Acceptance are participants. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender to pledge or assign any rights under this Agreement to (i) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors and any Operating Circular issued by such Federal Reserve Bank or (ii) counterparties to swap agreements relating to any Revolver Loans; provided, that (x) no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto and (y) any payment by the Borrowers to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy the Borrowers' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligat

- 13.3.2 Effect; Effective Date. Upon delivery to Agent of an assignment notice in the form of Exhibit C and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this Section 13.3. From such effective date, (i) the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder and (ii) the assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than any rights it may have pursuant to Section 14.2 which will survive) 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). Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with Section 5.10 and deliver, upon request, an Administrative Questionnaire satisfactory to Agent.
- 13.3.3 <u>Certain Assignees</u>. No assignment or participation may be made to a Borrower, Affiliate of a Borrower, Defaulting Lender or natural person. Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents. Any assignment by a Defaulting Lender must be accompanied by satisfaction of its outstanding obligations under the Loan Documents in a manner satisfactory to Agent and Borrower Agent, including payment by the Defaulting Lender or Eligible Assignee of an amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Agent in its discretion) to satisfy all funding and payment liabilities of the Defaulting Lender. If any assignment by a Defaulting Lender (by operation of law or otherwise) does not comply with the foregoing, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.
- 13.3.4 Register. Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names, addresses and Revolver Commitments of, and the Revolver Loans, stated interest and LC Obligations owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.
- 13.4 Replacement of Certain Lenders. If a Lender (a) is a Non-Consenting Lender, (b) is a Defaulting Lender, or (c) gave a notice under Section 3.5 or requested payment or compensation under Section 3.7 or 5.9 (and has not designated a different Lending Office pursuant to Section 3.8), then Agent or Borrower Agent may, upon notice to such Lender and Agent, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment and Acceptance(s). Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.
- 13.5 <u>Assignments/Participations with Respect to Securities Laws</u>. Each Lender agrees that, without the prior written consent of Borrower Agent and Agent, it will not make any assignment or sell a participation hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in respect of, any Revolver Loan or other Obligation under the securities laws of the United States of America or of any jurisdiction.

## **SECTION 14. MISCELLANEOUS**

#### 14.1 Consents, Amendments and Waivers.

- 14.1.1 <u>Amendment</u>. Subject to clause (ii) of the proviso to **Section 1.2**, **Section 2.2** (including all changes necessary to establish a FILO Tranche) and **Section 3.6(b)**, **(c)**, **(d)** and **(e)** no modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; <u>provided</u> that:
- (a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;
- (b) without the prior written consent of each affected Issuing Bank, no modification shall alter **Section 2.3** or any other provision in a Loan Document that relates to Letters of Credit or any rights, duties or discretion of such Issuing Bank;
- (c) without the prior written consent of each Lender directly and adversely affected thereby, including a Defaulting Lender, no modification shall (i) increase the Revolver Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (iii) extend the Revolver Termination Date applicable to such Lender's Obligations; (iv) amend this clause (c); or (v) alter **Section 5.6.2** (it being understood that any change required to establish a FILO Tranche shall be excluded); provided that for purposes of this clause (c), it being understood that (A) waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Revolver Commitments shall not constitute an increase of the Revolver Commitments of any Lender; (B) a waiver or reduction of the Default Rate (or other post-petition increase in interest) shall be effective with the consent of the Required Lenders (and shall not require the consent of each directly and adversely affected Lender or any Defaulting Lender); and (C) any modification to the Leverage Ratio or the component definitions thereof shall not constitute a reduction in the rate of interest or a reduction of fees);
- (d) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall (i) alter this **Section 14.1.1**; (ii) release all or substantially all of the Collateral; (iii) amend the definition of Pro Rata, Required Lenders or Supermajority Lenders (other than with respect to Lenders under a FILO Tranche); or (iv) except in connection with a merger, disposition or similar transaction expressly permitted hereby, including pursuant to **Sections 10.2.6** and **10.2.9**, release any Obligor from liability for any Obligations;

#### (e) reserved; and

(f) without the prior written consent of Supermajority Lenders, amend the definition of Borrowing Base (or any defined term used in such definition) if the effect of such amendment is to increase borrowing availability; provided that only the consent of Agent, the Borrowers and the Required Lenders shall be required to approve additional categories of assets to be included in the Borrowing Base.

Notwithstanding anything contained herein (including, without limitation, this **Section 14.1.1**) or any other Loan Document to the contrary, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, Agent and the Borrowers (a) to add one or more additional credit facilities or refinancing facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolver Loans and the accrued interest and fees in respect thereof; (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders, Supermajority Lenders and other definitions related to such new credit facilities; and/or (c) to modify any of the requirements set forth in **Sections 2.2** and **5.2.1** with respect to any FILO Tranche.

- 14.1.2 <u>Limitations</u>. The agreement of Borrowers shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agent and/or Issuing Bank as among themselves. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.
- 14.1.3 <u>Payment for Consents</u>. No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.
- 14.1.4 Errors. If Agent and the Borrowers shall have jointly identified an obvious error or any error or omission of a technical nature in the Loan Documents, then Agent and the Borrowers shall be permitted to amend such provision without any further action or consent of any other party to such Loan Document if the same is not objected to in writing by the Required Lenders to Agent within five (5) Business Days following receipt of notice thereof.
- 14.2 Indemnity. EACH BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE AS SET FORTH BELOW) OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless any Indemnitee with respect to a Claim that (i) is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or its Related Parties, or (y) material breach by such Indemnitee or its Related Parties of their obligations hereunder or under the Loan Documents or (ii) is brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding brought by or against Agent, acting in its capacity as Agent) that does not involve any act or omission of any Obligor and arises out of disputes among the Lenders and/or their transferees.

# 14.3 Notices and Communications.

14.3.1 <u>Notices</u>. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

i) if to any Obligor, to Borrower Agent at: 2445 Technology Forest Blvd. Suite 800 The Woodlands, TX 77381 Attention: Office of General Counsel

(ii) if to Agent, JPM in its capacity as an Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

1900 North Akard Street, 3rd Floor

Dallas, TX 75201 Attention: Jon Eckhouse Facsimile No: 214 965 2594

(iii) if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (B) sent by facsimile shall be deemed to have been given when sent, <u>provided</u> that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (C) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

- (b) Each of Agent and Borrower Agent (on behalf of the Obligors) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.
- (c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.
- (d) Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.3**, **3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any notice received by Borrower Agent shall be deemed received by all Borrowers.

14.3.2 [Reserved.]

## 14.3.3 Posting of Communications.

- (a) Borrowers agree that Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Bank by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by Agent to be its electronic transmission system (the "Approved Electronic Platform"). In the event the Borrowers and Agent agree to use an Approved Electronic Platform, notwithstanding anything in this Agreement to the contrary, delivery to Agent for posting to the Approved Electronic Platform of any Borrower Materials, Reports or other notice, certificate or document required pursuant to this Agreement shall constitute delivery in accordance with the terms of this Agreement.
- (b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by Agent from time to time (including, as of the Closing Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuing Bank and each Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution except, in each case, for any loses, claims, damages liabilities or expenses with respect to the foregoing if resulting from the gross negligence, bad faith or willful misconduct of Agent. Each of the Lenders, the Issuing Bank and each Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.
- (c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL AGENT, ANY ARRANGER, ANY DOCUMENTATION AGENT, ANY SYNDICATION AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY OBLIGOR, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY OBLIGOR'S OR AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM (OTHER THAN SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR EXPENSES RESULTING FROM THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF ANY APPLICABLE PARTY).

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Obligor pursuant to any Loan Document or the transactions contemplated therein which is distributed by Agent, any Lender or Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

- (d) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.
- (e) Each of the Lenders, Issuing Bank and each Borrower agrees that Agent may, but (except as may be required by Applicable Law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with Agent's generally applicable document retention procedures and policies.
- (f) Nothing herein shall prejudice the right of Agent, any Lender, Issuing Bank, any Borrower or Guarantor to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.
- 14.3.4 <u>Public Information</u>. Obligors and Secured Parties acknowledge that "public" information may not be segregated from material non-public information on the Approved Electronic Platform. Secured Parties acknowledge that Borrower Materials may include Obligors' material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor's securities.
- 14.3.5 Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of a Borrower; provided that such indemnity shall not, as to any such Indemnitee, be available to the extent that such liabilities, losses, costs or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

# 14.4 [Reserved].

- 14.5 <u>Credit Inquiries</u>. Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.
- 14.6 <u>Severability</u>. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.
- 14.7 <u>Cumulative Effect; Conflict of Terms</u>. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations, tests or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in **Section 14.20**, **Section 14.21** or another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

#### 14.8 Counterparts; Electronic Execution.

14.8.1 Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto.

- 14.8.2 Delivery of an executed counterpart of a signature page of (a) this Agreement. (b) any other Loan Document and/or (c) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 14.3.1). 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 telecopy, 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 telecopy, 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 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 Agent has agreed to accept any Electronic Signature, (A) Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of a Borrower or any other Obligor without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (B) the Obligors shall be entitled to rely on such Electronic Signature purportedly given on behalf of Agent, any Lender, any Swingline Lender or any Issuing Bank 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 any Obligor, Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each of the parties hereto hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Agent, the Lenders, the Borrowers and the other Obligors, Electronic Signatures transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original and (ii) each other party hereto may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record).
- 14.9 **Entire Agreement**. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.
- 14.10 Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Revolver Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

14.11 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Borrowers acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrowers and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Borrowers have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Borrowers are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrowers, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrowers and their Affiliates, and have no obligation to disclose any of such interests to Borrowers or their Affiliates. To the fullest extent permitted by Applicable Law, each Borrower hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.12 Confidentiality. Each of Agent, Lenders and Issuing Bank shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, auditors, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority (such as the National Association of Insurance Commissioners) purporting to have jurisdiction over it or its Affiliates; provided that unless specifically prohibited by Applicable Law or it is not practicable to do so prior to the required disclosure, each of Agent and each Lender shall endeavor to notify Borrower Agent (without any liability for a failure to so notify Borrower Agent) of any request made to such Lender or Agent prior to disclosure of such Information; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto or any party to the Term Loan Agreement; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or Eligible Assignee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender, Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrowers; (h) on a confidential basis to a provider of an Approved Electronic Platform; (i) subject to an agreement containing provisions substantially the same as this Section, to 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; or (j) with the consent of Borrower Agent. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrowers' logos, trademarks or product photographs in advertising materials. As used herein, "Information" means information received from or on behalf of an Obligor or Subsidiary relating to it or its business, including any information obtained by Agent, any Secured Party, any Indemnitee and their respective Affiliates and its and their respective directors, officers, employees, agents, advisors and attorneys in connection with any inspection, audit, appraisal or review of properties, assets, books and records of Parent and/or its Subsidiaries and/or

discussions with Parent's independent accountants. A Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

# 14.13 Intentionally Omitted.

14.14 <u>GOVERNING LAW</u>. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS (<u>WHETHER IN CONTRACT, TORT OR OTHERWISE AND WHETHER AT LAW OR IN EQUITY</u>). SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

# 14.15 Consent to Forum; Bail-In of Affected Financial Institutions.

- 14.15.1 Forum. EACH BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN THE BOROUGH OF MANHATTAN OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS (WHETHER IN CONTRACT, TORT OR OTHERWISE AND WHETHER AT LAW OR IN EQUITY), AND AGREES THAT ANY SUCH DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.
- 14.15.2 Other Jurisdictions. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.
- 14.15.3 <u>Acknowledgement and Consent to Bail-In of Affected Financial Institutions</u>. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:
- (a) the application of any Write-Down and Conversion Powers by an the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent 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 the applicable Resolution Authority.

## 14.15.4 Reserved.

- 14.16 Waivers by Borrowers. To the fullest extent permitted by Applicable Law, each Borrower waives (a) the right to trial by jury (which Agent, Issuing Bank, Lenders and all other Secured Parties hereby also waive) in any proceeding or dispute of any kind (whether in contract, tort or otherwise and whether at law or in equity) relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which a Borrower may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against an Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Borrower acknowledges that the foregoing waivers are a material inducement to Agent, Issuing Bank and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Borrowers. Each Borrower has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.
- 14.17 Patriot Act/Beneficial Ownership Regulation Notice. Agent and Lenders hereby notify Borrowers that pursuant to the Patriot Act and the Beneficial Ownership Regulation, Agent and Lenders are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act and the Beneficial Ownership Regulation. Agent and Lenders will also require information regarding Borrowers' management and owners, such as legal name, address, social security number and date of birth. The Borrowers shall, promptly upon request, provide all documentation and other information as Agent, Issuing Bank or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.
- 14.18 **NO ORAL AGREEMENT**. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

- 14.19 Existing Loan Agreement, No Novation. This Agreement does not extinguish the obligations for the payment of money outstanding under the Existing Loan Agreement or discharge or release the obligations or the liens or priority of any mortgage, pledge, security agreement or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Existing Loan Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby or by instruments executed concurrently herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of any Borrower from any of its obligations or liabilities under the Existing Loan Agreement or any of the security agreements, pledge agreements, mortgages, or other loan documents executed in connection therewith. Each Borrower hereby (a) confirms and agrees that each Loan Document to which it or its predecessor in interest is a party or to which it is a successor by operation of law is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the Closing Date all references in any such Loan Document to "the Loan Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Existing Loan Agreement shall mean the Existing Loan Agreement as amended and restated by this Agreement; and (b) confirms and agrees that to the extent that any such Loan Document purports to assign or pledge to Agent, for the benefit of the Lenders, or to grant to Agent, for the benefit of the Lenders a security interest in or lien on, any collateral as security for the Obligations of Borrowers from time to time existing in respect of the Existing Loan Agreement, such pledge, assignment or grant of the security interest or lien is hereby ratified and confirmed in all respects.
- 14.20 <u>ABL Intercreditor Agreement</u>. To the extent any provision of this Agreement conflicts with the ABL Intercreditor Agreement, such provision in the ABL Intercreditor Agreement shall govern and control.
- 14.21 <u>ABS Intercreditor Agreement</u>. Notwithstanding anything herein to the contrary, the Lien granted to Agent pursuant to this Agreement and the exercise of any right or remedy by Agent hereunder are subject to the provisions of the Permitted ABS Intercreditor Agreement. In the event of any conflict between the terms of the Permitted ABS Intercreditor Agreement and the terms of this Agreement, the terms of the Permitted ABS Intercreditor Agreement shall govern and control.
- 14.22 <u>Acknowledgement Regarding Any Supported QFCs</u>. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Hedging Agreement or any other agreement or instrument that is a QFC (such support, "<u>QFC Credit Support</u>", and each such QFC, a "<u>Supported QFC</u>"), 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>U.S. Special Resolution Regimes</u>") 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 14.22, 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).

[Remainder of page intentionally left blank; signatures begin on following page]

Exhibit B

# **ABL Intercreditor Agreement**

[attached]

# Exhibit C

# Amended and Restated Permitted ABS Intercreditor Agreement

[attached]

Exhibit D

# Amended and Restated Third Lien Intercreditor Agreement

[attached]

Schedule 1.1
Revolver Commitments of Lenders

# Schedule 1.1(g) Existing Badcock Securitization Arrangements

[To come]

Schedule 7.1(j) Equity Interests Schedule 8.5

Badcock Deposit Accounts

[To come]

Schedule 8.7.1 Business Locations Schedule 9.1.4
Names and Capital Structure

Schedule 9.1.5
Former Names and Companies

# Schedule 9.1.11

Patents, Trademarks, Copyrights and Licenses

Schedule 9.1.16 Litigation

# Schedule 10.2.17 Affiliate Transactions

[To come]

The Obligors, Agent and the other Secured Parties acknowledge that the exercise of certain of Agent's rights and remedies hereunder may be subject to, and restricted by, the provisions of the ABL Intercreditor Agreement. In the event of any conflict between the terms of the ABL Intercreditor Agreement shall control. Agent, on behalf of itself and the other Secured Parties, acknowledges and agrees that it and the other Secured Parties shall be bound by the terms and conditions of the ABL Intercreditor Agreement.

## TERM LOAN AND SECURITY AGREEMENT

Dated as of December 18, 2023

CONN'S, INC.,

as Parent and Guarantor

and

CONN APPLIANCES, INC., CONN CREDIT I, LP, CONN CREDIT CORPORATION, INC.,

and

W.S. BADCOCK LLC,

as Borrowers

CERTAIN FINANCIAL INSTITUTIONS,

as Lenders,

BRF FINANCE CO., LLC,

as Administrative Agent and Collateral Agent,

and

BRF FINANCE CO., LLC,

as Sole Lead Arranger and Sole Bookrunner

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## TERM LOAN AND SECURITY AGREEMENT

THIS TERM LOAN AND SECURITY AGREEMENT (this "Agreement") is dated as of December 18, 2023, by and among CONN'S, INC., a Delaware corporation, as parent and guarantor ("Parent"), CONN APPLIANCES, INC., a Texas corporation ("CAI"), CONN CREDIT I, LP, a Texas limited partnership ("CCI"), CONN CREDIT CORPORATION, INC., a Texas corporation ("CCCI") and W.S. BADCOCK LLC, a Florida limited liability company ("Badcock", and together with CAI, CCI, and CCCI each, a "Borrower" and collectively, the "Borrowers"), the financial institutions party to this Agreement from time to time as lenders (collectively, "Lenders"), and BRF FINANCE CO., LLC, a Delaware limited liability company ("B. Riley"), in its capacity as Administrative Agent and Collateral Agent for the Lenders (in such capacity, "Agent").

# RECITALS:

**WHEREAS**, Borrowers have requested that Agent and Lenders make available to Borrowers a term loan credit facility in an aggregate amount not to exceed \$108,000,000, the proceeds of which Borrowers will use for the purposes permitted hereunder.

WHEREAS, Agent and Lenders have agreed to provide such term loan facility in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, Lenders, Agent, Parent and Borrowers hereby agree as follows:

## SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

- 1.1 **<u>Definitions</u>**. As used herein, the following terms have the meanings set forth below:
- 13-Week Forecast: as defined in Section 10.1.16(a).

ABL Intercreditor Agreement: that certain Intercreditor Agreement, dated as of the Closing Date, between Agent and Revolving Agent, and acknowledged and agreed by the Obligors and each of Parent's Subsidiaries that are signatories thereto from time to time.

ABS Contract Portfolio: portfolio of Contracts subject to the Existing Securitization Facility and any other Permitted ABS Transaction.

ABS Excluded Leverage Ratio: the ratio, determined as of the end of any Fiscal Quarter for Parent and its Subsidiaries, on a consolidated basis, of (a) the result of (x) all items that would be included as liabilities on a balance sheet in accordance with GAAP (but excluding, for avoidance of doubt, any lease which is not treated as a Capital Lease in accordance with the definition of "Capital Lease", which exclusion shall be made by reducing the amount of such liabilities on the balance sheet by an amount equal to the remainder of (1) the sum of current and long term "operating leases" minus (2) deferred rent) as of the last day of such Fiscal Quarter (excluding Debt resulting from the Existing Securitization Facility and any other Permitted ABS Transaction), minus (y) Qualified Cash as of such date of measurement, to (b) Tangible Net Worth as of the last day of such Fiscal Quarter.

ABS Qualified Cash: as of any date of determination, the aggregate amount of cash of Parent and its Subsidiaries that is restricted pursuant to the Existing Securitization Facility or any other Permitted ABS Transaction as required under the applicable documents setting forth the terms of the Existing Securitization Facility or any other Permitted ABS Transaction.

Acquisition: a transaction or series of transactions resulting in (a) the acquisition of a business, division or substantially all assets of a Person; (b) the acquisition of record or beneficial ownership of 50% or more of the Equity Interests of a Person (including, in any event, any Investment in (x) any Subsidiary which increases Parent's interest, directly or indirectly, in such Subsidiary or (y) any joint venture for the purpose of increasing Parent's interest (directly or indirectly) in such joint venture); or (c) the merger, consolidation or combination of a Borrower or Subsidiary with another Person.

Adjusted Tangible Assets: all assets of Parent and Borrowers on a consolidated basis, except (a) patents, copyrights, trademarks, trade names, franchises, goodwill, and other similar intangibles; (b) assets constituting intercompany Accounts; (c) assets located and notes and receivables due from obligors domiciled outside the United States of America or Canada; and (d) fixed assets to the extent of any write-up in the book value thereof.

Administrative Questionnaire: an Administrative Questionnaire, if any, in a form supplied by Agent.

Affected Financial Institution: (a) any EEA Financial Institution or (b) any UK Financial Institution.

Affiliate: with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person; <u>provided</u> that in no event shall B. Riley or any of its Affiliates be considered Affiliates of the Parent or any of its Subsidiaries; <u>provided</u>, <u>further</u> that, subject to Section 10.2.17, none of Franchise Group Newco BHF, LLC, Freedom VCM Interco Holdings, Inc., any dealers or any of their respective affiliates shall be an Affiliate of Parent or any of its Subsidiaries.

Agent: as defined in the Preamble to this Agreement.

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

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

Agreed Tenor: with respect to any Benchmark Replacement, a tenor or an interest payment period of (a) approximately three months or (b) in the absence of such three-month tenor or an interest payment period, such other tenor or interest payment period agreed to by Agent and the Borrower Agent.

Agreement: as defined in the Preamble to this Agreement.

Allocable Amount: as defined in Section 5.11.3(b).

Ancillary Document: as defined in Section 14.8.2.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the Patriot Act.

Applicable Law: all laws, rules, regulations and binding governmental guidelines applicable to the Person or matter in question, including all applicable statutory law, common law and equitable principles, as well as applicable provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities and all Consumer Finance Laws.

Applicable Margin: a rate of interest per annum equal to 8.00%.

Applicable Reference Rate: an interest rate *per annum* equal to the then current Benchmark; <u>provided</u>, <u>however</u>, that during any Benchmark Unavailability Period, the Applicable Reference Rate shall mean an interest rate *per annum* equal to the Base Rate. The Applicable Reference Rate will be determined and adjusted monthly (as of the beginning of each month) as to all Term Loans then outstanding ((x) initially as provided in the definition of the Term SOFR Rate and (y) thereafter, for any Benchmark Replacement (subject to any Benchmark Replacement Conforming Changes)). If the Applicable Reference Rate would be less than the Floor, the Applicable Reference Rate will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

<u>Approved 13-Week Forecast</u>: a thirteen-week cash flow forecast in form and substance satisfactory to Revolving Agent (or, after the Discharge of the ABL Obligations, Agent).

Approved Electronic Platform: as defined in Section 14.3.3.

<u>Approved Fund</u>: any entity that is owned or Controlled by a Lender or Affiliate of a Lender, and is engaged in making or investing in commercial loans in its ordinary course of activities.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a division or otherwise) of Property of an Obligor, including a disposition of Property in connection with a sale-leaseback transaction or synthetic lease.

Assignment and Acceptance: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit B** or otherwise satisfactory to Agent and, to the extent the Borrowers' consent in respect of the applicable assignment is necessary, the Borrower Agent.

Availability: the Revolving Borrowing Base minus Revolving Outstandings.

B. Riley: as defined in the Preamble to this Agreement.

B. Riley Indemnitees: B. Riley and its Affiliates and its and their respective officers, directors, employees, agents, attorneys and advisors.

Badcock: as defined in the Preamble to this Agreement.

Badcock Acquisition: the transaction contemplated by the Badcock Acquisition Agreement.

<u>Badcock Acquisition Agreement</u>: that certain Investment Agreement, dated as of December 18, 2023 by and among, inter alios, Parent, as the purchaser, and Franchise Group Newco BHF, LLC and Franchise Group, Inc., as the sellers whereby Parent will acquire, directly or indirectly, all of the issued and outstanding units representing limited liability company interests in Badcock from Franchise Group Newco BHF, LLC.

Badcock Availability Reserve: the sum of (without duplication when taken into account with the CAI Availability Reserve or the CCI Availability Reserve, the Contract Advance Rate Amount, the Inventory Formula Amount or any of their respective component definitions) (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) [Reserved]; (d) the Sales Tax Reserve; (e) the aggregate amount of liabilities secured by Liens (other than Revolving Agent Liens) upon Collateral to the extent included in the Badcock Borrowing Base that are senior to Agent's Liens (but imposition of any such reserve shall not cure an Event of Default, if any, arising therefrom); and (f) in the case of a failure of the Dealer Collateral Access Requirements, reserves established by Revolving Agent (or, after the Discharge of the ABL Obligations, Agent) covering amounts owed to dealers and impairment of Inventory held at dealer locations; provided that the Obligors shall have a period of 45 days (or such longer period as may be agreed in writing by Revolving Agent (or, after the Discharge of the ABL Obligations, Agent) acting in its reasonable discretion) to satisfy the Dealer Collateral Access Requirements in respect of any Inventory (including Eligible Inventory and Eligible In-Transit Inventory) of Badcock held with dealers prior to the Agent implementing any reserve in respect of the Badcock Borrowing Base.

Badcock Borrowing Base: the Contract Advance Rate Amount applicable to Badcock (without duplication when taken into account with the Contract Advance Rate Amount applicable to each of CAI and CCI) plus the Inventory Formula Amount applicable to Badcock (without duplication when taken into account with the Inventory Formula Amount applicable to CAI) plus the Credit Card Account Formula Amount (without duplication when taken into account with the Credit Card Account Formula Amount applicable to CAI) minus any Badcock Availability Reserve.

<u>Badcock Manual Sweeping Accounts</u>: the Deposit Accounts maintained by Badcock that are identified to Agent as "Manual Sweeping Accounts" on or after the Closing Date, together with any such replacements or additional accounts of Badcock.

Badcock Revolving Borrowing Base: the "Badcock Borrowing Base" as defined in the Revolving Credit Agreement.

Badcock Store Accounts: as defined in Section 8.5.2.

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

Bail-In Legislation: (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: Title 11 of the United States Code.

Base Rate: for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 1/2 of 1% and (c) 1% plus the greater of (i) the Term SOFR Rate, and (ii) the Floor. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Term SOFR Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to **Section 3.6** (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to **Section 3.6(b)**), then the Base Rate shall be determined without reference to clause (c)(i) above.

Benchmark: initially, with respect to any Term Loan, the Term SOFR Rate; <u>provided</u> that if a Benchmark Transition Event, and the related Benchmark Replacement Date has occurred with respect to the Term SOFR Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **clause (b)** of **Section 3.6**.

Benchmark Replacement: the sum of: (a) the alternate benchmark rate that has been selected by Agent and the Borrower Agent as the replacement for the then-current Benchmark with an Agreed Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment. If the Benchmark Replacement as determined above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

Benchmark Replacement Adjustment: with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment for an Agreed Tenor with respect to such Unadjusted Benchmark Replacement, (which may be a positive or negative value or zero) that has been selected by Agent and the Borrower Agent giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities in the United States at such time.

Benchmark Replacement Conforming Changes: with respect to any Benchmark Replacement Term Loan, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Agreed Tenor", "Business Day," the definition of "U.S. Government Securities Business Day," timing and frequency of determining rates and making payments of interest, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Agent decides, in consultation with the Borrower Agent, may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as Agent decides, in consultation with the Borrower Agent, is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

Benchmark Replacement Date: with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide an Agreed Tenor of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; <u>provided</u>, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if an Agreed Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to the Agreed Tenor of such Benchmark (or the published component used in the calculation thereof).

Benchmark Transition Event: with respect to any Benchmark, the occurrence of one or more of the following events with respect to such thencurrent Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide the Agreed Tenor of such Benchmark (or such component thereof), permanently or indefinitely, <u>provided</u> that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Agreed Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide an Agreed Tenor of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide an Agreed Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that an Agreed Tenor of such Benchmark (or such component thereof) is no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to the Agreed Tenor of such Benchmark (or the published component used in the calculation thereof).

Benchmark Unavailability Period: with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.6** and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.6**.

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

Benefit Plan: 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."

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

Borrowed Money: with respect to any Obligor, without duplication, its (a) Debt of the type set forth in clause (a) of the definition of Debt; (b) Capital Leases; (c) letter of credit reimbursement obligations; and (d) Debt of the type set forth in clause (b) of the definition of Debt in respect of Debt described in clauses (a), (b) and (c) of this definition of Borrowed Money, in each case other than obligations owing to any Flooring Lender.

Borrower: as defined in the Preamble to this Agreement.

Borrower Agent: as defined in Section 4.4.

<u>Borrower Materials</u>: Borrowing Base Reports, Compliance Certificates and other information, reports, financial statements and other materials delivered by Borrowers hereunder, as well as other Reports and information provided by Agent to Lenders.

Borrowing: a group of Term Loans that are made together on the same day.

Borrowing Base: on any date of determination, an amount equal to the sum of (a) the CCI Borrowing Base, <u>plus</u> (b) the CAI Borrowing Base, <u>plus</u> (c) the Badcock Borrowing Base, <u>plus</u> (d) the Class C Retained Notes Advance Amount, <u>plus</u> (e) the Tax Refund Advance Amount <u>minus</u> (f) the Class C Retained Notes Reserve; <u>provided</u> that (x) on the Closing Date, the CCI Borrowing Base and the CAI Borrowing Base shall be based on the component parts thereof as of October 31, 2023 (as updated weekly through and including December 6, 2023) and (y) on and after the Closing Date and until delivery of the First Updated Badcock Report, the Badcock Borrowing Base will be based on the component parts of the Badcock Borrowing Base as of November 30, 2023, but not less than \$120,000,000. Notwithstanding anything to the contrary contained herein, all representations and warranties with respect to the Badcock Borrowing Base (or any component part thereof) and all Borrowing Base Reports in respect thereof be deemed true, correct and complete, and all covenants and agreements with respect to the Badcock Borrowing Base (or any component part thereof) and all Borrowing Base Reports in respect thereof shall be satisfied, from and after the Closing Date to and until the First Updated Badcock Report.

Notwithstanding anything to the contrary in this Agreement, (a) to the extent that the Revolving Agent is in compliance with Section 5.2(a)(iii) of the ABL Intercreditor Agreement, Agent shall have no right to establish or increase Reserves with respect to Collateral (other than with respect to the Class C Retained Notes Reserve) (it being understood that any establishment or increase of Reserves by Agent on Collateral in reliance on this clause (a) shall be strictly in accordance with the methodology of calculation required by the ABL Intercreditor Agreement), (b) no Reserve (including the Term Loan Push-Down Reserve) shall be duplicative of (x) any Revolving Reserves established and then currently maintained

against the Revolving Borrowing Base or (y) any other Reserve then applicable to the Borrowing Base and (c) (i) no Reserve shall be established or increased except upon not less than three (3) Business Days' (or shorter period as agreed to by Borrower Agent) prior written notice to Borrower Agent, which notice shall include a reasonably detailed description of such Reserve being established (during which period (x) Agent shall, if requested, discuss any such Reserve or increase with Borrower Agent and (y) Borrower Agent may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or increase thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser increase thereto, in a manner and to the extent reasonably satisfactory to Agent) and (ii) the amount of any Reserve established by Agent, and any increase in the amount of any Reserve, shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such increase. Notwithstanding clause (c) of the preceding sentence, (i) changes to the Reserves solely for purposes of correcting mathematical or clerical errors shall not be subject to such notice period, (ii) changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized shall not be subject to such notice period, (iii) no Default or Event of Default shall be deemed to result from the imposition of any Reserve for a period of three (3) Business Days (or shorter period as agreed to by Borrower Agent) following notice to Borrower Agent and (iv) Borrowers shall not request any Revolving Loans or Letters of Credit (each as defined in the Revolving Credit Agreement) under the Revolving Credit Agreement during such period of three (3) Business Days (or shorter period as agreed to by Borrower Agent).

Borrowing Base Condition: as defined in Section 8.1.

Borrowing Base Report: a report of the Borrowing Base and the Revolving Borrowing Base by Borrowers, in form satisfactory to Agent (it being understood and agreed that each component of the CAI Borrowing Base, CCI Borrowing Base and Badcock Borrowing Base (other than with respect to the advance rate percentages set forth in the definitions of Credit Card Account Formula Amount, Inventory Formula Amount and Contract Advance Rate Amount) contained in the Revolving Borrowing Base, as reflected on the Borrowing Base Report furnished on the Closing Date, are deemed satisfactory to Agent).

Business Day: means, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Houston, Texas; provided that, in addition to the foregoing, a Business Day shall be in relation to Term Loans referencing the Term SOFR Rate and any interest rate settings or payments of any such Term Loans referencing the Term SOFR Rate or any other dealings of such Term Loans referencing the Term SOFR Rate, any such day that is only a U.S. Government Securities Business Day.

<u>CAI</u>: as defined in the Preamble to this Agreement.

<u>CAI Availability Reserve</u>: the sum of (without duplication when taken into account with the CCI Availability Reserve, the Badcock Availability Reserve, the Credit Card Account Formula Amount, the Inventory Formula Amount, the Contract Advance Rate Amount or any of their respective component definitions) (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) [reserved]; (d) the Sales Tax Reserve; (e) the Gift Card Reserve; (f) the Customer Deposit Reserve and (g) the aggregate amount of liabilities secured by Liens (other than Revolving Agent Liens) upon Collateral to the extent included in the CAI Borrowing Base that are senior to Agent's Liens (but imposition of any such reserve shall not cure an Event of Default, if any, arising therefrom).

<u>CAI Borrowing Base</u>: the sum of the Credit Card Account Formula Amount applicable to CAI (without duplication when taken into account with the Credit Card Account Formula Amount applicable to Badcock), <u>plus</u> the Inventory Formula Amount applicable to CAI (without duplication when taken into account with the Inventory Formula Amount applicable to Badcock), <u>plus</u> the Contract Advance Rate Amount applicable to CAI (without duplication when taken into account with the Contract Advance Rate Amount applicable to CCI and Badcock), <u>minus</u> any CAI Availability Reserve.

CAI Revolving Borrowing Base: the "CAI Borrowing Base" as defined in the Revolving Credit Agreement.

CAIC: CAI Credit Insurance Agency, Inc., a Louisiana corporation.

CAIH: CAI Holding, LLC, a Delaware limited liability company.

<u>Capital Expenditures</u>: for any period of calculation with respect to Parent and its Subsidiaries, the aggregate of all expenditures incurred by Parent and its Subsidiaries during such period that, in accordance with GAAP, are required to be classified as capital expenditures, including Capital Leases incurred; provided that the following items shall be excluded:

- (a) the purchase price of fixed or capital assets made with the proceeds of any combination of (A) used or surplus fixed or capital assets traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus fixed or capital assets;
- (b) expenditures made in connection with the replacement, substitution, restoration, upgrade, development or repair of assets to the extent financed with (x) insurance or settlement proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored, upgraded, developed or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced;
- (c) the purchase price of assets that are purchased simultaneously with the trade-in of existing assets to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such property for the property being traded in at such time;
- (d) the purchase price of property, plant or equipment or software in an amount equal to the identifiable proceeds of Asset Dispositions of fixed or capital assets;
- (e) expenditures that are accounted for as capital expenditures by Parent and its Subsidiaries that are actually paid for, or reimbursed to Parent and its Subsidiaries in cash or cash equivalents, by a Person other than Parent and its Subsidiaries;
  - (f) expenditures to the extent constituting any portion of an Acquisition (or Investment permitted hereunder);
  - (g) any capitalized interest expense reflected on a consolidated balance sheet of Parent and its Subsidiaries;
- (h) expenditures relating to the construction, acquisition, replacement, reconstruction, development, refurbishment, renovation or improvement of any property which has been transferred to a Person other than Parent and its Subsidiaries during the same Fiscal Year in which such expenditures were made pursuant to a sale and leaseback transaction to the extent of the cash proceeds received by Parent and its Subsidiaries pursuant to such Sale and Leaseback Transaction; or
- (i) expenditures financed with the proceeds of an issuance of Equity Interests of Parent so long as the proceeds of such issuance are received within 60 days of the applicable expenditure.

<u>Capital Lease</u>: any lease required to be capitalized for financial reporting purposes in accordance with GAAP. Notwithstanding anything to the contrary contained herein, any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2018, such lease shall not be considered a capital lease for purposes of any financial ratios, covenants and similar calculations and deliverables (other than, for the avoidance of doubt, financial statements, which shall be prepared in accordance with GAAP as in effect from time to time) under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith (and, for the avoidance of doubt, such adjustment shall be effected as set forth in the definitions of ABS Excluded Leverage Ratio and Leverage Ratio in the manner set forth therein).

<u>Capital Lease Obligations</u>: the obligations of any Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

CARES Act Tax Refund Claim: at any time of determination, the aggregate amount of refund claims of one or more of the Obligors resulting from (a) the application of 2020 Fiscal Year tax credits and net operating loss carrybacks to the taxable years ending January 31 of 2014, 2015, 2016, and/or 2019 as permitted pursuant to the Code and any similar rule of state or local law and (b) any claims for refunds of alternative minimum tax related to such net operating loss carrybacks, in each case, as further described on **Schedule 1.1(c)**.

<u>CARES Act Tax Refund Proceeds</u>: cash proceeds actually received by any Obligor or any Subsidiary of Parent in respect of the CARES Act Tax Refund Claim.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 24 months of the date of acquisition, and overnight bank deposits, in each case which are issued by JPM or a commercial bank organized under the laws of the United States or any state or district thereof, rated A 1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by JPM or rated A 1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within 24 months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

Cash Recovery Percent: the percent, calculated as of the end of the last day of each month, equal to the amount determined by dividing (a) the actual Gross Cash Collections received by Borrowers from payments made by Contract Debtors during the previous three (3) months by (b) the sum of the Gross Contract Payments outstanding as of the beginning of the first day of each of the previous three (3) months. The Cash Recovery Percent shall be calculated based on the Managed Contract Portfolio; provided, however, that if, for a period of 18 months after the closing of any Permitted ABS Transaction that is not a "revolving" transaction entered into after the Closing Date, at least 85% of the value of all Contracts of Borrowers that are eligible to be included in such Permitted ABS Transaction as of any Cut-Off Date of such Permitted ABS Transaction are not transferred to such Permitted ABS Transaction, then the Cash Recovery Percent shall be determined based on the lower of (i) the Cash Recovery Percent determined based on the Owned Contract Portfolio, and (ii) the Cash Recovery Percent determined based on the Managed Contract Portfolio.

CCCI: as defined in the Preamble to this Agreement.

<u>CCI</u>: as defined in the Preamble to this Agreement.

CCI Availability Reserve: the sum of (without duplication when taken into account with the CAI Availability Reserve, the Badcock Availability Reserve, the Contract Advance Rate Amount or any of their respective component definitions) (a) the Rent and Charges Reserve; (b) [reserved]; (c) the Sales Tax Reserve and (d) the aggregate amount of liabilities secured by Liens (other than Revolving Agent Liens) upon Collateral to the extent included in the CCI Borrowing Base that are senior to Agent's Liens (but imposition of any such reserve shall not cure an Event of Default, if any, arising therefrom).

CCI Borrowing Base: the Contract Advance Rate Amount applicable to CCI (without duplication when taken into account with the Contract Advance Rate Amount applicable to CAI and Badcock), minus any CCI Availability Reserve.

CCI Revolving Borrowing Base: the "CCI Borrowing Base" as defined in the Revolving Credit Agreement.

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

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: (a) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934), other than the Permitted Holders, shall at any time have acquired direct or indirect beneficial ownership of Equity Interests of Parent representing aggregate voting power for the election of directors of Parent (without regard to the happening of any contingency) representing more than the greater of (i) 40% of such Equity Interests and (ii) the percentage of such Equity Interests owned by the Permitted Holders; (b) Parent ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in CAI; (c) CAI ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests of CCI, CCCI or Badcock; (d) Persons who were (i) directors of Parent on the Closing Date, (ii) nominated, appointed or approved for consideration for election by the board of directors of Parent or (iii) appointed or elected by directors who were directors of Parent on the Closing Date or were nominated, appointed, or approved as provided in clause (ii) above, cease to occupy a majority of the seats (excluding vacant seats) on the board of directors of Parent; or (e) all or substantially all of a Borrower's assets are sold or transferred, other than as permitted pursuant to Section 10.2.9; provided that any acquisition by (i) Franchise Group Newco BHF, LLC, (ii) Freedom VCM Interco Holdings, Inc., (iii) any Affiliates of the foregoing or (iv) any "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934) of which any of the foregoing are members, of the direct or indirect beneficial ownership of Equity Interests of Parent representing aggregate voting power for the election of directors of Parent (without regard to the happening of any contingency) representing more than 49% of such Equity Interests shall be deemed a Change of Control.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses (but limited, in the case of attorneys' fees and expenses, to the reasonable and documented out-of-pocket fees, charges and disbursements of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent and, in the case of an actual or potential conflict of interest, one (1) additional firm of lead counsel to all affected Indemnitees, taken as a whole and, in each case, without duplication of attorneys' fees and expenses included in the definition of Claims)) at any time (including after Full Payment of the Obligations, or replacement of Agent, or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person in any way relating to (a) any Term Loans, Loan Documents, Borrower Materials, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, including the payment of principal, interest and fees, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) the exercise of any rights or remedies under any Loan Documents or Applicable Law, (e) the failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto, or (f) failure by any Obligor (directly or indirectly), Credit and Collection Guideline, Contract or Third Party Contract to comply with or otherwise satisfy any Consumer Finance Law in any respect.

Class C Retained Notes: any (a) series of "Class C" notes issued pursuant to a Permitted ABS Transaction, by a Securitization Subsidiary in favor of another Securitization Subsidiary (the "Purchasing Securitization Subsidiary") which shall (i) be subsequently transferred, through a contribution, dividend, distribution or otherwise, by such Purchasing Securitization Subsidiary to an Obligor (with no requirement for any cash consideration to be paid by such Obligor for such Class C Retained Notes, except to the extent any cash consideration is contemporaneously redistributed or contributed to such Obligor upon the payment of such cash consideration), (ii) have not been further subsequently sold or otherwise transferred by such Obligor to any other Person (other than an Obligor), and (iii) represent Debt of the issuing Securitization Subsidiary pursuant to the terms of the applicable Permitted ABS Transaction or (b) other note otherwise acceptable to Agent in its sole discretion.

<u>Class C Retained Notes Advance Amount</u>: an amount equal to the lesser of (a) an advance rate of 35% multiplied by the face amount of all Eligible Class C Retained Notes and (b) \$15,000,000.

<u>Class R Retained Notes</u>: any series of "Class R" notes issued, pursuant to a Permitted ABS Transaction, by a Securitization Subsidiary in favor of a Purchasing Securitization Subsidiary which represent equity interests of the issuing Securitization Subsidiary pursuant to the terms of the applicable Permitted ABS Transaction.

<u>Class C Retained Notes Reserve</u>: reserves in respect of Class C Retained Notes included in the Borrowing Base, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time (subject to the limitations set forth in the definition of "Borrowing Base").

CLL: Conn Lending, LLC, a Delaware limited liability company.

Closing Date: as defined in Section 6.1.

<u>CME Term SOFR Administrator</u>: CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

Code: the Internal Revenue Code of 1986.

<u>Collateral</u>: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations; provided that "Collateral" shall not include any Excluded Collateral.

<u>Collateral Adjustment Percentage</u>: calculated as of the first day of each month, the sum of the Past Due Percent and the Net Charge-Off Percent. The Collateral Adjustment Percentage shall be calculated based on the higher of (x) the Collateral Adjustment Percentage determined based on the Owned Contract Portfolio, and (y) the Collateral Adjustment Percentage determined based on the Managed Contract Portfolio.

Compliance Certificate: a certificate in the form of Exhibit D in which Borrowers certify compliance with Sections 10.2.3 and 10.3.

Confidential Information: as defined in Section 10.1.1(c).

<u>Connection Income Taxes</u>: Other Connection Taxes that are imposed on or measured by net income (however denominated), or are franchise or branch profits Taxes.

<u>Consolidated Cash Balance</u>: the sum of the cash and Cash Equivalents of the Parent, Borrowers and their Subsidiaries (other than a Securitization Subsidiary) in the aggregate among all such Persons.

Consumer Finance Laws: all laws, rules, regulations, and binding governmental guidelines of any kind relating to the extension, securing or administration of consumer credit, whether relating to secured or unsecured credit, real or personal security, advertising, solicitation, marketing, underwriting, origination, documentation, brokering, purchase, assignment, administration, servicing, collection or other activities relating thereto, in each case applicable to the Person, including any of the foregoing relating to consumer protection, usury, privacy, discriminatory or predatory practices, or unfair, deceptive or abusive acts or practices, and specifically including the Federal Consumer Credit Protection Act, Federal Fair Credit Reporting Act, Fair and Accurate Credit Transactions Act, Equal Credit Opportunity Act, Fair Debt Collections Practices Act, Real Estate Settlement Procedures Act, Magnuson-Moss Warranty Act, Servicemember's Civil Relief Act, Gramm-Leach-Bliley Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, Federal Trade Commission Act, Consumer Financial Protection Bureau Regulations B, M, N, O P, V, X and Z, and Federal Reserve Board Regulations B and Z.

Contingent Obligation: any obligation of a Person (without duplication) guaranteeing or having the economic effect of guaranteeing any Debt, lease, dividend or other obligation ("primary obligations") of another obligor ("primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; or (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or

customary and reasonable indemnity obligations entered into in connection with any transaction permitted or not restricted by this Agreement (other than such obligations with respect to Debt). The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

Contract Advance Rate Amount: the lesser of (a) the amount equal to an advance rate of 17.5% <u>multiplied by</u> the Net Eligible Contract Payments and (b) 17.5% of the net fair market value of the Owned Contract Portfolio as set forth in the most recent appraisal of the Owned Contract Portfolio performed by an appraiser approved by and on terms reasonably satisfactory to Revolving Agent (or, after the Discharge of the ABL Obligations, Agent). Notwithstanding the above, the portion of the Contract Advance Rate Amount supported by Eligible Revolving Contracts shall at no time exceed 10% of the CCI Borrowing Base. In the case of repayments and prepayments of Term Loans (other than any such prepayment made pursuant to Section 5.4), the advance rate set forth above in calculating the Contract Advance Rate Amount shall be reduced, with every \$1.0 million in aggregate principal amount of Term Loans so repaid or prepaid equating to a 25 basis point reduction in such advance rate (e.g., if the amount of any repayment or prepayment was \$1.0 million and the relevant advance rate prior to such repayment or prepayment was 17.5%, such advance rate shall be reduced to 17.25%); provided that in no event shall the Contract Advance Rate Amount be less than 5%. If any repayment or prepayment is of a greater or lesser amount than \$1.0 million, such advance rate shall be reduced proportionally based on the formula set forth above. Any such reduction in such advance rate shall be implemented by Agent and shall become effective on the date of the applicable repayment or prepayment (regardless of amount).

<u>Contract Debtor</u>: each Person who is obligated to a Borrower to perform any duty under or to make any payment pursuant to the terms of a Contract.

<u>Contracts</u>: all of each Borrower's now owned and hereafter acquired loan agreements, accounts, revolving credit agreements, retail installment sale contracts, consumer loans, Instruments, notes, documents, chattel paper, and all other forms of obligations owing to such Borrower, including any collateral for any of the foregoing, including all rights under any and all security documents and merchandise returned to or repossessed by such Borrower, in each case excluding any Third Party Contract.

<u>Control</u>: the possession, directly or indirectly, of the power to direct or cause the direction of a Person's management or policies, whether through the ability to exercise voting power, by contract or otherwise.

Covenant Relief Period: the period commencing on the Closing Date and ending on the date on which the Borrowers deliver financial statements and a Compliance Certificate in accordance with the relevant provisions of Section 10.1.2(b) and 10.1.2(d) demonstrating compliance with Sections 10.3.1, 10.3.2, 10.3.3, 10.3.4 (if applicable) and 10.3.5 as of the end of the Fiscal Quarter ending April 30, 2025.

<u>Credit and Collection Guidelines</u>: as the context requires, the guidelines applicable to the (a) Borrowers (other than Badcock) or (b) Badcock, in each case, which state the credit criteria used by such Borrower in extending credit to Contract Debtors and the collection criteria used by such Borrower in collection of amounts due from Contract Debtors.

<u>Credit Card Account</u>: Accounts and all Payment Intangibles together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Borrower resulting from charges by a retail customer of a Borrower on credit or debit cards in connection with the sale of goods by a Borrower, or services performed by a Borrower, in each case in the Ordinary Course of Business.

Credit Card Account Formula Amount: an advance rate of 10% multiplied by the Value of Eligible Credit Card Accounts.

<u>Credit Card Agreements</u>: with respect to each Borrower, all agreements now or hereafter entered into by such Borrower with any Credit Card Issuer or any Credit Card Processor.

<u>Credit Card Issuers</u>: any Person (other than a Borrower) who issues or whose members issue credit cards, including, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., VISA, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards approved by Revolving Agent in accordance with the Revolving Credit Agreement.

<u>Credit Card Processors</u>: with respect to each Borrower, any servicing or processing agent or any financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of such Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

<u>Curative Equity</u>: common equity contributions made to Parent which Parent contributes as additional common equity contributions to any Borrower and which is designated "Curative Equity" by Borrower Agent under **Section 10.4** at the time it is contributed.

<u>Customer Deposit Reserve</u>: as of any measurement date, a reserve equal to the aggregate amount of deposits paid by the customers of any Borrower for the purchase of goods.

<u>Customs Broker Agreement</u>: an agreement, in form and substance reasonably satisfactory to Revolving Agent (in consultation with Agent), among an Obligor, a customs broker or other carrier, Agent and Revolving Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory or other property for the benefit of Agent and Revolving Agent, and agrees, upon notice from Revolving Agent (or Agent, as applicable), to hold and dispose of the subject Inventory and other property solely as directed by Revolving Agent (or Agent, as applicable).

<u>Cut-Off Date</u>: with respect to any pool of Contracts to be transferred to a Securitization Subsidiary pursuant to a Permitted ABS Transaction on any date, the date specified in the documentation with respect to such pool.

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

Dealer Collateral Access Requirements: Badcock (or any other applicable Borrower) has executed and delivered to Agent an agreement between Badcock (or such other applicable Borrower) and a dealer that provides that (i) all Inventory has been provided to such dealer on consignment, (ii) Borrower or its designee (including any person designated as a third party beneficiary of such agreement) may enter onto the premises of such dealer to inspect, remove, sell or otherwise dispose of the Inventory from such premises without interference by, and free of all liens, claims and demands of, such dealer and (iii) any lender who may from time to time be providing financing to such Borrower secured by such Inventory shall be an intended third-party beneficiary of such agreement (and thereby deemed a designee of Borrower); provided that this shall be deemed to be satisfied if both (x) Badcock (or such other applicable Borrower) and the applicable dealer have entered into a dealer agreement that contains language substantially consistent with the provisions above and (y) the applicable Borrower shall have (I) delivered a written notice (which shall include notice by electronic means to the extent permitted by the applicable dealer

agreement) to the applicable dealer that such Borrower has irrevocably designated Agent as an express third-party beneficiary of the applicable dealer agreement, that Agent irrevocably has all of the rights of such a beneficiary under such dealer agreement and that such Borrower retains all right, title and interest in and to the Inventory subject to such dealer agreement and (II) provided written evidence (including by electronic means) to Agent of such delivery.

<u>Debt</u>: as to any Person at a particular time, without duplication, all of the following, to the extent included as indebtedness or liabilities (excluding footnotes) in accordance with GAAP:

- (a) all indebtedness of such Person for borrowed money and all indebtedness of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) the maximum amount of all Contingent Obligations of such Person in respect of the Debt of any other Person of the type set forth in clauses (a), (c), (d) and (f) of this definition of "Debt" which are monetary obligations once they become primary obligations:
  - (c) net obligations of such Person under any Hedging Agreement;
- (d) all obligations of such Person to pay the deferred purchase price of property (other than (i) trade accounts payable and accrued liabilities, in each case in the Ordinary Course of Business and (ii) earn out obligations until such obligations appear in the liabilities section of the balance sheet and have not been paid within 60 days of the date when due);
- (e) Debt of the type set forth in clauses (a), (c), (d) and (f) of this definition of "Debt" (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse but, in the case of limited recourse indebtedness, the amount of such Debt shall be deemed equal to the lesser of the aggregate unpaid amount of such Debt and the fair market value (as reasonably estimated by the Borrower Agent) of the encumbered property;
  - (f) all obligations of such Person in respect of Capital Leases; and
- (g) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock).

For all purposes hereof, (i) the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person and (ii) Debt shall not include (A) amounts owed to Flooring Lenders on account of flooring arrangements paid in the Ordinary Course of Business, (B) Permitted Convertible Notes Hedging Agreements, (C) the endorsement of negotiable instruments for collection in the ordinary course of business, (D) prepaid or deferred revenue in the ordinary course of business and (E) any obligations that have been defeased in accordance with the agreements or instruments governing such obligations or where an amount in cash and cash equivalents equal to the aggregate principal amount of such obligations has been deposited with (or pledged for the benefit of) the holders of such obligations (or any trustee or agent acting on their behalf). The amount of any net obligation under any Hedging Agreement on any date shall be deemed to be the swap termination value thereof as of such date.

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

<u>Default Rate</u>: means (a) when used with respect to any Term Loan, (i) an interest rate equal to the Applicable Reference Rate (plus the Applicable Margin) otherwise applicable to such Term Loan <u>plus</u> (ii) two percent (2.00%) *per annum*, and (b) with respect to all other Obligations, a rate equal to (i) the Base Rate, <u>plus</u> (ii) the Applicable Margin, <u>plus</u> two percent (2.00%) *per annum*.

<u>Deposit Account Control Agreements</u>: the deposit account control agreements executed by each institution maintaining a Deposit Account for a Borrower, in favor of Agent as security for the Obligations and Revolving Agent as security for the Revolving Obligations; <u>provided</u> that it is understood and agreed that no Deposit Account Control Agreement shall be required for Excluded Accounts.

<u>Designated Jurisdiction</u>: a country or territory that is the target of a Sanction (as of the Closing Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea Region of Ukraine and the non-government controlled Zaporizhzhia and Kherson regions of Ukraine, Cuba, Iran, North Korea and Syria).

Discharge of ABL Obligations: as defined in the ABL Intercreditor Agreement.

Disqualified Stock: means, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior Full Payment of the Obligations that are accrued and payable), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payment of dividends in cash or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the Term Loan Termination Date in effect at the time of issuance thereof (provided, that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock). Notwithstanding the foregoing: (i) any Equity Interests issued to any employee or to any plan for the benefit of employees of the Borrowers or the Subsidiaries or by any such plan to such employees shall not constitute Disqualified Stock solely because they may be required to be repurchased by any Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability and (ii) any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disquali

<u>Distribution</u>: (a) any payment of a distribution, interest or dividend on any Equity Interest and (b) any purchase, redemption, or other acquisition or retirement for value of any Equity Interest, excluding any distribution related to equity compensation plans of Parent and its Subsidiaries.

**Dollars**: lawful money of the United States.

<u>Dominion Accounts</u>: special accounts established by Borrowers at JPM, any lender under the Revolving Credit Agreement or other banks reasonably acceptable to Revolving Agent, over which Revolving Agent and Agent have "springing" exclusive control for withdrawal purposes.

<u>Dominion Trigger Period</u>: the period (a) commencing on the day that (i) an Event of Default occurs; (ii) average Availability during any month is less than 10% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve); or (iii) Availability is at any time less than 7.5% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), and (b) ending on the day on which, during the preceding 60 consecutive days, (x) no Event of Default has existed and (y) average Availability during any month during such period has at all times been greater than 12.5% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve).

<u>EBITDA</u>: for any period of measurement, determined on a consolidated basis for Parent and its Subsidiaries derived from financial statements prepared in accordance with GAAP, net income, calculated before

- (a) interest expense,
- (b) provision for taxes, including, without limitation, foreign, federal, state, local, franchise, excise and similar taxes, foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations, and including pursuant to any tax sharing arrangements),
  - (c) depreciation and amortization expense,
  - (d) stock based compensation,
  - (e) gains or losses arising from the sale of assets (other than the bulk sale of Contracts) outside the Ordinary Course of Business,
- (f) any extraordinary, unusual or non-recurring gains or losses (in each case, to the extent included in determining net income and including any book loss reserve with respect to Contracts),
  - (g) any non-cash asset write-offs relating to construction in process,
  - (h) any other non-cash charges, losses or expenses (other than the book loss reserve with respect to Contracts),
  - (i) [reserved],
  - (j) [reserved],
- (k) any increases in loss reserve resulting solely from a Borrower's repurchase of Contracts subject to a Permitted ABS Transaction occurring after such Permitted ABS Transaction has been deconsolidated from Parent and its Subsidiaries financial statements prepared in accordance with GAAP,
  - (l) any gain or loss from the Ordinary Course of Business sale of residual interests of cash flows subject to a Permitted ABS Transaction,
- (m) business optimization expenses and restructuring charges and reserves (which, for the avoidance of doubt, shall include retention, severance, systems establishment costs, excess pension charges, contract termination costs (including future lease commitments) and costs to consolidate facilities and relocate employees); provided that with respect to each business optimization expense or restructuring charge or reserve, Borrower Agent shall have delivered to Agent a certificate of a Senior Officer of Borrower Agent specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve, as the case may be; provided further that the aggregate amount added back to EBITDA pursuant to this clause (m), in any period shall not exceed 20% of the EBITDA for such period (prior to giving effect to any such add back),

- (n) fees, costs and expenses incurred directly in connection with any transaction, including any equity issuance or offering, Investment, acquisition, Asset Disposition, recapitalization or incurrence, repayment, amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extension and refinancing of Debt, including such fees, costs and expenses related to this Agreement, the Revolving Credit Agreement, the Third Lien Term Loan Agreement, the Badcock Acquisition, the any Existing Securitization Facility, any other Permitted ABS Transaction, any Permitted HY Notes, any Permitted Convertible Notes or any Refinancing Debt (in each case, (A) not prohibited under this Agreement and (B) whether or not consummated) during such period,
- (o) to the extent reimbursable by third parties pursuant to indemnification provisions, insurance or similar contract, other transaction fees, costs and expenses, <u>provided</u> that Borrower Agent in good faith expects to receive reimbursement for such fees, costs and expenses within the next four (4) Fiscal Quarters,
  - (p) costs of legal settlement, fines, judgments or orders,
  - (g) any unrealized losses in the fair market value of any Hedging Agreements,
- (r) (A) any charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholder agreement or any distributor equity plan or agreement and (B) any charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of equity interests held by management, in each case under this clause (B), to the extent such charges, costs, expenses, accruals or reserves are funded with the net cash proceeds of any issuance of Equity Interests, and
- (s) the expected proceeds of business interruption insurance, in an amount not to exceed the earnings for the applicable period that such proceeds are intended to replace; <u>provided</u> that the Borrowers in good faith expect to receive such business interruption proceeds within the next 4 Fiscal Quarters.
- EEA Financial Institution: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses (a) or (b) and is subject to consolidated supervision with its parent.

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

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

<u>Electronic Signature</u>: 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.

<u>Electronic System</u>: any electronic system, including e-mail, e-fax, web portal access for such Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Agent or any of its Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

Eligible Assignee: (a) a Lender, an Affiliate of a Lender or an Approved Fund; (b) an assignee approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed) and Agent; or (c) during an Event of Default, any assignee acceptable to Agent in its discretion.

## Eligible CARES Act Tax Refund Claim: the CARES Act Tax Refund Claim (or portion thereof), fulfilling the following requirements:

- (a) the amount thereof as to which all actions necessary (in the good faith judgment of the Borrowers) to establish a claim for such refund with the IRS has been completed, including the filing and/or execution, as applicable, of all applicable forms required with respect thereto with the IRS or other Governmental Authority (including the Joint Committee on Taxation);
  - (b) such CARES Act Tax Refund Claim (or portion thereof) shall be owing, and solely payable to, one or more Obligors;
- (c) such CARES Act Tax Refund Claim (or portion thereof) shall be payable in cash and not (x) credited against any Tax liability of an Obligor or any Affiliate thereof or (y) otherwise received in cash by any Obligor or Affiliate thereof;
- (d) such CARES Act Tax Refund Claim (or portion thereof) has not been (x) denied or (y) reduced (in amount) by the IRS or other Governmental Authority (including the Joint Committee on Taxation);
  - (e) such CARES Act Tax Refund Claim (or portion thereof) has not been reduced by amendment to the original claimed amount;
- (f) such CARES Act Tax Refund Claim (or portion thereof) is not subject to setoff by the IRS or other Governmental Authority (including the Joint Committee on Taxation), including in respect of deferred social security Taxes;
- (g) Agent has a first priority perfected Lien (subject only to prior Liens consisting of Revolving Agent Liens) in such CARES Act Tax Refund Claim, and such CARES Act Tax Refund Claim is not subject to any other Lien (other than Revolving Agent Liens);
- (h) there has been no adverse determination, delivered to any Obligor or Affiliate in writing, by the IRS or any other Governmental Authority (including the Joint Committee on Taxation) with respect to the underlying basis upon which the claim for such CARES Act Tax Refund Claim (or portion thereof) has been made; and
- (i) except as otherwise agreed by Agent, the CARES Act Tax Refund Claim complies in all material respects with all of Borrowers' representations and warranties contained herein relating to such CARES Act Tax Refund Claim.

Eligible Class C Retained Notes: each Class C Retained Note fulfilling the following requirements:

- (a) the Class C Retained Note is owned by an Obligor (either directly or through The Depositary Trust Company) and such Obligor has good title to such Class C Retained Notes;
- (b) except as otherwise agreed by Agent, the Class C Retained Note complies in all material respects with all of the representations and warranties contained herein relating to such Class C Retained Note;
- (c) (x) no payment due under the Class C Retained Note is more than 32 days contractually delinquent (without giving effect to any extensions of time granted by the holder of such Class C Retained Note to the issuing Securitization Subsidiary) and (y) the Class C Retained Note and the applicable Permitted ABS Documents have not been amended, restated or otherwise modified (including any such modifications occurring as a result of the issuing Securitization Subsidiary executing a new or replacement Class C Retained Note) to reduce the principal amount or adjust the payment date to less frequently than monthly or lower its interest rate or the priority of payment relative to the other classes of notes;
  - (d) no event of default has occurred under the indenture (or similar document) governing such Class C Retained Note;
  - (e) the Class C Retained Note and payments due thereunder are not subject to any defense, counterclaim, offset, discount, or allowance;
- (f) the terms of the Class C Retained Note and all related documents and Instruments comply in all material respects with all Requirement of Law;
- (g) the obligor under such Class C Retained Note is not subject to an active or pending Insolvency Proceeding under federal law or any similar proceeding under state law;
- (h) unless otherwise agreed to by Agent, (x) collections received for the applicable ABS Contract Portfolio subject to the Permitted ABS Transaction governing such Class C Retained Note are distributed no less frequently than on a monthly basis to the noteholders of the notes issued under such Permitted ABS Transaction (the "Monthly Waterfall") and (y) the Monthly Waterfall applicable to such Class C Retained Note is generally consistent with the waterfall in Section 5.15 of that certain Series 2022-A Supplement to Base Indenture, dated as of July 21, 2022, between Conn's Receivables Funding 2022-A LLC, as issuer, and Computershare Trust Company, National Association, as trustee (as such supplement is in effect on the date hereof), subject to any additional modifications viewed by the applicable rating agency as consistent with the rating of such Class C Retained Note;
  - (i) the original term of the Class C Retained Notes is not more than six (6) years;
- (j) the terms of such Class C Retained Note do not prohibit the pledge, assignment and transfer of such Class C Retained Note to Agent, and the Obligor which owns (including beneficially) such Class C Retained Note has pledged (and has complied with all requirements under the Security Documents and applicable Permitted ABS Documents to pledge) such Class C Retained Note in favor of Agent; provided, that to the extent Agent would not qualify as a "Qualified Institutional Buyer", Agent shall make commercially reasonable efforts (without the requirement to incur any additional cost or expense for which Agent is not reimbursed or indemnified hereunder and to the extent not adverse to Agent in any respect (as determined by Agent in its reasonable discretion)) to appoint a custodian agent to act on its behalf in satisfaction of this clause (j);

- (k) if definitive notes are issued, the Class C Retained Note has been collaterally assigned to, and delivered to, Revolving Agent (or, after the Discharge of ABL Obligations, Agent), with appropriate endorsements in blank or, if the Class C Retained Note is credited to an account of an Obligor, other arrangements (including control arrangements) satisfactory to Agent shall have been made with respect to the intermediary holding such Class C Retained Note for the benefit of Agent;
- (l) the Class C Retained Notes are rated by Fitch (or another nationally recognized rating agency reasonably acceptable to Agent) with a rating of no less than "Bsf" (or such equivalent rating by another nationally recognized rating agency reasonably acceptable to Agent);
- (m) (x) the Class C Retained Note is secured directly or indirectly by an ABS Contract Portfolio owned by a Securitization Subsidiary and the receivables thereunder are subject to customary eligibility requirements for Permitted ABS Transactions, and (y) the outstanding receivables balance of such ABS Contract Portfolio is not less than the outstanding principal amount of the Class C Retained Notes plus the outstanding principal amount of all other notes senior to such Class C Retained Note issued under the applicable Permitted ABS Documents;
- (n) the Obligor has not entered into any agreement to sell or otherwise transfer such Class C Retained Note to a third party for consideration in an amount that would result in net cash proceeds to the Obligor less than the amount attributable to such Class C Retained Notes included in the Borrowing Base at such time;
- (o) the Class C Retained Note has been issued pursuant to documentation and transaction structure reasonably acceptable to Agent in its Permitted Discretion; and
- (p) Agent has a first priority perfected Lien in the Class C Retained Notes, subject only to prior Liens consisting of Revolving Agent Liens.

Notwithstanding the above, Eligible Class C Retained Notes shall not include Class C Retained Notes which do not satisfy other criteria determined by Agent in its Permitted Discretion.

Eligible Contracts: Contracts fulfilling the following requirements:

- (a) such Contract is owned by a Borrower and such Borrower has good title to such Contract;
- (b) except as otherwise agreed by Revolving Agent, the Contract complies in all material respects with all of Borrowers' representations and warranties contained herein relating to such Contracts;
  - (c) no payment due under the Contract is more than 60 days contractually delinquent;
- (d) no Borrower has during the term of any Contract granted to the Contract Debtor more than six extensions of time (each no longer than 30 days) for the payment of any sum due under the Contract;
- (e) the Contract or payments due thereunder are not subject to any defense, counterclaim, offset, discount, or allowance other than discounts provided in connection with promotional credit, such as same as cash offerings or deferred interest programs (to the extent of such defense, counterclaim, offset, discount, or allowance);

- (f) the terms of the Contract and all related documents and Instruments comply in all material respects with all Requirement of Law;
- (g) the Contract Debtor is not an Affiliate or an employee of an Obligor;
- (h) the Contract (i) conforms to the applicable Credit and Collection Guidelines of such Borrower in all material respects and (ii) has conformed at the time of origination in all material respects to such Borrower's then-applicable underwriting standards (taking into account the permissible exceptions therein):
- (i) the Contract Debtor is not subject to an active or pending Insolvency Proceeding under federal law or any similar proceeding under state law;
- (j) the first scheduled payment pursuant to the terms of the Contract is, or was, due within 45 days following the execution of the Contract and all other payments are scheduled to be made on the same date of each month thereafter;
  - (k) the payment schedule for such Contract is fully amortizing on a monthly basis;
  - (1) with respect to installment Contracts only, the original term of the Contract is not more than 48 months;
- (m) repayment of the Contract is secured by a first priority interest in any merchandise sold in connection therewith, the merchandise subject to such Contract has been delivered and such merchandise has not been repossessed by a Borrower or returned by the Contract Debtor to a Borrower;
- (n) to the extent that the balance of the Contract includes sums representing the financing of "service maintenance plans," such plans are in compliance with all applicable Consumer Finance Laws, including any and all special insurance laws relating thereto;
  - (o) the Contract is not a Modified Contract;
  - (p) the Contract is originated or acquired in the Ordinary Course of Business; and
  - (q) Agent has a first priority perfected Lien in the Contract, subject only to prior Liens consisting of Revolving Agent Liens.

Notwithstanding the above, Eligible Contracts shall not include Contracts which do not satisfy other criteria for "Eligible Contracts" pursuant to and in accordance with the terms of the Revolving Credit Agreement.

Eligible Credit Card Accounts: Credit Card Accounts fulfilling the following requirements:

- (a) such Credit Card Account is owned by a Borrower and such Borrower has good title to such Credit Card Account;
- (b) such Credit Card Account constitutes a "Payment Intangible" or an "Account" (as defined in the UCC) and such Credit Card Account has not been outstanding for more than five (5) Business Days or such longer period as may be approved by Revolving Agent;
  - (c) [reserved];
  - (d) [reserved];

(e) such Credit Card Account is subject to a properly perfected first priority Lien in favor of Agent, subject only to prior Liens of Revolving Agent Liens (it being the intent that chargebacks in the ordinary course by the Credit Card Processor shall not be deemed violatic clause);	$\mathcal{L}$
(f) [reserved];	
(g) [reserved];	
(h) [reserved];	

- (j) such Credit Card Account has been earned by performance and originated in the Ordinary Course of Business; and
- (k) such Credit Card Account has not been disputed, is without recourse, and with respect to which no claim, counterclaim, offset, or chargeback has been asserted (to the extent of such claim, counterclaim, offset, or chargeback) (it being the intent that chargebacks in the ordinary course by the Credit Card Processor shall not be deemed violative of this clause).

Notwithstanding the above, Eligible Credit Card Accounts shall exclude any particular Credit Card Accounts that are excluded from the definition of "Eligible Credit Card Accounts" pursuant to and in accordance with the terms of the Revolving Credit Agreement.

Eligible In-Transit Inventory: as of any date of determination (without duplication of other Eligible Inventory), Inventory:

- (a) (i) that has been delivered to a carrier in a foreign port or foreign airport for receipt by an Obligor in the United States within sixty (60) days of the date of determination, but which has not yet been received by an Obligor or (ii) that has been delivered to a carrier in the United States for receipt by an Obligor in the United States within five (5) Business Days of the date of determination, but which has not yet been received by an Obligor;
  - (b) for which the purchase order is in the name of an Obligor and title has passed to an Obligor;
- (c) except as otherwise agreed by Revolving Agent, for which the document of title or waybill reflects an Obligor as consignee (along with delivery to an Obligor or its customs broker of the documents of title, to the extent applicable, with respect thereto);
- (d) as to which Revolving Agent and Agent have control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement); <u>provided</u> that this clause (d) shall not be applicable to Inventory of Badcock for a period of 45 days (or such longer period as may be agreed in writing by Agent acting in its reasonable discretion) following the Closing Date:
- (e) that is insured in accordance with the provisions of this Agreement and the other Loan Documents, including, without limitation, marine cargo insurance; and
  - (f) that otherwise is not excluded from the definition of "Eligible Inventory";

(i) [reserved];

<u>provided</u> that Eligible In-Transit Inventory shall exclude any particular Inventory that is excluded from the definition of "Eligible In-Transit Inventory" pursuant to and in accordance with the terms of the Revolving Credit Agreement; <u>provided</u>, <u>further</u>, that, as of any date of determination, the aggregate amount of the Borrowing Base attributable to Eligible In-Transit Inventory and Eligible Letter of Credit Inventory shall not exceed \$15,000,000.

## Eligible Inventory: Inventory fulfilling the following requirements:

- (a) such Inventory is finished goods or raw materials, and not work-in-process, packaging or shipping materials, labels, samples, bags, replacement parts or manufacturing supplies;
- (b) such Inventory is neither held on consignment (other than Inventory in the possession of dealers), nor subject to any deposit or down payment;
  - (c) such Inventory is in new and saleable condition and is not damaged, defective, shopworn or otherwise unfit for sale;
- (d) such Inventory is not obsolete or unmerchantable, and does not constitute returned or repossessed goods (in each case, without duplication of items included in the determined NOLV Percentage or Inventory Reserve);
- (e) such Inventory is in compliance in all material respects with all standards imposed by any Governmental Authority and has not been acquired from a Person subject to any Sanction or any specially designated nationals list maintained by OFAC;
- (f) except as otherwise agreed by Revolving Agent, such Inventory complies in all material respects with the representations and warranties herein relating to such Inventory;
- (g) such Inventory is subject to (i) Agent's duly perfected, first priority Lien, subject only to prior Liens consisting of Revolving Agent Liens and (ii) no other Lien other than Permitted Liens (and is not subject to any warehouse receipt or other negotiable Document in which Agent does not have a first priority Lien, subject only to prior Liens consisting of Revolving Agent Liens);
- (h) such Inventory (other than any Eligible Letter of Credit Inventory and Eligible In-Transit Inventory) is within the continental United States, is not in transit (except between locations of Borrowers, so long as (i) the aggregate amount of the Borrowing Base attributable to such Inventory shall not exceed the lesser of (A) 5% of the Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) attributable to Inventory and (B) \$15,000,000 and (ii) such Inventory is in transit for no longer than 10 Business Days), is not consigned to any Person (other than Inventory in the possession of dealers) and is not located in a clearance center or service center;
- (i) such Inventory is not subject to any License or other arrangement that restricts such Borrower's or Agent's right to dispose of such Inventory, unless Revolving Agent and Agent have received an appropriate Lien Waiver;
- (j) such Inventory (other than any Eligible Letter of Credit Inventory and Eligible In-Transit Inventory) is not located (i) on leased premises or in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate Rent and Charges Reserve has been established, as determined by Revolving Agent in its discretion or (ii) at a location owned or leased by a dealer, other than Inventory for which the Borrowers have met the Dealer Collateral Access Requirements;

- (k) such Inventory is reported net of shrinkage accrual;
- (1) such Inventory is reflected in the details of a current perpetual inventory report of Borrowers;
- (m) such Inventory is insured in compliance with the provisions of Section 8.7.2 hereof; and
- (n) such Inventory is owned by a Borrower and such Borrower has good title to such Inventory free and clear of all Liens other than Permitted Liens.

Notwithstanding the above, Eligible Inventory shall not include Inventory which do not satisfy other criteria for "Eligible Inventory" pursuant to and in accordance with the terms of the Revolving Credit Agreement.

Eligible Letter of Credit Inventory: as of any date of determination (without duplication of other Eligible Inventory), Inventory:

- (a) (i) that has been delivered to a carrier in a foreign port or foreign airport for receipt by an Obligor in the United States within sixty (60) days of the date of determination, but that has not yet been received by an Obligor, or (ii) that has been delivered to a carrier in the United States for receipt by an Obligor in the United States within five (5) Business Days of the date of determination, but which has not yet been received by an Obligor;
- (b) the purchase order for which is in the name of an Obligor, title has passed to an Obligor and the purchase of which is supported by a letter of credit issued under either the Revolving Credit Agreement or otherwise permitted thereunder having an initial expiry, subject to the proviso hereto, within 120 days after the date of initial issuance of such letter of credit; <u>provided</u> that ninety percent (90%) of the maximum face amount of all such letters of credit shall not, at any time, have an initial expiry greater than ninety (90) days after the original date of issuance of such letters of credit;
- (c) for which the document of title or waybill reflects an Obligor as consignee (along with delivery to an Obligor or its customs broker of the documents of title, to the extent applicable, with respect thereto) <u>provided</u> that this clause (c) shall not be applicable to Inventory of Badcock for a period of 45 days (or such longer period as may be agreed in writing by Agent acting in its reasonable discretion) following the Closing Date;
- (d) as to which Revolving Agent and Agent have control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement);
- (e) that is insured in accordance with the provisions of this Agreement and the other Loan Documents, including, without limitation, marine cargo insurance; and
  - (f) that otherwise is not excluded from the definition of "Eligible Inventory";

provided that Eligible Letter of Credit Inventory shall exclude any particular Inventory that is excluded from the definition of "Eligible Letter of Credit Inventory" pursuant to and in accordance with the terms of the Revolving Credit Agreement; provided, further, that, as of any date of determination, the aggregate amount of the Borrowing Base attributable to Eligible In-Transit Inventory and Eligible Letter of Credit Inventory shall not exceed \$15,000,000.

Eligible Revolving Contract: Eligible Contract under which the applicable Contract Debtor may borrow, repay and re-borrow up to the credit limit thereunder.

Enforcement Action: any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

Environmental Laws: Applicable Laws (including programs, permits and guidance promulgated by regulators) relating to public health in respect of exposure to hazardous materials (other than occupational safety and health regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

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

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

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

Equity Interest Pledge Agreement: a pledge agreement in the form executed by Parent, CAIH and CLL in favor of Agent on the Closing Date or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent, in each case, granting a security interest in the Equity Interests in each of such grantor's Subsidiaries in favor of Agent for the benefit of the Secured Parties.

ERISA: the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

## ERISA Event:

- (a) Reportable Event with respect to a Pension Plan;
- (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;
- (c) complete or partial withdrawal of an Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization;

- (d) filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the institution of proceedings by the PBGC to terminate a Pension Plan;
  - (e) determination that a Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA;
- (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan;
- (g) imposition of any liability on an Obligor or ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; or
- (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

Erroneous Payment: as defined in Section 12.9.2.

Erroneous Payment Return Deficiency: as defined in Section 12.9.2.

Erroneous Payment Impacted Loans: as defined in Section 12.9.2.

Erroneous Payment Deficiency Assignment: as defined in Section 12.9.2.

Erroneous Payment Subrogation Rights: as defined in Section 12.9.2.

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

Event of Default: as defined in Section 11.1.

<u>Excluded Accounts</u>: any Deposit Account or Securities Account (i) a Badcock Store Account, (ii) exclusively used for Tax and Trust Funds or to hold funds constituting collateral for Permitted Liens of the type described in **Section 10.2.2**, (iii) used to service Third Party Contracts or to hold the proceeds of Third Party Contracts or (iv) containing not more than \$10,000 at any time.

Excluded Assets: (i) motor vehicles subject to certificate-of-title statutes; (ii) Excluded Accounts; (iii) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" (or equivalents thereof) with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law, and (iv) any property to the extent that such grant of a security interest of the type otherwise created hereby (A) is prohibited by any Applicable Law, (B) requires a consent not obtained of any Governmental Authority pursuant to such Law or (C) is prohibited by a negative pledge or anti-assignment provision or gives rise to any type of right of termination or default remedy under any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except, in each case, to the extent that such Law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Applicable Law (including Sections 9-406, 9-407, 9-408 or 9 409 of the UCC).

Notwithstanding the foregoing to the contrary, in no event shall any assets included in the determination of the Borrowing Base or Revolving Borrowing Base be deemed to be Excluded Assets.

Excluded Collateral: (i) any Excluded Assets, (ii) the Equity Interests of any Foreign Subsidiary to the extent such Equity Interests exceed 65% of the voting power of all classes of Equity Interests of such Foreign Subsidiary entitled to vote and (iii) the Equity Interests of a Subsidiary of a Foreign Subsidiary; provided that no asset shall constitute Excluded Collateral to the extent a Lien or security interest therein is granted to secure the Revolving Obligations.

Excluded Taxes: (a) Taxes imposed on or measured by a Recipient's net income (however denominated), franchise Taxes and branch profits Taxes (i) as a result of such Recipient being organized under the laws of, or having its principal office or applicable Lending Office located in, the jurisdiction imposing such Tax, or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Term Loan or Term Loan Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.10**; and (d) U.S. federal withholding Taxes imposed pursuant to FATCA.

Existing Securitization Facilities: (a) the transaction established pursuant to that certain Note Purchase Agreement, dated October 9, 2020, by and among Conn Appliances, Inc., Conn's Receivables Funding 2020-A, LLC, Conn Appliances Receivables Funding, LLC, Conn's, Inc. and the Initial Purchasers (as defined therein); (b) the transaction established pursuant to that certain Note Purchase Agreement, dated November 17, 2021, by and among Conn Appliances, Inc., Conn's Receivables Funding 2021-A, LLC, Conn Appliances Receivables Funding, LLC, Conn's, Inc. and the Initial Purchasers (as defined therein); (c) the transaction established pursuant to that Note Purchase Agreement, dated July 14, 2022, by and among the Initial Purchasers (as defined therein), Conn Appliances, Inc., Conn's Inc., Conn Appliances Receivables Funding, LLC, and Conn's Receivables Funding 2022-A, LLC and (d) the transaction established pursuant to that Note Purchase Agreement, dated August 7, 2023, by and among the Initial Purchasers (as defined therein), Conn Appliances, Inc., Conn's Inc., Conn Appliances Receivables Funding, LLC, and Conn's Receivables Funding 2023-A, LLC; provided that any reference in this Agreement to "the Existing Securitization Facility" shall be a reference to any of the foregoing.

Extraordinary Expenses: all reasonable and documented out-of-pocket costs, expenses or advances that Agent may incur during the existence an Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor in accordance with the terms of this Agreement and the other applicable Loan Documents, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances in each case in accordance with this Agreement. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any

Obligor or independent contractors in liquidating any Collateral, and travel expenses; <u>provided</u>, that, notwithstanding the foregoing or anything to the contrary contained herein (a) attorneys' fees and expenses shall be limited to the reasonable and documented out-of-pocket fees, charges and disbursements of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent and, in the case of any actual or potential conflict of interest, one (1) additional counsel to all Lenders, taken as a whole, and (b) Extraordinary Expenses shall be subject to the limitations set forth herein including the limitations on inspections and appraisals set forth in **Section 10.1.1**.

<u>FATCA</u>: Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practice adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

<u>Federal Funds Effective Rate</u>: for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; <u>provided</u> that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

Fee Letter: one or more fee letter agreements between Agent and Borrowers dated as of even date herewith.

First Updated Badcock Report: as defined in Section 8.1.

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

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

<u>Fixed Charge Coverage Ratio</u>: at any date, the ratio of (a) EBITDA *minus* Unfinanced Capital Expenditures to (b) Fixed Charges, all calculated for the period of four consecutive fiscal quarters ended on such date (or, if such date is not the last day of a Fiscal Quarter, ended on the last day of the Fiscal Quarter most recently ended prior to such date).

<u>Fixed Charges</u>: for any period, without duplication, cash Interest Expense, <u>plus</u> Rentals, <u>plus</u> regularly scheduled principal payments on Debt for borrowed money actually made (which shall exclude any Debt to trade creditors or under vendor financing programs, principal payments on Revolving Loans and, for the avoidance of doubt, any mandatory (but in any event including any scheduled amortization payments), non-regularly scheduled pre-payments or repayments), plus expenses for Taxes paid in cash, plus Distributions paid in cash, plus Capital Lease Obligation payments, all calculated for Parent and its Subsidiaries on a consolidated basis in accordance with GAAP.

Floor: 4.80% per annum.

<u>Flooring Intercreditor Agreement</u>: each intercreditor agreement entered into by Revolving Agent and a Flooring Lender prior to the Closing Date and, following the Closing Date, each intercreditor agreement entered into by a Flooring Lender, Agent and Revolving Agent, in form and substance reasonably satisfactory to Agent.

Flooring Lender: any lender which provides financing for the purchase of Inventory by a Borrower.

FLSA: the Fair Labor Standards Act of 1938.

Forecasting Period: as defined in Section 10.1.16(b).

Foreign Lender: any Lender that is not a U.S. Person.

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

<u>Foreign Subsidiary</u>: a Subsidiary of Parent that is a "controlled foreign corporation" under Section 957 of the Code, such that a guaranty by such Subsidiary of the Obligations or a Lien on the assets of such Subsidiary to secure the Obligations would result in material tax liability to Borrowers.

<u>Full Payment</u>: with respect to any Obligation (a) the full cash payment thereof (other than contingent obligations for which no claim or demand has been made), including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are contingent in nature (other than contingent obligations for which no claim or demand has been made), cash collateralization thereof in an amount equal 100% of the reasonably estimated liabilities in respect thereof, as Agent determines in its reasonable discretion (such cash collateral to be applied to the reimbursement of the applicable Obligations as and when they become due and payable and, once paid in full, to be remitted to the Borrowers).

<u>GAAP</u>: generally accepted accounting principles in effect in the United States from time to time. If Borrower Agent notifies Agent that it is required to report under the International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto ("<u>IFRS</u>") or has elected to do so through an early adoption policy, upon the execution and effectiveness of an amendment hereof in accordance therewith to accommodate such change in accordance with **Section 1.2**, "GAAP" means international financial reporting standards pursuant to IFRS, it being understood and agreed that all financial statements shall be prepared in accordance with IFRS.

Gift Card Reserve: a reserve equal to 50% of the face amount of gift cards which are issued by a Borrower and are outstanding as of any measurement date.

<u>Governmental Approval</u>: any authorization, consent, approval, license or exemption of, or any registration or filing with, any Governmental Authority.

<u>Governmental Authority</u>: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, or regulatory authority (including the Consumer Financial Protection Bureau, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

Gross Cash Collections: total Contracts payments received from Contract Debtors and applied to such Contracts during any applicable period.

Gross Contract Payments: as of the date of determination, (i) with respect to an interest-bearing Contract, the outstanding balance thereof, including all accrued but unpaid interest, fees and other charges (including administrative fees and escrow fees but excluding late charges), owing by the Contract Debtor, and (ii) with respect to a precomputed Contract, the outstanding balance thereof, including all unearned interest, fees, and other charges (including administrative fees and escrow fees but excluding late charges), owing by the Contract Debtor.

Guarantor Payment: as defined in Section 5.11.3(b).

<u>Guarantors</u>: Parent, CAIH, CAIC, CLL, RTO and each other Person who guarantees payment or performance of the Obligations pursuant to the Guaranty.

<u>Guaranty</u>: a guaranty agreement in the form executed by the Guarantors in favor of Agent on the Closing Date or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent.

Hedging Agreement: any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one (1) or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or credit spread transaction, repurchase transaction, reserve repurchase transaction, securities lending transaction, weather index transaction, spot contracts, fixed price physical delivery contracts, or any similar transaction or any combination of these transactions, in each case whether or not exchange traded; <u>provided</u> that no phantom stock or other employee benefit or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management or consultants of Parent, Borrowers or any of their Subsidiaries shall be a Hedging Agreement.

Increased Reporting Period: at any time after (a) an Event of Default occurs, (b) average Availability during any month is less than 12.5% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), or (c) Availability is less than 10% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) at any time for four or more consecutive days. When in place, such Increased Reporting Period shall be deemed continuing so long as (i) such Event of Default has not been waived, and/or (ii) if the Increased Reporting Period arises as a result of Borrowers' failure to achieve Availability as required hereunder, until average Availability during any month has exceeded 15% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) for ninety (90) consecutive days, in which case an Increased Reporting Period shall no longer be deemed to be continuing for purposes of this Agreement; provided that an Increased Reporting Period shall be deemed continuing (even if an Event of Default is no longer continuing and/or Availability exceeds the required amount for ninety (90) consecutive days) at all times after an Increased Reporting Period has occurred and been discontinued on two (2) occasions after the Closing Date.

<u>Indemnified Taxes</u>: (a) Taxes, other than Excluded Taxes, imposed on or relating to any payment of an Obligation; and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees and B. Riley Indemnitees.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all Licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

<u>Intellectual Property Claim</u>: any claim or assertion (whether in writing, by suit or otherwise) that a Borrower's or its Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

<u>Intellectual Property Security Agreements</u>: means one or more intellectual property security agreements contemplated to be executed and delivered pursuant to the applicable Security Documents.

Interest Coverage Ratio: the ratio, determined as of the end of any Fiscal Quarter on a consolidated basis for Parent and its Subsidiaries (including EBITDA and Interest Expense under the Existing Securitization Facility and any other Permitted ABS Transactions whether or not consolidated in Parent's financial statements), of (a) EBITDA divided by two (2) in the case of **Section 10.3.1(a)** and four (4) in the case of **Section 10.3.1(b)** to (b) Interest Expense.

Interest Expense: with respect to Parent and its Subsidiaries on a consolidated basis, for any period of measurement, the interest expense (net of interest income to the extent not included in the calculation of EBITDA) for such period in each case paid or payable in cash (excluding (i) the amortization of debt discounts, (ii) the amortization of all closing fees incurred with respect to the initial closing of, any amendment to, or redemption or termination of (a) an Existing Securitization Facility or any other Permitted ABS Transaction, (b) any Permitted HY Notes or any Permitted Convertible Notes, (c) the Loan Documents and (d) any other documents evidencing Debt payable in connection with the incurrence of Debt to the extent included in interest expense, and (iii) backup servicing fees, field exam and other non-interest expenses but only if such expenses are otherwise deducted from ordinary operating expenses or the definition of EBITDA for covenant calculation purposes, and including (x) commissions, discounts and other fees and charges incurred in respect of letters of credit, (y) the portion of any payments or accruals with respect to Capital Leases allocable to interest expense and (z) net payments and receipts (if any) pursuant to interest rate Hedging Agreements).

<u>Interest Payment Date</u>: (a) the first day of each month, (b) the date of any repayment or prepayment of any Term Loan, with respect to the portion of the Term Loan so repaid or prepaid, and (c) the Term Loan Termination Date.

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

Inventory Formula Amount: the amount equal to an advance rate of 7.5% of the NOLV Percentage of the Value of Eligible Inventory.

<u>Inventory Reserve</u>: the corresponding amount of reserves established by Revolving Agent in accordance with the definition of "Inventory Reserve" pursuant to the terms of the Revolving Credit Agreement, subject to the terms of the Intercreditor Agreement and the definition of the Borrowing Base.

<u>Investment</u>: as to any Person, an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests of another Person, or a loan or advance of money, or capital contribution to, another Person.

IRS: the United States Internal Revenue Service.

JPM: JPMorgan Chase Bank, N.A., a national banking association.

<u>Junior Lien Debt</u>: Debt (other than the Obligations or the Revolving Obligations) secured by Liens that are contractually subordinated to the Liens securing the Obligations pursuant to the terms of a customary intercreditor agreement or other lien subordination agreement in form and substance reasonably satisfactory to Agent.

LCT Election: as defined in Section 1.8.

LCT Test Time: as defined in Section 1.8.

Legal Action: any judicial action, suit, or proceeding at law, in equity, or before any Governmental Authority.

Lender Indemnitees: each Lender and its Affiliates and its and their respective officers, directors, employees, agents and attorneys.

<u>Lenders</u>: lenders party to this Agreement, including any Person who hereafter becomes a "<u>Lender</u>" pursuant to an Assignment and Acceptance, in each case including any Lending Office of any Lender.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by Agent or a Lender by notice to Borrower Agent and, if applicable, Agent.

Leverage Ratio: the ratio, determined as of the end of any Fiscal Quarter for Parent and its Subsidiaries, on a consolidated basis, of (a) the result of (i) all items that would be included as liabilities on a balance sheet in accordance with GAAP (but excluding, for avoidance of doubt, any lease which is not treated as a Capital Lease in accordance with the definition of "Capital Lease", which exclusion shall be made by reducing the amount of such liabilities on the balance sheet by an amount equal to the remainder of (1) the sum of current and long term "operating leases" minus (2) deferred rent) as of the last day of such Fiscal Quarter (including debt under the Existing Securitization Facility and any other Permitted ABS Transactions whether or not included as a liability on the balance sheet), minus (ii) the sum of Qualified Cash and ABS Qualified Cash as of such date of measurement to (b) Tangible Net Worth as of the last day of such Fiscal Quarter.

<u>License</u>: any written license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or Asset Disposition of Collateral, any use of Property or any other conduct of its business.

<u>Licensor</u>: any Person from whom an Obligor obtains the right to use any Intellectual Property.

<u>Lien</u>: with respect to any asset, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as the foregoing)), in each case, relating to such asset and in the nature of security.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis a vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

<u>Limited Condition Transaction</u>: means (a) any Permitted Acquisition that the Parent or one or more of its Subsidiaries has contractually committed to consummate, the terms of which do not condition the Parent's or its Subsidiary's, as applicable, obligations to close such Permitted Acquisition on the availability of third-party financing and (b) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Debt requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

<u>Limited Repurchase Obligations</u>: any obligation of a Person that is a seller of Contracts directly or indirectly to a Securitization Subsidiary to repurchase such Contracts arising as a result of a breach of a representation, warranty or covenant, including as a result of a Contract or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

<u>Liquidity</u>: the sum of, as of any date of determination, (a) cash and Cash Equivalents of Parent and the Borrowers which are not subject to any Liens other than the Liens permitted under Section 10.2.2(a), (c), (i), (x) and (ee), plus (b) Availability.

Loan Account: the loan account established by Agent on its books pursuant to Section 5.8.

<u>Loan Documents</u>: this Agreement, Other Agreements, Security Documents, the Flooring Intercreditor Agreements and each other agreement or instrument designated by the Borrower Agent and Agent as a "Loan Document".

Loan Year: each 12-month period commencing on the Closing Date or an anniversary thereof.

Managed Contract Portfolio: the Owned Contract Portfolio and ABS Contract Portfolio.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: (a) a material adverse effect on the business, operations, Properties or financial condition of Obligors, taken as a whole; (b) a material adverse effect on the validity or enforceability of the Loan Documents or the rights or remedies of Agent and the Lenders thereunder, taken as a whole; or (c) a material adverse impairment of the ability of the Obligors, collectively, to perform any obligations under the Loan Documents, including repayment of any Obligations, or on the ability of Agent or any Lender to enforce or collect any Obligations under the Loan Documents or to realize upon any Collateral.

<u>Material Contract</u>: any agreement or arrangement to which any Obligor is a party (other than the Loan Documents) (a) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (b) that relates to Debt with an aggregate outstanding principal amount of \$35,000,000 or more.

Modified Contract: a Contract which, at any time, was in payment default for more than 60 days and such payment default was cured by execution of a new Contract in order to adjust, amend, or reduce the payment terms of the original Contract.

Moody's: Moody's Investors Service, Inc.

<u>Multiemployer Plan</u>: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Net Balance: as of the date of determination, the Gross Contract Payments of a Contract less all unearned interest owing by the Contract Debtor.

Net Charge-Off: for any period, the aggregate amount of all unpaid payments due under Contracts which have been charged off during such period, as reduced by the amount of unearned interest, unearned insurance, accrued but unpaid interest, unpaid late charges, repossession recoveries, cash recoveries and amounts recovered in cash from other third parties, with respect to Contracts which had been charged off during previous periods or during such period.

Net Charge-Off Percent: the percent, calculated as of the last day of each month, equal to the (a) aggregate amount of Net Charge-Offs for the 3 preceding months then ended multiplied by four (4), divided by (b) the sum of the Net Balance owing under all Contracts outstanding during the trailing three (3) months then ended, divided by three (3).

Net Eligible Contract Payments: as of the date of determination, the remainder of (a) the Gross Contract Payments owing under all Eligible Contracts, minus (b) the sum of (i) the aggregate amount, to the extent included within the definition of Gross Contract Payments, of all unearned interest, fees, and charges applicable to the Eligible Contracts and (ii) the unearned insurance commissions, in each case, as presented on the books and records of Borrowers.

<u>Net Proceeds</u>: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by a Borrower or any of its Subsidiaries in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed.

NOLV Percentage: the net orderly liquidation value of Inventory, expressed as a percentage of the Value (calculated in a manner consistent with the methodology employed at the time of the most recent inventory appraisal conducted pursuant to the terms of this Agreement) of such Inventory, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrowers' Inventory performed by an appraiser and on terms reasonably satisfactory to Agent (it being understood and agreed that the appraiser and the methodology utilized with respect to the appraisal provided to Agent on or prior to the Closing Date is reasonably satisfactory to Agent).

Non-Consenting Lender: any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders, or all affected Lenders, or Supermajority Lenders in accordance with the terms of **Section 14.1.1** and (ii) has been approved by the Required Lenders.

Notice of Borrowing: a request by Borrower Agent for a Borrowing of Term Loans, in form reasonably satisfactory to Agent.

NYFRB: the Federal Reserve Bank of New York.

NYFRB Rate: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

NYFRB's Website: the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

Obligations: all (a) principal of and premium, if any, on the Term Loans, (b) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under the Loan Documents and (c) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, in each case, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

Obligor: each Borrower, Guarantor or other Person that is liable for payment of any Obligations or that has granted a Lien on its assets in favor of Agent to secure any Obligations.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Ordinary Course of Business: the ordinary course of business of any Borrower or any of its Subsidiaries or consistent with past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, 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 Person.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: each Fee Letter, Permitted ABS Intercreditor Agreement, the ABL Intercreditor Agreement, the Third Lien Intercreditor Agreement or other subordination or intercreditor agreement entered into by Agent in connection with Debt permitted under Section 10.2.1(b).

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Term Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 13.4(c)).

Overadvance: as defined in Section 2.1.5.

Overnight Bank Funding Rate: for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

Owned Contract Portfolio: portfolio of Contracts subject to Agent's Lien pursuant to the Security Documents.

Parent: as defined in the Preamble to this Agreement.

Participant: as defined in Section 13.2.1.

<u>Past Due Percent</u>: the percent, calculated as of the beginning of the first day of each month, equal to (a) the aggregate amount of Gross Contract Payments owing under all Contracts (excluding Contracts charged-off), as to which any portion of an installment due thereunder is more than 30 days past due as determined on a contractual basis as of the last day of the month immediately preceding the date of calculation, <u>divided by</u> (b) the aggregate amount of Gross Contract Payments owing under all Contracts (excluding Contracts charged-off) as of the last day of the month immediately preceding the date of calculation.

<u>Patriot Act</u>: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Conditions: with respect to (a) any Permitted Distribution, incurrence of Debt, payment of Debt, Permitted Acquisition or other Investment permitted hereunder, so long as immediately before and after giving effect thereto, (i) no Event of Default exists and (ii) the sum of (A) Qualified Cash plus (B) Availability is greater than 25% of the sum of (x) Qualified Cash plus (y) the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) and (b) in the case of a Permitted Distribution, so long as (i) immediately before and after giving effect thereto, no Event of Default exists and (ii) financial statements and Compliance Certificates delivered by Parent to Agent pursuant to Section 10.1.2 for the most recent Fiscal Quarter ended reflect that Parent has achieved, on a Pro Forma Basis, an Interest Coverage Ratio of greater than or equal to 1.75:1.00 for the trailing two (2) Fiscal Quarters ending immediately prior to giving effect to such Distribution or payment.

Payment Item: each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

Payment Notice: as defined in Section 12.9.2.

Payment Recipient: as defined in Section 12.9.2.

<u>PBGC</u>: the Pension Benefit Guaranty Corporation.

<u>Pension Funding Rules</u>: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in, for plan years ending prior to the Pension Protection Act of 2006 effective date, Section 412 of the Code and Section 302 of ERISA, both as in effect prior to such act, and thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

Pension Plan: any employee pension benefit plan (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

<u>Permitted ABS Agent</u>: with respect to a Permitted ABS Transaction, the entity acting as trustee, collateral agent or other secured party or pledgee under such Permitted ABS Transaction.

<u>Permitted ABS Documents</u>: the Permitted ABS Financing Agreements, the Permitted ABS Purchase Agreements and all documents, instruments and agreements executed in connection therewith.

<u>Permitted ABS Financing Agreement</u>: an agreement entered into in connection with a Permitted ABS Transaction, including an indenture, by and between a Securitization Subsidiary and a Permitted ABS Agent, whereby a Securitization Subsidiary grants a security interest in, or deposits into trust, Contracts.

<u>Permitted ABS Intercreditor Agreement</u>: an intercreditor agreement by and among Permitted ABS Agent, Revolving Agent, Agent, Parent, CAI, CCI and CCCI.

<u>Permitted ABS Purchase Agreement</u>: any agreement by and between one or more Borrowers and a Securitization Subsidiary in connection with a Permitted ABS Transaction for the purpose of effecting one or more transfers of Contracts.

Permitted ABS Transaction: (A) any Existing Securitization Facility or (B) any other transaction pursuant to which a direct or indirect Subsidiary of Parent acquires or has the right to acquire, by capital contribution or sale, Contracts originated or acquired by one or more Borrowers or other direct or indirect Subsidiaries of Parent or a Borrower, which such Subsidiary acquires or has the right to acquire either (i) from time to time or (ii) in one or more contemporaneous transfers that taken together constitute one transaction, in either case for the purpose of pooling such assets and pledging or granting a security interest in such pool to secure indebtedness (whether in the form of a term or revolving loan or the issuance of securities, certificates or notes, including term notes or variable funding notes) or depositing such pool with a trustee for the purpose of issuing certificates or other instruments representing a beneficial interest in the assets of a trust, in each case so long as:

- (a) on each day on which a Borrower transfers a pool of Contracts thereunder, after giving effect to such transfer and any prepayment of the aggregate principal amount of Revolving Obligations, the Revolving Outstandings shall not exceed the Revolving Borrowing Base;
- (b) such transactions are entered into without recourse to any Obligor, other than Limited Repurchase Obligations and customary representations, warranties, covenants and indemnities made in connection with such transactions;

- (c) such transaction is on current market terms for facilities of such type (as reasonably determined by Borrowers);
- (d) upon the closing of such transaction or within 10 days (or such later date as shall be reasonably acceptable to Revolving Agent) thereafter, Agent has received all of the material documentation related to such transaction; and
  - (e) in the case of any Permitted ABS Transaction entered into after the Closing Date:
- (i) if (and only if) a Dominion Trigger Period exists before or would exist, after giving effect to any transfer of a pool of Contracts under such transaction, the net cash proceeds of such Permitted ABS Transaction payable to the Borrowers shall be used to repay an aggregate principal amount of Revolving Obligations (and, to the extent provided herein, the Obligations) in an amount equal to the net cash proceeds of such Permitted ABS Transaction received by the Borrowers;
- (ii) if such Permitted ABS Transaction is a "revolving" transaction, for each transfer of a pool of Contracts thereunder, Agent has received copies of (x) evidence delivered to Revolving Agent and reasonably acceptable to Revolving Agent demonstrating that such pool of Contracts is randomly selected as of the related Cut-Off Date from the Contracts owned by the Obligors that are eligible to be advanced against under such Permitted ABS Transaction at such time (it being understood that, for purposes of determining whether such pool of Contracts is randomly selected, any Securitized Contracts with respect to any other Permitted ABS Transaction that are assigned and transferred to a Borrower upon the termination of such Permitted ABS Transaction shall be disregarded) and (y) a pro forma Borrowing Base Report; and
- (iii) if such Permitted ABS Transaction is not a "revolving" transaction, (x) if fewer than 85% of the eligible Contracts owned by the Obligors at such time that are eligible to be contributed or sold to a Securitization Subsidiary as part of such Permitted ABS Transaction are contributed or sold to a Securitization Subsidiary as part of such Permitted ABS Transaction, Agent has received copies of evidence delivered to Revolving Agent and reasonably acceptable to Revolving Agent demonstrating that (A) the pool of Contracts to be transferred pursuant to such Permitted ABS Transaction is randomly selected as of the related Cut-Off Date from the Contracts owned by the Obligors that are eligible to be advanced against under such Permitted ABS Transaction (it being understood that, for purposes of determining whether such pool of Contracts is randomly selected, any Securitized Contracts with respect to any other Permitted ABS Transaction that are assigned and transferred to a Borrower upon the termination of such Permitted ABS Transaction shall be disregarded) or (B) immediately after giving effect to such Permitted ABS Transaction the characteristics of the pool of Contracts (excluding delinquent and charged-off Contracts that are not eligible to be advanced against under the terms of such Permitted ABS Transaction) that remain part of the Collateral shall, in Revolving Agent's reasonable determination, remain consistent in all material respects with the pool of Contracts (excluding delinquent and charged-off Contracts and Contracts that are not eligible to be advanced against under the terms of such Permitted ABS Transaction) that was part of the Collateral as it existed immediately prior to such Permitted ABS Transaction and (y) Borrower Agent shall deliver to Agent a pro forma Borrowing Base Report.

#### Permitted Acquisition: any Acquisition as long as:

- (a) the assets, business or Person being acquired is located or organized within the United States;
- (b) the Acquisition is consensual;

- (c) the Payment Conditions are satisfied with respect to such Acquisition;
- (d) Obligors are in compliance with the financial covenants set forth in **Section 10.3** after giving effect to such Acquisition on a Pro Forma Basis; and
- (e) Parent delivers to Agent a certificate stating that the Acquisition is a "Permitted Acquisition" and demonstrating compliance with the foregoing requirements.

Permitted Asset Disposition: an Asset Disposition that is:

- (a) a sale of Inventory in the Ordinary Course of Business;
- (b) an Asset Disposition of Equipment (other than those set forth in clause (e) below), that, in the aggregate during any 12-month period, has a book value of \$20,000,000 or less;
- (c) an Asset Disposition of Inventory or Property that is obsolete, worn out, unmerchantable or otherwise unsalable in the Ordinary Course of Business;
  - (d) a termination of a lease of real or personal Property that is not necessary for the Ordinary Course of Business;
- (e) an Asset Disposition of any Borrower's Real Estate and related Equipment affixed thereto in connection with a sale or sale-leaseback transaction;
  - (f) a Permitted Contract Transfer;
  - (g) an exchange of like property for use in a similar business of Parent and its Subsidiaries;
  - (h) a sale, lease, assignment, sublease, license or sublicense of any real or personal property in the Ordinary Course of Business;
- (i) exercise of termination rights under any lease, sublease, license, sublicense, concession or other agreement or pursuant to buy/sell arrangements under any joint venture or similar agreement or arrangement;
- (j) the grant in the Ordinary Course of Business of any licenses or sublicenses of Intellectual Property (including, for the avoidance of doubt, licenses or sublicenses of Intellectual Property to dealers in the Ordinary Course of Business);
- (k) a discount of Inventory or notes receivable or the conversion of accounts receivable to notes receivable in the Ordinary Course of Business;
- (l) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind;
  - (m) a disposition in connection with the outsourcing of services in the Ordinary Course of Business;
  - (n) termination or unwinding of Hedging Agreements not resulting in an Event of Default pursuant to Section 11.1(f);

- (o) a sale or other disposition of Equity Interests under any compensation plan or agreement and other sales of Equity Interests which do not result in a Change of Control;
- (p) an Asset Disposition constituting a merger, combination, consolidation, liquidation, wind-up, dissolution or the disposition of all or substantially all of the assets of any Borrower or its Subsidiaries, in each case as permitted under **Section 10.2.9(a)**;
- (q) sales of accounts receivable in connection with the collection, settlement or compromise thereof or in an Insolvency Proceeding of the relevant account debtor, in each case, in the Ordinary Course of Business;
- (r) to the extent constituting an Asset Disposition, a Permitted Distribution or Investments permitted by the definition of "Restricted Investment" (other than clause (m) of the definition of "Restricted Investment");
  - (s) an Asset Disposition of cash and Cash Equivalents in the Ordinary Course of Business; and
  - (t) approved in writing by the Required Lenders, such approval not to be unreasonably withheld, delayed or conditioned.

# Permitted Contingent Obligations: Contingent Obligations:

- (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business;
- (b) arising from Hedging Agreements permitted hereunder;
- (c) existing on the Closing Date, and any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing which does not increase the amount of such Contingent Obligation except by an amount equal to accrued and unpaid interest, penalties and premiums (including tender premiums) and defeasance costs, in each case on the primary obligation, and fees, commissions and expenses related to any such amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing of the Contingent Obligation and the underlying primary obligation;
- (d) incurred in the Ordinary Course of Business with respect to bids, trade contracts (other than for Borrowed Money), leases (other than Capital Leases), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including Debt in respect of letters of credit, bank guarantees or similar instruments in lieu of such items to support the issuance thereof);
- (e) arising from agreements of Parent and its Subsidiaries providing for indemnification, adjustment of purchase or acquisition price or similar obligations (including without limitation earn-out obligations), in each case, incurred or assumed in connection with any acquisition or Asset Disposition of any business or assets (including Equity Interests of Subsidiaries) of any Subsidiary of Parent permitted by Section 10.2.5 or Section 10.2.6, other than Contingent Obligations of Debt incurred by any Person acquiring all or any portion of such business or assets for the purpose of financing such acquisition;

- (f) arising under the Loan Documents and the Revolving Loan Documents;
- (g) relating to indemnification, guaranty or repurchase obligations arising under Permitted ABS Documents or Third Party Contract sales; and

(h) (i) all other Contingent Obligations in an aggregate amount not to exceed \$30,000,000 at any time outstanding and (ii) any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing which does not increase the outstanding principal amount thereof except by an amount equal to accrued and unpaid interest, penalties and premiums (including tender premiums) and defeasance costs on the underlying obligation, and fees, commissions and expenses related to such any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing.

Permitted Contract Transfer: (a) a sale or other transfer by a Borrower to a Securitization Subsidiary of Contracts pursuant to the Permitted ABS Purchase Agreement, (b) a sale or other transfer of Contracts between Borrowers in connection with a Permitted ABS Transaction, (c) a sale or other transfer of Contracts between two (2) Securitization Subsidiaries in connection with a Permitted ABS Transaction, (d) a capital contribution of Contracts by a Borrower to a Securitization Subsidiary in connection with a Permitted ABS Transaction with the consent of Revolving Agent and (e) the granting by a Securitization Subsidiary to a Permitted ABS Agent of a security interest in Contracts subject to a Permitted ABS Transaction.

Permitted Convertible Notes: senior and/or subordinated convertible debt securities of Parent (a) that are unsecured, (b) that may be guaranteed by any or all of the Subsidiaries of Parent, including, without limitation, any Borrower, (c) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common stock of the Company, cash or a combination thereof as the Company may elect or (iii) an acceleration upon an event of default will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement), (d) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by Parent in good faith) and (e) have a scheduled maturity date at least 91 days later than the Revolver Termination Date (as in effect on the date of issuance of the Permitted Convertible Notes).

<u>Permitted Convertible Notes Hedging Agreements</u>: (a) a Hedging Agreement pursuant to which Parent acquires a call or a capped call option requiring the counterparty party thereto to deliver to Parent shares of common Equity Interests of Parent, the cash value of such shares or a combination thereof from time to time upon exercise of such option and (b) if entered into by Parent in connection with any Hedging Agreement described in clause (a) above, a Hedging Agreement pursuant to which Parent issues to the counterparty thereto warrants to acquire common Equity Interests of Parent, in each case, entered into by Parent in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes; <u>provided</u> that the terms, conditions and covenants of each such Hedging Agreement shall be such as are typical and customary for hedging agreements of such type (as determined by Parent in good faith).

Permitted Discretion: a determination made by Agent in the exercise of its reasonable credit judgment, exercised in good faith in accordance with customary business practices for comparable asset-based lending transactions in the retail and consumer finance industry, as applicable to the relevant component of the Borrowing Base and as it relates to the establishment of reserves or eligibility criteria, shall require that the amount of any such reserve or category of ineligibility so established or the effect of any adjustment shall, as it relates to a reserve, be a reasonable quantification (as reasonably determined by Agent in good faith) of the incremental dilution of the Borrowing Base attributable to such contributing factors and, as it relates to an ineligible category, be reasonably related (as reasonably determined by Agent in good faith) to facts or circumstances discovered by Agent after the Closing Date or a material change in facts or circumstances that existed and were discovered by Agent prior to the Closing Date.

#### Permitted Distribution:

- (a) Distributions declared and made by Parent or any of its Subsidiaries solely for the purpose of making, or permitting Parent to make, payments on account of obligations owed under any Permitted HY Notes and Permitted Convertible Notes which payments are permitted to be made under **Section 10.2.8(c)**;
  - (b) Distributions payable solely in Equity Interests of Parent;
  - (c) Distributions consisting of or constituting a Permitted Tax Distribution;
- (d) Distributions consisting of issuances of Equity Interests deemed to occur upon the exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;
- (e) Distributions by Borrowers, or by Borrowers to Parent to enable Parent, to purchase or redeem fractional shares (or cash payments in lieu thereof) of Equity Interests in connection with the exercise of warrants, options, other rights to acquire Equity Interests or other securities convertible or exchangeable for Equity Interests of Parent;
- (f) Distributions as shall be necessary to allow Parent to pay (i) operating expenses in the Ordinary Course of Business and other corporate overhead, legal, accounting and other professional fees and expenses (including, without limitation, those owing to third parties plus any customary indemnification claims made by directors, officers, employees, members of management or consultants of Parent), (ii) fees and expenses related to any debt or equity offering, Investment or acquisition permitted hereunder (in each case, whether or not successful), (iii) franchise or similar taxes and other fees and expenses required in connection with the maintenance of its existence and its ownership of Borrower, (iv) the consideration to finance any Investment permitted hereunder (provided that such Distribution under this clause (f)(iv) shall be made substantially concurrently with the closing of such Investment), (v) customary salary, bonus, severance, indemnification obligations and other fees, benefits or expense reimbursements payable to directors, officers, employees, members of management and consultants of Parent and any payroll, social security or similar taxes thereof, (vi) any incremental state or local income or franchise tax (net of any federal income tax benefits, as determined in good faith by Parent) payable by Parent as a result of any Permitted Distribution to such entity permitted hereby, and (vii) any amounts permitted to be paid pursuant to clauses (b), (c), (d), (e) and (g) of Section 10.2.17;
- (g) Distributions made or expected to be made by Borrowers in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management or consultants of Parent or any of its Subsidiaries (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of the foregoing) and any repurchases of Equity Interests in consideration of such payments including demand repurchases in connection with the exercise of stock options;

- (h) Distributions made within 60 days after the date of declaration thereof, if at the date of declaration such Distribution would have complied with the provisions of this Agreement;
  - (i) Distributions made by any Subsidiary of CAI to the holders of its Equity Interests on a pro rata basis according to their interests; and
- (j) so long as the Covenant Relief Period is not in effect, other Distributions which satisfy the Payment Conditions as of the date such Distribution is paid.

Permitted Holders: (a) Franchise Group Newco BHF, LLC, (b) Freedom VCM Interco Holdings, Inc., (c) each of the respective Affiliates or any a "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934) of the Persons listed in clauses (a) and (b) and (d) the shareholders of Parent that, as of the Closing Date, own more than 12.5% of the Equity Interest of Parent, in each case, including their respective Affiliates, and any Person with whom such shareholders or their Affiliates form a "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934).

Permitted HY Note Indenture: an indenture to be entered into in respect of any Permitted HY Notes between Parent and an indenture trustee.

Permitted HY Notes: senior or senior subordinated notes issued by Parent after the Closing Date with the following terms and conditions:

- (a) the obligations of Parent or any other Person (including guarantees by any Obligor) to repay such Debt are unsecured; and
- (b) no principal payments are required to be paid with respect thereto prior to the date which is 91 days after the Term Loan Termination Date other than principal payments which are required to be paid after acceleration of such Debt and principal payments due in connection with customary asset sale or change of control provisions.

Permitted Liens: as defined in Section 10.2.2.

<u>Permitted Originator Notes</u>: one or more promissory notes made by a Securitization Subsidiary or a Borrower, as a purchaser of Contracts in a Permitted Contract Transfer, in favor of a Borrower or any Subsidiary of a Borrower, as a seller of Contracts in a Permitted Contract Transfer, evidencing that portion of the purchase price represented by Debt incurred by such purchaser in connection with its purchase of Contracts and related assets from such seller.

<u>Permitted Purchase Money Debt</u>: Purchase Money Debt and Capital Leases of Borrowers and its Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate outstanding principal amount does not exceed \$50,000,000 at any time.

<u>Permitted Securitization Hedging Transaction</u>: any Hedging Agreement with respect to any series of notes issued by a Securitization Subsidiary pursuant to a Permitted ABS Transaction.

Permitted Tax Distributions: for each taxable year or portion thereof with respect to which Parent, any Borrower and/or any of its Subsidiaries are members (or constituent parts) of a consolidated, combined, unitary or similar income or franchise tax group for U.S. federal and/or applicable state or local income or franchise Tax purposes of which Parent is the common parent (a "Tax Group"), aggregate distributions to Parent to pay the portion of any consolidated, combined, unitary or similar U.S. federal, state or local income and franchise Taxes (as applicable) of such Tax Group for such taxable year that are attributable to the income of the Subsidiaries of Parent; provided that (i) the amount of such dividends or other distributions for any taxable year or portion thereof shall not exceed the amount of such Taxes that the Subsidiaries would have paid had the Subsidiaries been a stand-alone corporate taxpayer (or a stand-alone corporate group).

<u>Person</u>: any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

<u>Plan</u>: an employee benefit plan (as defined in Section 3(3) of ERISA) maintained by any Obligor or any Subsidiary of an Obligor for its employees, or to which any Obligor or any Subsidiary of an Obligor is required to contribute on behalf of its employees.

<u>Prime Rate</u>: the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest *per annum* interest rate published by the Board of Governors in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Agent) or any similar release by the Board of Governors (as determined by Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

Pro Forma Basis: as to any calculation of the Interest Coverage Ratio, the Leverage Ratio, the ABS Excluded Leverage Ratio or the Fixed Charge Coverage Ratio or other financial ratio or metric for any events as described below that occur subsequent to the commencement of any relevant measurement period (the "Reference Period") for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred after giving effect thereto (it being understood and agreed that (x) unless otherwise specified for the calculation of any such financial ratio or metric, such Reference Period shall be deemed to be the relevant measurement period for such financial ratio or metric ending on the last day of the most recently ended Fiscal Quarter of Parent for which financial statements are available and such pro forma adjustments shall be excluded to the extent already accounted for in the calculation of EBITDA for such period and (y) if any Person that became a Subsidiary or was merged, amalgamated or consolidated with or into a Borrower or any Subsidiary of Parent shall have experienced any event requiring adjustments pursuant to this definition, then such calculation shall give pro forma effect thereto for such period as if such event occurred at the beginning of such period): (i) in making any determination of EBITDA, pro forma effect shall be given to any Asset Disposition of a Subsidiary of Parent or line of business, to any Acquisition, any discontinued operation or any operational change in each case that occurred during the Reference Period (or, in the case of determinations made with respect to any action the taking of which hereunder is subject to compliance on a Pro Forma Basis or otherwise with any ratio (any such action, a "Restricted Action") occurring during the Reference Period or thereafter and through and including the date of such determination) and (ii) in making any determination on a Pro Forma Basis, (x) all Debt (including Debt incurred or assumed and for which the financial effect is being calculated, whether incurred under this Agreement or otherwise, but excluding normal fluctuations in revolving Debt incurred for working capital purposes) incurred or permanently repaid, returned, redeemed or extinguished during the Reference Period (or, in the case of determinations made with respect to any Restricted Action, occurring during the Reference Period or thereafter and through and including the date of such determination) shall be deemed to have been incurred or repaid, returned, redeemed or extinguished at the beginning of such period (it being understood that for purposes of any calculation of any ratio and or financial metric, the use of proceeds of any such Debt shall be taken into account in such calculation) and (y) Interest Expense of such Person attributable to (A) interest on any Debt, for which pro forma effect is being given as provided in the preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of determination as if such rate had been actually in effect during the period for which pro forma effect

is being given taking into account any interest hedging arrangements applicable to such Debt, (B) any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a Senior Officer of Parent or Borrower Agent to be the rate of interest implicit in such Capital Lease in accordance with GAAP and (C) interest on any Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered 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 Parent or any Subsidiary may designate.

Pro forma calculations made pursuant to the definition of the term "Pro Forma Basis" shall be determined in good faith by a Senior Officer of Parent or Borrower Agent and, for any fiscal period ending on or prior to the date that is 12 months following the date of any such Acquisition, Asset Disposition, discontinued operation or operational change, may include adjustments to reflect operating expense reductions and other operating improvements or synergies reasonably expected to result from such Acquisition, Asset Disposition, discontinued operation or operational change and for purposes of determining compliance with the such adjustments may reflect additional operating expense reductions and other additional operating improvements and synergies that (x) would be includable in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act (other than cost savings and synergies that are only permitted under Regulation S-X as "Management's Adjustments" by virtue of the amendments adopted on May 21, 2020 by the Securities & Exchange Commission) and (y) such other adjustments not includable in Regulation S-X under the Securities Act or which are included as "Management's Adjustments" by virtue of the amendments adopted on May 21, 2020 by the Securities & Exchange Commission, in each case, for which substantially all of the steps necessary for the realization thereof have been taken or are reasonably anticipated by Borrower to be taken in the next 12-month period following the consummation thereof and, are estimated on a good faith basis by Parent or Borrower Agent; provided, however that the aggregate amount of any such adjustments pursuant to clause (y) shall not exceed (together with the aggregate add backs to EBITDA pursuant to clause (m) of the definition of EBITDA with respect to the applicable period) 20% of the EBITDA of Parent and its Subsidiaries for any such period (prior to giving effect to any such add backs).

<u>Pro Rata</u>: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) immediately prior to the funding of the Term Loans on the Closing Date, by dividing the amount of such Lender's Term Loan Commitment by the aggregate outstanding Term Loan Commitments of all Lenders; or (b) following the funding of the Term Loans on the Closing Date, by dividing the amount of such Lender's Term Loans by the aggregate amount of all outstanding Term Loans.

<u>Properly Contested</u>: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect; and (e) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: as defined in Section 2.1.6.

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

<u>Purchase Money Debt</u>: Debt incurred for the payment of the acquisition, construction, repair, replacement, additions, accessions and/or improvements (including any industrial revenue bond, industrial development bond and similar financings) incurred prior to or within two hundred seventy (270) days after the acquisition, construction, repair, replacement, addition, accession and/or improvement of the respective asset in order to finance such acquisition, construction, repair, replacement, addition, accession and/or improvement or to reimburse the costs thereof.

<u>Purchase Money Lien</u>: a Lien that secures Purchase Money Debt, encumbering only the fixed or capital assets acquired with such Debt (and any construction, repairs, replacements, additions, accessions and improvements thereto, any proceeds thereof or of the foregoing) or constituting a Capital Lease (it being understood that individual financings that constitute Purchase Money Debt or a Capital Lease provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates).

Qualified Cash: as of any date of determination, the aggregate amount of unrestricted cash of Parent and its Subsidiaries that (i) is subject to a first priority Lien in favor of Agent for the benefit of Secured Parties (subject only to the prior Liens consisting of Revolving Agent Liens and any Permitted Liens set forth in Section 10.2.2(i)) and (ii) is subject to (x) a Deposit Account Control Agreement if maintained in a Deposit Account and (y) a Securities Account Control Agreement if maintained in a Securities Account.

Qualified Equity Interests: any Equity Interest other than Disqualified Stock.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property and any buildings, structures, parking areas or other improvements thereon.

Recipient: Agent, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation under the Loan Documents.

Reference Time: with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting, or (2) if such Benchmark is not the Term SOFR Rate, the time determined by Agent in its reasonable discretion.

Refinancing Conditions: the following conditions for Refinancing Debt:

(a) the Refinancing Debt is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced (plus an amount necessary to pay all accrued and unpaid interest, penalties, premiums (including tender premiums) thereon and defeasance costs, and the fees, commissions and expenses related to such extension, renewal or refinancing) unless (i) such excess is otherwise permitted to be incurred under Section 10.2.1 or (ii) the excess is used to repay the outstanding Revolving Loans and the Revolver Commitments (as defined in the Revolving Credit Agreement) are reduced by the amount of the repayment (and if no Revolving Loans are outstanding, the Revolver Commitments are reduced by the excess);

(b) in respect of **Section 10.2.1(m)** and **Section 10.2.1(i)** (as it relates to Refinancing Debt in respect of Debt incurred under **Section 10.2.1(m)**), it has a final maturity no sooner than and a weighted average life no less than the Debt being extended, renewed or refinanced;

- (c) if the Debt being extended, renewed, or refinanced is subordinated to the Obligations such Debt being extended, renewed or refinanced is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced;
- (d) the representations, covenants and defaults applicable to it are not materially less favorable to Borrowers than those applicable to the Debt being extended, renewed or refinanced or such terms are current market terms (as determined by Borrower Agent);
  - (e) no additional Lien is granted to secure it except to the extent otherwise permitted by Section 10.2.2; and
  - (f) no additional Person is obligated on such Debt to the extent otherwise permitted under Section 10.2.1.

Refinancing Debt: Debt that is the result of an extension, renewal, refinancing or replacement of Debt permitted under Section 10.2.1(b), (c), (d), (e), (h), (k), (m) and (aa), including any expenses and premiums in connection therewith and under Section 10.2.1(i) in respect of the foregoing or any prior Refinancing Debt.

Regulatory Event: (a) a "Level One Regulatory Event", which shall mean the formal commencement by written notice by any Governmental Authority of any Legal Action against any of Borrowers or any of their Subsidiaries, or to the knowledge of Borrowers, any servicer or asset manager of their respective or collective portfolios of Contracts or Third Party Contracts owned or serviced by a Borrower or its Subsidiary, denying its authority to originate, hold, own, service, collect or enforce any category or group of Contracts or such Third Party Contracts, in each case that would reasonably be expected to have a material adverse effect on the business or financial condition of Borrowers and their Subsidiaries taken as a whole, which Legal Action is not released or terminated within 180 calendar days of commencement thereof; or (b) a "Level Two Regulatory Event", which shall mean the issuance or entering of any stay, cease and desist order, injunction, temporary restraining order, or other judicial or non-judicial sanction (other than the imposition of a monetary fine), against any of Borrowers or any of their Subsidiaries, or to the knowledge of Borrowers, any servicer or asset manager of their respective or collective portfolios of Contracts or Third Party Contracts owned or serviced by a Borrower or its Subsidiary, for material violations of Applicable Law regarding the originating, holding, pledging, collecting, servicing or enforcing of any Contracts or such Third Party Contracts, in each case that would reasonably be expected to have a material adverse effect on the business or financial condition of Borrowers and their Subsidiaries taken as a whole.

Related Parties: as to any Person, its officers, directors, employees, Affiliates, agent and attorneys.

<u>Relevant Governmental Body</u>: the Board of Governors or the NYFRB, or a committee officially endorsed or convened by the Board of Governors or the NYFRB or, in each case, any successor thereto.

<u>Rentals</u>: means, for any period, the aggregate fixed amounts payable by Parent and its Subsidiaries under any operating leases, calculated on a consolidated basis for the Parent and its Subsidiaries for such period in accordance with GAAP.

Rent and Charges Reserve: the corresponding amount of reserves maintained under the Revolving Credit Agreement pursuant to the "Rent and Charges Reserve" (as defined in the Revolving Credit Agreement), subject to the terms of the Intercreditor Agreement and the definition of the Borrowing Base.

Report: as defined in Section 12.2.3.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30-day notice period has been waived.

Required Lenders: Lenders holding more than 50% of the aggregate outstanding Term Loans and other Obligations under the Loan Documents; provided that so long as B. Riley and its Affiliates collectively hold 25% or more of the aggregate outstanding Term Loans, the Required Lenders shall include B. Riley.

Requirement of Law: as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator 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.

Reserve: the Class C Retained Notes Reserve, the CAI Availability Reserve, the CCI Availability Reserve, the Badcock Availability Reserve and their respective component parts including the Inventory Reserve, Rent and Charges Reserve, Sales Tax Reserve, Gift Card Reserve, and Customer Deposit Reserve.

Resolution Authority: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Restricted Investment: any Investment by Parent, a Borrower or any of their Subsidiaries, other than:

- (a) Investments in its Subsidiaries to the extent such Investments are existing on the Closing Date;
- (b) Investments (i) by the Obligors in Subsidiaries that are Obligors, (ii) by any non-Obligor in an Obligor or any other Subsidiary and (iii) other than during the Covenant Relief Period (except with respect to Investments in any Securitization Subsidiary) by any Obligor in any non-Obligor in an outstanding amount not to exceed \$10,000,000 at any time;
  - (c) Cash Equivalents;
  - (d) Permitted Originator Notes;
- (e) Investments by CAI which are consistent with the corporate investment policy of CAI from time to time in effect, as approved by Revolving Agent (or, after the Discharge of ABL Obligations, Agent (such approval not to be unreasonably withheld));
- (f) Investments (i) in and by a Securitization Subsidiary permitted under a Permitted ABS Transaction and (ii) other Investments in a Securitization Subsidiary in the form of (x) a direct investment in cash, (y) the purchase of any securities issued by a Securitization Subsidiary (whether by tender offer or otherwise) or (z) the transfer of any pool of Contracts by any Borrower to a Securitization Subsidiary (which may be in exchange for an underperforming pool of Contracts), in each case so long as (A) immediately before and after giving effect to such other Investment, no Event of Default exists, (B) the financial statements and Compliance Certificates delivered by Parent to Agent pursuant to Section 10.1.2 for the most recent Fiscal Quarter ended reflect that Parent is in compliance with the applicable financial covenants set forth in Section 10.3 measured on a Pro Forma Basis for such Fiscal Quarter and (C) the aggregate amount of such Investments under this clause (f)(ii) (and with respect to clause (f)(ii)(z) above, following the application of the Contract Advance Rate Amount in measuring the amount of any such Investment) do not exceed \$50,000,000 at any time outstanding:

- (g) Investments for the purpose of funding the repurchase of Contracts which are subject to (i) a Permitted ABS Transaction from a Securitization Subsidiary required under the terms of such Permitted ABS Transaction (ii) such securitization arrangements entered into by Badcock on or prior to the Closing Date and set forth on **Schedule 1.1(g)**, in each case, so long as immediately before and after giving effect to each such repurchase, no Event of Default exists;
- (h) so long as the Covenant Relief Period is not in effect and EBITDA on a Pro Forma Basis is equal to or greater than \$170,000,000, Permitted Acquisitions;
- (i) Investments arising out of the receipt by Borrowers or any Subsidiary of promissory notes and other non-cash consideration for any Asset Dispositions permitted under **Section 10.2.6**;
- (j) accounts receivable, notes receivable, security deposits and prepayments arising and trade credit granted in the Ordinary Course of Business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers made in the Ordinary Course of Business;
  - (k) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 10.2.5;
- (l) Investments received in connection with the bankruptcy or reorganization of any Person, or settlement of obligations of, or other disputes with or judgments against, or foreclosure or deed in lieu of foreclosure with respect to any Lien held as security for an obligation, in each case in the Ordinary Course of Business;
- (m) Investments consisting of Debt, Liens, capital expenditures, Permitted Distributions, Asset Dispositions, payments and repurchases of Debt, fundamental change transactions, and affiliate transactions permitted under Section 10.2.1 (other than Section 10.2.1(v)), 10.2.2, 10.2.3, 10.2.4, 10.2.6, 10.2.8, 10.2.9 and 10.2.17 (other than Section 10.2.17(k));
- (n) Investments by Borrowers or any Subsidiary in an outstanding aggregate amount (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) not to exceed \$10,000,000 at any time (<u>plus</u> any returns, profits, distributions and similar amounts, repayments of loans and the release of guarantees in respect of Investments theretofore made by it pursuant to this clause (n)); provided, that during the Covenant Relief Period, Investments pursuant to this clause (n) shall be limited to \$1,000,000 in the aggregate for such period;
- (o) Investments in the Ordinary Course of Business consisting of (i) endorsements for collection or deposit or (ii) customary trade arrangements with customers;
- (p) Investments made in the Ordinary Course of Business in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees in the Ordinary Course of Business;
- (q) Investments made by any Subsidiary that is not an Obligor to the extent such Investments are made with the proceeds received by such Subsidiary from an Investment made by an Obligor in such Subsidiary which is permitted hereunder;

- (r) any Investment upon the satisfaction the Payment Conditions with respect thereto; <u>provided</u> that during the Covenant Relief Period this <u>clause (r)</u> shall not be utilized for any Acquisition;
- (s) Investments in connection with Hedging Agreements, in each case entered into in the Ordinary Course of Business and not for speculative purposes (it being agreed that the Permitted Convertible Notes Hedging Agreements and any Permitted Securitization Hedging Transaction are permitted);
- (t) advances to any director, officer, employee, member or management or consultant for salary, travel expenses, commissions and similar items in the Ordinary Course of Business in an aggregate amount outstanding at any time not to exceed \$5,000,000;
  - (u) prepaid expenses and extensions of trade credit made in the Ordinary Course of Business;
  - (v) deposits with financial institutions permitted hereunder;
  - (w) loans made by a Borrower to a Contract Debtor pursuant to a Contract entered into in the Ordinary Course of Business;
  - (x) loans made pursuant to any Permitted Originator Note; and
- (w) Investments in the form of payments required to be made pursuant to that certain Asset Purchase Agreement, dated as of March 11, 2022, among, *inter alios*, RTO, as buyer, and Tempoe, LLC, a Delaware limited liability company, as seller, in an amount not to exceed \$7,500,000 in the aggregate.

Restrictive Agreement: any agreement that prohibits, restricts or imposes any condition upon (a) the ability of Borrowers or any their respective Subsidiaries to create, incur or permit to exist any Lien upon any of its property to secure the Obligations, or (b) the ability of any Subsidiary of Borrowers to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to Borrowers or any other Subsidiary.

Reuters: as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

Revolving Agent: JP Morgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent under the Revolving Credit Agreement.

Revolving Agent Liens: Liens on the Collateral granted by the Obligors in favor of Revolving Agent pursuant to the Revolving Loan Documents to secure the Revolving Obligations, subject in all cases to the ABL Intercreditor Agreement.

Revolving Borrowing Base: the "Borrowing Base" under and as defined in the Revolving Credit Agreement, as in effect on the Closing Date or as modified from time to time in accordance with the ABL Intercreditor Agreement.

Revolving Collection Account: has the meaning specified in Section 8.2.4.

Revolving Credit Agreement: that certain Fifth Amended and Restated Loan and Security Agreement, dated as of March 29, 2021, by and among the Borrowers, the Parent, the other Obligors party thereto, the lenders party thereto, Revolving Agent and the other agents and arrangers from time to time party thereto, as the same may from time to time be amended, restated, amended and restated, supplemented modified, replaced, increased, renewed, extended or refinanced from time to time in accordance with the ABL Intercreditor Agreement.

Revolving Loan: the "Revolver Loan" under and as defined in the Revolving Credit Agreement.

Revolving Loan Documents: the "Loan Documents" under and as defined in the Revolving Credit Agreement.

Revolving Obligations: the "Obligations" as defined in the Revolving Credit Agreement, as in effect on the Closing Date.

Revolving Outstandings: the "Revolver Usage" as defined in the Revolving Credit Agreement, as in effect on the Closing Date.

Revolving Overadvance: an "Overadvance" as defined in the Revolving Credit Agreement, as in effect on the Closing Date.

Revolving Reserves: the "Reserves" under and as defined in the Revolving Credit Agreement.

Royalty: all royalties, fees, expense reimbursement and other amounts payable by a Borrower under a License.

RTO: New RTO, LLC, a Delaware limited liability company.

S&P: Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc.

<u>Sales Tax Reserve</u>: a reserve equal to 100% of the aggregate sales tax obligations of Borrowers as set forth in Borrowers' books and records as of any measurement date which have not been prepaid by Borrowers.

Sanction: any 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, or (b) the United Nations Security Council, the European Union, any European Union member state or His Majesty's Treasury of the United Kingdom or other relevant sanctions authority in each case having jurisdiction over any Borrower or its Subsidiaries.

Secured Parties: Agent and Lenders.

<u>Securities Account Control Agreements</u>: the account control agreements executed by each institution maintaining a Securities Account for a Borrower, in favor of Agent as security for the Obligations and Revolving Agent as security for the Revolving Obligations; <u>provided</u> that it is understood and agreed that no Securities Account Control Agreement shall be required for Excluded Accounts.

<u>Securitization Subsidiary</u>: one or more direct or indirect Subsidiaries of Parent formed for the purposes of entering into a Permitted ABS Transaction, including Conn Appliances Receivables Funding, LLC, Conn's Receivables Funding I, LP, Conn's Receivables Funding I GP, LLC, Conn's Receivables, LLC, Conn's Receivables Warehouse, LLC, Conn's Receivables Warehouse Trust, Conn's Receivables Funding 2021-A, LLC, Conn's Receivables 2021-A Trust, Conn's Receivables Funding 2022-A, LLC, and Conn's Receivables 2022-A Trust.

Securitized Contracts: the Contracts and related assets which are subject to a Permitted ABS Transaction.

<u>Security Agreement</u>: a security agreement, in the form executed by each Guarantor on the Closing Date, pursuant to which such Guarantor shall grant to Agent a Lien (for the benefit of the Secured Parties) in all of such Guarantor's assets, or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent.

<u>Security Documents</u>: the Guaranty, each Security Agreement, Deposit Account Control Agreements, Securities Account Control Agreements, Equity Interest Pledge Agreement, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations, or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent.

<u>Senior Officer</u>: the chairman of the board, president, chief executive officer, chief financial officer (or other officer holding a similar role), chief operating officer, treasurer or assistant treasurer of a Borrower or, if the context requires, an Obligor.

SOFR: a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator: the NYFRB (or a successor administrator of the secured overnight financing rate).

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "Fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Specified Financial Covenants: as defined in Section 10.4.1.

Subordinated Debt: Debt (other than the Obligations or the Revolving Obligations) incurred by a Borrower that is expressly subordinate and junior in right of payment to the Obligations and has a maturity no shorter than, at the time of such incurrence or issuance, ninety-one (91) days after the Term Loan Termination Date and has subordination terms reasonably satisfactory to Agent.

<u>Subsidiary</u>: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a direct or indirect Subsidiary or Subsidiaries of Parent.

<u>Supermajority Lenders</u>: Lenders holding more than 66 2/3% of (a) the aggregate outstanding Term Loans and other Obligations under the Loan Documents.

Tangible Net Worth: at any date, an amount equal to: (i) the net book value (after deducting related depreciation, obsolescence, amortization, valuation and other proper reserves) at which the Adjusted Tangible Assets of a Person would be shown on a balance sheet at such date in accordance with GAAP, less (ii) the amount at which such Person's liabilities would be shown on such balance sheet, and including as liabilities all reserves for contingencies and other potential liabilities, in each case, in accordance with GAAP.

Tax and Trust Funds: cash, cash equivalents or other assets comprised solely of

- (a) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Person's employees in the current period (which may be monthly or quarterly, as applicable),
- (b) all taxes required to be collected, remitted or withheld in the current period (which may be monthly or quarterly, as applicable) (including, without limitation, federal and state withholding taxes (including the employer's share thereof)), and
- (c) any other funds which such Person holds in trust or as an escrow or fiduciary for another Person (which is not an Obligor) in the ordinary course of business.

<u>Tax Materials</u>: any materials (together with all supplements or other modifications thereto) related to the CARES Act Tax Refund Claim prepared by any third party for any Obligor or any of its Subsidiaries on or prior to the Closing Date.

Tax Refund Advance Amount: an amount equal to: (i) at any time on or prior to July 31, 2024 (or such later date as may be agreed to by Agent in writing in its discretion (but in no event later than December 31, 2024) solely to the extent that Borrower Agent shall have delivered (in good faith) evidence satisfactory to Agent on or prior to July 31, 2024 that the Eligible CARES Act Tax Refund Claim will more likely than not be received on or prior to December 31, 2024), an advance rate of 85% multiplied by the then applicable amount of the Eligible CARES Act Tax Refund Claim and (ii) at any time after December 31, 2024 (or such later date as may be agreed to by Agent in accordance with clause (i) above), \$0.

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

Term Collection Account: has the meaning specified in Section 8.2.4.

Term Loan: any loan made pursuant to Section 2.1.

<u>Term Loan Commitment</u>: for any Lender, its obligation to make Term Loans up to the maximum principal amount shown on **Schedule 1.1**, or as set forth in any Assignment and Acceptance to which it is a party. "<u>Term Loan Commitments</u>" means the aggregate amount of such commitments of all Lenders which, as of the Closing Date, is \$108,000,000.

<u>Term Loan Exposure</u>: as to any Lender at any time, without duplication, the aggregate principal amount at such time of its outstanding Term Loans at such time.

<u>Term Loan Usage</u>: the aggregate amount of all outstanding Term Loans.

<u>Term Loan Push-Down Reserve</u>: a Reserve maintained against the Revolving Borrowing Base in an amount equal to the amount by which (if any) the Term Loan Usage exceeds the Borrowing Base.

<u>Term Loan Termination Date</u>: February 20, 2027, provided that if such day is not a Business Day, the Term Loan Termination Date shall be the immediately preceding Business Day.

<u>Term Note</u>: a promissory note to be executed by Borrowers in favor of a Lender in the form of **Exhibit A**, which shall be in the amount of such Lender's Term Loan Exposure and shall evidence the Term Loans made by such Lender.

Term SOFR Rate: at any time of determination for any month, the greater of (a) the Floor and (b) the rate *per annum* equal to the Term SOFR Reference Rate two U.S. Government Securities Business Days prior to the first day of such month for Dollar deposits with a term equivalent to three months; <u>provided</u> that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR Rate means the Term SOFR Reference Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case. Term SOFR shall be determined on a monthly basis as of the first day of each month.

<u>Term SOFR Reference Rate</u>: the forward-looking SOFR term rate administered by CME Term SOFR Administrator and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Agent from time to time).

Third Lien Agent: the "Agent" under and as defined in the Third Lien Term Loan Agreement.

Third Lien Intercreditor Agreement: that certain Amended and Restated Third Lien Intercreditor Agreement, dated as of the date hereof, among Revolving Agent, Agent and Stephens Investments Holdings LLC and acknowledged and agreed by Parent, CAI, CCI, CCCI, Badcock and each of Parent's Subsidiaries that are signatories from time to time thereto.

Third Lien Term Loan Agreement: as defined in the definition of "Third Lien Term Loan Facility".

Third Lien Term Loan Documents: the "Loan Documents" under and as defined in the Third Lien Term Loan Agreement.

Third Lien Term Loan Facility: the senior secured delayed draw term loan facility established pursuant to that certain Delayed Draw Term Loan and Security Agreement, dated as of July 31, 2023 (as the same may be amended, restated, amended and restated, supplemented, modified, replaced, increased, renewed, extended or refinanced from time to time in accordance with the Third Lien Intercreditor Agreement, the "Third Lien Term Loan Agreement"), by and among Parent, CAI, CCI, CCCI, the other Obligors party thereto from time to time, the Lenders and Stephens Investments Holdings LLC.

Third Lien Term Loan Obligations: the "Obligations" under and as defined in the Third Lien Term Loan Agreement, as in effect on the Closing Date or as modified from time to time in accordance with the Third Lien Intercreditor Agreement.

Third Party Contracts: any loan agreement, account, revolving credit agreement, retail installment sale contract, consumer loan, Instrument, note, document, chattel paper, and all other forms of obligations

owing to any Borrower or any Subsidiary of a Borrower, including any collateral for any of the foregoing, including all rights under any and all security documents, in each case which does not satisfy the credit criteria under the Credit and Collection Guidelines and is intended to be sold to a third party in the Ordinary Course of Business promptly following the execution thereof (and delivery of the product financed thereby); provided, that (x) any purchase and sale agreement related to such Third Party Contract shall provide that such Third Party Contract shall be purchased by such third party within two (2) Business Days of its origination and the applicable Borrower or Subsidiary shall take commercially reasonable efforts to consummate such sale within two (2) Business Days of origination and (y) the aggregate outstanding balance of Third Party Contracts owned by Borrowers and their Subsidiaries shall at no time exceed \$1,000,000.

Threshold Amount: \$25,000,000.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

<u>UCC</u>: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

<u>UK Financial Institutions</u>: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

<u>UK Resolution Authority</u>: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

<u>Unadjusted Benchmark Replacement</u>: the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

<u>Unfinanced Capital Expenditures</u>: for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Debt (other than Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

<u>U.S. Government Securities Business Day</u>: 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. Person: "United States Person" as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in Section 5.10.2(b)(iii).

<u>Value</u>: (a) for Inventory, its value determined on the basis of the lower of cost or market, calculated on a moving weighted average cost basis, and excluding any portion of cost attributable to intercompany profit among Borrowers and their Affiliates, and (b) for a Credit Card Account, its face amount.

<u>Variance Report</u>: as defined in **Section 10.1.16(b)**.

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

- 1.2 Accounting Terms. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that if Borrower Agent notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Agent notifies Borrower Agent that Agent requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith and, if an amendment is requested by Borrower Agent or Agent, then Borrower Agent and Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to Agent or the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed).
- 1.3 <u>Uniform Commercial Code</u>. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "<u>Account</u>", "<u>Account Debtor</u>", "<u>Chattel Paper</u>", "<u>Commercial Tort Claim</u>", "<u>Deposit Account</u>", "<u>Document</u>", "<u>Equipment</u>", "<u>General Intangibles</u>", "<u>Goods</u>", "<u>Instrument</u>", "<u>Investment Property</u>", "<u>Letter-of-Credit Right</u>", "<u>Securities Account</u>" and "<u>Supporting Obligation</u>".
- 1.4 Certain Matters of Construction. The terms "herein," "hereof," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders and the neuter form. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan Document, the parties agree that the rule of ejusdem generis shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement (including any Loan Document and any Organic Document) include any amendments, restatements, amendments and restatements, supplements, modifications, replacements, renewals, extensions and refinancings from time to time (to the extent permitted or not restricted by the Loan Documents); (c) any section means, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and permitted assigns; and (f) time of day means, unless the context otherwise requires, Central time (daylight or standard, as applicable). All determinations (including calculations of Borrowing Base, the Revolving Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time (as adjusted in accordance with the terms hereof). No provision of

any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to a Borrower's "knowledge" or words of similar import means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained in good faith and diligent performance of his or her duties. The use of the phrase "subject to" as used in connection with Permitted Liens or otherwise and the permitted existence of any Permitted Liens or any other Liens in this Agreement or any other Loan Document shall not be interpreted to expressly or impliedly subordinate any Liens granted in favor of Agent and the other Secured Parties as there is no intention to subordinate the Liens granted in favor of Agent and the other Secured Parties, expect as expressly set forth in this Agreement or such other Loan Documents.

- 1.5 <u>Payment and Performance</u>. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.
- 1.6 <u>Compliance with this Agreement</u>. For purposes of determining the permissibility of any action, change, transaction or event that by the terms of the Loan Documents requires a calculation of any financial ratio or test, such financial ratio or test shall be calculated at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.
- 1.7 <u>Classification</u>. For purposes of determining compliance at any time with Sections 10.2.1, 10.2.2, 10.2.4, 10.2.5, 10.2.6, 10.2.8, 10.2.9, 10.2.14, and 10.2.17 (and, in each case, any definition used therein) in the event that any Debt, Lien, Distribution, Restricted Investment, Asset Disposition, payment, prepayment, redemption, repurchase, retirement, defeasance or acquisition, merger, combination, consolidation, liquidation, winding up or dissolution, Restrictive Agreement, or Affiliate transaction meets the criteria of more than one (1) of the categories of transactions or items permitted pursuant to any clause of such Sections 10.2.1, 10.2.2, 10.2.4, 10.2.5, 10.2.6, 10.2.8, 10.2.9, 10.2.14, and 10.2.17 (and, in each case, any definition used therein), Borrowers, in their sole discretion, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one (1) category.

### 1.8 Certain Calculations.

- (a) Subject to the immediately succeeding clauses (b) and (c) and **Section 1.6** above, notwithstanding anything to the contrary contained herein, financial ratios and tests (including the Interest Coverage Ratio, the Leverage Ratio the Fixed Charge Coverage Ratio and the ABS Excluded Leverage Ratio) pursuant to this Agreement shall be calculated in the manner prescribed by the definition of "Pro Forma Basis."
- (b) Notwithstanding anything to the contrary herein (including in connection with any calculation made on a Pro Forma Basis), to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including the Interest Coverage Ratio, the Leverage Ratio, the Fixed Charge Coverage Ratio and the ABS Excluded Leverage Ratio and the component definitions of any of the foregoing), (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default) or (iii) the making of any representation or warranty, in each case as a condition to (A) the consummation of any transaction in connection with any acquisition or similar Investment (including the assumption or incurrence of Debt), (B) the making of any Distribution and/or (C) the making of any restricted Debt payment, in each case in connection with a Limited Condition Transaction, at the election of Borrowers (the "LCT Election"), the determination of whether the relevant condition is satisfied may be

made at the time (the "LCT Test Time") of (or on the basis of the financial statements for the most recently ended fiscal period at the time of) the execution of the definitive agreement with respect to such Limited Condition Transaction. If Borrowers have made an LCT Election, then, in connection with any calculation of any financial ratio or test (other than with respect to determining actual (as opposed to pro forma) compliance with the Financial Covenants) following such LCT Test Time and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the definitive agreement with respect thereto is terminated, any such financial ratio or test shall be calculated (and tested) on a Pro Forma Basis assuming such Limited Condition Transaction and other subject transactions in connection therewith have been consummated.

- (c) Notwithstanding anything to the contrary contained in this **Section 1.8** or otherwise, for purposes of determining actual compliance with the financial covenants set forth in **Section 10.3**, any such adjustments shall only include events that occurred during the relevant measurement period for such financial covenant.
- 1.9 Interest Rates; Benchmark Notification. The interest rate on a Term Loan 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, Section 3.6(b) provides a mechanism for determining an alternative rate of interest. Agent will promptly notify the Borrower Agent, pursuant to Section 3.6(d), of any change to the reference rate upon which the interest rate on a Term Loan is based. However, Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, 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, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability (it being understood that this sentence does not limit Agent's obligation to make any determination or calculation of such reference rate as expressly required to be made by Agent pursuant to the terms of this Agreement). Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate 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. 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 referenced 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.
- 1.10 **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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

### **SECTION 2. CREDIT FACILITIES**

### 2.1 Term Loans.

- 2.1.1 Term Loans. Each Lender agrees, severally, on the terms set forth herein, to make term loans (collectively, the "Term Loans") to Borrowers on the Closing Date in an aggregate amount (for all such Term Loans) equal to its Term Loan Commitment; provided that after giving effect to the Term Loans made on the Closing Date the Term Loan Usage shall not exceed the sum of (a) the Borrowing Base and (b) the Term Loan Push-Down Reserve maintained against the Revolving Borrowing Base. The Term Loans on the Closing Date shall be made concurrently by the Lenders in accordance with their respective Term Loan Commitments. The Term Loans that are repaid or prepaid may not be reborrowed. Upon funding of the respective Term Loans by each Lender on the Closing Date, the Term Loan Commitment of such Lender shall terminate and be reduced to \$0.
- 2.1.2 <u>Term Notes</u>. The Term Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any Lender, Borrowers shall deliver a Term Note to such Lender.
- 2.1.3 <u>Use of Proceeds</u>. The proceeds of Term Loans shall be used by Borrowers solely (a) to pay in full the obligations owed under that certain Term Loan and Security Agreement, dated February 21, 2023, among Parent, CAI, CCI, CCCI the financial institutions party thereto from time to time as lenders and Pathlight Capital LP (as amended, restated or otherwise modified from time to time); (b) to pay transaction fees, costs and expenses; and (c) for working capital and other lawful corporate purposes of Borrowers and their Subsidiaries in accordance with this Agreement. No Borrower shall, directly or, to its knowledge, indirectly, use any Term Loan proceeds, nor use, lend, contribute or otherwise make available any Term Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of funding of the Loan, is the target of any Sanction; or (ii) in any manner that would result in a violation of a Sanction by such Person.

## 2.1.4 Termination of Term Loan Commitments.

- (a) The Term Loan Commitments shall terminate upon funding of the Term Loans on the Closing Date.
- 2.1.5 Overadvances; Term Loan Push-Down Reserve. If the Term Loan Usage exceeds the Borrowing Base (an "Overadvance"), the Borrowers shall cause to be maintained against the Revolving Borrowing Base the Term Loan Push-Down Reserve in an amount equal to the applicable Overadvance. The existence of any Overadvance shall not create nor constitute a Default or an Event of Default so long as the applicable Term Loan Push-Down Reserve (x) is maintained against the Revolving Borrowing Base as provided herein and in accordance with the ABL Intercreditor Agreement and (y) the imposition of such Term Loan Push-Down Reserve does not result in a Revolving Overadvance (subject to the right to repay the Revolving Obligations pursuant to the Revolving Credit Agreement to "cure" such Revolving Overadvance).
- 2.1.6 <u>Protective Advances</u>. Agent shall be authorized, in its sole discretion, at any time, to make Term Loans (a) up to an aggregate amount not to exceed at any time of \$15,000,000, if Agent deems such Term Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including costs, fees and expenses (such Term Loans are referred to herein as "<u>Protective Advances</u>"). Each Lender shall participate in each Protective Advance on a Pro Rata basis. Required Lenders may at any time revoke Agent's authority to make further Protective Advances by written notice to Agent. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive.

#### SECTION 3. INTEREST, FEES AND CHARGES

#### 3.1 Interest.

### 3.1.1 Rates and Payment of Interest.

- (a) The Obligations under the Loan Documents shall bear interest (i) if a Term Loan, on the outstanding principal amount thereof at a rate *per annum* equal to the Applicable Reference Rate in effect from time to time, plus the Applicable Margin; and (ii) if any other Obligation under the Loan Documents (including, to the extent permitted by law, interest not paid when due) to the extent not paid when due, at the Base Rate in effect from time to time, plus the Applicable Margin. Interest shall accrue from the date the Term Loan is advanced or the Obligation is payable, until paid by Borrowers. If a Term Loan is repaid on the same day made, one day's interest shall accrue.
- (b) During an Insolvency Proceeding with respect to any Obligor, or during any other Event of Default if Agent or Required Lenders in their discretion so elect, Obligations under the Loan Documents shall bear interest at the Default Rate (whether before or after any judgment), payable on demand.
  - (c) Interest accrued on the Term Loans shall be due and payable in arrears on each Interest Payment Date.

### 3.2 Fees.

- 3.2.1 Fee Letter. The Borrowers shall pay to Agent and the Lenders, for their own respective accounts, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.
- 3.3 <u>Computation of Interest, Fees, Yield Protection</u>. All interest, as well as fees and other charges calculated on a *per annum* basis, shall be computed for the actual days elapsed (including the first day but excluding the last day), based on a year of 360 days, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under Section 3.2 are either compensation for services or liquidated damages and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate setting forth in reasonable detail the calculation of the amount or amounts payable by Borrowers under Section 3.4, 3.6, 3.7, 3.9 or 5.9, submitted to Borrower Agent by Agent or the affected Lender, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error; <u>provided</u> that such certificate from each such Lender shall contain a certification to Borrowers that such Lender is generally requiring reimbursement for the relevant amounts from similarly situated borrowers under comparable credit facilities. The Borrowers shall pay such amounts to the appropriate party within 30 days following receipt of the certificate.

- 3.4 Reimbursement Obligations. The Borrowers shall pay all Extraordinary Expenses within 30 days of receipt of an invoice (in reasonable detail and accompanied by backup documentation). Without duplication of the foregoing sentence, the Borrowers shall also reimburse Agent within 30 days of receipt of an invoice (in reasonable detail and accompanied by backup documentation) for all reasonable and documented out-of-pocket legal, examination and appraisal fees and expenses (in the case of legal fees and expenses, fees and expenses of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent) incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (c) subject to the limits of Section 10.1.1(b), any examination or appraisal with respect to any Obligor or Collateral by Agent's personnel or a third party (including any insurance review).
- 3.5 <u>Illegality</u>. If any Lender reasonably determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Term Loans bearing interest by reference to the Term SOFR Rate, or to determine or charge interest based on the then applicable Benchmark, then, on written notice thereof by such Lender to Agent and Borrower Agent, all Term Loans shall bear interest at the Base Rate (without reference to any Benchmark component thereof) until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist.

### 3.6 Alternate Rate of Interest.

- (a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 3.6:
- (i) Agent reasonably determines (which determination shall be conclusive absent manifest error) (A) in connection with the determination of the applicable rate of interest for the Term Loans on any month, that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis); or
- (ii) Agent is advised by the Required Lenders that in connection with the determination of the applicable rate of interest for the Term Loans on any month the Term SOFR Rate will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan);

then Agent shall give notice thereof to the Borrower Agent and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark (which Agent agrees to deliver promptly when such circumstances cease to exist), the Term Loans shall bear interest based on the Base Rate until Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark (which Agent agrees to deliver promptly when such circumstances cease to exist).

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

- (c) Notwithstanding anything to the contrary herein or in any other Loan Document, Agent, in consultation with the Borrower, will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.
- (d) Agent will promptly notify the Borrower Agent and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any Agreed Tenor, and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, or any Lender (or group of Lenders) pursuant to this **Section 3.6**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this **Section 3.6**.
- (e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) an Agreed Tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that an Agreed Tenor for such Benchmark is or will be no longer representative, then Agent may modify the definition of "Agreed Tenor" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Agent may modify the definition of "Agreed Tenor" for all Benchmark settings at or after such time to reinstate such previously removed tenor.
- (f) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Term Loans shall bear interest at the Base Rate until such time as a Benchmark Replacement is implemented pursuant to this **Section 3.6**.

# 3.7 Increased Costs; Capital Adequacy.

- 3.7.1 <u>Increased Costs Generally</u>. If any Change in Law shall:
- (a) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender;
- (b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Term Loan or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender or the applicable offshore interbank market any other condition affecting this Agreement or any other Loan Document or any Term Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining, any Loan (or of maintaining its obligation to make any such Term Loan), or to reduce the amount of any sum received or receivable by a Lender hereunder (whether of principal, interest or any other amount) then, within 30 days of receipt of a certificate of the type specified in **Section 3.3** from such Lender, Borrowers will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered.

- 3.7.2 <u>Capital Requirements</u>. If a Lender determines that a Change in Law affecting such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or holding company's capital as a consequence of this Agreement, or such Lender's Term Loan Commitments, or the Term Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time within 30 days of receipt of a certificate of the type specified in **Section 3.3**, Borrowers will pay to such Lender, as the case may be, such additional amounts as will compensate it or such Lender's holding company for the reduction suffered.
- 3.7.3 <u>Compensation</u>. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender for any increased costs or reductions suffered more than 90 days (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender notifies Borrower Agent of the applicable Change in Law and of such Lender's intention to claim compensation therefor.
- 3.8 <u>Mitigation</u>. If any Lender gives a notice under Section 3.5 or requests compensation under Section 3.7, or if Borrowers are required to pay any Indemnified Taxes or additional amounts with respect to a Lender under Section 5.9, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to it or unlawful. The Borrowers shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

### 3.9 Funding Losses.

3.9.1 If for any reason (a) any Borrowing of a Term Loan does not occur on the date specified therefor in a Notice of Borrowing, or (b) Borrowers fail to repay a Term Loan when required hereunder, then Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of margin). A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to Borrower Agent and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

3.10 Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law ("maximum rate"). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations under the Loan Documents or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations under the Loan Documents.

# **SECTION 4. LOAN ADMINISTRATION**

- 4.1 Manner of Borrowing and Funding Term Loans.
- 4.1.1 Notice of Borrowing. To request Term Loans on the Closing Date, Borrower Agent shall give Agent a Notice of Borrowing no later than 12:00 noon, at least one (1) Business Day (or such shorter period agreed by Agent) prior to the Closing Date.
  - 4.2 [Reserved].
  - 4.3 [<u>Reserved</u>].
- 4.4 **Borrower Agent**. Each Borrower hereby designates CAI ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Term Loans, delivery or receipt of communications, delivery of Borrower Materials required to be delivered by Borrowers hereunder, payment of Obligations, requests for waivers, amendments or other modifications, accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice or communication with a Borrower hereunder to Borrower Agent on behalf of such Borrower. Each of Agent and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking by Borrower Agent shall be binding upon and enforceable against such Borrower.
- 4.5 **One Obligation**. The Term Loans and other Obligations constitute one general obligation, on a joint and several basis, of Borrowers and are secured by Agent's Lien on all Collateral; <u>provided</u>, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.
- 4.6 <u>Effect of Termination</u>. Until Full Payment of all Obligations under the Loan Documents, all undertakings of Borrowers contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. Sections 3.4, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2, this Section and each indemnity (and related provisions (including the obligation to return any payments to which an indemnitee was not entitled to payment)) or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations subject to the limitations set forth in such Sections, if any.

#### **SECTION 5. PAYMENTS**

5.1 General Payment Provisions. All payments or prepayments of Obligations under the Loan Documents shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes (except as provided in Section 5.9), and in immediately available funds, prior to 2:00 p.m. (or such later time as Agent may agree in its reasonable discretion) on the due date or the date fixed for any prepayment hereunder. Any amounts received after such time may, at the discretion of Agent, be deemed made on the next Business Day for purposes of calculating interest thereon. Except as expressly provided herein, all such payments shall be made to Agent at its offices at 11100 Santa Monica Blvd, Suite 800, Los Angeles, California 90025.

### 5.2 Repayment of Obligations.

- 5.2.1 The Borrowers shall repay the Term Loan to Agent, for the ratable account of the Lenders, on April 30, July 31, October 31 and January 31 of each year, commencing on January 31, 2025, in an amount equal to one and one-quarter of one percent (1.25%) of the original aggregate principal amount of the Term Loan (giving effect to any prepayments applied thereto under **Section 5.6**) on each such date, with the remaining balance thereof payable in full on the Term Loan Termination Date. The Term Loan may be prepaid from time to time.
- 5.2.2 In the event and on such occasion that Term Loan Usage exceeds the sum of (x) the Borrowing Base and (y) the Term Loan Push-Down Reserve maintained against the Revolving Borrowing Base, then the Borrowers shall on the immediately succeeding Business Day repay Term Loans in an amount equal to such excess.
- 5.2.3 If on any day Revolving Outstandings exceeds \$400,000,000, then the Borrowers shall, on the immediately succeeding Business Day, repay Revolving Loans in an amount sufficient to reduce Revolving Outstandings to an amount that does not exceed \$400,000,000 (and thereafter, if any excess remains or Availability continues to be less than required by this **Section 5.2.3** due to outstanding LC Obligations (as defined in the Revolving Credit Agreement), cash collateralize such outstanding LC Obligations (as defined in the Revolving Credit Agreement) in an amount equal to such excess or until the Borrowers have satisfied this **Section 5.2.3**).
- 5.3 <u>Curative Equity</u>. Within one (1) Business Day of the date of receipt by any Borrower of the proceeds of any Curative Equity pursuant to **Section 10.4**, such Borrower shall <u>first</u>, prepay the outstanding principal of the Revolving Obligations in accordance with **Section 5.3** of the Revolving Credit Agreement (including the cash collateralization of any such Revolving Obligations) and <u>second</u>, at any time after the Discharge of ABL Obligations, prepay the outstanding principal of Terms Loans in an amount equal to 100% of remaining balance of such proceeds (together with accrued interest thereon), net of any reasonable out-of-pocket expenses incurred in connection with the issuance of such Curative Equity.
- 5.4 <u>CARES Act Tax Refund Proceeds</u>. Within one (1) Business Day following receipt by any Obligor or any Affiliate thereof of any portion of the CARES Act Tax Refund Proceeds, the Borrowers shall prepay the principal of the Term Loans in an amount equal to 100% of the amount of the CARES Act Tax Refund Proceeds; <u>provided</u>, <u>however</u>, that the principal amount of the Term Loans required to be prepaid pursuant to this **Section 5.4** shall not exceed \$15,000,000 in the aggregate.
- 5.5 Marshaling; Payments Set Aside. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers is made to Agent or any Lender, or if Agent or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person in any Insolvency Proceeding, then to the extent of such recovery, the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

#### 5.6 Application and Allocation of Payments.

- 5.6.1 <u>Application of Payments Generally.</u> Subject to **Section 5.6.2** and **Section 5.6.3**, payments made by Borrowers hereunder shall be applied (a) <u>first</u>, to Obligations under the Loan Documents then due and owing, if any; (b) <u>second</u>, to other Obligations specified by Borrowers, and (c) <u>third</u>, as determined by Agent in its discretion.
- 5.6.2 <u>Application of Voluntary and Mandatory Prepayments</u>. Subject to **Section 5.6.3**, any payment made by Borrowers to Agent pursuant to **Section 5.2**, **Section 5.3** or **Section 5.4**, in each case, shall be applied to prepay the remaining scheduled installments of the Term Loans in inverse order of maturity.
- 5.6.3 <u>Post-Default Allocation</u>. Notwithstanding anything in any Loan Document to the contrary, during the existence of an Event of Default under **Section 11.1(j)**, or during any other Event of Default at the discretion of Agent or Required Lenders, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows:

first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent;

second, to all other amounts owing to Agent, including Protective Advances funded by Agent;

*third*, to all Obligations constituting fees based on the amount of the Term Loan then prepaid, repaid or required to be repaid, as provided below in this **Section 5.6.3**), indemnification, costs or expenses owing to Lenders;

fourth, to all Obligations constituting interest;

fifth, to all Term Loans;

sixth, to all remaining Obligations; and

LAST, to Borrowers.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. The allocations in this Section are solely to determine the priorities among Secured Parties and may be changed by agreement of affected Secured Parties without the consent of any Obligor. No Obligor has any right to direct the application of payments or Collateral proceeds subject to this Section 5.6.3.

5.7 **Dominion Account**. The ledger balance in the main Dominion Account as of the end of each Business Day shall be applied at the beginning of the next Business Day, (a) <u>first</u>, to the Revolving Obligations (as provided in the Revolving Credit Agreement, including the cash collateralization of any such Revolving Obligations), and (b) <u>second</u>, to the Obligations, in each case, during each Business Day of a Dominion Trigger Period. Any resulting credit balance shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Event of Default exists.

5.8 Account Stated. Agent shall maintain, in accordance with its customary practices, loan account(s) (collectively the "Loan Account") evidencing the Debt of Borrowers hereunder, and each Borrower confirms that such arrangement shall have no effect on the joint and several character of its liability for the Obligations. Any failure of Agent to record anything in a Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries made in a Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in a Loan Account is provided to any Person for verification (or inspected in the case of any Person other than Borrowers), the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt (or inspection, as applicable) that specific information is subject to dispute; provided that payment by Borrowers to Agent of any amounts owed hereunder which are under dispute by Borrowers shall not be deemed a waiver of Borrowers' right to continue such dispute.

## 5.9 **Taxes**.

- 5.9.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.
- (a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Agent in its discretion) requires the deduction or withholding of any Tax from any such payment by Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding based on information and documentation provided pursuant to **Section 5.10**.
- (b) If Agent or any Obligor is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) Agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.
- (c) If Agent or any Obligor is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.
- 5.9.2 <u>Payment of Other Taxes</u>. Without limiting the foregoing, Borrowers shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

#### 5.9.3 Tax Indemnification.

- (a) Each Borrower shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any penalties, interest and reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Borrower shall indemnify and hold harmless Agent against any amount that a Lender fails for any reason to pay to Agent as required pursuant to this Section. Each Borrower shall make payment within 30 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.
- (b) Each Lender shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender (but only to the extent Borrowers have not already paid or reimbursed Agent therefor and without limiting Borrowers' obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error.
- 5.9.4 Evidence of Payments. If Agent or an Obligor pays any Taxes pursuant to this Section, then upon request and as soon as practicable after payment, Agent shall deliver to Borrower Agent or Borrower Agent shall deliver to Agent, respectively, a copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment or other evidence of payment reasonably satisfactory to Agent or Borrower Agent, as applicable.
- 5.9.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender, nor have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of a Lender. If a Recipient determines in its discretion that it has received a refund of any Taxes as to which it has been indemnified by Borrowers or with respect to which a Borrower has paid additional amounts pursuant to this Section, it shall pay Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrowers agree, upon request by the Recipient, to repay the amount paid over to Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to Borrowers if such payment would place the Recipient in a less favorable net after-Tax position than it 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. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its taxes that it deems confidential) available to any Obligor or other Person.
- 5.9.6 <u>Survival</u>. Each party's obligations under **Sections 5.9** and **5.10** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender and the repayment, satisfaction, discharge or Full Payment of any Obligations under the Loan Documents.

# 5.10 Lender Tax Information.

- 5.10.1 <u>Status of Lenders</u>. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrowers and Agent properly completed and executed documentation reasonably requested by Borrowers or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrowers or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrowers or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in **Sections 5.10.2(a)**, (b) and (d)) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.
  - 5.10.2 <u>Documentation</u>. Without limiting the foregoing, if any Borrower is a U.S. Person,
- (a) Any Lender that is a U.S. Person shall deliver to Borrowers and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), executed originals of IRS Form W 9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;
- (b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of originals as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), whichever of the following is applicable:
  - (i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
    - (ii) executed originals of IRS Form W 8ECI;
  - (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3) (A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code ("U.S. Tax Compliance Certificate"), and (y) executed originals of IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable; or
  - (iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; <u>provided, however</u>, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct or indirect partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of Borrowers or Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers or Agent to determine the withholding or deduction required to be made; and

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrowers and Agent at the time(s) prescribed by law and otherwise as reasonably requested by Borrowers or Agent, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for them to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

5.10.3 <u>Redelivery of Documentation</u>. If any form or certification previously delivered by a Lender pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrowers and Agent in writing of its inability to do so.

# 5.11 Nature and Extent of Each Borrower's Liability.

5.11.1 Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Lenders the prompt payment and performance of, all Obligations. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Full Payment of the Obligations under the Loan Documents, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Obligations or any action, or the absence of any action, by Agent or any Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any Lender against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Obligations under the Loan Documents.

### 5.11.2 Waivers.

(a) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses

available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations under the Loan Documents and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is a Borrower. It is agreed among each Borrower, Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and Lenders would decline to make Term Loans. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(b) During the continuance of an Event of Default, Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this Section 5.11. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Agent may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 5.11, notwithstanding that any present or future law or court decision may have the effect of reducing the amount o

## 5.11.3 Extent of Liability; Contribution.

- (a) Notwithstanding anything herein to the contrary, each Borrower's liability under this **Section 5.11** shall not exceed the greater of (i) all amounts for which such Borrower is primarily liable, as described in clause (c) below, and (ii) such Borrower's Allocable Amount.
- (b) If any Borrower makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, ratably based on their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 5.11** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

- (c) This **Section 5.11.3** shall not limit the liability of any Borrower to pay or guarantee Term Loans made directly or indirectly to it (including Term Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.
- 5.11.4 Joint Enterprise. Each Borrower has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. The Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. The Borrowers acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.
- 5.11.5 <u>Subordination</u>. Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of all Obligations under the Loan Documents.

### **SECTION 6. CONDITIONS PRECEDENT**

- 6.1 <u>Conditions Precedent to Term Loans</u>. Lenders shall not be required to fund the Term Loan, until the date ("<u>Closing Date</u>") that each of the following conditions has been satisfied (or waived in accordance with **Section 14.1**), in each case, in form and substance satisfactory to Agent and the Lenders:
- (a) Term Notes shall have been executed by Borrowers and delivered to each Lender that requests issuance of a Term Note. This Agreement, the Guaranty, the Security Agreement, the ABL Intercreditor Agreement, the Third Lien Intercreditor Agreement, the Permitted ABS Intercreditor Agreement, the Equity Interest Pledge Agreements, the Fee Letter and any applicable Intellectual Property Security Agreements shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor (to the extent a party thereto) shall be in compliance with all terms thereof.
- (b) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral (and all filing and recordation fees shall be paid concurrently with such filing or recordation), as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.
- (c) Agent shall have received certificates from a Senior Officer of Borrower Agent certifying that, after giving effect to the making of Term Loans and the transactions contemplated hereby, (i) Borrowers and their Subsidiaries, taken as a whole on a consolidated basis, are Solvent; (ii) no Default or Event of Default exists; and (iii) the representations and warranties set forth in **Section 9** are true and correct (in accordance with **clause** (q) below).
- (d) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

- (e) Agent shall have received a customary written opinion of Sidley Austin LLP.
- (f) Agent shall have received copies of the charter documents of each Obligor, certified as of a recent date by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization. Agent shall have received good standing certificates for each Obligor, issued as of a recent date by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.
- (g) Since January 31, 2023, there has been no change in the financial condition of Parent or any of its Subsidiaries (when taken as a whole) that could reasonably be expected to have a Material Adverse Effect.
- (h) Substantially concurrently with the consummation of the Badcock Acquisition, the Borrowers shall have paid all fees and expenses due and payable to Agent and Lenders on the Closing Date, including, to the extent invoiced at least one (1) Business Day prior to the Closing Date, reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the Borrowers hereunder.
- (i) Agent shall have received a copy of the current Credit and Collection Guidelines in effect on the Closing Date (which may, in the case of Confidential Information, be redacted).
  - (j) Agent shall have received an updated Borrowing Base Report, dated as of the Closing Date and executed by a Senior Officer.
  - (k) Agent shall have received a Notice of Borrowing with respect to the Term Loan no less than one (1) day prior to the Closing Date.
- (l) Agent and the Lenders shall have received all documentation and other information, including tax identification numbers of the Obligors, required by such institution or its bank regulatory authorities under applicable economic sanctions laws, "know your customer" and other terrorism, counter-terrorism and anti-money laundering rules and regulations, including the PATRIOT Act and the United States Executive Order No. 13224 on Terrorist Financing.
  - (m) Agent shall have received duly executed and effective copies of:
    - (i) substantially concurrently with the consummation of the Badcock Acquisition, the Badcock Acquisition Agreement;
    - (ii) an amendment to the Revolving Credit Agreement, in form and substance acceptable to the Lenders; and
    - (iii) an amendment to the Third Lien Term Loan Agreement, in form and substance acceptable to the Lenders.
- (n) Each Obligor shall have obtained all Governmental Approvals and all consents of other Persons, in each case that are necessary in connection with the entering into of the Loan Documents to be delivered on the Closing Date, and each of the foregoing shall be in full force and effect.
- (o) There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that (i) is related to this Agreement or the other Loan Documents or (ii) in the reasonable opinion of Agent, singly or in the aggregate, could have a Material Adverse Effect.

- (p) No Default or Event of Default exists or would result from the funding of the Term Loan or from the application of the proceeds thereof on the Closing Date.
- (q) The representations and warranties of each Obligor in the Loan Documents are true and correct in all material respects (and in all respects with respect to any representations and warranties which are expressly qualified with materiality) on the Closing Date, and upon giving effect to, the funding of the Term Loans (except for representations and warranties that relate solely to an earlier date, in which case they are true in correct in all material respects (and in all respects with respect to any representations and warranties which are expressly qualified with materiality) as of such earlier date).
- (r) The Badcock Acquisition shall have been consummated, or shall substantially concurrently with the making of the Term Loans on the Closing Date be consummated, in all material respects in accordance with the Badcock Acquisition Agreement and the Agent shall have received a certificate of a duly authorized officer of Borrower Agent certifying as to the satisfaction of the condition set forth in this **clause (r)**.

#### **SECTION 7. COLLATERAL**

- 7.1 <u>Grant of Security Interest</u>. To secure the prompt payment and performance of all Obligations, each Borrower hereby assigns and transfers to Agent, and hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all of the following Property of such Borrower (other than Excluded Collateral), whether now owned or hereafter acquired, and wherever located:
  - (a) all Contracts and all Third Party Contracts;
  - (b) all Accounts including Credit Card Accounts;
  - (c) all Chattel Paper, including electronic chattel paper;
  - (d) all Commercial Tort Claims, including those shown, as of the Closing Date, on Schedule 9.1.16;
  - (e) all Deposit Accounts;
  - (f) all Documents;
  - (g) all General Intangibles, including Intellectual Property and the CARES Act Tax Refund Claim;
  - (h) all Goods, including Inventory, Equipment and fixtures;
  - (i) all Instruments;
- (j) all Investment Property, including the Equity Interests of each Borrower in its Subsidiaries set forth on **Schedule 7.1(j)** and all Class C Retained Notes;
  - (k) all Letter-of-Credit Rights;
  - (l) all Supporting Obligations;

- (m) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender;
- (n) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (o) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

Each Contract and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor directly or indirectly from the sale of the securities in a Permitted ABS Transaction on account of such Contract becoming a Securitized Contract) shall be released from Agent's security interest automatically upon becoming a Securitized Contract without further action by Agent or any other Person. Each Third Party Contract and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor on account of the sale thereof) shall be released from Agent's security interest automatically upon being sold to a third party in accordance with the terms of the Loan Documents without further action by Agent or any other Person. Each Class C Retained Note and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor on account of the sale thereof) shall be released from Agent's security interest automatically upon being sold to a third party in accordance with Section 10.2.6(b) without further action by Agent or any other Person. Agent shall execute a release evidencing the foregoing upon any Borrower's request; provided that only Agent or its designee may file any UCC-3 financing statements in connection with the foregoing (which Agent agrees to do promptly upon Borrower Agent's request). If a Securitized Contract is transferred from a Securitization Subsidiary back to a Borrower (other than a defaulted Securitized Contract being transferred back solely for tax rebate purposes), it shall cease being a Securitized Contract upon such transfer back and, together with its related security shall again constitute Collateral hereunder.

# 7.2 Lien on Deposit Accounts.

7.2.1 <u>Deposit Accounts</u>. To further secure the prompt payment and performance of all Obligations, each Borrower hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all amounts credited to any Deposit Account of such Borrower (other than Excluded Accounts), including any sums in any blocked or lockbox accounts (if any) or in any accounts into which such sums are swept. Each Borrower authorizes and directs each bank or other depository to deliver all balances in each such Deposit Account maintained by such Borrower with such depository promptly following the receipt by such bank or other depository institution of a notice of a Dominion Trigger Period, to (a) <u>first</u>, the Revolving Obligations (as provided in the Revolving Credit Agreement, including the cash collateralization of any such Revolving Obligations) and (b) <u>second</u> such accounts directed by Agent, in its sole discretion, for application to the Obligations. Each Borrower irrevocably appoints Agent as such Borrower's attorney-in-fact to collect such balances to the extent any such delivery is not so made.

- 7.3 Reserved.
- 7.4 Reserved.
- 7.5 Other Collateral.

- 7.5.1 Commercial Tort Claims. Borrowers shall promptly notify Agent in writing if any Borrower has a Commercial Tort Claim (other than, as long as no Event of Default exists, a Commercial Tort Claim for less than \$5,000,000) and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority Lien (subject only to the prior Liens consisting of Revolving Agent Liens and Permitted Liens arising by, and which have priority by, operation of law) in favor of Agent for the benefit of the Secured Parties.
- 7.5.2 Certain After-Acquired Collateral. The Borrowers (a) shall promptly notify Agent if a Borrower obtains an interest in any Deposit Account (other than an Excluded Account) and (b) shall notify Agent concurrently with the delivery of any Compliance Certificate delivered pursuant to Section 10.1.1(d)(i), if, during the most recently ended Fiscal Quarter to which such Compliance Certificate relates, any Borrower obtains any interest in Collateral (other than Contracts and related assets) consisting of Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights (provided that, notwithstanding the foregoing, the Borrowers shall notify Agent promptly but in any event within ten (10) Business Days if any Borrower obtains any interest in Collateral of a type described in this clause (b) with a fair market value in excess of \$15,000,000 individually or in the aggregate) and, in each case, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority Lien (subject to Revolving Agent Liens and other Permitted Liens) on such Collateral, including obtaining any appropriate possession, or control agreement. If any Collateral included in the Borrowing Base is in the possession of a third party other than Revolving Agent, at Agent's reasonable request, Borrowers shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent.
- 7.5.3 <u>Limitations</u>. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Borrowers relating to any Collateral.
- 7.5.4 <u>Further Assurances</u>. All Liens granted to Agent for the benefit of the Secured Parties under the Loan Documents are for the benefit of Secured Parties. Promptly upon request, Borrowers shall deliver such instruments and agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Borrower authorizes Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of such Borrower, or words to similar effect, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.
- 7.6 <u>Contract Legend</u>. Subject to <u>Section 10.1.16</u>, from and after the Closing Date, if such Contract is tangible chattel paper and has not become a Securitized Contract, Borrowers shall promptly following the execution or receipt of a Contract stamp or type in on the Contract the following:
- "This instrument or agreement is assigned as collateral to JPMorgan Chase Bank, N.A., as agent for secured parties under an asset based revolving credit facility and BRF Finance Co., LLC, as agent for secured parties under an asset based term credit facility".

#### **SECTION 8. COLLATERAL ADMINISTRATION**

8.1 <u>Collateral Reports</u>. By the 20th day of each month, Borrowers shall deliver to Agent (and Agent shall promptly deliver same to Lenders) (a) a Borrowing Base Report prepared as of the close of business of the previous month; <u>provided</u> that the NOLV Percentage to be applied to the Value of Eligible Inventory shall be the NOLV Percentage set forth in the most recent appraisal of Inventory received by Agent in accordance with this Agreement, a copy of which has been delivered to the Borrowers (<u>provided</u>, that Borrowing Base Reports shall be delivered weekly by the third (3rd) Business Day of each week during (x) an Increased Reporting Period; it being understood that Eligible Contracts, Eligible Inventory, the CAI Availability Reserve, the CCI Availability Reserve and the Badcock Availability Reserve shall be provided

by Borrower on a monthly basis at all times and (y) the Covenant Relief Period, which report shall be substantially in the form of the illustrative report provided to Revolving Agent pursuant to the Revolving Credit Agreement), (b) an aggregate list of Borrowers' Contracts, aged in 30 day contractual delinquency intervals and separately identifying the revolving Contracts; (c) a calculation of the Past Due Percent, the Cash Recovery Percent, Collateral Adjustment Percentage, the Net Charge-Off Percent; (d) an Inventory turn report of Borrowers' Inventory; (e) a listing of each Borrower's Inventory by location, specifying the amount of Inventory at each location; (f) the summary balances of Borrowers' Owned Contract Portfolio and ABS Contract Portfolio and delinquent balances of such portfolios; and (g) a certificate of an officer of Borrower Agent certifying as to the accuracy and completeness in all material respects of the foregoing; provided, further, that notwithstanding the foregoing, no such Borrowing Base Report delivered pursuant to this Section 8.1 shall be required to update such forgoing information set forth in the Borrowing Base Report delivered on the Closing Date with respect to Badcock until delivery of the first Borrowing Base Report under this Section 8.1 after the date that is 20 Business Days after the Closing Date (the "First Updated Badcock Report"). All calculations of Availability in any Borrowing Base Report shall be made by Borrowers and certified by a Senior Officer (and adjusted from time to time to give effect to any CAI Availability Reserve, CCI Availability Reserve, Badcock Availability Reserve or other Reserve then in effect). Notwithstanding the foregoing, Borrowers shall deliver an updated Borrowing Base Report (based upon the most recent month-end (or week-end, as applicable) information and other estimates reasonably believed to be true and correct at the time furnished) within (a) three (3) Business Days following receipt by any Obligor of any CARES Act Tax Refund Proceeds, which Borrowing Base Report shall reflect the reduction of the CARES Act Tax Refund Claim from the Borrowing Base (to the extent then included) and (b) three (3) Business Days after any portion of the "Eligible Class C Retained Notes" ceases to be eligible for inclusion in the Borrowing Base as a result of the definition of "Eligible Class C Retained Notes", including following any sale or other transfer of any Class C Retained Notes to any third party, which Borrowing Base Report shall reflect the corresponding reduction of the Class C Retained Notes from the Borrowing Base.

In the event that any Obligor shall engage in a transaction or a series of related transactions (other than sales of Inventory in the ordinary course of business or Asset Disposition of Contracts in connection with any Permitted ABS Transaction) which result in (i) the Asset Disposition or other transfer of assets (including pursuant to the sale of Equity Interests in a Subsidiary, or a merger, liquidation, amalgamation, division, contribution of assets, Equity Interests or Debt or otherwise) included in the determination of the Borrowing Base or the Revolving Borrowing Base, or (ii) the exclusion and/or removal of assets which were included in the determination of the Borrowing Base or the Revolving Borrowing Base (including, as a result of the application of the eligibility criteria) in an aggregate amount for any single or series of related transactions (or other applicable events) in excess of \$10,000,000, then prior to or concurrently with the consummation of any such transaction or series of related transactions (or the occurrence of any other applicable events), the Borrower Agent shall deliver to Agent for prompt further distribution to each Lender, an updated Borrowing Base Report reflecting such transactions or series of related transactions (or other applicable events) as of the date of the most recently delivered Borrowing Base Report, and demonstrating that no Overadvance or other Event of Default shall result from such transaction or series of related transactions (or other applicable events) (the foregoing, the "Borrowing Base Condition").

# 8.2 Administration of Contracts.

# 8.2.1 Contracts.

(a) The Borrowers hereby represent and warrant to Agent and Lenders with respect to the Contracts included in the Borrowing Base or the Revolving Borrowing Base, that: (i) each such Contract represents a bona fide obligation of the Contract Debtor, enforceable in accordance with its terms (except to the extent enforceability may be limited by applicable bankruptcy, insolvency, moratorium,

reorganization or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability); (ii) each existing Contract is for a liquidated amount payable by the Contract Debtor thereon on the terms set forth in the Contract therefor or in the schedule thereof delivered to Agent, without any offset, deduction, defense (including the defense of usury), or counterclaim (other than to the extent taken into account in the definition of Eligible Contracts); (iii) to the extent any Contract is in tangible form, there is only one original "Corporate Copy" counterpart and one original "Store Copy" counterpart of such Contract executed by the Contract Debtor and any copies of such original are clearly marked as copies; (iv) the signatures of all Contract Debtors are genuine and, to the knowledge of Borrowers, each Contract Debtor had the legal capacity to enter into and execute such documents on the date thereof; (v) each Borrower maintains policies and procedures designed to achieve compliance with Consumer Finance Laws; and (vi) Borrowers have complied, in all material respects, with all requirements of Applicable Law with respect to all such Contracts and related transactions; and have originated or acquired, serviced, collected and otherwise administered all Contracts and conducted Borrowers' business, in each case in accordance with the Credit and Collection Guidelines and, in all material respects, all applicable Consumer Finance Laws. Notwithstanding anything else to the contrary, the failure of Borrowers to satisfy any of the representations and warranties of this **Section 8.2.1(a)(i)** through (iv) with respect to Contracts resulting in an adjustment (in the aggregate) to the Borrowing Base and the Revolving Borrowing Base of \$5,000,000 or less shall not constitute a breach or Event of Default under this Agreement or any Loan Document but shall instead result in such materially affected Contracts being excluded from the determination of, or other appropriate ad

- (b) The Borrowers shall not grant any discount, credit or allowance to any such Contract Debtor except as otherwise permitted under the Revolving Credit Agreement.
- (c) Except as provided in Borrowers' Credit and Collection Guidelines and with respect to their "direct loan program", Borrowers shall not accept any note or other instrument (except a check or other instrument for the immediate payment of money) with respect to any Contract unless otherwise permitted under the Revolving Credit Agreement. If Revolving Agent consents to the acceptance of any such instrument (which consent shall not be required in the case of the Borrowers' "direct loan program"), it shall be considered as evidence of the Contract and not payment thereof and Borrowers will promptly deliver such instrument to Revolving Agent (or, after the Discharge of the ABL Obligations, Agent) (other than notes in connection with the "direct loan program"), endorsed by the applicable Borrower to Revolving Agent (or, after the Discharge of the ABL Obligations, Agent) in a manner reasonably satisfactory in form and substance to Revolving Agent. Regardless of the form of presentment, demand, notice of protest with respect thereto, the Contract Debtor shall remain liable thereon until such Instrument is paid in full.
- (d) Agent may rely, in determining which Contracts are Eligible Contracts, on all statements and representations made by Borrowers with respect thereto.
- (e) The Borrowers hereby represent and warrant to Agent and Lenders with respect to the Third Party Contracts (i) each Borrower maintains policies and procedures designed to achieve compliance with Consumer Finance Laws; and (ii) Borrowers have complied, in all material respects, with all requirements of Applicable Law with respect to all such Third Party Contracts originated by it and, at the time this representation and warranty is made, then serviced, collected or otherwise administered by it and related transactions and have originated, serviced, collected and otherwise administered all Third Party Contracts, in each case in accordance with all applicable Consumer Finance Laws in all material respects.

(f) [Reserved.]

- (g) If the Contract is in electronic format, (i) none of the Borrowers or a custodian or vaulting agent thereof has communicated an "authoritative copy" (as such term is used in Section 9-105 of the UCC) to any Person other than a Borrower or an Affiliate of a Borrower (which, in the case of an Affiliate of a Borrower, is a Person to whom such Borrower has delegated its duties or has entered into a subservicing arrangement and, in any case, is a Person who has agreed to hold such "authoritative copy" in trust for such Borrower (or its assigns)) and (ii) that is maintained by a custodian or vaulting agent, Borrower shall, upon request by Agent (but without duplication of, and only to the extent such request has not already been made by Revolving Agent), use commercially reasonable efforts to cause such custodian or vaulting agent to enter into a control agreement with Revolving Agent and Agent, which shall be in form and substance satisfactory to Agent. If the Contract is in print format, Borrowers shall keep such Contract at the chief executive office or other safe and secure location as designated by Borrower Agent to Agent from time to time.
- 8.2.2 <u>Taxes</u>. If any collections received from payments made by Contract Debtors includes charges for any Taxes, Agent is authorized (without duplication of, and only to the extent any such action has not already been commenced by Revolving Agent), in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge Borrowers therefor; <u>provided</u>, that neither Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.
- 8.2.3 <u>Contract Verification</u>. In connection with the conduct of any field examination permitted under **Section 10.1.1**, Agent shall have the right, in the name of Agent, any designee of Agent or any Borrower, to verify the validity, amount or any other matter relating to any Contracts by mail, telephone or otherwise. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.
- 8.2.4 Maintenance of Dominion Account. The Borrowers shall maintain Dominion Accounts pursuant to lockbox or other arrangements reasonably acceptable to Agent (it being understood and agreed that the Dominion Accounts pursuant to lockbox and/or other arrangements in effect on the Closing Date under the Revolving Credit Agreement are reasonably satisfactory to Agent). Subject to Section 10.1.16, at the request of Agent, the Borrowers shall obtain an agreement (in form and substance reasonably satisfactory to Agent) from each lockbox servicer (if any) and Dominion Account bank, establishing Agent's control over and Lien in the lockbox (if any) or Dominion Account, which may be exercised by Revolving Agent (or, if the Discharge of ABL Obligations has occurred, by Agent) during any Dominion Trigger Period, requiring prompt deposit of all remittances received in the lockbox (if any) to an account designated by Revolving Agent (or, upon the payment of Revolving Obligations in accordance with the Revolving Credit Agreement (including cash collateralization thereof, in accordance with the Revolving Credit Agreement), to an account designated by Agent that is under the sole dominion and control of Agent). Agent and Lenders assume no responsibility to Borrowers for any lockbox arrangement (if any) or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.
- 8.2.5 <u>Proceeds of Collateral</u>. Subject to Section **10.1.15**, the Borrowers shall request in writing that all payments on Contracts or otherwise relating to Collateral included in the Borrowing Base are made (a) directly to a Dominion Account (or a lockbox relating to a Dominion Account, if any) or (b) to a Badcock Store Account in accordance with **Section 8.5.2**. If any Borrower or its Subsidiary receives cash or Payment Items with respect to any such Collateral, it shall hold same in trust for Revolving Agent and Agent and promptly deposit same into a Dominion Account; <u>provided</u>, that payments on Securitized Contracts may be remitted to and held by the Securitization Subsidiary, its agents or the related Permitted ABS Agent and payments on any Third Party Contract may be remitted to and held by the purchaser of such Third Party Contract or its trustee, agent or other representatives and, in each case, shall not be subject to the requirements set forth above.

#### 8.3 Administration of Inventory.

- 8.3.1 Records and Reports of Inventory. Each Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form reasonably satisfactory to Agent (it being understood the form of such reports delivered to Revolving Agent under the Revolving Credit Agreement is satisfactory to Agent), on such periodic basis as Agent may request. Each Borrower shall conduct a physical inventory at each of its locations at least once per calendar year (excluding locations that have not been open for more than twelve months).
- 8.3.2 <u>Returns of Inventory</u>. No Borrower shall return any Inventory included in the Borrowing Base or the Revolving Borrowing Base to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default, Revolving Overadvance or Overadvance exists or would result therefrom; (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds \$15,000,000; and (d) any payment received by a Borrower in excess of the aggregate amount of \$15,000,000 in any month for a return is promptly remitted to Revolving Agent for application to the Revolving Obligations (in accordance with the Revolving Credit Agreement).
- 8.3.3 <u>Acquisition and Sale</u>. To Borrowers' knowledge, each Borrower's Inventory included in the Borrowing Base is produced, in all material respects, in accordance with the FLSA.

# 8.4 Administration of Equipment.

8.4.1 <u>Condition of Equipment</u>. The Equipment is in good operating condition and repair, and all necessary replacements and repairs have been made so that its value and operating efficiency are preserved at all times, reasonable wear and tear and casualty and condemnation excepted.

# 8.5 Administration of Deposit Accounts and Securities Accounts.

- 8.5.1 <u>Deposit Accounts and Securities Accounts.</u> **Schedule 8.5** lists, as of the Closing Date, all Deposit Accounts and Securities Accounts maintained by Borrowers (other than Badcock), including Dominion Accounts. Each Borrower shall take all actions necessary to establish Agent's first priority Lien (subject, as to priority, to Permitted Liens set forth in **Section 10.2.2(i)** and, including Revolving Agent Liens) on each Deposit Account and Securities Account (in each case, other than an Excluded Account) and, shall, subject to **Section 10.1.16**, cause all Deposit Accounts and Securities Accounts (in each case, other than Excluded Accounts) to be subject to control agreements. A Borrower shall be the sole account holder of each such Deposit Account or Securities Account and shall not allow any Person (other than Revolving Agent, Agent and the applicable depository bank or securities intermediary) to have control over such Deposit Accounts, Securities Accounts or any Property deposited therein. The Borrowers shall promptly notify Agent of any opening or closing of a Deposit Account or Securities Account (in each case, other than an Excluded Account).
- 8.5.2 <u>Badcock Store Accounts</u>. **Schedule 8.5** lists, as of the Closing Date, all Deposit Accounts and Securities Accounts maintained by Badcock, and identifies each of the Deposit Accounts established by Badcock that are used solely for receiving store receipts from any store owned or leased and operated by a dealer (together with any other Deposit Accounts at any time established or used by Badcock for receiving such store receipts from any such dealer-operated store location, each individually, a

"Badcock Store Account" and, collectively, the "Badcock Store Accounts"). Subject to Section 10.1.15, all funds deposited into any Badcock Store Account shall be sent by wire transfer or other electronic funds transfer on each Business Day to a Dominion Account of a Borrower except for (a) nominal amounts which are required to be maintained in such Badcock Store Accounts under the terms of the arrangements with the bank at which such Badcock Store Account is maintained or (b) funds deposited in Badcock Manual Sweeping Accounts, which shall be sent to a Dominion Account of a Borrower not less than twice every month (and which amounts shall not in the aggregate exceed at any one time (x) \$5,000,000 for the period commencing on the Closing Date through and including January 17, 2024 and (b) thereafter, \$1,000,000, except (i) to the extent from time to time additional amounts may be held in Badcock Store Accounts on Saturday, Sunday or other days where the applicable depositary bank is closed, which additional amounts are to be, and shall be, transferred on the next Business Day to a Dominion Account of a Borrower, and (ii) as Agent may otherwise agree).

# 8.6 Administration of Credit Card Accounts; CARES Act Tax Refund Claim; Class C Retained Notes.

8.6.1 Credit Card Agreements. Schedule 8.6.1 is a list of all Credit Card Agreements as of the Closing Date.

8.6.2 CARES Act Tax Refund Claim. (i) Except to the extent previously disclosed to Agent, all information provided to the Lenders in respect of the CARES Act Tax Refund Claim remains true and correct in all material respects as of the date of each Borrowing Base Report and without limiting the foregoing, the Borrowers shall promptly notify Agent and the Lenders in writing of any material change to such information, (ii) except as disclosed to Agent, there has been no materially adverse developments with respect to the assumptions upon which any Tax Materials rely, (iii) all claims or amended returns or other forms making claims for the CARES Act Tax Refund Claim available to the Obligors (and any Subsidiary filing as a part of a consolidated, combined or unitary Tax group), to the knowledge of the Senior Officers responsible for pursuing such claim, have been appropriately filed and/or executed, (iv) except as disclosed to Agent, neither the Parent nor any of its Subsidiaries has been audited or received notice of initiation thereof by any governmental taxing authority for any tax period for which the applicable statute of limitations for assessment of taxes remains open and (v) all such claims or amended returns or other forms reflect the anticipated receipt by the Borrower of not less than the CARES Act Tax Refund Claim reflected in the most recent Borrowing Base Report.

8.6.3 <u>Class C Retained Notes</u>. As of the Closing Date, the Borrowers do not hold any Class C Retained Notes. At any time any Class C Retained Notes are included in the determination of the Borrowing Base, the Borrowers hereby represent and warrant and, as applicable, agree with Agent and Lenders: (i) the ABS Contract Portfolio transferred pursuant to the applicable Permitted ABS Transaction governing such Class C Retained Notes as of the applicable cutoff date satisfied, in all material respects, the eligibility requirements for such receivables as set forth in the applicable Permitted ABS Documents (which eligibility requirements are customary for Permitted ABS Transactions) or have or will be repurchased in accordance with Permitted ABS Documents; (ii) to the extent that the servicer of the applicable ABS Contract Portfolio is a Borrower or an Affiliate thereof, such servicer will comply in all material respects with the Credit and Collection Guidelines and all other covenants of the servicer under the applicable Permitted ABS Documents (including with respect to the collection and disbursement of receivables for the ABS Contract Portfolio), except to the extent any non-compliance does not give rise to a "Servicer Default" under the applicable Permitted ABS Documents; and (iii) the Borrowers will furnish to Agent from time to time such information in its (or its Affiliates') possession available to other noteholders under the applicable Permitted ABS Documents as Agent may reasonably request.

# 8.7 General Provisions.

8.7.1 <u>Location of Collateral</u>. All tangible items of Collateral, other than Inventory in transit, Collateral out for repair, Inventory consigned by the Borrowers or their Subsidiaries to a third party and Collateral such as laptops, phones, mobile hotspots and similar devices utilized by directors, officers, employees and consultants, shall at all times be kept by Borrowers at the business locations set forth in **Schedule 8.7.1** (as such Schedule may be updated by Borrowers from time to time at the time of the delivery of a quarterly Compliance Certificate (it being understood that no violation of this provision shall be deemed to occur as a result of any Collateral being maintained at a new business location not previously set forth in **Schedule 8.7.1**, so long as such Schedule is updated to include such new business location in connection with the next succeeding delivery of a quarterly Compliance Certificate)), except that Borrowers may (a) make sales or other Asset Dispositions of Collateral in accordance with **Section 10.2.6**; and (b) move Collateral to another location not listed on **Schedule 8.7.1** upon ten (10) Business Days' prior written notice to Agent (or upon such shorter period as Agent may agree in its sole discretion).

# 8.7.2 Insurance of Collateral; Condemnation Proceeds.

- (a) Each Borrower shall maintain insurance with respect to the Collateral, in such amounts, with insurers and against such risks as are customarily maintained by similarly situated businesses operating in the same or similar locations. All proceeds under each policy (other than insurance with respect to business interruption, workers' compensation and similar insurance and directors and officers liability policies) shall name Agent as an additional insured or lender loss payee, as applicable. Unless Agent shall agree otherwise, each such policy shall include satisfactory endorsements to the extent available (i) showing Agent as lender loss payee; (ii) requiring 30 days' prior written notice to Agent in the event of cancellation of the policy for any reason except 10 days' notice shall be given for cancellation due to non-payment of premium; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Borrower or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. From time to time upon Agent's reasonable request, Borrowers shall deliver to Agent the certified copies of its insurance policies. If any Borrower fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Borrowers therefor. Each Borrower agrees to deliver to Agent, promptly as rendered, copies of all claims reports made to insurance companies with respect to Collateral included in the Borrowing Base or the Revolving Borrowing Base, in each case in excess of \$10,000,000. While no Event of Default exists, Borrowers may settle, adjust or compromise any insurance claim, as long as the proceeds of any insurance with respect to Collateral included in the Borrowing Base are delivered to Agent. If an Event of Default exists, after the Discharge of ABL Obligations, only Agent shall be authorized to settle, adjust and compromise such claims.
- (b) Any proceeds of insurance (other than proceeds from business interruption, workers' compensation and similar insurance and directors and officers liability insurance) and any awards arising from condemnation of any Collateral shall be paid to Revolving Agent and shall be deposited in a Dominion Account directed by Revolving Agent or, if the Discharge of ABL Obligations shall have otherwise occurred, paid to Agent and deposited in a Dominion Account directed by Agent.
- (c) After Revolving Agent's (or Agent's, as provided in clause (b) above) receipt of any insurance proceeds or condemnation awards relating to any loss or destruction of Equipment or Real Estate, Borrowers may use such proceeds or awards to repair or replace such Equipment or Real Estate as long as (i) no Event of Default exists and is continuing; (ii) such repair or replacement is promptly undertaken and concluded and (iii) the repaired or replaced Property is free of Liens, other than Permitted Liens.

8.7.3 <u>Protection of Collateral</u>. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Borrowers. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Borrowers' sole risk.

8.7.4 <u>Defense of Title to Collateral</u>. Each Borrower shall at all times defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands whatsoever, except Permitted Liens.

#### 8.8 Power of Attorney.

Each Borrower hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Borrower's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Agent, or Agent's designee, may (but shall have no obligation to), without notice and in either its or a Borrower's name, but at the cost and expense of Borrowers:

- (a) Endorse a Borrower's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control for deposit in a Dominion Account; and
- (b) During the continuance of an Event of Default, with respect to any Collateral (i) send notices to Contract Debtors of the assignment of their Contracts, demand and enforce payments on Contracts, by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Contract; (ii) settle, adjust, modify, compromise, discharge or release any claims with respect to amounts due on Contracts or other Collateral, or any legal proceedings brought to collect on Contracts or other Collateral, (iii) collect, liquidate, and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (iv) prepare, file and sign a Borrower's name to a proof of claim or other document in a bankruptcy of a Contract Debtor, or to any notice, assignment or satisfaction of Lien or similar documents; (v) receive, open and dispose of mail addressed to a Borrower, and notify postal authorities to deliver any such mail to an address designated by Agent; (vi) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Contract, Inventory or other Collateral; (vii) use a Borrower's stationery and sign its name to verifications of Contract and notices to Contract Debtors; (viii) use information contained in any data processing, electronic, or other information systems relating to Collateral; (ix) make and adjust claims under insurance policies; (x) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which a Borrower is a beneficiary; (xi) following three (3) Business Days' written notice to Borrower Agent, exercise any voting or other rights under or with respect to any Investment Property; and (xii) take all other lawful actions as Agent deems appropriate to fulfill any Borrowers' obligations under the Loan Documents.
- (c) All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

#### SECTION 9. REPRESENTATIONS AND WARRANTIES

- 9.1 General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make the Term Loan, Parent and each Borrower represents and warrants that:
- 9.1.1 Organization and Qualification. Parent and its Subsidiaries are duly organized, validly existing and in good standing under the laws of the jurisdiction of their organization, except where the failure to be so organized or validly existing (other than in the case of a Borrower) or in good standing could not reasonably be expected to have a Material Adverse Effect. Parent and its Subsidiaries are duly qualified, authorized to do business and in good standing in each other jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect. No Obligor is an EEA Financial Institution.
- 9.1.2 Power and Authority. Each Obligor is duly authorized to execute, deliver and perform its obligations under the Loan Documents to which it is a party. The execution, delivery and performance by each Obligor of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or organizational action, and do not (a) require any consent or approval of any holders of Equity Interests of any Obligor, other than those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a default under any Applicable Law or Material Contract; or (d) result in or require the imposition of any Lien (other than Permitted Liens) on any Property of any Obligor, except, in the case of clauses (c) and (d), for any contravention, violation or imposition of a Lien as could not reasonably be expected to result in a Material Adverse Effect.
- 9.1.3 Enforceability. Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable against such Obligor in accordance with its terms, except as enforceability may be limited by bankruptcy, fraudulent transfer, insolvency, reorganization, moratorium, administration or similar laws relating to, limiting or otherwise affecting creditors' rights or by equitable principles or principles of public order relating to enforceability.
- 9.1.4 <u>Capital Structure</u>. **Schedule 9.1.4** sets forth, as of the Closing Date, for each Subsidiary of Parent, its name, its jurisdiction of organization and its authorized and issued Equity Interests. Parent or its applicable Subsidiary has good title to its Equity Interests in its Subsidiaries, subject only to Agent's Lien and Permitted Liens, and all such Equity Interests are duly issued, fully paid and non-assessable. As of the Closing Date, except as set forth in **Schedule 9.1.4**, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Subsidiaries of Parent.
- 9.1.5 <u>Corporate Names; Locations</u>. During the five years preceding the Closing Date, except as shown on **Schedule 9.1.5**, neither Parent nor any of its Subsidiaries has been known as or used any corporate, fictitious or trade names, has been the surviving corporation of a merger or combination, or has acquired any substantial part of the assets of any Person. As of the Closing Date, the chief executive offices and other places of business of Parent and its Subsidiaries are shown on **Schedule 8.7.1**.
- 9.1.6 <u>Title to Properties; Priority of Liens</u>. Each of Parent and its Subsidiaries has good and indefeasible title to (or valid leasehold interests in) all of its Real Estate, and good title to all of its personal Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except Permitted Liens and minor defects in title to its Real Estate that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purpose or that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of Parent and its Subsidiaries has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, in each case other than Permitted Liens. Subject to actions required to be taken by Agent, including the filing of UCC-1 financing statements, all Liens of Agent in the Collateral will be duly perfected, first priority Liens, subject only to Revolving Agent Liens and other Permitted Liens.

9.1.7 Financial Statements. The consolidated balance sheets, and related statements of income, cash flow and shareholder's equity, of Parent and its Subsidiaries that have been delivered to Agent and Lenders, have been prepared in accordance with GAAP, and fairly present the financial positions and results of operations of Parent and its Subsidiaries at the dates and for the periods indicated, subject, in the case of certain interim statements, to the absence of footnotes and normal year-end adjustments. All projections pertaining to Parent and its Subsidiaries heretofore delivered to Agent and Lenders by or on behalf of the Obligor have been prepared in good faith, based on assumptions believed to be reasonable in light of the circumstances at such time, it being understood that (a) whether or not such projections are in fact achieved will depend upon future events which are beyond the control of Parent or any of its Subsidiaries, (b) no assurance can be given that such projections will be realized, (c) actual results may vary from the projections and such variations may be material and (d) the projections should not be regarded as a representation by Parent or any of its Subsidiaries or their management that the projected results will be achieved. Since October 31, 2022, there has been no change in the financial condition of Parent or any of its Subsidiaries (when taken as a whole) that could reasonably be expected to have a Material Adverse Effect. As of the Closing Date, the Borrowers and their Subsidiaries, taken as a whole on a consolidated basis, are Solvent.

# 9.1.8 Reserved.

9.1.9 <u>Taxes</u>. Parent and each of its Subsidiaries have filed all federal and other material tax returns that it is required by Applicable Law to file, and has paid, caused to be paid or made provision for the payment of, all material Taxes upon it, its income and its Properties that are due and payable, except in each case to the extent constituting Permitted Liens.

# 9.1.10 <u>Reserved</u>.

- 9.1.11 Intellectual Property. Each of Parent and its Subsidiaries owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others except for any such failure to own or have rights, conflict or infringement that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There is no pending or, to Parent's or any Borrower's knowledge, Intellectual Property Claim threatened in writing with respect to Parent, any of its Subsidiaries or any of their Intellectual Property which could reasonably be expected to result in a Material Adverse Effect. All material federally registered Intellectual Property owned, used or licensed by, or otherwise subject to any interests of, Parent or its Subsidiaries is shown on Schedule 9.1.11 (as such Schedule may be updated by Borrowers from time to time at the time of the delivery of a Compliance Certificate in accordance with Section 10.1.2). It is understood and agreed that the representation and warranty set forth in this Section 9.1.11, as it relates to items disclosed on Schedule 9.1.11, shall be deemed not to have been breached to the extent any information set forth on such Schedule changes, so long as such Schedule is updated to reflect such changes in connection with the next succeeding delivery of a quarterly Compliance Certificate or by such other notice or at such later date as is acceptable to Agent.
- 9.1.12 Governmental Approvals. Each of Parent and its Subsidiaries have, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. To each Borrowers' knowledge, all necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Parent and its Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, in each case except where the failure to have such license, permit or certificate or noncompliance could not reasonably be expected to have a Material Adverse Effect.

- 9.1.13 <u>Compliance with Laws</u>. Each of Parent and its Subsidiaries has duly complied, and its Properties and business operations are in compliance, in all material respects with all Applicable Law (including all Consumer Finance Laws), except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There are no citations, notices or orders of material non-compliance issued to Parent or any of its Subsidiaries under any Applicable Law, except as could not reasonably be expected to result in a Material Adverse Effect.
- 9.1.14 Compliance with Environmental Laws. Except as disclosed on **Schedule 9.1.14**, to Parent's or any Borrower's knowledge, neither Parent's nor any of its Subsidiaries' past or present operations, Real Estate or other Properties are subject to any federal, state or local investigation to determine whether any remedial action is needed to address any Environmental Release that could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Subsidiaries has received any Environmental Notice that could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Subsidiaries has knowledge of any facts or conditions that would reasonably be expected to result in any material contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or, to Parent's or any Borrower's knowledge, previously owned, leased or operated by it, in each case which could reasonably be expected to result in a Material Adverse Effect.
- 9.1.15 <u>Burdensome Contracts</u>. Neither Parent nor any of its Subsidiaries is a party or subject to any contract, agreement or charter restriction that could reasonably be expected to have a Material Adverse Effect.
- 9.1.16 <u>Litigation</u>. Except as shown on **Schedule 9.1.16**, there are no proceedings or investigations pending or, to Parent's or any Borrower's knowledge, threatened in writing against Parent or its Subsidiaries, or any of their businesses, operations or Properties that (a) as of the Closing Date, relate to any Loan Documents or transactions contemplated thereby or (b) could reasonably be expected to have a Material Adverse Effect. Neither Parent nor its Subsidiaries are in default with respect to any order, injunction or judgment of any Governmental Authority that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.
  - 9.1.17 No Defaults. No event or circumstance has occurred or exists that constitutes a Default or Event of Default.
- 9.1.18 <u>ERISA</u>. Except as could not reasonably be expected, whether individually or in the aggregate, to result in a Material Adverse Effect:
- (a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code, and other federal and state laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter has been submitted to the IRS with respect thereto and, to the knowledge of Borrowers, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Obligor and ERISA Affiliate has met all applicable requirements under the Code, ERISA and the Pension Protection Act of 2006, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Plan.

- (b) There are no pending or, to the knowledge of Borrowers, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. To the knowledge of the Borrowers, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.
- (c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60% (iii) no Obligor or ERISA Affiliate has incurred any liability to the PBGC except for the payment of premiums, and no premium payments are due and unpaid; (iv) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; and (v) no Pension Plan has been terminated by its plan administrator or the PBGC such that there remains material liability in connection therewith.
- (d) With respect to any Foreign Plan, (i) all employer contributions required by law or by the terms of the Foreign Plan have been made and (ii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.
- 9.1.19 <u>Trade Relations</u>. There exists no actual or threatened termination, limitation or modification of any business relationship between Parent or its Subsidiaries and any customer or supplier, or any group of customers or suppliers, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.
- 9.1.20 <u>Labor Relations</u>. Except as described on **Schedule 9.1.20**, as of the Closing Date, neither Parent nor its Subsidiaries are party to or bound by any collective bargaining agreement. There are no material grievances, disputes or controversies with any union or other organization of Parent or its Subsidiaries' employees that could reasonably be expected to have a Material Adverse Effect, or, to any Borrower's knowledge, any asserted or threatened strikes, material work stoppages or material demands for collective bargaining that could reasonably be expected to have a Material Adverse Effect.

# 9.1.21 <u>Reserved</u>.

- 9.1.22 Not a Regulated Entity. No Obligor is an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940.
- 9.1.23 <u>Margin Stock</u>. Neither Parent nor its Subsidiaries are engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Term Loan proceeds will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose in any manner that would result in a violation of Regulations T, U or X of the Board of Governors.
- 9.1.24 OFAC. No Borrower, Subsidiary or, to the knowledge of any Borrower, any director, officer, employee, agent or representative thereof, is or is owned or controlled by any individual or entity that is currently the target of any Sanction or is located, organized or resident in a Designated Jurisdiction.
- 9.1.25 <u>Benefit Plans</u>. Parent and each Borrower represents and warrants as of the Closing Date that Parent nor any of its Subsidiaries is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans.

9.2 <u>Complete Disclosure</u>. As of the Closing Date only, none of the written reports, Loan Documents, financial statements, certificates or other written information (other than any projections, pro formas, budgets, and other forward-looking information and information of a general economic or industry nature) concerning Parent and its Subsidiaries furnished by or at the direction of any Obligor to Agent and the Lenders prior to the Closing Date in connection with the negotiation of this Agreement or any other Loan Document, when taken as a whole, contains, as of the date furnished, any material misstatement of fact or omits to state any material fact necessary to make the statements therein not materially misleading in light of the circumstances under which such statements were made.

#### SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1 Affirmative Covenants. Until Full Payment of all Obligations has occurred, Parent and each Borrower shall, and shall cause each of their Subsidiaries to:

#### 10.1.1 Inspections; Appraisals.

(a) Permit Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice and during normal business hours, to visit and inspect the Properties of the Obligors, inspect, audit and make extracts from Obligors' books and records, and discuss with its officers, employees, agents, advisors and independent accountants Obligors' business, financial condition, assets and results of operations (it being understood that a representative of Parent shall be allowed to be present in any discussions with independent accountants). Lenders may participate in any such visit or inspection, at their own expense. None of Agent or Lenders shall have any duty to any Obligor to make any inspection, nor shall Agent have any obligation to (but Agent may) share any results of any inspection, appraisal or report with any Obligor. The Borrowers acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them. No Borrowing Base or Revolving Borrowing Base calculation shall include Collateral acquired in an Acquisition or otherwise outside the Ordinary Course of Business until completion of applicable field examinations and appraisals (which shall not be included in the limits provided in Section 10.1.1(b)) satisfactory to Revolving Agent and delivery to Agent of any material documents related to such Acquisition.

(b) Reimburse Agent for all its reasonable out-of-pocket charges, costs and expenses in connection with (i) examinations of Obligors' books and records or any other financial or Collateral matters as it deems appropriate, up to two (2) times per Loan Year (provided that, except with respect to examinations conducted during the Covenant Relief Period, if at all times during such Loan Year, Availability measured as of each month-end (as reflected in the Loan Account) is greater than or equal to 30% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), Borrowers shall be obligated to only reimburse Agent for one (1) such examination conducted during such Loan Year); (ii) appraisals of Inventory up to two (2) times per Loan Year (provided, that if at all times during any Loan Year, the Inventory Formula Amount is less than 10% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) and Availability measured as of each month-end (as reflected in the Loan Account) is greater than 10% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), Borrowers shall be obligated to only reimburse Agent for one (1) such appraisal conducted during such Loan Year); and (iii) up to one (1) physical appraisal of accounts receivable per Loan Year and, at Agent's discretion, quarterly desktop appraisals of accounts receivable; provided, that if an examination or appraisal is initiated during the existence of an Event of Default, all charges, costs and expenses therefor shall be reimbursed by Borrowers without regard to such limits. Subject to and without limiting the foregoing, Parent and Borrowers shall pay Agent's then standard charges for each day that an employee of Agent or its Affiliates is engaged in any examination activities, and shall pay the standard charges of its internal appraisal group.

Notwithstanding the foregoing, so long as Revolving Agent furnishes to Agent (in accordance with the requirements of ABL Intercreditor Agreement) copies of the field examinations and inventory appraisals permitted to be conducted by Revolving Agent or its retained professionals in accordance with the limitations set forth in the Revolving Credit Agreement (which would otherwise be permitted to be conducted by Agent in accordance with the terms of this **Section 10.1.1(b)**), Agent and the Lenders shall rely on such field examinations and inventory appraisals conducted by Revolving Agent or its retained professionals in lieu of conducting independent field examinations and inventory appraisals pursuant to the terms of this clause (b).

- (c) Notwithstanding anything to the contrary contained in the Loan Documents (and other than information relating to the CARES Act Tax Refund Claim required to be delivered under **Section 10.1.3(b)**), none of Parent, Borrowers and any of their Subsidiaries shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of such Person or any of its Subsidiaries or any of their respective customers and/or suppliers, (ii) in respect of which disclosure to Agent or any Lender (or any of their respective representatives) is prohibited by any Applicable Law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which Parent, Borrowers or any Subsidiary owes confidentiality obligations to any third party, including dealers (information of the type set forth in clauses (i) through (iv) collectively, "Confidential Information").
- 10.1.2 <u>Financial and Other Information</u>. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent (<u>provided</u>, that the documents required to be delivered pursuant to **clauses (a)**, (b) and (h) below shall be deemed to have been delivered on the date on which such documents are posted on the Securities and Exchange Commission's website at www.sec.gov):
- (a) as soon as available, and in any event no later than (i) 90 days after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders' equity for such Fiscal Year, on a consolidated basis for Parent and its Subsidiaries, which consolidated statements shall be audited and certified by a firm of independent certified public accountants of nationally recognized standing selected by Parent or otherwise acceptable to Agent (which audit shall be without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (except for any such qualification pertaining to the maturity of any Debt occurring within 15 months of the relevant audit or any breach or anticipated breach of any financial covenant)), and shall set forth in comparative form corresponding figures for the preceding Fiscal Year; and (ii) 60 days after the end of each Fiscal Year, internal management financial statements (balance sheet, statement of income, and cash flow statement) as of the end of such Fiscal Year, on a consolidated basis for Parent and its Subsidiaries; provided, that the financial statements delivered pursuant to this clause (ii) shall be delivered to Agent for informational purposes only;
- (b) as soon as available, and in any event no later than 45 days after the end of each Fiscal Quarter (or 60 days solely with respect to the Fiscal Quarter ending January 31, 2024), unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income and cash flow for such Fiscal Quarter and for the portion of the Fiscal Year then elapsed, on a consolidated basis for Parent and its Subsidiaries (excluding Badcock in respect of any Fiscal Quarter ending prior to April 30, 2024), setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer (or other officer holding a similar role) of Parent as prepared in accordance with GAAP and fairly presenting in all material respects the financial position and results of operations of Parent and its Subsidiaries on a consolidated basis as of such date and for such Fiscal Quarter and period, subject to normal year-end adjustments and the absence of footnotes;

- (c) as soon as available, and in any event within 30 days after the end of each month that is not the last month of a Fiscal Year or Fiscal Quarter, internal management financial statements (balance sheet, statement of income, and cash flow statement) as of the end of such month, on a consolidated basis for Parent and its Subsidiaries (excluding Badcock in respect of any such month ending prior to April 30, 2024), setting forth in comparative form corresponding figures for (i) the preceding Fiscal Year and (ii) such period set forth in the projections delivered pursuant to Section 10.1.2(f) hereof, in each case on a month-to-date and year-to-date basis with respect to profit and loss and cash flow statements, in each case certified by the chief financial officer (or other officer holding a similar role) of Parent as prepared in accordance with its normal internal, interim reporting practices;
- (d) within the time frame specified for the delivery of financial statements under clauses (a)(i), (a)(ii) and (b) above, (i) a Compliance Certificate executed by the chief financial officer (or other officer holding a similar role) of Parent; <u>provided</u>, that the Compliance Certificate delivered with the financial statements pursuant to clause (a)(ii) shall be delivered to Agent for informational purposes only and (ii) a copy of the Credit and Collection Guidelines if changes have been made since the Closing Date or the date of the most recent delivery of the Credit and Collection Guidelines (which Credit and Collection Guidelines may, in the case of Confidential Information, be redacted);
- (e) together with the financial statements delivered pursuant to Section 10.1.2(a)(i), a copy of the final management letters (if any) submitted to Borrowers by their accountants in connection with such financial statements, if any;
- (f) not later than 60 days after the commencement of each Fiscal Year, projections of Parent's consolidated balance sheets, results of operations, cash flow and Availability for such Fiscal Year, month by month;
- (g) at Agent's reasonable request, a listing of each Borrower's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent;
- (h) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that Parent or any Borrower has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that Parent or any Borrower files with any Governmental Authority, except the Securities and Exchange Commission (which shall be deemed to have been delivered when filed), or any securities exchange; and copies of any press releases or other statements made available by Parent or a Borrower to the public concerning material changes to or developments in the business of Parent or such Borrower;
  - (i) evidence as to Borrowers' compliance with Consumer Finance Laws as reasonably requested by Agent from time to time;
- (j) during the Covenant Relief Period, with each Borrowing Base Report (and such other times as reasonably requested by Agent), Borrowers shall provide to Agent a statement of the Consolidated Cash Balance for the most recently ended week, together with such information as Agent may reasonably request; and
- (k) such other reports and information (financial or otherwise) as Agent may reasonably request (in its reasonable discretion or at the reasonable request of any Lender) from time to time in connection with any Collateral or the financial condition or business of any Obligor.

Information required to be delivered pursuant to this **Section 10.1.2** shall be deemed to have been delivered if such information, or one or more annual or quarterly reports containing such information, shall have been posted by Agent on SyndTrak, IntraLinks or a similar site to which Agent and the Lenders have been granted access or shall be available on the website of the Securities and Exchange Commission at http://www.sec.gov or on the website of Parent. Information required to be delivered pursuant to this **Section 10.1.2** may also be delivered by electronic communications pursuant to procedures approved by Agent. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

#### 10.1.3 Notices.

- (a) General. Notify Agent and Lenders in writing, promptly after a Senior Officer of Borrower Agent obtains knowledge thereof, of any of the following that affects an Obligor: (a) the commencement of any proceeding or investigation which would reasonably be expected to have a Material Adverse Effect; (b) any default under or termination of a Material Contract; (c) the existence of any Default or Event of Default; (d) the occurrence of any event (including any Intellectual Property Claim, violation or asserted violation of Applicable Law (including ERISA, OSHA, FLSA and Environmental Laws), an Environmental Release, ERISA Event or Regulatory Event) that would reasonably be expected to have a Material Adverse Effect; (e) any judgment in an amount exceeding the Threshold Amount; (f) any written allegation, claim, fact or circumstance indicating that any Third Party Contract, Contract originated by it or, at the time of such event, then serviced, collected or otherwise administered by it, Credit and Collection Guidelines, act, omission or business practice of Parent, any Obligor or any Subsidiary violates or fails to comply with any Consumer Finance Law and which allegation, claim, fact or circumstance claims damages in excess of the Threshold Amount; and (g) the sale of any Inventory on consignment or approval or any other basis under which the customer may return or require a Borrower to repurchase such Inventory other than returns or repurchases in the Ordinary Course of Business.
- (b) <u>CARES Act Tax Refund Claim</u>. Promptly (but in any event within two (2) Business Days following the occurrence thereof or, in the case of clause (ix), Agent's request therefor), together with true and complete copies thereof (as applicable), deliver to Agent and Lenders written notice of:
  - (i) the receipt by any Obligor of written notice of any rejection by the IRS or any other Governmental Authority (including the Joint Committee on Taxation) of the CARES Act Tax Refund Claim or any request by the IRS or any other Governmental Authority (including the Joint Committee on Taxation) for the applicable Obligors to remit CARES Act Tax Refund Proceeds;
    - (ii) any material revision to the Obligors' calculation with respect to the CARES Act Tax Refund Claim;
  - (iii) the filing any forms or any amended income tax return with the IRS with respect to the CARES Act Tax Refund Claim, or of any amendment or supplemental filing with respect thereto;
    - (iv) the receipt by any Obligor or any of its Affiliates of any portion of the CARES Act Tax Refund Proceeds;
  - (v) the receipt by any Obligor or any of its Affiliates of any written claim made by the IRS or any other Governmental Authority (including the Joint Committee on Taxation) with respect to setoff against any portion of the CARES Act Tax Refund Proceeds;

- (vi) any Obligor's knowledge of any Change in Law that could reasonably be expected to materially affect the amount of the CARES Act Tax Refund Claim;
  - (vii) any supplement or updates to any Tax Materials;
- (viii) any other material development in respect of the CARES Act Tax Refund Claim that has resulted or would reasonably be expected to result in a reduction in the anticipated aggregate amount of the CARES Act Tax Refund Claim or material adverse impairment of the ability of the Obligors, collectively, to collect the CARES Act Tax Refund Claim; and
- (ix) any other documents, instruments, agreements or information that is available to the Obligors as Agent may reasonably request with respect to the CARES Act Tax Refund Claim or the CARES Act Tax Refund Proceeds.
- (c) <u>Class C Retained Notes</u>. At any time that any Class C Retained Notes are included in the calculation of the Borrowing Base, within one (1) Business Day following the delivery of any written notice or other written communication to the holders of any such Class C Retained Notes, deliver to Agent (for further distribution to Lenders) copies thereof.
- (d) <u>Revolving Events</u>. Notify Agent and Lenders in writing, together with true and complete copies thereof (as applicable), of each amendment, supplement, modification, waiver, consent or forbearance in respect of the Revolving Loan Documents, and of any material notices received from Revolving Agent or any lender of, under or with respect to the Revolving Obligations, to the extent not otherwise provided to Agent under the Loan Documents.
- 10.1.4 <u>Landlord and Storage Agreements</u>. Upon request, provide Agent with copies of all existing agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.
- 10.1.5 Compliance with Laws. Comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws with which the Borrowers and their Subsidiaries shall comply in all material respects) or maintain could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if an Environmental Release which could reasonably be expected to result in a Material Adverse Effect requiring remediation under Environmental Laws occurs at or on any Properties of Parent or its Subsidiaries, Parent, the relevant Borrower or the applicable Subsidiary shall act, or shall cause the legally responsible party to act, in each case promptly and diligently to investigate and report to Agent and, as required by Environmental Laws, to all appropriate Governmental Authorities the extent of, and to undertake or cause the legally responsible party to undertake appropriate and necessary remedial action to address such Environmental Release as required by applicable Environmental Laws.

#### 10.1.6 Taxes.

(a) Pay and discharge all material Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are not overdue by more than 30 days or (i) such Taxes are being Properly Contested or (ii) the failure to pay such Taxes could not reasonably be expected to result in a Material Adverse Effect.

- (b) (i) Timely file all claims or amended returns making claims for the maximum amount of CARES Act Tax Refund Claim available under Applicable Law to the Obligors (and any Subsidiary filing as a part of a consolidated, combined or unitary Tax group) as reasonably determined by the Borrowers and (ii) take such other actions as Agent may reasonably request in respect of the CARES Act Tax Refund Claim.
- 10.1.7 <u>Insurance</u>. Maintain insurance with insurers with respect to the Properties and business of Borrowers and its Subsidiaries of such type, in such amounts, and with such coverages and deductibles as are customary for companies similarly situated and operating in the same or similar locations.
- 10.1.8 <u>Licenses</u>. Except as could not reasonably be expected to result in a Material Adverse Effect: keep each License affecting any Collateral (including the manufacture, distribution or Asset Disposition of Inventory) or any other material Property of Borrowers and its Subsidiaries in full force and effect; notify Agent, upon its request, of any modification to any such License; pay all Royalties when due; and notify Agent of any default or breach asserted by any Person to have occurred under any such License.
- 10.1.9 <u>Future Subsidiaries</u>. Promptly notify Agent upon any Person becoming a Subsidiary of Parent and, if such Person is not a Foreign Subsidiary or a Securitization Subsidiary, cause it to guaranty the Obligations in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall reasonably require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all assets of such Person; <u>provided</u>, that to the extent any Subsidiary of a Securitization Subsidiary shall be subject to the requirements of this **Section 10.1.9**, it is understood and agreed that no pledge by the applicable Securitization Subsidiary of the Equity Interests of such Subsidiary shall be required under the Loan Documents and such Equity Interests shall otherwise constitute Excluded Collateral.

10.1.10 Reserved.

10.1.11 Reserved.

- 10.1.12 <u>Charge-Off Policy</u>. The Borrowers shall establish and implement a policy for charging off the unpaid balance of its delinquent Contracts as set forth in the Credit and Collections Guidelines.
- 10.1.13 <u>Loss Reserve</u>. Parent and its Subsidiaries shall maintain, on a consolidated basis, loss reserves at all times during the term of the Agreement in amounts required to be maintained under GAAP.
- 10.1.14 <u>Know Your Customer</u>. Promptly following any request therefor, provide information and documentation reasonably requested by Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation.
- 10.1.15 <u>Control Agreements</u>. From time to time upon request by Agent, the Borrowers shall deliver to Agent a list of all Deposit Accounts and Securities Accounts (including Excluded Accounts) maintained by the Obligors, which list shall identify the account owner, the depositary bank, the account number and type of account and indicate whether such Deposit Account or Securities Account is subject to a control agreement in favor of Agent or an Excluded Account and the basis therefor.

#### 10.1.16 13-Week Forecasts and Variance Reports.

- (a) Commencing on the third Business Day of the first full calendar month ending after the Closing Date, and thereafter, no later than the third Business Day of each calendar month, Borrower Agent shall deliver to Agent, for distribution to the Lenders, a thirteen-week cash flow forecast in substantially the same form as the Approved 13-Week Forecast or other form reasonably satisfactory to Revolving Agent (or, if the Discharge of ABL Obligations has occurred, Agent) (each, including the Approved 13-Week Forecast, a "13-Week Forecast"), which 13-Week Forecast shall reflect, for the periods covered thereby, projected weekly disbursements, cash receipts, outstanding Obligations under the Agreement and ending cash for each week covered by such 13-Week Forecast.
- (b) Borrower Agent shall deliver to Agent, for further distribution to the Lenders, commencing on January 3, 2024, and on the third Business Day of every other week, a variance report (each a "<u>Variance Report</u>") comparing (i) for the two-week period most recently ended, the actual cash flow results against anticipated cash flow results set forth under the 13-Week Forecast covering such two-week period and (ii) the actual cash flow results for the period covered by the most recently delivered 13-Week Forecast against anticipated cash flow results set forth under such 13-Week Forecast on a cumulative basis from the start of the thirteen-week period covered by such 13-Week Forecast (each such period referred to in clauses (i) and (ii), a "<u>Forecasting Period</u>"), in each case of clauses (i) and (ii), with a narrative description of any line item variances in excess of fifteen percent (15%) for such Forecasting Period.
- 10.1.17 <u>Post-Closing Actions</u>. Within the time periods specified on **Schedule 10.1.16** (as each such time period may be extended by Agent in its reasonable discretion), the Obligors shall comply with their obligations as set forth on **Schedule 10.1.16**. All conditions precedent, eligibility criteria, covenants and representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described above within the time periods required by this **Schedule 10.1.16**, rather than as elsewhere provided in the Loan Documents).
- 10.2 <u>Negative Covenants</u>. Until Full Payment of all Obligations has occurred, Parent and each Borrower shall not, and shall not permit any of its Subsidiaries to:
  - 10.2.1 Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:
    - (a) the Obligations;
- (b) (i) Subordinated Debt; and (ii) unsecured Debt of Parent or its Subsidiaries so long as, in the case of this clause (b)(ii), after giving effect to such Debt, Parent shall be in Pro Forma Compliance with the covenants set forth in **Section 10.3.2** and **10.3.3** and such Debt shall have a maturity no earlier than the date that is 91 days after the Term Loan Termination Date;
  - (c) Permitted Purchase Money Debt;
- (d) Debt (other than the Obligations) of the Parent and its Subsidiaries outstanding (or pursuant to commitments outstanding) on the Closing Date and, solely with respect to Badcock, set forth on **Schedule 10.2.1**;
- (e) Debt that is assumed or acquired in connection with any Acquisition permitted hereunder or the acquisition of any asset or group of assets so long as (i) such Debt was not incurred in contemplation of such Acquisition or acquisition of assets and (ii) either does not exceed (x) \$25,000,000 in the aggregate outstanding at any time or (y) after giving effect to each such assumption or acquisition of such Debt, the Payment Conditions are satisfied;

- (f) Permitted Contingent Obligations;
- (g) Debt owed to a Flooring Lender; <u>provided</u>, that such Flooring Lender has entered into a Flooring Intercreditor Agreement with respect to such Debt;
- (h) Debt incurred for the acquisition of Real Estate by an Obligor so long as the purchase price of such Real Estate does not exceed the fair market value of the Real Estate at the time of its acquisition (as determined by the Borrower Agent in good faith) and the Debt incurred in connection therewith does not exceed 100% of the purchase price (including fees, costs and expenses, prepaid interest and similar items in connection therewith) of such Real Estate; <u>provided</u>, that the aggregate outstanding Debt permitted under this **subsection (h)** does not at any time exceed \$30,000,000;
  - (i) Refinancing Debt as long as each Refinancing Condition is satisfied with respect to such Refinancing Debt;
- (j) Debt incurred by a Securitization Subsidiary pursuant to one or more Permitted ABS Transactions so long as at or prior to the initial transfer of Contracts under any such transaction, the applicable Permitted ABS Agent has entered into a Permitted ABS Intercreditor Agreement;
  - (k) Debt incurred under Permitted Originator Notes;
  - (l) [Reserved];
  - (m) Debt evidenced by the Permitted Convertible Notes or by the Permitted HY Notes;
  - (n) Debt in the form of guarantees by Parent or any of its Subsidiaries of Debt permitted under this Section 10.2.1;
- (o) obligations of Parent or any of its Subsidiaries under any Hedging Agreements not entered into for speculative purposes (including any Hedging Agreement entered into by any Securitization Subsidiary in connection with a Permitted ABS Transaction and by Parent or any Subsidiary in connection with any Permitted Securitization Hedging Transaction);
- (p) (i) Debt incurred in the Ordinary Course of Business in respect of netting services, overdraft protections, employee credit card programs, cash management services and otherwise in connection with Deposit Accounts and Securities Accounts and (ii) Debt incurred in connection with letters of credit, bankers' acceptances, bank guarantees, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, warehouse receipts or similar facilities, in each case incurred or undertaken in the Ordinary Course of Business;
- (q) Debt among Parent and its Subsidiaries; <u>provided</u> that (i) Debt of any Subsidiary that is not an Obligor owing to any Obligor shall be permitted under **Section 10.2.5** (other than under clause (m) of the definition of "Restricted Investments") and (ii) Debt of the Obligors owing to any Subsidiary that is not an Obligor shall be expressly subordinated to the Obligations under the Loan Documents on terms reasonably acceptable to Agent (it being understood that such subordination terms shall permit the repayment of interest and/or principal with respect to such Debt in the absence of notification by Agent during the existence of an Event of Default that such payments shall no longer be made);

- (r) Debt consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the Ordinary Course of Business;
- (s) Debt incurred by Parent and its Subsidiaries representing (i) deferred compensation to directors, officers, employees, members of management and consultants of Parent and its Subsidiaries in the Ordinary Course of Business or in connection with any Permitted Acquisition or any Investment permitted hereby and (ii) deferred purchase price or other similar arrangements in connection with any Permitted Acquisition or any Investment permitted hereby;
- (t) Debt arising out of the creation of any Lien (other than for Liens securing debt for Borrowed Money) permitted under Section 10.2.2;
- (u) Debt incurred in the Ordinary Course of Business in respect of obligations of Parent and its Subsidiaries to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;
  - (v) Debt incurred by Parent and its Subsidiaries representing Investments permitted under the definition of "Restricted Investment";
- (w) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the Ordinary Course of Business to the extent that they are permitted to remain unfunded under Applicable Law;
- (x) Debt owed to (including obligations in respect of letters of credit, bank guarantees or similar instruments for the benefit of) any Person providing workers' compensation, securing unemployment insurance and other social security laws or regulation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other similar obligations to Parent or any Subsidiary;
- (y) Debt supported by a Letter of Credit (as defined in the Revolving Credit Agreement), in a principal amount not in excess of the face amount of such Letter of Credit;
- (z) Debt in respect of any letter of credit issued in favor of any Issuing Bank or Swingline Lender (each as defined in the Revolving Credit Agreement) to support any Defaulting Lender's (as defined in the Revolving Credit Agreement) participation in Letters of Credit (as defined in the Revolving Credit Agreement) issued, or Swingline Loans (as defined in the Revolving Credit Agreement) made under the Revolving Credit Agreement;
  - (aa) Debt with an aggregate principal amount not exceeding \$50,000,000 in the aggregate outstanding at any time;
- (bb) Debt under (i) the ABL Documents (as defined in the ABL Intercreditor Agreement) and (ii) the Third Lien Term Loan Documents; and
- (cc) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Debt described in paragraphs (a) through (bb) above.

- 10.2.2 Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "Permitted Liens"):
  - (a) any Lien created under the Loan Documents;
  - (b) Purchase Money Liens securing Permitted Purchase Money Debt;
- (c) Liens for Taxes that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, (i) which are being Properly Contested or (ii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;
- (d) statutory Liens arising in the Ordinary Course of Business including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the Ordinary Course of Business and securing obligations that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, (i) which are being Properly Contested or (ii) are subject to a Lien Waiver, or (iii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;
- (e) (i) Liens incurred or pledges or deposits made in the Ordinary Course of Business to secure the performance of bids, trade contracts (other than for Borrowed Money), leases (other than Capital Leases), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, including those incurred to secure health, safety and environmental obligations in the Ordinary Course of Business or arising as a result of progress payments under government contracts and (ii) obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support payment of the items set forth in clause (i) of this **Section 10.2.2(e)**;
  - (f) Liens arising in the Ordinary Course of Business that are subject to Lien Waivers;
- (g) Liens arising by virtue of a judgment or judicial order against Parent or its Subsidiaries, or any Property of Parent or its Subsidiaries, not constituting an Event of Default;
- (h) (i) easements, rights-of-way, restrictions, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, covenants or other agreements of record, and other similar charges or encumbrances on Real Estate, that do not secure any Borrowed Money and do not materially interfere with the Ordinary Course of Business and (ii) Liens and other matters disclosed in any mortgagee title policy and any replacement, modification, extension or renewal of such Lien;
- (i) (i) contractual rights of set-off (A) relating to the establishment of depository relationships with banks not given in connection with the issuance of Borrowed Money, (B) relating to pooled deposit, sweep accounts and netting arrangements of Parent and its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the Ordinary Course of Business, and (C) relating to purchase orders and other agreements entered into with customers of Parent and its Subsidiaries in the Ordinary Course of Business and (ii) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights (including overdraft protection);
- (j) Liens in favor of a Flooring Lender so long as such Liens do not attach to any assets of a Borrower other than the Inventory floored by such Flooring Lender (which may include Liens on all Inventory of a given manufacturer, brand or line which is floored by such Person, provided that all such Inventory of a given manufacturer, brand or line are excluded (up to the aggregate amount of the obligations owing to such Flooring Lender) from the determination of the Revolving Borrowing Base and, without duplication, the Borrowing Base) and the proceeds and products thereto;

- (k) Liens securing only the Real Estate owned by a Borrower to secure Debt permitted under Section 10.2.1(h);
- (l) existing Liens shown on **Schedule 10.2.2**, and any refinancing, modification, replacement, renewal or extension thereof; provided, that the Lien does not extend to any additional property other than after-acquired property that is affixed to or incorporated in the property covered by such Lien and the proceeds and products thereof;
- (m) Liens on the Equity Interests of Parent which are held by Parent, to the extent such Equity Interests are deemed to be Margin Stock;
- (n) Liens on the Securitized Contracts of a Securitization Subsidiary and Liens on the assets of a Securitization Subsidiary, in each case, in favor of a Permitted ABS Agent and subject to a Permitted ABS Intercreditor Agreement;
- (o) Security interests as described in 9-109(a)(3) of the UCC created in connection with sales of accounts, chattel paper, payment intangibles or promissory notes permitted by or not otherwise prohibited by this Agreement or any other Loan Document;
- (p) any interest or title of a lessor, sublessor, licensor or sublicensee under any leases, subleases, licenses or sublicenses entered into by Parent or any Subsidiary in the Ordinary Course of Business;
- (q) (i) leases, subleases, licenses or sublicenses of property in the Ordinary Course of Business or (ii) rights reserved to or vested in any Person by the terms of any lease, license, franchise, grant or permit held by Parent or any Subsidiary or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof;
- (r) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (s) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Parent or the Subsidiaries in the Ordinary Course of Business and (ii) arising by operation of law under Article 2 of the Uniform Commercial Code;
  - (t) Liens on insurance policies and the proceeds thereof securing the financing of Debt permitted pursuant to Section 10.2.1(r)(i);
- (u) ground leases in the Ordinary Course of Business in respect of Real Estate on which facilities owned or leased by Parent or any Subsidiary are located;
- (v) Liens securing obligations under Hedging Agreements permitted by **Section 10.2.1(o)** (including any Hedging Agreement entered into by any Securitization Subsidiary in connection with a Permitted ABS Transaction and by Parent or any Subsidiary in connection with any Permitted Securitization Hedging Transaction);
- (w) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

- (x) Liens deemed to exist in connection with permitted repurchase obligations or set-off rights;
- (y) Liens securing Debt permitted under **Section 10.2.1(e)**; <u>provided</u>, however, such Liens are not created or incurred in connection with, or in contemplation of, such acquisition and such Liens shall be limited to all or part of the same assets (including after acquired property to the extent it would have been subject to a Lien in respect of the arrangements under which such Liens arose) that secured the obligations to which the original Liens relate (plus improvements on such Property);
- (z) Liens securing obligations in respect of letters of credit, banker's acceptances, bank guarantees or similar instruments permitted under Sections 10.2.1(p), (x) and (z);
- (aa) Liens (i) solely on any cash earnest money deposits or cash equivalents in connection with any letter of intent or purchase agreement or otherwise in connection with any escrow arrangements with respect to any Permitted Acquisition or other Investment permitted hereunder and (ii) consisting of an agreement to dispose of any property in a transaction permitted hereunder;
- (bb) Liens arising from precautionary UCC financing statements (or similar filings under Applicable Law) regarding operating leases or consignment or bailee arrangements;
- (cc) other Liens with respect to property or assets of Parent or any of its Subsidiaries; <u>provided</u> that the aggregate principal amount of the Debt or other obligations secured by such Liens does not exceed \$30,000,000 at any time outstanding; <u>provided</u>, <u>further</u>, that if such Liens attach to any Collateral included in the Borrowing Base, such Liens will be subject to an intercreditor agreement in form and substance satisfactory to Agent;
- (dd) Liens on cash or cash equivalents pledged to defease or otherwise satisfy and discharge any Debt or other obligations that are permitted or not prohibited hereunder;
- (ee) Liens (i) in favor of the Revolving Agent securing the ABL Obligations (as defined in the ABL Intercreditor Agreement) to the extent permitted under Section 10.2.1(bb) and to the extent such Liens are subject to the ABL Intercreditor Agreement, (ii) on cash or deposits granted in favor of any Swingline Lender or any Issuing Bank under (and each as defined in) the Revolving Credit Agreement to cash collateralize any Defaulting Lender's (as defined in the Revolving Credit Agreement) participation in Letters of Credit issued, or Swingline Loans made (each as defined in the Revolving Credit Agreement), under the Revolving Credit Agreement, as applicable, and (iii) in favor of the Third Lien Agent securing the Third Lien Term Loan Obligations to the extent permitted under Section 10.2.1(bb) and to the extent such Liens are subject to the Third Lien Intercreditor Agreement.
  - (ff) Liens arising out of a sale-leaseback transaction permitted hereunder; and
- (gg) Liens filed against dealers (excluding Parent or its Subsidiaries) with respect to property or assets of Parent or any of its Subsidiaries.
- 10.2.3 <u>Capital Expenditures</u>. Make Capital Expenditures in excess of \$100,000,000 in the aggregate during any period of four (4) consecutive Fiscal Quarters, measured as at the end of each Fiscal Quarter.

- 10.2.4 <u>Distributions</u>. Declare or make any Distributions, except Permitted Distributions (subject to the satisfaction of the Borrowing Base Condition, if applicable). Notwithstanding the foregoing, to the extent any such Distribution is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through the Distribution of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to **Section 11.3**) in favor of Agent.
- 10.2.5 <u>Restricted Investments</u>. Make any Restricted Investment. Notwithstanding the foregoing, to the extent any Investment that is permitted hereunder (subject to the satisfaction of the Borrowing Base Condition, if applicable) is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through an Investment of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to Section 11.3) in favor of Agent.
- 10.2.6 <u>Disposition of Assets</u>. Make any Asset Disposition, except (subject to the satisfaction of the Borrowing Base Condition, if applicable):
- (a) (i) a Permitted Asset Disposition and (ii) to the extent constituting an Asset Disposition of the assets subject to thereto, any Hedging Agreement permitted under **Section 10.2.1**;
- (b) (i) Asset Dispositions to effect a Permitted ABS Transaction, (ii) so long as no Default or Event of Default shall then exist or would result therefrom, the sale to any third party of the Class C Retained Notes in the ordinary course of business or consistent with past practice and (iii) after all Debt has been repaid under a Permitted ABS Transaction, any distribution to a Borrower of the remaining ABS Contract Portfolio of the applicable Securitization Subsidiary related to such Permitted ABS Transaction;
- (c) a transfer of Property by (i) an Obligor to a Borrower or any other Obligor, (ii) by a Subsidiary that is not an Obligor to an Obligor or any other Subsidiary, or (iii) by an Obligor to a non-Obligor, in each case to the extent permitted by the definition of "Restricted Investments":
  - (d) an Asset Disposition of Margin Stock by Parent;
  - (e) the Asset Disposition of charged-off receivables in the Ordinary Course of Business;
- (f) Asset Disposition of Property subject to casualty, condemnation or similar proceedings (including in lieu thereof) upon receipt of the Net Proceeds therefor;
- (g) Asset Disposition of Real Estate and related assets in the Ordinary Course of Business in connection with relocation activities for directors, officers, employees, members of management, or consultants of Parent and the Subsidiaries;
- (h) the transfer or abandonment of Intellectual Property rights no longer used or useful in the business in accordance with the reasonable business judgement of Borrower Agent; and

(i) (i) so long as no Default or Event of Default is continuing or would arise therefrom as of the earlier of the date of execution of the definitive documentation for any Asset Disposition (so long as such Asset Disposition is consummated within 120 days of such date) and the date of such Asset Disposition, an Asset Disposition of other assets or property in exchange for reasonably equivalent value, <u>provided</u> that (A) any such Asset Disposition shall be made for fair market value, (B) with respect to any such Asset Disposition of assets included in the Borrowing Base, such Asset Disposition shall be made for cash consideration in an amount not less than the amount advanced against such assets under the Borrowing Base, as applicable, and in connection with any Asset Disposition in excess of \$10,000,000, the Borrower shall deliver an updated Borrowing Base Report, (C) such Asset Disposition shall not result in an Overadvance or Revolving Overadvance.

Notwithstanding the foregoing, to the extent any such Asset Disposition is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through the Asset Disposition of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to Section 11.3) in favor of Agent.

# 10.2.7 Reserved.

# 10.2.8 Restrictions on Payment of Certain Debt.

- (a) Make any payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to any Subordinated Debt or Junior Lien Debt, except
  - (i) regularly scheduled payments of principal, interest, fees, expenses and indemnities, but only to the extent permitted or not restricted under any subordination agreement or intercreditor agreement relating to such Debt;
  - (ii) payments made in respect of a Permitted Originator Note subject to any subordination provisions in respect of such Permitted Originator Note;
    - (iii) [reserved];
    - (iv) the conversion of any such Subordinated Debt or Junior Lien Debt to, or payment with the proceeds of, Equity Interests;
  - (v) additional payments and prepayments in respect of the Subordinated Debt or Junior Lien Debt with net proceeds from the incurrence of Subordinated Debt, Junior Lien Debt or other unsecured Debt permitted hereunder;
    - (vi) payments made with the proceeds of Refinancing Debt in respect of such Subordinated Debt or Junior Lien Debt;
  - (vii) payments of, and cash payments due upon conversion with respect to, any Permitted Convertible Notes in accordance with the terms thereof; and

(viii) other than during the Covenant Relief Period, additional cash payments and prepayments so long as, in each case, the Payment Conditions are satisfied.

- (b) Make any payment with respect to a Permitted ABS Transaction other than (i) payments made with the proceeds of the Securitized Contracts of the corresponding Permitted ABS Transaction; (ii) payments made in connection with the repurchase of Contracts which are permitted under clause (g) of the definition of Restricted Investments; (iii) payments so long as immediately before and after giving effect to any such repayment no Default or Event of Default exists and immediately after giving effect thereto Availability exceeds the greater of (x) \$40,000,000 and (y) 10.0% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) then in effect; (iv) payments using the proceeds of Investments permitted under clause (f)(ii) of the definition of Restricted Investments.
- (c) Make any principal payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to unsecured Debt (including the Permitted HY Notes), except:
  - (i) regularly scheduled payments of principal and scheduled payments at maturity;
  - (ii) principal payments made with the proceeds of the incurrence of other unsecured Debt, Permitted HY Notes, and Subordinated Debt permitted hereunder;
    - (iii) [reserved];
    - (iv) the conversion of any such Debt to, or payment with the proceeds of, Equity Interests;
    - (v) payments made with the proceeds of Refinancing Debt in respect of such unsecured Debt;
  - (vi) principal payments of, and cash payments due upon conversion with respect to, any Permitted Convertible Notes in accordance with the terms thereof; and
  - (vii) other than during the Covenant Relief Period, if the outstanding principal amount of such unsecured Debt is (A) greater than \$15,000,000, any other principal payments with respect to such Debt so long as the Payment Conditions are satisfied with respect to each such payment and (B) \$15,000,000 or less, immediately before and after giving effect to such payment, no Event of Default exists.
- (d) Make any payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to any Debt among Parent and its Subsidiaries that is expressly subordinate and junior in right of payment to the Obligations unless such payment is permitted pursuant to the subordination agreement or subordination terms applicable thereto.

# 10.2.9 Fundamental Changes.

(a) Merge, combine or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions, except (i) Parent and its Subsidiaries may engage in Permitted Acquisitions, (ii) any non-Obligor Subsidiary may be merged into or consolidated with, or transfer all or substantially all of its property to, (1) any

Borrower or Guarantor (other than Parent), so long as such Borrower or such Guarantor is the surviving entity or the surviving entity assumes the Obligations in a manner satisfactory to Agent, or (2) another non-Obligor Subsidiary, (iii) any Borrower or Guarantor (other than Parent) may merge into or consolidate with any Borrower so long as a Borrower is the surviving entity or the surviving entity assumes the Obligations in a manner satisfactory to Agent, (iv) any Guarantor (other than Parent) may merge into or consolidate with any other Guarantor (other than Parent) and (v) any Subsidiary may liquidate or dissolve so long as (1) such Subsidiary determines in good faith that such liquidation or dissolution is in its best interest, (2) a Borrower shall only liquidate or dissolve with or into another Borrower with at least one Borrower surviving and (3) a Guarantor shall only liquidate or dissolve into an Obligor or such liquidation or dissolution is an Investment permitted hereunder.

(b) Without providing Agent at least thirty (30) days' prior written notice thereof (or such shorter period as Agent may agree), (i) change its name (ii) change its charter or other organizational identification number or (iii) change its entity type or state of organization.

# 10.2.10 Reserved.

10.2.11 Organic Documents. Except as required by Applicable Law, amend, modify or otherwise change any of its Organic Documents as in effect on the Closing Date in a manner that would reasonably be expected to be materially adverse to the rights or interests of Agent or Lenders.

# 10.2.12 Reserved.

- 10.2.13 <u>Accounting Changes</u>. Change its Fiscal Year without the consent of Agent; <u>provided</u> that the Borrowers and the Subsidiaries may change their fiscal year end to align to that of Parent.
  - 10.2.14 Restrictive Agreements. Become a party to any Restrictive Agreement, except Restrictive Agreements as follows:
- (a) in effect on the Closing Date and any replacements, renewals, extensions, refinancings, refundings or exchanges of or any amendment, restatement, amendment and restatement, supplement or other modification expanding the scope of, such restriction or condition, in each case, so long as not done so in a manner materially adverse to the Lenders taken as a whole;
- (b) relating to secured Debt permitted hereunder (including any Refinancing Debt in respect thereof), as long as the restrictions apply only to collateral for such Debt (other than the Collateral);
  - (c) constituting customary restrictions on assignment in leases and other contracts;
  - (d) the Permitted HY Note Indentures (as amended as permitted hereunder);
- (e) any guaranty by any Subsidiary of Parent of Parent's obligations under any Permitted HY Notes as permitted under Section 10.2.1(n);
  - (f) pursuant to any Loan Document or any Revolving Loan Document;
- (g) pursuant to any Permitted ABS Documents entered into by a Securitization Subsidiary or any Organic Document of any Securitization Subsidiary;

- (h) restrictions and conditions imposed by Applicable Law;
- (i) in the case of any Subsidiary that is not a wholly-owned Subsidiary, restrictions and conditions imposed by its organizational documents or any related joint venture or similar agreement;
- (j) customary restrictions and conditions contained in agreements relating to Asset Dispositions pending such Asset Disposition; provided such restrictions and conditions apply only to the Person and/or assets subject to such Asset Disposition and such sale is permitted hereunder;
- (k) restrictions and conditions that were binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as the agreements providing for such restrictions and conditions were not entered into in contemplation of such Person becoming a Subsidiary;
  - (1) restrictions and conditions imposed by agreements relating to non-Obligor Subsidiaries;
  - (m) customary provisions in joint venture agreements and other similar agreements entered into in connection with any joint venture;
- (n) restrictions on cash or other deposits imposed by suppliers and customers under contracts entered into in the Ordinary Course of Business; and
  - (o) customary net worth provisions contained in Real Estate leases entered into by Parent or any of its Subsidiaries.

# 10.2.15 Reserved.

- 10.2.16 <u>Conduct of Business</u>. Engage in any lines of business, other than as a conducted on the Closing Date any activities incidental, ancillary or reasonably related thereto (including providing proprietary credit solutions for customers).
- 10.2.17 <u>Affiliate Transactions</u>. Enter into or be party to any transaction with an Affiliate (with Franchise Group Newco BHF, LLC, Freedom VCM Interco Holdings, Inc. and any of their respective Affiliates being treated as Affiliates of Parent and its Subsidiaries for purposes of this Section 10.2.17) except:
- (a) transactions among Parent and its Subsidiaries on the one hand and the Secured Parties on the other hand contemplated by the Loan Documents:
- (b) payment of reasonable compensation to officers and employees for services actually rendered, and loans and advances permitted under this Agreement;
  - (c) payment of customary directors' fees and indemnities;
  - (d) transactions solely among Obligors to the extent permitted or not restricted hereunder;
- (e) transactions with Affiliates that were consummated on or prior to the Closing Date or arising out of the transactions contemplated by the Badcock Acquisition Agreement or, in each case, any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect;

- (f) transactions with Affiliates no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate;
- (g) entry into a Permitted ABS Purchase Agreement, any other Permitted ABS Documents, and Permitted Originator Notes and all transactions contemplated thereunder;
- (h) entry into a guaranty of any Permitted HY Notes or Permitted Convertible Notes facility as permitted under **Section 10.2.1** and all transactions contemplated thereunder;
- (i) servicing agreements and administration agreements, and all transactions contemplated thereunder, entered into in connection with a Permitted ABS Transaction;
  - (j) transactions solely among non-Obligor Subsidiaries;
- (k) any Investment not prohibited by the definition of "Restricted Investment" or any merger, consolidation or combination not prohibited by **Section 10.2.9**;
- (l) (i) any employment or severance agreements or arrangements entered into by Borrowers or any of the Subsidiaries in the Ordinary Course of Business, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers, directors, members of management or consultants, and (iii) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract or arrangement and transactions pursuant thereto;
  - (m) any purchase by Parent of or contributions to, the Equity Interests of Borrowers;
- (n) transactions among Borrowers and the Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the Ordinary Course of Business;
- (o) transactions with customers, clients, suppliers or joint ventures for the purchase or sale of goods and services entered into in the Ordinary Course of Business;
  - (p) Distributions permitted under Section 10.2.4; and
- (q) for the avoidance of doubt, the transactions under the Loan Documents and the Third Lien Term Loan Documents, in each case, as amended, amended and restated, supplemented, waived or otherwise modified to the extent such modification or waiver is not prohibited by the ABL Intercreditor Agreement, the Third Lien Intercreditor Agreement or Section 10.2.23 hereof, as applicable.
- 10.2.18 Amendments to Revolving Loan Documents. Notwithstanding anything to the contrary contained herein, in no event shall the Revolving Credit Agreement or the Revolving Loan Documents be amended, restated, amended and restated, supplemented, modified, replaced, increased, renewed, extended or refinanced in contravention of the ABL Intercreditor Agreement; provided that to the extent that the terms of any amendment, supplement or other modification to the Revolving Credit Agreement are materially less favorable to the Obligors than the terms of the Revolving Credit Agreement as in effect on the Closing Date, then such amendment, supplement or other modification shall be deemed incorporated into this Agreement (which amendment, supplement or other modification shall occur automatically upon notice from Agent and the Obligors to the Lenders and the other Secured Parties).

#### 10.2.19 Amendments to Subordinated Debt and Permitted HY Notes.

(a) Amend, supplement or otherwise modify any document, instrument or agreement relating to any Subordinated Debt or Permitted HY Notes, if, in any case, such modification (a) increases the principal balance of such Debt except as permitted by **Section 10.2.1**; (b) accelerates the date on which any installment of principal is due; (c) shortens the final maturity date (except to a date that is no earlier than 91 days after the Term Loan Termination Date); or (d) in the case of Subordinated Debt, results in the Obligations not being fully benefited by any subordination provisions thereof (it being understood that this **Section 10.2.19** is not intended to restrict any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extension and refinancing of Subordinated Debt or Permitted HY Notes that is otherwise not restricted under this Agreement or the applicable subordination agreement).

10.2.20 Reserved.

- 10.2.21 <u>Class R Retained Notes</u>. Permit any transfer, sale or other Asset Disposition of the Class R Retained Notes to any Person (other than Parent or any Subsidiary thereof).
- 10.2.22 Amendment to Permitted ABS Documents. Permit any amendment, supplement or other modification in the Permitted ABS Documents, if such amendment, supplement or modification would be materially adverse to the interests of the Secured Parties; it being understood that no amendment, supplement, or other modification is adverse if (x) such amendment, supplement, or modification is permitted under the applicable Permitted ABS Intercreditor Agreement or (y) after giving effect to such amendment, supplement or other modification, the transactions under such Permitted ABS Documents as of the date of such amendment, supplement or other modification constitute a Permitted ABS Transaction.
- 10.2.23 Amendments to Third Lien Term Loan Facility. Notwithstanding anything to the contrary contained herein, the aggregate amount of the outstanding term loans and undrawn commitments under the Third Lien Term Loan Facility shall not be prepaid, reduced or terminated, as applicable, so long as any Term Loans are outstanding. In no event shall the Third Lien Term Loan Agreement or the Third Lien Loan Documents be amended, restated, amended and restated, supplemented, modified, replaced, increased, renewed, extended or refinanced in contravention of the Third Lien Intercreditor Agreement; provided that to the extent that the terms of any amendment, supplement or other modification to the Third Lien Term Loan Agreement are materially less favorable to the Obligors than the terms of the Third Lien Loan Agreement as in effect on the Closing Date, then such amendment, supplement or other modification shall be deemed incorporated into this Agreement (which amendment, supplement or other modification shall occur automatically upon notice from Agent and the Obligors to the Lenders and the other Secured Parties).
- 10.3 <u>Financial Covenants</u>. As long as Full Payment of the Obligations has not occurred, in the case of <u>Sections 10.3.1</u>, 10.3.2, 10.3.3, 10.3.4 and 10.3.7, Parent shall on a consolidated basis with its Subsidiaries, and, in the case of <u>Sections 10.3.5</u>, and 10.3.6, Parent and/or the Borrowers, as applicable, shall:
- 10.3.1 Minimum Interest Coverage Ratio. Other than with respect to any Fiscal Quarter ending prior to April 30, 2025, maintain an Interest Coverage Ratio of at least (a) 1.50:1.00, measured on a trailing two Fiscal Quarter basis and (b) 1.00:1.00 measured for each Fiscal Quarter, in each case as of the last day of each Fiscal Quarter.

- 10.3.2 <u>Maximum Leverage Ratio</u>. Maintain a Leverage Ratio not greater than 4.50:1.00, measured quarterly as of the last day of each Fiscal Quarter.
- 10.3.3 <u>Maximum ABS Excluded Leverage Ratio</u>. Maintain an ABS Excluded Leverage Ratio not greater than 2.50:1.00, measured quarterly as of the last day of each Fiscal Quarter.
- 10.3.4 <u>Fixed Charge Coverage Ratio</u>. Commencing with the most recent Fiscal Quarter for which the Parent's consolidated financial statements have been delivered prior to the date on which Availability is less than 20% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve), maintain a Fixed Charge Coverage Ratio of no less than 1.00:1.00, measured quarterly as of the last day of each Fiscal Quarter for so long as such covenant is in effect. Once such covenant is in effect, compliance with the covenant will be discontinued on the first day immediately succeeding the last day of the Fiscal Quarter which includes the 30th consecutive day on which Availability remains in excess of 20% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve).
- 10.3.5 <u>Minimum Availability</u>. Maintain Availability of no less than the greater of (a) 17.5% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) and (b) \$100,000,000; <u>provided</u> that, for purposes of this **Section 10.3.5**, commencing on January 1, 2025, Availability shall be calculated giving pro forma effect to the reduction of the Revolver Commitments (as defined in the Revolving Credit Agreement) to occur on the Revolver Termination Date (as defined in the Revolving Credit Agreement) in respect of the Non-Extending Class (as defined in the Revolving Credit Agreement).
- 10.3.6 <u>Anti-Cash Hoarding</u>. As of the end of any Business Day, if there shall be Revolving Loans (as defined in the Revolving Credit Agreement) then outstanding and the Consolidated Cash Balance exceeds \$25,000,000, apply such amounts in excess of \$25,000,000 within two (2) Business Days to prepay the outstanding principal balance of the Revolving Loans (as defined in the Revolving Credit Agreement) without premium or penalty.
- 10.3.7 Minimum EBITDA. As of the last day of each Fiscal Quarter, commencing with the Fiscal Quarter ending January 31, 2024, have EBITDA of no less than (a) \$50,000,000, measured on a trailing two Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending July 31, 2024; (b) \$90,000,000, measured on a trailing three Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending October 31, 2024; (c) \$125,000,000, measured on a trailing four Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending January 31, 2025; (d) \$150,000,000, measured on a trailing four Fiscal Quarter basis commencing with the Fiscal Quarter ending April 30, 2024 and ending on the last day of the Fiscal Quarter ending April 30, 2025; and (e) for each four Fiscal Quarter period ending on or after July 31, 2025, \$175,000,000, measured on a trailing four Fiscal Quarter basis.

# 10.4 Curative Equity.

10.4.1 Subject to the limitations set forth in Section 10.4.6, Borrowers may cure an Event of Default arising out of a breach of any of the financial covenants set forth in Sections 10.3.1, 10.3.2, 10.3.3, 10.3.4 and 10.3.7 (the "Specified Financial Covenants") (as the case may be) by way of an investment of Curative Equity prior to the date on which the Compliance Certificate is delivered to Agent pursuant to Section 10.1.2(d) in respect of the Fiscal Quarter with respect to which any such breach occurred; provided, that Borrowers' right to so cure an Event of Default shall be contingent on the timely delivery of such Compliance Certificate as required under Section 10.1.2(d).

- 10.4.2 The Borrowers shall promptly notify Agent of their receipt of any proceeds of Curative Equity and shall apply the same to the payment of the Revolving Obligations or, following the Discharge of ABL Obligations, the Obligations, as applicable, in the manner specified in Section 5.3.
- 10.4.3 Subject to the limitations set forth in **Section 10.4.6**, any investment of Curative Equity shall be in an amount that is sufficient to cause Parent and its Subsidiaries to be in compliance with all of the Specified Financial Covenants as at the last day of the most recently ended month or Fiscal Quarter (as the case may be), calculated for such purpose as if such amount were additional EBITDA and increase in Tangible Net Worth, and a decrease in total liabilities, as necessary, of Parent and its Subsidiaries as at such date and had been included in the financial calculations of Parent and its Subsidiaries on such date.
- 10.4.4 In the Compliance Certificate delivered pursuant to Section 10.1.2(d) in respect of the month end or Fiscal Quarter end (as the case may be) on which Curative Equity is used to cure any breach of the Specified Financial Covenants, Borrowers shall (i) include evidence of its receipt of Curative Equity proceeds, and (ii) set forth a calculation of the financial results and balance sheet of Parent and its Subsidiaries as at such month end or Fiscal Quarter end (as the case may be) (including for such purposes the proceeds of such Curative Equity as either deemed EBITDA for such month end or Fiscal Quarter end (as the case may be), or increased Tangible Net Worth and decreased total liabilities for such month end or Fiscal Quarter end (as the case may be), as if received on such date), which shall confirm that on a pro forma basis taking into account the application of Curative Equity proceeds, Parent and its Subsidiaries would have been in compliance with the Specified Financial Covenants (as at such date).
- 10.4.5 Upon delivery of a Compliance Certificate pursuant to **Section 10.1.2(d)** conforming to the requirements of this Section, any Event of Default that is continuing from a breach of any of the Specified Financial Covenants shall be deemed cured with no further action required by the Lenders. In the event Borrowers do not cure all financial covenant violations as provided in this **Section 10.4**, the existing Event of Default shall continue unless waived by the Required Lenders in writing.
- 10.4.6 Notwithstanding the foregoing, (i) Borrowers' rights under this **Section 10.4** may be exercised not more than two times during the term of this Agreement, and (ii) the amount of each investment of Curative Equity may not be less than \$1,000,000 or greater than \$20,000,000.
- 10.5 <u>Contract Forms</u>. The Borrowers shall not include in the Borrowing Base, Contracts which are not on the printed forms permitted under the Revolving Credit Agreement, and Borrowers shall not change or vary the printed forms of such Contracts unless otherwise permitted under the Revolving Credit Agreement.

#### SECTION 11. EVENTS OF DEFAULT: REMEDIES ON DEFAULT

- 11.1 Events of Default. Each of the following shall be an "Event of Default" hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:
- (a) A Borrower fails to pay (i) principal on any Term Loan when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any interest, fees or other amounts due under this Agreement within three (3) Business Days of the date due;
- (b) (i) any representation or warranty of an Obligor made in connection with any Loan Document or any certificate or instrument required to be furnished in connection with or pursuant to any Loan Document is incorrect or misleading in any material respect when given, or (ii) any information provided to Agent or the Lenders in respect of the CARES Act Tax Refund Claim shall have been untrue and incorrect as of the date provided in any material respect;

(c) A Borrower breaches or fail to perform any covenant contained in Section 2.1.5, 8.2.4, 8.2.5, 8.6.2, 10.1.1, 10.1.3, 10.1.6(b)(i),

10.2 and 10.3;

- (d) An Obligor breaches or fails to (i) deliver a Borrowing Base Report required to be delivered pursuant to **Section 8.1** within three (3) Business Days of the date such Borrowing Base Report was required to be delivered, (ii) comply with **Section 7.6** and such failure is not cured within ten (10) Business Days or (iii) perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives written notice thereof from Agent, whichever is sooner;
- (e) (i) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; (ii) an Obligor denies in writing or contests the validity or enforceability of any Loan Documents; (iii) other than with respect to items of Collateral with a value not exceeding \$5,000,000 in the aggregate, any Lien granted to Agent ceases to be a valid and perfected Lien (or the priority of such Lien ceases to be in full force and effect) (to the extent perfection is required hereunder or under any Loan Document), except to the extent that any such loss of validity, perfection or priority results from the failure of Agent to maintain possession of Collateral requiring perfection through control or to file or record any document delivered to it for filing or recording; or (iv) any Loan Document ceases to be in full force or effect for any reason (other than in accordance with its terms or a waiver or release by Agent and Lenders);
- (f) Any material breach or default of an Obligor occurs under (i) any Hedging Agreement or (ii) any instrument or agreement to which it is a party or by which it or any of its Properties is bound, in each case relating to any Debt (other than the Obligations) constituting Revolving Obligations or with an aggregate outstanding principal amount in excess of the Threshold Amount (including the documents related to the Permitted ABS Documents) and beyond the period of grace, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach, in each case (x) unless such Debt has been paid in full or the failure has been waived or otherwise cured prior to the acceleration of the Obligations under the Loan Documents, (y) with respect to such Debt consisting of obligations under Hedging Agreements, termination events or equivalent events relating to the breach by Parent, any Borrower or any Subsidiary of the terms thereof and (z) this clause (f) shall not apply to secured Debt that becomes due as a result of the voluntary sale, transfer of the property or assets subject to such Debt or as a result of an event not constituting a Change of Control under this Agreement and such Debt is paid when due or prior to acceleration of the Obligations;
- (g) Any final judgment or order for the payment of money is entered against an Obligor in an amount that exceeds, individually or cumulatively with all such unsatisfied judgments or orders against all Obligors, the Threshold Amount (net of insurance coverage therefor that has not been denied by the insurer), and there is a period of 60 consecutive days during which (i) such judgment or order is not discharged, satisfied, vacated or bonded pending appeal or (ii) a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect;
- (h) A loss, theft, damage or destruction occurs with respect to any Collateral included in the Borrowing Base or the Revolving Borrowing Base if the amount not covered by insurance exceeds, in the aggregate, the Threshold Amount;
- (i) An Obligor suffers the loss, revocation or termination any material license or permit which is necessary for the continued operation of a material part of such Obligor's business and such loss, revocation or termination could reasonably be expected to have a Material Adverse Effect, an Obligor agrees to or commences any liquidation, dissolution or winding up of its affairs; or an Obligor is not Solvent;

- (j) An Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any of the business of an Obligor; or an Insolvency Proceeding is commenced against an Obligor and the Obligor consents to institution of the proceeding (it being understood that any involuntary Insolvency Proceeding, petition or appointment described in this clause (j) shall not constitute an Event of Default unless such proceeding, petition or appointment shall continue undismissed for 60 days or an order for relief is entered in the proceeding, petition or appointment);
- (k) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; (ii) an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or (iii) any event similar to the foregoing occurs or exists with respect to a Foreign Plan, but, in each case in this clause (k) only if such occurrence or event would either individually or in the aggregate reasonably be expected to result in an Obligor or the Obligors incurring a liability which would have a Material Adverse Effect;
- (I) An Obligor or any of its Senior Officers is criminally indicted or convicted for (i) a felony committed in the conduct of the Obligor's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any Collateral with an aggregate fair market value in excess of \$10,000,000;
  - (m) A Change of Control occurs;
  - (n) A Level Two Regulatory Event has occurred; and
- (o) (i) The provisions of the ABL Intercreditor Agreement or the subordination provisions of the documents evidencing or governing the subordination of any Junior Lien Debt or Subordinated Debt (with an aggregate outstanding principal amount in excess of the Threshold Amount) (together with the provisions of the ABL Intercreditor Agreement, the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the Revolving Obligations or the applicable Junior Lien Debt or Subordinated Debt; or (ii) any Obligor shall disavow in writing the effectiveness, validity or enforceability of the ABL Intercreditor Agreement.
- 11.2 **Remedies upon Default.** Upon the occurrence and during the continuance of an Event of Default described in **Section 11.1(j)** with respect to any Borrower, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its sole discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:
- (a) declare any Obligations immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;

- (b) adjust the Borrowing Base, CAI Borrowing Base, CCI Borrowing Base or Badcock Borrowing Base;
- (c) [reserved]; and
- (d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrowers to assemble Collateral, at Borrowers' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Borrower, Borrowers agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Borrower agrees that 10 days' notice of any proposed sale or other Asset Disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable so long as otherwise conducted in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.
- (e) So long as a Level Two Regulatory Event is continuing, Agent shall have the right to immediately substitute a third party acceptable to Agent as servicer or asset manager of Borrowers' respective or collective portfolios of Contracts, and upon and after such substitution, such replacement servicer shall be entitled to receive a commercially reasonable fee for such services; <u>provided</u>, that upon the cure of such Event of Default, Borrowers shall be reinstated as such servicer or asset manager as promptly as practicable.
- 11.3 <u>License</u>. For the purpose of enabling Agent to exercise rights and remedies under this Agreement at such time as Agent shall be lawfully entitled to exercise such rights and remedies under this Agreement, except as is prohibited by an existing and enforceable anti-assignment provision of any license of Intellectual Property Rights (and solely with respect to the Intellectual Property Rights subject to such license, and other than to the extent that any such term would be rendered ineffective pursuant to the UCC or any other Applicable Law or principles of equity), Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of Royalty or other compensation to any Person) any or all Intellectual Property of Borrowers, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral.
- 11.4 Setoff. At any time during the existence of an Event of Default, Agent, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, such Lender or such Affiliate (other than, for the avoidance of doubt, Tax and Trust Funds) to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have. Each Lender agrees to promptly notify the Borrowers and Agent after any such setoff and application.

### 11.5 Remedies Cumulative; No Waiver.

11.5.1 <u>Cumulative Rights</u>. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations under the Loan Documents.

11.5.2 <u>Waivers</u>. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Term Loan during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Except as provided in **Section 10.4**, any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

### **SECTION 12. AGENT**

# 12.1 Appointment, Authority and Duties of Agent.

12.1.1 Appointment and Authority. Each Secured Party appoints and designates B. Riley as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute, deliver and perform its obligations as Agent under each Loan Document, including the ABL Intercreditor Agreement and any other intercreditor or subordination agreement (including any intercreditor or subordination agreement in respect of any Permitted HY Notes and with the purchaser of (or any trustee, agent or representative for the purchaser of) any Third Party Contract), and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. With respect to the Class C Retained Notes and CARES Act Tax Refund Claim, to the extent otherwise permitted hereunder, Agent alone is authorized to determine eligibility and applicable advance rates under the Borrowing Base, whether to impose or release any reserve, or whether any conditions to funding on the Closing Date have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment. No Secured Party (other than Agent) shall have any right individually to take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, Applicable Law or otherwise.

- 12.1.2 <u>Duties</u>. The title of "Agent" is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.
- 12.1.3 <u>Agent Professionals</u>. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.
- 12.1.4 <u>Instructions of Required Lenders</u>. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

# 12.2 Agreements Regarding Collateral and Borrower Materials.

- 12.2.1 Lien Releases; Care of Collateral. Agent will release (and the Secured Parties authorize Agent to release) any Lien on any Collateral (a) upon Full Payment of the Obligations under the Loan Documents; (b) that is the subject of an Asset Disposition or Lien that Borrowers certify in writing is a Permitted Asset Disposition or a Asset Disposition permitted by Section 10.2.6 (and Agent may rely conclusively on such certificate without further inquiry); (c) that does not constitute a material part of the Collateral (as agreed by Agent and Borrower); (d) to the extent required by the ABL Intercreditor Agreement; or (e) subject to Section 14.1, with the consent of Required Lenders. Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.
- 12.2.2 <u>Possession of Collateral</u>. Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

- 12.2.3 Reports. Agent shall promptly provide to Lenders, when complete, any field examination, audit or appraisal report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders by providing access to them on the Approved Electronic Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrowers' books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants in accordance with the requirements of Section 13), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Approved Electronic Platform or otherwise.
- 12.3 Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, email or other electronic means) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person (including, for the avoidance of doubt, in connection with Agent's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page). Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.
- 12.4 Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in Section 6, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party (other than Agent) agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations or assert any rights relating to any Collateral.
- 12.5 **Ratable Sharing**. If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.3**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. No Lender shall set off against a Deposit Account or Securities Account without Agent's prior consent.
- 12.6 <u>Indemnification</u>. EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, <u>PROVIDED</u> THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral

prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.

12.7 Limitation on Responsibilities of Agent. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Contract Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

### 12.8 Successor Agent and Co-Agents.

12.8.1 Resignation; Successor Agent. Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrowers. Required Lenders may appoint a successor to replace the resigning Agent that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Event of Default exists pursuant to Section 11.1(a) or (j)) Borrowers. If no successor is appointed by the effective date of Agent's resignation then on such date, Agent may appoint a successor acceptable to it in its discretion and the Borrowers (provided no Event of Default exists pursuant to Section 11.1(a) or (j)) (which shall be a Lender unless no Lender accepts the role) or in the absence of such appointment, Required Lenders automatically assume all rights and duties of Agent, the successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. The retiring Agent shall be discharged from its duties hereunder on the effective date of its resignation or removal, but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or Claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including the indemnification set forth in Sections 12.6 and 14.2, and all rights and protections under this Section 12. Any successor to Agent by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.8.2 <u>Co-Collateral Agent</u>. If allowed under Applicable Law, Agent may appoint, subject to the approval of Borrower (such approval not to be unreasonably withheld or delayed) a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such separate agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

### 12.9 Acknowledgments of Lenders and Secured Parties.

### 12.9.1 Each Lender acknowledges and agrees that:

(a) it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Term Loans hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time (which may contain material, non-public information within the meaning of the United States securities laws concerning the Company and its Affiliates), continue to make and rely upon its own credit decisions in making Term Loans, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

(b) in participating as a Lender, it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender, in each case in the ordinary course of business, and not for the purpose of investing in the general performance or operations of the Borrowers, or for the purpose of purchasing, acquiring or holding any other type of financial instrument such as a security (and each Lender agrees not to assert a claim in contravention of the foregoing, such as a claim under the federal or state securities law); and

(c) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

### 12.9.2 Erroneous Payments

(a) If Agent notifies a Lender, or any Person who has received funds on behalf of a Lender (any such Lender or other recipient, a "Payment Recipient"), that Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from Agent) received by such Payment Recipient from Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender 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 demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of Agent pending its return or repayment as contemplated below in this Section 12.9.2 and held in trust for the benefit of Agent, and such Lender 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 two (2) Business Days thereafter (or such later date as Agent may, in its sole discretion, specify in writing), return to 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 Agent) in respect of each day from the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

- (b) Without limiting immediately preceding clause (a), each Payment Recipient, hereby further agrees that if it receives a payment, prepayment or repayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from 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 Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a "Payment Notice"), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment 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 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 Payment Recipient shall promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) or (z)) notify Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Agent pursuant to this Section 12.9.2(b)(ii).
- (c) Each Lender hereby authorizes Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that Agent has demanded to be returned under the preceding **clause (a)** above.
- (d) In the event that an Erroneous Payment (or portion thereof) is not recovered by Agent for any reason, after demand therefor by Agent in accordance with the preceding clause (a) above, from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (i) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Loans") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as Agent may specify) (such assignment of the Term Loans (but not Commitments) of the Erroneous Payment Impacted Loans, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or Agent (but the failure of such Person to deliver any such notes shall not affect the effectiveness of the foregoing assignment), (ii) Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender and (iv) Agent will reflect in the

Register its ownership interest in the Term Loans subject to the Erroneous Payment Deficiency Assignment. Subject to Section 13.01, Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether Agent may be equitably subrogated, Agent shall be contractually subrogated to all the rights and interests of the applicable Lender under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the "Erroneous Payment Subrogation Rights").

- (e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Obligor, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Agent from the Borrower or any other Obligor for the purpose of making such Erroneous Payment.
- (f) 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 Agent for the return of any Erroneous Payment received, including waiver of any defense based on "discharge for value" or any similar doctrine.
- (g) Each party's obligations, agreements and waivers under this **Section 12.9.2(g)** shall survive the resignation or replacement of Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

# 12.10 Remittance of Payments and Collections.

- 12.10.1 Remittances Generally. Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 12:00 noon, on a Business Day, then payment shall be made by the Secured Party by 2:00 p.m., on such day, and if request is made after 12:00 noon, then payment shall be made by 12:00 noon, on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.
- 12.10.2 <u>Failure to Pay</u>. If any Secured Party fails to deliver when due any amount payable by it to Agent hereunder, such amount shall bear interest, from the due date until paid in full, at the Default Rate for a Base Rate Term Loans. In no event shall Borrowers be entitled to credit for any interest paid by a Secured Party to Agent.
- 12.10.3 Recovery of Payments. If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, on demand, its share of the amounts required to be returned.

- 12.11 <u>Individual Capacities</u>. As a Lender, B. Riley or its Affiliates shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include B. Riley or its Affiliates in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide bank products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Contract Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.
- 12.12 **Titles.** Each Lender, other than B. Riley or its Affiliates, that is designated in connection with this credit facility as an "Arranger," "Bookrunner" or "Agent" of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

# 12.13 [**Reserved**].

12.14 No Third Party Beneficiaries. This Section 12 is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations under the Loan Documents. Other than with respect to Sections 12.1, 12.2, 12.4, 12.5, 12.8, 12.9, 12.11 and 12.15, this Section 12 does not confer any rights or benefits upon Borrowers or any other Person. As between Borrowers and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

# 12.15 Lender Representations and Warranties.

- (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, Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Obligor, that at least one of the following is and will be true:
  - (i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans,
  - (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans 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 Term Loans and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans and this Agreement satisfies the requirements of subsections (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 Term Loans and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between Agent, in its sole discretion, and such Lender.

- (b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Obligor, that:
  - (i) none of Agent or the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),
  - (ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other Person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),
  - (iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),
  - (iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Term Loans and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and
  - (v) no fee or other compensation is being paid directly to Agent or the Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Term Loans or this Agreement.

(c) Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Term Loans, the Term Loan Commitments and this Agreement, (ii) may recognize a gain if it extended the Term Loans for an amount less than the amount being paid for an interest in the Term Loans by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, Agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

# SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS

13.1 <u>Successors and Assigns</u>. This Agreement shall be binding upon and inure to the benefit of Borrowers, Agent, Lenders, Secured Parties and their respective successors and permitted assigns, except that (a) no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents other than as set forth in Section 10.2.9; and (b) any assignment by a Lender must be made in compliance with Section 13.3. Agent may treat the Person which made any Term Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with Section 13.3. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

# 13.2 Participations.

- 13.2.1 Permitted Participants; Effect. Subject to Section 13.3.3, any Lender may sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Term Loans for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.9 unless Borrowers agree otherwise in writing.
- 13.2.2 <u>Voting Rights</u>. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Term Loan in which such Participant has an interest, postpones the Term Loan Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Term Loans, or releases any Borrower, Guarantor or substantially all of the Collateral.
- 13.2.3 <u>Participant Register</u>. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in the Term Loans (and stated interest). Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code.

- 13.2.4 <u>Benefit of Setoff</u>. Each Participant shall have a right of set-off pursuant to **Section 11.4** in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off pursuant to **Section 11.4** with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.
- 13.2.5 <u>Increased Costs/Break Funding/Taxes</u>. A Participant shall not be entitled to receive any greater payment under **Section 3.7**, **3.9**, **5.9** or **5.10** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent expressly acknowledging such Participant may receive a greater benefit. A Participant shall not be entitled to the benefits of **Section 5.9** and **5.10** to the extent such Participant fails to comply with **Section 5.10.1** as though it were a Lender.

# 13.3 Assignments.

- 13.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$5,000,000 (unless otherwise agreed by Agent and the Borrower Agent, each in their discretion) and integral multiples of \$1,000,000 in excess of that amount; and (b) the parties to each such assignment shall execute and deliver to Agent (i) an Assignment and Acceptance or (ii) to the extent applicable, an agreement incorporating an Assignment and Acceptance by reference pursuant to an Approved Electronic Platform as to which Agent and the parties to the Assignment and Acceptance are participants. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender to pledge or assign any rights under this Agreement to (i) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors and any Operating Circular issued by such Federal Reserve Bank or to any other financing source of such Lender that is an Eligible Assignee or (ii) counterparties to swap agreements relating to any Term Loans; provided, that (x) no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto and (y) any payment by the Borrowers to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy the Borrowers' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligations hereunder.
- 13.3.2 Effect; Effective Date. Upon delivery to Agent of an assignment notice in the form of **Exhibit** C and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, (i) the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder and (ii) the assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than any rights it may have pursuant to **Section 14.2** which will survive) 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). Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.10** and deliver, upon request, an Administrative Questionnaire satisfactory to Agent.

- 13.3.3 <u>Certain Assignees</u>. No assignment or participation may be made to a Borrower, Affiliate of a Borrower or natural person. Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents.
- 13.3.4 Register. Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names and addresses of each Lender and the Term Loans and stated interest owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.
- 13.4 Replacement of Certain Lenders. If a Lender (a) is a Non-Consenting Lender (other than B. Riley and its Affiliates) or (b) gave a notice under Section 3.5 or requested payment or compensation under Section 3.7 or 5.9 (and has not designated a different Lending Office pursuant to Section 3.8), then Agent or Borrower Agent may, upon notice to such Lender and Agent, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment and Acceptance(s). Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.
- 13.5 <u>Assignments/Participations with Respect to Securities Laws</u>. Each Lender agrees that, without the prior written consent of Borrower Agent and Agent, it will not make any assignment or sell a participation hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in respect of, any Term Loan or other Obligation under the securities laws of the United States of America or of any jurisdiction.

# **SECTION 14. MISCELLANEOUS**

### 14.1 Consents, Amendments and Waivers.

- 14.1.1 <u>Amendment</u>. Subject to the proviso to **Section 1.2**, and **Section 3.6(b)**, **(c)**, **(d)** and **(e)** no modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of the Required Lenders) and each Obligor party to such Loan Document; <u>provided</u> that:
- (a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;
  - (b) [reserved];
- (c) without the prior written consent of each Lender directly and adversely affected thereby, no modification shall (i) increase the Term Loan Commitment of such Lender to fund Term Loans hereunder; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender; (iii) extend the Term Loan Termination Date applicable to such Lender's

Obligations; (iv) amend this clause (c); or (v) alter **Section 5.6.3**; <u>provided</u> that for purposes of this clause (c), it being understood that (A) waivers or modifications of conditions precedent, covenants or Defaults or Events of Default shall not constitute an increase of the Term Loan Commitment of any Lender; (B) a waiver or reduction of the Default Rate (or other post-petition increase in interest) shall be effective with the consent of the Required Lenders (and shall not require the consent of each directly and adversely affected Lender); and (C) any modification to the Leverage Ratio or the component definitions thereof shall not constitute a reduction in the rate of interest or a reduction of fees;

(d) without the prior written consent of all Lenders, no modification shall (i) alter this **Section 14.1.1**; (ii) release all or substantially all of the Collateral; (iii) amend the definition of Pro Rata, Required Lenders or Supermajority Lenders; or (iv) except in connection with a merger, disposition or similar transaction expressly permitted hereby, including pursuant to **Sections 10.2.6** and **10.2.9**, release any Obligor from liability for any Obligations;

# (e) [reserved]; and

(f) without the prior written consent of Supermajority Lenders, amend the definition of Borrowing Base (or any defined term used in such definition) if the effect of such amendment is to increase borrowing availability; provided that only the consent of Agent, the Borrowers and the Required Lenders shall be required to approve additional categories of assets to be included in the Borrowing Base.

Notwithstanding anything contained herein (including, without limitation, this **Section 14.1.1**) or any other Loan Document to the contrary, this Agreement may be amended (or amended and restated): (a) by Agent and Borrowers, without the consent of any Lender, in the event that Agent may, in its reasonable discretion (which discretion shall take into consideration, *inter alios*, the credit quality of the Obligors and their Subsidiaries, the internal credit guidelines of Agent (including credit committee approval) and all in advance rates and concentration levels related to such assets, but in any event shall not be exercised in an arbitrary or capricious manner), decide to include additional categories of assets related to rent-to-own assets of the Obligors (subject to reasonably satisfactory collateral diligence) and (b) with the written consent of the Required Lenders, Agent and the Borrowers (i) to add one or more additional credit facilities or refinancing facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof; and/or (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders, Supermajority Lenders and other definitions related to such new credit facilities.

- 14.1.2 <u>Limitations</u>. The agreement of Borrowers shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders and/or Agent as among themselves. Only the consent of the parties to any agreement relating to fees shall be required for modification of such agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.
- 14.1.3 <u>Payment for Consents</u>. No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

14.1.4 Errors. If Agent and the Borrowers shall have jointly identified an obvious error or any error or omission of a technical nature in the Loan Documents, then Agent and the Borrowers shall be permitted to amend such provision without any further action or consent of any other party to such Loan Document if the same is not objected to in writing by the Required Lenders to Agent within five (5) Business Days following receipt of notice thereof.

14.2 Indemnity. EACH BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE AS SET FORTH BELOW) OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless any Indemnitee with respect to a Claim that (i) is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or its Related Parties, or (y) material breach by such Indemnitee or its Related Parties of their obligations hereunder or under the Loan Documents or (ii) is brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding brought by or against Agent, acting in its capacity as Agent) that does not involve any act or omission of any Obligor and arises out of disputes among the Lenders and/or their transferees.

### 14.3 Notices and Communications.

14.3.1 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to any Obligor, to Borrower Agent at: 2445 Technology Forest Blvd. Building 4, Suite 800 The Woodlands, TX 77381 Attention: Office of General Counsel

(ii) if to Agent, at: c/o B. Riley Financial, Inc. 11100 Santa Monica Blvd Suite 800 Los Angeles, California 90025 Attn: Alan Forman

Email: aforman@brileyfin.com

with copies (which shall not constitute notice) to:

Sullivan & Cromwell LLP 125 Broad Street New York, NY 10004 Attn: Ari B. Blaut

Email: blauta@sullcrom.com

(iii) if to any other Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (B) sent by facsimile shall be deemed to have been given when sent, <u>provided</u> that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (C) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

- (b) Each of Agent and Borrower Agent (on behalf of the Obligors) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.
- (c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.
- (d) Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.3**, **3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any notice received by Borrower Agent shall be deemed received by all Borrowers.
- 14.3.2 Certain Determinations. Notwithstanding anything to the contrary contained herein, in the event of a Discharge of ABL Obligations shall have otherwise occurred, references in this Agreement or any other Loan Document to (or actions, terms or conditions in this Agreement which default or defer to or are limited by) the determination or discretion of Revolving Agent or actions taken by or in favor of Revolving Agent, or actions, events or conditions permitted by the Revolving Credit Agreement or any other Revolving Loan Document, shall, in each case, be deemed to refer to (and be vested in), as applicable, Agent and determination or discretion of Agent or actions taken by or in favor of Agent, or actions, events or conditions permitted or required by this Agreement and the other Loan Documents. In furtherance of the foregoing, it is expressly acknowledged and agreed that upon a Discharge of ABL Obligations (x) all determinations of eligibility criteria and Reserves with respect to assets included in the Borrowing Base to be made by Revolving Agent shall be made by Agent in its Permitted Discretion (an any restriction on such discretion, to the extent related to the existence of Revolving Agent or the Revolving Credit Agreement, shall be deemed to reference the Collateral which otherwise reference the terms and conditions of Revolving Agent or the Revolving Credit Agreement, shall be deemed to reference the determinations and conditions required by Agent and this Agreement and (z) to the extent that this Agreement, shall be deemed to reference the determinations and conditions, term or condition set forth in the Revolving Credit Agreement or any other Revolving Loan Document, such determinations shall be made by reference to the terms and conditions set forth in the Revolving Credit Agreement and the Revolving Loan Documents (as in effect immediately prior to the termination thereof or the occurrence of the Discharge of ABL Obligations) and all references therein to Revolving Agent shall mean Agent for purp

### 14.3.3 Posting of Communications.

(a) Borrowers agree that Agent may, but shall not be obligated to, make any Communications available to the Lenders by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system, if any, chosen by Agent to be its electronic transmission system (the "Approved Electronic Platform"). In the event the Borrowers and Agent agree to use an Approved Electronic Platform, notwithstanding anything in this Agreement to the contrary, delivery to Agent for posting to the Approved Electronic Platform of any Borrower Materials, Reports or other notice, certificate or document required pursuant to this Agreement shall constitute delivery in accordance with the terms of this Agreement.

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by Agent from time to time (including, as of the Closing Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders and each Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. except, in each case, for any loses, claims, damages liabilities or expenses with respect to the foregoing if resulting from the gross negligence, bad faith or willful misconduct of Agent. Each of the Lenders and each Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL AGENT, ANY ARRANGER, ANY DOCUMENTATION AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY OBLIGOR, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY OBLIGOR'S OR AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM (OTHER THAN SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR EXPENSES RESULTING FROM THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT OF ANY APPLICABLE PARTY).

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Obligor pursuant to any Loan Document or the transactions contemplated therein which is distributed by Agent or any Lender by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

- (d) Each Lender agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees (i) to notify Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.
- (e) Each of the Lenders and each Borrower agrees that Agent may, but (except as may be required by Applicable Law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with Agent's generally applicable document retention procedures and policies.
- (f) Nothing herein shall prejudice the right of Agent, any Lender, any Borrower or Guarantor to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.
- 14.3.4 <u>Public Information</u>. Obligors and Secured Parties acknowledge that "public" information may not be segregated from material non-public information on the Approved Electronic Platform. Secured Parties acknowledge that Borrower Materials may include Obligors' material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor's securities.
- 14.3.5 Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of a Borrower; provided that such indemnity shall not, as to any such Indemnitee, be available to the extent that such liabilities, losses, costs or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

# 14.4 [**Reserved**].

- 14.5 <u>Credit Inquiries</u>. Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.
- 14.6 <u>Severability.</u> Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.
- 14.7 <u>Cumulative Effect; Conflict of Terms.</u> The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations, tests or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

# 14.8 Counterparts; Electronic Execution.

14.8.1 Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto.

14.8.2 Delivery of an executed counterpart of a signature page of (a) this Agreement, (b) any other Loan Document and/or (c) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 14.3.1), 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 telecopy, 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," "signed," "signed," "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 telecopy, 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 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 Agent has agreed to accept any Electronic Signature, (A) Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of a Borrower or any other Obligor without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (B) the Obligors shall be entitled to rely on such Electronic Signature purportedly given on behalf of Agent or any Lender 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 any Obligor, Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each of the parties hereto hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Agent, the Lenders, the Borrowers and the other Obligors, Electronic Signatures transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original and (ii) each other party hereto may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record).

14.9 **Entire Agreement**. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

14.10 **Relationship with Lenders**. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

14.11 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Borrowers acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrowers and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Borrowers have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Borrowers are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrowers, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrowers and their Affiliates, and have no obligation to disclose any of such interests to Borrowers or their Affiliates. To the fullest extent permitted by Applicable Law, each Borrower hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.12 Confidentiality, Each of Agent and Lenders shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, auditors, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority (such as the National Association of Insurance Commissioners) purporting to have jurisdiction over it or its Affiliates; provided that unless specifically prohibited by Applicable Law or it is not practicable to do so prior to the required disclosure, each of Agent and each Lender shall endeavor to notify Borrower Agent (without any liability for a failure to so notify Borrower Agent) of any request made to such Lender or Agent prior to disclosure of such Information; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto or any party to the Revolving Credit Agreement; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or Eligible Assignee or any actual or prospective party (or its advisors) to \any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender or any of their Affiliates on a nonconfidential basis from a source other than Borrowers; (h) on a confidential basis to a provider of an Approved Electronic Platform; (i) subject to an agreement containing provisions substantially the same as this Section, to 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; or (j) with the consent of Borrower Agent. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrowers' logos, trademarks or product photographs in advertising materials. As used herein, "Information" means information received from or on behalf of an Obligor or Subsidiary relating to it or its business, including any information obtained by Agent, any Secured Party, any Indemnitee and their respective Affiliates and its and their respective directors, officers, employees, agents, advisors and attorneys in connection with any inspection, audit, appraisal or review of properties, assets, books and records of Parent and/or its Subsidiaries and/or discussions with Parent's independent accountants. A

Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent and Lenders acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

### 14.13 Intentionally Omitted.

14.14 **GOVERNING LAW**. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE AND WHETHER AT LAW OR IN EQUITY) SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

### 14.15 Consent to Forum; Bail-In of Affected Financial Institutions.

- 14.15.1 Forum. EACH BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN THE BOROUGH OF MANHATTAN OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS (WHETHER IN CONTRACT, TORT OR OTHERWISE AND WHETHER AT LAW OR IN EQUITY), AND AGREES THAT ANY SUCH DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.
- 14.15.2 Other Jurisdictions. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.
- 14.15.3 <u>Acknowledgement and Consent to Bail-In of Affected Financial Institutions</u>. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:
- (a) the application of any Write-Down and Conversion Powers by an the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent 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 the applicable Resolution Authority.

# 14.15.4 Reserved.

- 14.16 Waivers by Borrowers. To the fullest extent permitted by Applicable Law, each Borrower waives (a) the right to trial by jury (which Agent, Lenders and all other Secured Parties hereby also waive) in any proceeding or dispute of any kind (whether in contract, tort or otherwise and whether at law or in equity) relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which a Borrower may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against an Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Borrower acknowledges that the foregoing waivers are a material inducement to Agent and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Borrowers. Each Borrower has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.
- 14.17 Patriot Act Notice/Beneficial Ownership Regulation. Agent and Lenders hereby notify Borrowers that pursuant to the Patriot Act and the Beneficial Ownership Regulation, Agent and Lenders are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act and the Beneficial Ownership Regulation. Agent and Lenders will also require information regarding any personal guarantor, and may require information regarding Borrowers' management and owners, such as legal name, address, social security number and date of birth. The Borrowers shall, promptly upon request, provide all documentation and other information as Agent or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.
- 14.18 **NO ORAL AGREEMENT**. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

- 14.19 <u>ABL Intercreditor Agreement</u>. To the extent any provision of this Agreement conflicts with the ABL Intercreditor Agreement, such provision in the ABL Intercreditor Agreement shall govern and control.
- 14.20 <u>Acknowledgement Regarding Any Supported QFCs</u>. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Hedging Agreement or any other agreement or instrument that is a QFC (such support, "<u>QFC Credit Support</u>", and each such QFC, a "<u>Supported QFC</u>"), 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>U.S. Special Resolution Regimes</u>") 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.
  - (b) As used in this Section 14.20, the following terms have the following meanings:
  - "BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.
  - "Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).
  - "Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.
  - "QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c) (8)(D).

14.21 **ABL Intercreditor Agreement** Notwithstanding anything herein to the contrary, so long as the Discharge of ABL Obligations has not occurred, any covenant under this Agreement requiring (or any representation or warranty hereunder to the extent that it would have the effect of requiring) the delivery of physical possession to Agent of any Collateral (including, without limitation, Instruments, Documents, tangible Chattel Paper and any Certificated Security (as defined in Section 8-102 of the UCC)) shall be deemed to have been satisfied (or, in the case of any representation and warranty, shall be deemed to be true) if such physical possession shall have been delivered to Revolving Agent (or any Person acting on behalf of Revolving Agent), with any such holder serving as bailee and custodian for Agent during its physical possession of such Collateral in accordance with the ABL Intercreditor Agreement or otherwise, and such holder thereafter maintains such physical possession for so long as this Agreement would otherwise require any Borrower to cause Agent to be in such physical possession.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

### CONN'S, INC.,

a Delaware corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

# CONN APPLIANCES, INC.,

a Texas corporation

By:

/s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

# CONN CREDIT I, LP,

a Texas limited partnership

By: CAI HOLDING, LLC,

a Delaware limited liability company, its General

Partner

By: /s/ Mark Prior

Name: Mark Prior

Title: Vice President, General Counsel and Secretary

# CONN CREDIT CORPORATION, INC.,

a Texas corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

# W.S. BADCOCK LLC,

a Florida limited liability company

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

[Signature Page to Term Loan and Security Agreement]

# BRF FINANCE CO., LLC, as Agent

/s/ Daniel Shribman

Name: Daniel Shribman

Title: CIO

# BRF FINANCE CO., LLC, as a Lender

/s/ Daniel Shribman Name: Daniel Shribman Title: CIO

[Signature Page to Term Loan and Security Agreement]

# AMENDMENT NO. 1 TO DELAYED DRAW TERM LOAN AND SECURITY AGREEMENT

This AMENDMENT NO. 1 TO DELAYED DRAW TERM LOAN AND SECURITY AGREEMENT (this "Amendment") is dated as of December 18, 2023, and is entered into by and among CONN'S, INC., a Delaware corporation, as parent and guarantor ("Parent"), CONN APPLIANCES, INC., a Texas corporation ("CAI"), CONN CREDIT I, LP, a Texas limited partnership ("CCI"), CONN CREDIT CORPORATION, INC., a Texas corporation ("CCCI"; and together with CAI and CCI, each an "Existing Borrower" and collectively, the "Existing Borrowers"), W.S. BADCOCK LLC, a Florida limited liability company (the "New Borrower" and, together with the Existing Borrowers, the "Borrowers" and each, a "Borrower"), the undersigned Guarantors (together with Parent and the Borrowers, the "Obligors" and each, an "Obligor"), the undersigned Lenders and STEPHENS INVESTMENTS HOLDINGS LLC in its capacity as Agent for the Lenders (in such capacity, "Agent").

### RECITALS

**WHEREAS**, the Existing Borrowers, Agent and the Lenders are parties to that certain Delayed Draw Term Loan and Security Agreement, dated as of July 31, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "Existing Loan Agreement" and, as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, including by this Amendment, the "Loan Agreement");

WHEREAS, pursuant to that certain Investment Agreement, dated as of December 18, 2023 (the "Acquisition Agreement" and the transaction contemplated thereby, the "Blade Acquisition"), by and among Parent, as the purchaser, and Franchise Group Newco BHF, LLC ("Newco BHF"), Freedom VCM Interco Holdings, Inc. ("Freedom VCM") and Franchise Group, Inc. ("FRG"), as the sellers, Parent will acquire, directly or indirectly, all of the issued and outstanding units representing limited liability company interests in the New Borrower from Newco BHF; and

WHEREAS, the Existing Borrowers have requested (a) that the Lenders consent to, *inter alia*, the Blade Acquisition and (b) certain amendments and modifications to the Existing Loan Agreement in connection with the Blade Acquisition, including, among other things, to extend the maturity date thereof and add the New Borrower as a borrower under the Loan Agreement, and, subject to the satisfaction (or waiver in accordance with the terms hereof) of the conditions set forth herein, Agent and the Lenders are willing to so amend the Existing Loan Agreement on the terms set forth herein.

**NOW**, **THEREFORE**, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned agrees as follows:

# ARTICLE I DEFINITIONS

Section 1.1 <u>Definitions</u>. Initially capitalized terms used but not otherwise defined in this Amendment have the respective meanings given thereto in the Loan Agreement.

## ARTICLE II CONSENTS, AMENDMENTS AND AGREEMENTS

### Section 2.1. Consents.

- (a) Agent and the Lenders consent to (i) the Blade Acquisition and the Term Loan Agreement and each Term Loan Document (in each case as defined in **Exhibit A** hereto) and (ii) solely in respect of the Fiscal Quarter ending on October 31, 2023, the financial statements (and any other obligation in respect thereof) being delivered on December 18, 2023 and such obligations shall be satisfied upon filing such financial statements with the Securities and Exchange Commission.
- (b) On the Amendment No. 1 Effective Date (as defined below), Agent consents to the entry into the amendment of the Revolving Credit Agreement and each Revolving Loan Document (in each case as defined in **Exhibit A** hereto).
- Section 2.2. <u>Amendments to Existing Loan Agreement</u>. Each of the parties hereto agrees and consents that, effective as of the Amendment No. 1 Effective Date, the Existing Loan Agreement (including the Exhibits thereto) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: <u>stricken text</u>) and to add the double-underlined text (indicated textually in the same manner as the following example: <u>double-underlined text</u>) in the form attached as **Exhibit A** hereto.

### Section 2.3 Joinder of New Borrower.

Effective immediately upon the consummation of the Blade Acquisition, the Lenders hereby agree that, from and after the Amendment No. 1 Effective Date, the New Borrower shall become a borrower under the Loan Agreement and shall constitute a "Borrower" for all purposes thereof and of the other Loan Documents, with the same force and effect as if originally named therein as a Borrower. The New Borrower agrees that, by execution of this Amendment and effective as of the Amendment No. 1 Effective Date, the New Borrower hereby assigns and transfers to Agent, and hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all of the Collateral of the New Borrower (other than Excluded Collateral), whether now owned or hereafter acquired, and wherever located. On the Amendment No. 1 Effective Date, Schedules 7.1(j), 8.5, 8.7.1, 9.1.4, 9.1.5, 9.1.11 and 9.1.16 attached hereto, and Schedules 1.1(g) and 10.2.17 attached hereto are hereby added to the Loan Agreement.

# ARTICLE III CONDITIONS PRECEDENT

- Section 3.1 Conditions Precedent to Signing. The effectiveness of this Amendment (other than in respect of Sections 2.2 and 2.3 hereof), is subject to satisfaction of the following condition precedent (the date on which such condition precedent is so satisfied, the "Signing Effective Date"):
- (a) The Obligors (other than New Borrower) and Lenders have delivered to Agent, in such number as may be requested by Agent, executed counterparts of this Amendment.
- Section 3.2 <u>Conditions Precedent to Amendment</u>. The effectiveness of this Amendment in respect of Sections 2.2 and 2.3 hereof, is subject to satisfaction (or waiver in accordance with Section 14.1.1 of the Loan Agreement) of the following conditions precedent (the first date on which such conditions precedent are so satisfied or waived, the "<u>Amendment No. 1 Effective Date</u>"):

- (a) The Signing Effective Date shall have occurred and the New Borrower has delivered to Agent, in such number as may be requested by Agent, executed counterparts of this Amendment. The Guarantors shall have delivered to Agent (i) an amendment and restatement of the currently effective Security Agreement in the form attached hereto as **Exhibit B** and (ii) an amendment and restatement of each currently effective Equity Interest Pledge Agreement in the forms attached hereto as **Exhibit C**.
- (b) The representations and warranties contained in **Article IV** hereof shall be true and correct in all material respects as of the Amendment No. 1 Effective Date as if made on the Amendment No. 1 Effective Date, except for such representations and warranties limited by their terms to a specific date and without duplication of any materiality qualifiers contained therein.
  - (c) No Default or Event of Default (after giving effect to this Amendment) shall have occurred and be continuing.
- (d) Agent shall have received a certificate of a Senior Officer of the Borrower Agent certifying as to the satisfaction of the conditions contained in **Sections 3.2(b)** and **3.2(c)** hereof and as to any other factual matters as may be reasonably requested by Agent.
- (e) Substantially concurrently with but after the consummation of the Blade Acquisition, the Borrowers shall have paid (i) to Agent all reasonable documented and out-of-pocket fees, costs, and expenses owed to and/or incurred by Agent arising in connection with this Amendment to the extent invoiced one (1) Business Day prior to the Amendment No. 1 Effective Date (including reasonable attorneys' fees and costs of Holland & Knight LLP, as counsel to Agent) and (ii) to Agent and the Lenders all fees required to be paid by the Borrowers in connection with this Amendment.
- (f) Substantially concurrently with but after the consummation of the Blade Acquisition, Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral of the New Borrower, as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens, and that the New Borrower has no Debt for borrowed money outstanding as of the Amendment No. 1 Effective Date.
- (g) Agent shall have received a certificate from a Senior Officer of the Borrower Agent certifying that, as of the Amendment No. 1 Effective Date (after giving effect to the Blade Acquisition), the Borrowers and their Subsidiaries, taken as a whole on a consolidated basis, are Solvent.
- (h) Agent shall have received a certificate of a duly authorized officer of each Obligor (and in the case of New Borrower, substantially concurrently with but after the consummation of the Blade Acquisition) certifying (i) that attached copies of such Obligor's Organic Documents, as applicable, are true and complete, and in full force and effect, without amendment, except as shown, (ii) that an attached copy of resolutions authorizing the execution and delivery of the Amendment is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this Amendment, and (iii) to the title, name and signature of each Person authorized to sign the Amendment. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.
  - (i) Agent shall have received a customary written opinion of Sidley Austin LLP with respect to each Obligor.

- (j) Agent shall have received good standing certificates for each Obligor issued as of a recent date by the Secretary of State or other appropriate official of the applicable jurisdiction of organization.
- (k) Substantially concurrently herewith, the Blade Acquisition shall have been consummated, the Term Loan Facility shall have closed, and the Borrowers' Fifth Amended and Restated Loan and Security Agreement with the lenders party thereto and JPMorgan Chase Bank, N.A., as agent (the "Revolving Facility") shall have been amended, restated, amended and restated, refinanced or replaced to, among other things, permit the Blade Acquisition and otherwise on terms acceptable to Agent and the Lenders party hereto; provided that, upon the execution and delivery by such Lender of its signature page to this Amendment, the condition set forth in this clause (k) shall be deemed to be satisfied.
- (l) (i) Agent shall have received, at least two (2) days prior to the Amendment No. 1 Effective Date, all documentation and other information regarding the Obligors requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Obligors at least ten (10) days prior to the Amendment No. 1 Effective Date, and (ii) to the extent any Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least two (2) days prior to the Amendment No. 1 Effective Date, any Lender (including the New Lender) that has requested, in a written notice to the Obligors at least ten (10) days prior to the Amendment No. 1 Effective Date, a Beneficial Ownership Certification in relation to each Obligor shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Amendment, the condition set forth in this clause (ii) shall be deemed to be satisfied).

Agent is hereby authorized and directed to declare **Sections 2.2 and 2.3** of this Amendment to be effective when it has received documents confirming or certifying, to the satisfaction of Agent, compliance with the conditions set forth in this **Section 3.2** or the waiver of such conditions as permitted hereby. Such declaration shall be final, conclusive and binding upon all parties to the Loan Agreement (including as amended hereby) for all purposes. Each Lender that delivers its executed counterpart to this Amendment shall be deemed satisfied with the compliance with each condition contained herein that require the satisfaction, approval or consent of any Lender.

# ARTICLE IV REPRESENTATIONS AND WARRANTIES

Each Obligor hereby represents and warrants to Agent and each Lender, as of the Amendment No. 1 Effective Date, as follows:

Section 4.1 Representations and Warranties. The representations and warranties set forth in Section 9 of the Loan Agreement and in each other Loan Document are true and correct in all material respects (and in all respects with respect to any representations and warranties which are expressly qualified with materiality) on and as of the date hereof with the same effect as if made on and as of the date hereof, except to the extent such representations and warranties expressly relate solely to an earlier date.

Section 4.2 No Defaults. After giving effect to this Amendment, no Default or Event of Default has occurred and is continuing.

Section 4.3 <u>Authority</u>. The execution, delivery, and performance by each Obligor of this Amendment is within the powers and authority of each Obligor and has been duly authorized by each such Obligor (as applicable).

**Section 4.4 Enforceability.** This Amendment constitutes the legal, valid, and binding obligation of each Obligor, enforceable against each such Obligor in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles.

# ARTICLE V ADDITIONAL COVENANTS AND MISCELLANEOUS

Section 5.1 No Waiver; Loan Documents Unmodified; Ratification of Loan Documents. Except as expressly set forth in this Amendment, neither the execution by Agent or the Lenders of this Amendment, nor any other act or omission by Agent or the Lenders or their officers in connection herewith, shall be deemed a waiver by Agent or the Lenders of any Defaults or Events of Default which may exist, which may have occurred prior to the date of the effectiveness of this Amendment or which may occur in the future under the Loan Agreement and/or the other Loan Documents. Similarly, nothing contained in this Amendment shall directly or indirectly in any way whatsoever either impair, prejudice or otherwise adversely affect Agent's or the Lenders' right at any time to exercise any right, privilege or remedy in connection with the Loan Documents with respect to any Default or Event of Default, amend or alter any provision of the Loan Agreement or the other Loan Documents (other than as expressly set forth herein), or constitute any course of dealing or other basis for altering any obligation of the Borrowers or any right, privilege, obligation or remedy of Agent or the Lenders under the Loan Agreement, the other Loan Documents or any other contract or instrument. To the extent applicable, each Obligor hereby (a) reaffirms, ratifies, and confirms its respective payment and performance obligations under the Loan Agreement and each of the other Loan Documents, in each case, to which such Person is a party, as may be amended hereby, and (b) agrees that its guarantee under the Guaranty, as applicable, shall remain in full force and effect with respect to the Obligations as amended hereby. Nothing contained in this Amendment shall in any way impair the validity or enforceability of the Loan Documents, as modified hereby, or alter, waive, annul, vary, affect, or impair any provisions, conditions, or covenants contained therein or any rights, powers, or remedies granted therein, except as otherwise specifically provided in this Amendment, each of which as modified hereby, shall remain in full force and effect. Subject to the terms of this Amendment, any lien and/or security interest granted to Agent in the Collateral set forth in the Loan Documents shall remain unchanged and in full force and effect and shall continue to secure the payment and performance of all of the Obligations. Nothing contained herein or in any other document delivered in connection with this Amendment shall constitute a novation of the Loan Agreement, any other Loan Document or the Obligations.

Section 5.2 <u>Intercreditor Agreements</u>. In connection with any amendment, restatement, amendment and restatement, refinancing or replacement of the Term Loan Agreement (as defined in the Existing Loan Agreement) and/or the Revolving Credit Agreement entered into in connection herewith, the Lenders hereby authorize and direct Agent to enter into (a) an amendment and restatement of the currently effective Permitted ABS Intercreditor Agreement substantially in the form attached hereto as **Exhibit D** and (b) an amendment and restatement of the Intercreditor Agreement in the form attached hereto as **Exhibit E**.

Section 5.3 <u>Parties</u>, <u>Successors and Assigns</u>. This Amendment shall be binding upon the parties hereto and their respective successors and assigns.

Section 5.4 Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Amendment and/or any document to be signed in connection herewith and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be.

Section 5.5 <u>Headings</u>. The headings, captions, and arrangements used in this Amendment are for convenience only, are not a part of this Amendment, and shall not affect the interpretation hereof.

Section 5.6 Expenses of Agent. Without limiting the terms and conditions of the Loan Documents, the Borrowers, including the New Borrower, agree to pay on demand all reasonable, documented and out-of-pocket costs and expenses incurred by Agent in connection with the preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto, including without limitation, the reasonable, documented and out-of-pocket costs and fees of one legal counsel to Agent, in each case as contemplated by Section 3.4 of the Loan Agreement.

Section 5.7 Choice of Law; Jury Trial Waiver; Consent to Forum. WITHOUT LIMITING THE APPLICABILITY OF ANY OTHER PROVISION OF THE LOAN AGREEMENT, THE TERMS OF SECTIONS 14.14, 14.15 AND 14.16 OF THE LOAN AGREEMENT ARE INCORPORATED HEREIN BY REFERENCE, MUTATIS MUTANDIS.

**Section 5.8 <u>Total Agreement</u>.** This Amendment, the Existing Loan Agreement (as amended hereby) and all of the other Loan Documents (as may be amended hereby) shall constitute the entire agreement between the parties relating to the subject matter hereof, and shall not be changed or terminated orally.

Section 5.9 <u>Effect of Amendments</u>. The parties hereto hereby acknowledge and agree that each reference in the Loan Agreement to "this Agreement", "hereunder", "hereof", "herein", or words of like import shall mean and be a reference to the Existing Loan Agreement as amended hereby, and each reference to the Loan Agreement in any other document, instrument or agreement executed and/or delivered in connection with the Loan Agreement shall mean and be a reference to the Existing Loan Agreement as amended hereby.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been executed and delivered as of the date set forth above.

# **PARENT**:

# CONN'S, INC., a Delaware corporation

By: /s/ Timothy Santo
Name: Timothy Santo

Title: Interim Chief Financial Officer

# **EXISTING BORROWERS:**

# CONN APPLIANCES, INC.,

a Texas corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

# **CONN CREDIT I, LP,**

a Texas limited partnership

By: CAI HOLDING, LLC

a Delaware limited liability company,

its General Partner

By: CONN APPLIANCES, INC.

a Texas corporation, its Sole Member

By: /s/ Mark Prior

Name: Mark Prior

Title: Vice President, General Counsel and Secretary

# CONN CREDIT CORPORATION, INC.,

a Texas corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

[Conn's – Signature Page to Amendment No. 1 to Delayed Draw Term Loan and Security Agreement]

# **OTHER OBLIGORS**:

# CAI HOLDING, LLC, a Delaware limited liability company

By: /s/ Mark Prior

Name: Mark Prior

Title: Vice President, General Counsel and Secretary

# CAI CREDIT INSURANCE AGENCY, INC., a Louisiana corporation

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

# CONN LENDING, LLC., a Delaware limited liability company

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

# **NEW RTO, LLC**

a Delaware limited liability company

By: /s/ Timothy Santo

Name: Timothy Santo

Title: Interim Chief Financial Officer

[Conn's - Signature Page to Amendment No. 1 to Delayed Draw Term Loan and Security Agreement]

**NEW BORROWER**:

# W.S. BADCOCK LLC,

a Florida limited liability company

/s/ Timothy Santo

Name:

Timothy Santo Interim Chief Financial Officer Title:

[Conn's – Signature Page to Amendment No. 1 to Delayed Draw Term Loan and Security Agreement]

## STEPHENS INVESTMENTS HOLDINGS LLC, as

Agent and a Lender

By: /s/ Jackson Farrow, Jr.

Name: Jackson Farrow, Jr. Title: Senior Vice President

# STEPHENS GROUP, LLC, as a Lender

By: /s/ Ronald M. Clark

Name: Ronal M. Clark
Title: Chief Operating Officer

[Conn's - Signature Page to Amendment No. 1 to Delayed Draw Term Loan and Security Agreement]

Exhibit A

# **Conformed Loan Agreement**

[attached]

#### Execution Version

The Obligors, Agent and the other Secured Parties acknowledge that the exercise of certain of Agent's rights and remedies hereunder may be subject to, and restricted by, the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall control. Agent, on behalf of itself and the other Secured Parties, acknowledges and agrees that it and the other Secured Parties shall be bound by the terms and conditions of the Intercreditor Agreement.

## DELAYED DRAW TERM LOAN AND SECURITY AGREEMENT

Dated as of July 31, 2023

CONN'S, INC.,

as Parent and Guarantor

and

CONN APPLIANCES, INC., CONN CREDIT I, LP,

and

CONN CREDIT CORPORATION, INC.,

W.S. BADCOCK LLC, as Borrowers

### CERTAIN FINANCIAL INSTITUTIONS,

as Lenders,

and

## STEPHENS INVESTMENTS HOLDINGS LLC,

as Administrative Agent

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### **LIST OF EXHIBITS AND SCHEDULES**

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#### DELAYED DRAW TERM LOAN AND SECURITY AGREEMENT

THIS DELAYED DRAW TERM LOAN AND SECURITY AGREEMENT (this "Agreement") is dated as of July 31, 2023, by and among CONN'S, INC., a Delaware corporation, as parent and guarantor ("Parent"), CONN APPLIANCES, INC., a Texas corporation ("CAI"), CONN CREDIT I, LP, a Texas limited partnership ("CCI"), and CONN CREDIT CORPORATION, INC., a Texas corporation ("CCI"), W.S. BADCOCK LLC, a Florida limited liability company ("Badcock", and together with CAI and, CCI and CCCI, each, a "Borrower" and collectively, the "Borrowers"), the Lenders, and Stephens Investments Holdings LLC, in its capacity as administrative agent for the Lenders (in such capacity, "Agent").

### RECITALS:

WHEREAS, Borrowers have requested that Lenders make available to Borrowers a delayed draw term loan credit facility (the "DDTL Facility") in an aggregate amount not to exceed \$50,000,000, the proceeds of which Borrowers will use for the purposes permitted hereunder.

WHEREAS, Lenders have agreed to provide the DDTL Facility in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, Lenders, Agent, Parent and Borrowers hereby agree as follows:

#### SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 **<u>Definitions</u>**. As used herein, the following terms have the meanings set forth below:

ABL Intercreditor Agreement: that certain Intercreditor Agreement, dated as of February 21, 2023 the First Amendment Effective Date, between Term Loan Agent and Revolving Agent, and acknowledged by the Obligors, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

ABS Excluded Leverage Ratio: the ratio, determined as of the end of any Fiscal Quarter for Parent and its Subsidiaries, on a consolidated basis, of (a) the result of (x) all items that would be included as liabilities on a balance sheet in accordance with GAAP (but excluding, for avoidance of doubt, any lease which is not treated as a Capital Lease in accordance with the definition of "Capital Lease", which exclusion shall be made by reducing the amount of such liabilities on the balance sheet by an amount equal to the remainder of (1) the sum of current and long term "operating leases" minus (2) deferred rent) as of the last day of such Fiscal Quarter (excluding Debt resulting from the Existing Securitization Facility and any other Permitted ABS Transaction), minus (y) Qualified Cash as of such date of measurement, to (b) Tangible Net Worth as of the last day of such Fiscal Quarter.

ABS Qualified Cash: as of any date of determination, the aggregate amount of cash of Parent and its Subsidiaries that is restricted pursuant to the Existing Securitization Facility or any other Permitted ABS Transaction as required under the applicable documents setting forth the terms of the Existing Securitization Facility or any other Permitted ABS Transaction.

Acquisition: a transaction or series of transactions resulting in (a) the acquisition of a business, division or substantially all assets of a Person; (b) the acquisition of record or beneficial ownership of 50% or more of the Equity Interests of a Person (including, in any event, any Investment in (x) any Subsidiary which increases Parent's interest, directly or indirectly, in such Subsidiary or (y) any joint venture for the purpose of increasing Parent's interest (directly or indirectly) in such joint venture); or (c) the merger, consolidation or combination of a Borrower or Subsidiary with another Person.

Adjusted Tangible Assets: all assets of Parent and Borrowers on a consolidated basis, except (a) patents, copyrights, trademarks, trade names, franchises, goodwill, and other similar intangibles; (b) assets constituting intercompany Accounts; (c) assets located and notes and receivables due from obligors domiciled outside the United States of America or Canada; and (d) fixed assets to the extent of any write-up in the book value thereof.

Affected Financial Institution: (a) any EEA Financial Institution or (b) any UK Financial Institution.

Affiliate: with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person; provided, that, subject to Section 10.2.17, none of Franchise Group Newco BHF, LLC, Freedom VCM Interco Holdings, Inc., any dealers or any of their respective affiliates shall be an Affiliate of Parent or any of its Subsidiaries.

Agent: as defined in the Preamble to this Agreement.

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

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

Agreed Tenor: with respect to any Benchmark Replacement, a tenor or an interest payment period of (a) approximately three months or (b) in the absence of such three-month tenor or an interest payment period, such other tenor or interest payment period agreed to by Agent and the Borrower Agent.

Agreement: as defined in the Preamble to this Agreement.

Allocable Amount: as defined in Section 5.11.3(b).

Amendment No. 1: that certain Amendment No. 1 to Delayed Draw Term Loan and Security Agreement, dated as of December 18, 2023, by and among Parent, the Borrowers, the other Obligors party thereto, Agent and the Lenders party thereto.

Ancillary Document: as defined in Section 14.8.2.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the Patriot Act.

Applicable Law: all laws, rules, regulations and binding governmental guidelines applicable to the Person or matter in question, including all applicable statutory law, common law and equitable principles, as well as applicable provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities and all Consumer Finance Laws.

Applicable Margin: a rate of interest per annum equal to 10.00%.

Applicable Reference Rate: an interest rate *per annum* equal to the then current Benchmark; <u>provided</u>, <u>however</u>, that during any Benchmark Unavailability Period, the Applicable Reference Rate shall mean an interest rate *per annum* equal to the Base Rate. The Applicable Reference Rate will be determined and adjusted monthly (as of the beginning of each month) as to all Delayed Draw Term Loans then outstanding ((x) initially as provided in the definition of the Term SOFR Rate and (y) thereafter, for any Benchmark Replacement (subject to any Benchmark Replacement Conforming Changes)). If the Applicable Reference Rate would be less than the Floor, the Applicable Reference Rate will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

<u>Applicable Parent Common Stock: prior to the authorization of the Non-Voting Parent Common Stock, the Parent Common Stock, and from and after the authorization of the Non-Voting Parent Common Stock, the Non-Voting Parent Common Stock.</u>

Approved Fund: any entity that is owned or Controlled by a Lender or Affiliate of a Lender, and is engaged in making or investing in commercial loans in its ordinary course of activities.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a division or otherwise) of Property of an Obligor, including a disposition of Property in connection with a sale-leaseback transaction or synthetic lease.

Assignment and Acceptance: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit B** or otherwise satisfactory to Agent and, to the extent the Borrowers' consent in respect of the applicable assignment is necessary, the Borrower Agent.

Availability: the Revolving Borrowing Base minus Revolving Outstandings.

Badcock: as defined in the Preamble to this Agreement.

<u>Badcock Purchase Agreement: that certain Investment Agreement by and among Franchise Group Newco BHF, LLC, Badcock, Freedom VCM Interco Holdings, Inc., Franchise Group, Inc. and Parent.</u>

Badcock Store Accounts: all Deposit Accounts and Securities Accounts established, maintained and identified by Badcock that are used solely for receiving store receipts from any store owned or leased and operated by a dealer (together with any other Deposit Accounts at any time established or used by Badcock for receiving such store receipts from any such dealer-operated store location).

Badcock Transaction Documents: all documents and instruments executed and delivered in connection with the Badcock Purchase Agreement.

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

<u>Bail-In Legislation</u>: (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: Title 11 of the United States Code.

Base Rate: for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) 1% plus the greater of (i) the Term SOFR Rate, and (ii) the Floor. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Term SOFR Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to **Section 3.6** (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to **Section 3.6(b)**), then the Base Rate shall be determined without reference to **clause** (c)(i) above.

Benchmark: initially, with respect to any Delayed Draw Term Loan, the Term SOFR Rate; <u>provided</u> that if a Benchmark Transition Event, and the related Benchmark Replacement Date has occurred with respect to the Term SOFR Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **clause** (b) of Section 3.6.

Benchmark Replacement: the sum of: (a) the alternate benchmark rate that has been selected by Agent and the Borrower Agent as the replacement for the then-current Benchmark with an Agreed Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment. If the Benchmark Replacement as determined above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

Benchmark Replacement Adjustment: with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment for an Agreed Tenor with respect to such Unadjusted Benchmark Replacement, (which may be a positive or negative value or zero) that has been selected by Agent and the Borrower Agent giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities in the United States at such time.

Benchmark Replacement Conforming Changes: with respect to any Benchmark Replacement Delayed Draw Term Loan, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Agreed Tenor", "Business Day," the definition of "U.S. Government Securities Business Day," timing and frequency of determining rates and making payments of interest, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Agent decides, in consultation with the Borrower Agent, may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as Agent decides, in consultation with the Borrower Agent, is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

Benchmark Replacement Date: with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide an Agreed Tenor of such Benchmark (or such component thereof); or

(2) (2) in the case of **clause** (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; <u>provided</u>, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such **clause** (3) and even if an Agreed Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of **clause (1)** or **(2)** with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to the Agreed Tenor of such Benchmark (or the published component used in the calculation thereof).

Benchmark Transition Event: with respect to any Benchmark, the occurrence of one or more of the following events with respect to such thencurrent Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide the Agreed Tenor of such Benchmark (or such component thereof), permanently or indefinitely, <u>provided</u> that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Agreed Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide an Agreed Tenor of such Benchmark (or such statement or publication, there is no successor administrator that will continue to provide an Agreed Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that an Agreed Tenor of such Benchmark (or such component thereof) is no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to the Agreed Tenor of such Benchmark (or the published component used in the calculation thereof).

Benchmark Unavailability Period: with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to **clauses (1)** or **(2)** of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.6** and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.6**.

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

Benefit Plan: 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."

Blade Acquisition: has the meaning assigned to such term in Amendment No. 1.

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

Borrowed Money: with respect to any Obligor, without duplication, its (a) Debt of the type set forth in **clause (a)** of the definition of Debt; (b) Capital Leases; (c) letter of credit reimbursement obligations; and (d) Debt of the type set forth in **clause (b)** of the definition of Debt in respect of Debt described in **clauses (a)**, (b) and (c) of this definition of Borrowed Money, in each case other than obligations owing to any Flooring Lender.

Borrower: as defined in the Preamble to this Agreement.

Borrower Agent: as defined in Section 4.4.

Business Day: means, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Houston, Texas; provided that, in addition to the foregoing, a Business Day shall be in relation to Delayed Draw Term Loans referencing the Term SOFR Rate and any interest rate settings or payments of any such Delayed Draw Term Loans referencing the Term SOFR Rate or any other dealings of such Delayed Draw Term Loans referencing the Term SOFR Rate, any such day that is only a U.S. Government Securities Business Day.

<u>CAI</u>: as defined in the Preamble to this Agreement.

CAIC: CAI Credit Insurance Agency, Inc., a Louisiana corporation.

CAIH: CAI Holding, LLC, a Delaware limited liability company.

<u>Capital Expenditures</u>: for any period of calculation with respect to Parent and its Subsidiaries, the aggregate of all expenditures incurred by Parent and its Subsidiaries during such period that, in accordance with GAAP, are required to be classified as capital expenditures, including Capital Leases incurred; <u>provided</u> that the following items shall be excluded:

- (a) the purchase price of fixed or capital assets made with the proceeds of any combination of (A) used or surplus fixed or capital assets traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus fixed or capital assets;
- (b) expenditures made in connection with the replacement, substitution, restoration, upgrade, development or repair of assets to the extent financed with (x) insurance or settlement proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored, upgraded, developed or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced;
- (c) the purchase price of assets that are purchased simultaneously with the trade-in of existing assets to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such property for the property being traded in at such time;
- (d) the purchase price of property, plant or equipment or software in an amount equal to the identifiable proceeds of Asset Dispositions of fixed or capital assets;
- (e) expenditures that are accounted for as capital expenditures by Parent and its Subsidiaries that are actually paid for, or reimbursed to Parent and its Subsidiaries in cash or cash equivalents, by a Person other than Parent and its Subsidiaries;
  - (f) expenditures to the extent constituting any portion of an Acquisition (or Investment permitted hereunder);
  - (g) any capitalized interest expense reflected on a consolidated balance sheet of Parent and its Subsidiaries;
- (h) expenditures relating to the construction, acquisition, replacement, reconstruction, development, refurbishment, renovation or improvement of any property which has been transferred to a Person other than Parent and its Subsidiaries during the same Fiscal Year in which such expenditures were made pursuant to a sale and leaseback transaction to the extent of the cash proceeds received by Parent and its Subsidiaries pursuant to such Sale and Leaseback Transaction; or
- (i) expenditures financed with the proceeds of an issuance of Equity Interests of Parent so long as the proceeds of such issuance are received within 60 days of the applicable expenditure.

<u>Capital Lease</u>: any lease required to be capitalized for financial reporting purposes in accordance with GAAP. Notwithstanding anything to the contrary contained herein, any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2018, such lease shall not be considered a capital lease for purposes of any financial ratios, covenants and similar calculations and deliverables (other than, for the avoidance of doubt, financial statements, which shall be prepared in accordance with GAAP as in effect from time to time) under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith (and, for the avoidance of doubt, such adjustment shall be effected as set forth in the definitions of ABS Excluded Leverage Ratio and Leverage Ratio in the manner set forth therein).

CARES Act Tax Refund Claim: means, at any time of determination, the aggregate amount of refund claims of one or more of the Obligors resulting from (a) the application of 2020 Fiscal Year tax credits and net operating loss carrybacks to the taxable years ending January 31 of 2014, 2015, 2016, and/or 2019 as permitted pursuant to the Code and any similar rule of state or local law and (b) any claims for refunds of alternative minimum tax related to such net operating loss carrybacks, in each case, as further described on Schedule 1.1(c).

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the United States government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 24 months of the date of acquisition, and overnight bank deposits, in each case which are issued by JPM or a commercial bank organized under the laws of the United States or any state or district thereof, rated A 1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by JPM or rated A 1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within 24 months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least \$500,000,000 and has the highest rating obtainable from either Moody's or S&P.

**CCCI**: as defined in the Preamble to this Agreement.

CCI: as defined in the Preamble to this Agreement.

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

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: means (a) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934), other than the Permitted Holders, shall at any time have acquired direct or indirect beneficial ownership of Equity Interests of Parent representing aggregate voting power for the election of directors of Parent (without regard to the happening of any contingency) representing more than the greater of (i) 40% of such Equity Interests and (ii) the percentage of such Equity Interests owned by the Permitted Holders; (b) Parent ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests of CCI and, CCCI or Badcock; (d) Persons who were (i) directors of Parent on the Closing Date, (ii) nominated, appointed or approved for consideration for election by the board of directors of Parent or (iii) appointed or elected by directors who were directors of Parent on the Closing Date or were nominated, appointed, or approved as provided in clause (ii) above, cease to occupy a majority of the seats (excluding vacant seats) on the board of directors of Parent; or (e) all or substantially all of a Borrower's assets are sold or transferred, other than as permitted pursuant to Section 10.2.9; provided that any acquisition by (i) Franchise Group Newco BHF, LLC, (ii) Freedom VCM Interco Holdings, Inc., (iii) any Affiliates of the foregoing or (iv) any "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934) of which any of the foregoing are members, of the direct or indirect beneficial ownership of Equity Interests of Parent representing aggregate voting power for the election of directors of Parent (without regard to the happening of any contingency) representing more than 49% of such Equity Interests shall be deemed a Change of Control.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses (but limited, in the case of attorneys' fees and expenses, to the reasonable and documented out-of-pocket fees, charges and disbursements of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent and, in the case of an actual or potential conflict of interest, one (1) additional firm of lead counsel to all affected Indemnitees, taken as a whole and, in each case, without duplication of attorneys' fees and expenses included in the definition of Claims)) at any time (including after Full Payment of the Obligations, or replacement of Agent, or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person in any way relating to (a) any Delayed Draw Term Loans, Loan Documents, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, including the payment of principal, interest and fees, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) the exercise of any rights or remedies under any Loan Documents or Applicable Law, (e) the failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto, or (f) failure by any Obligor (directly or indirectly), Credit and Collection Guideline, Contract or Third Party Contract to comply with or otherwise satisfy any Consumer Finance Law in any respect.

<u>Class C Retained Notes</u>: any (a) series of "Class C" notes issued, pursuant to a Permitted ABS Transaction, by a Securitization Subsidiary in favor of another Securitization Subsidiary (the "<u>Purchasing Securitization Subsidiary</u>") which shall (i) be subsequently transferred, through a contribution, dividend, distribution or otherwise, by such Purchasing Securitization Subsidiary to an Obligor (with no requirement for any cash consideration to be paid by such Obligor for such Class C Retained Notes, except to the extent any cash consideration is contemporaneously redistributed or contributed to such Obligor upon the payment of such cash consideration), (ii) have not been further subsequently sold or otherwise transferred by such Obligor to any other Person (other than an Obligor), and (iii) represent Debt of the issuing Securitization Subsidiary pursuant to the terms of the applicable Permitted ABS Transaction or (b) other note otherwise acceptable to each of Revolving Agent and constituting a "Class C Retained Note" under the Term Loan Agent in its sole discretion Agreement.

CLL: Conn Lending, LLC, a Delaware limited liability company.

Closing Date: as defined in Section 6.1.

<u>CME Term SOFR Administrator</u>: CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

Code: the Internal Revenue Code of 1986.

<u>Collateral</u>: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations; <u>provided</u> that "Collateral" shall not include any Excluded Collateral.

Compliance Certificate: a certificate in the form of Exhibit D in which Borrowers certify compliance with Sections 10.2.3 and 10.3.

<u>Connection Income Taxes</u>: Other Connection Taxes that are imposed on or measured by net income (however denominated), or are franchise or branch profits Taxes.

### Confidential Information: as defined in Section 10.1.1(c).

Consumer Finance Laws: all laws, rules, regulations, and binding governmental guidelines of any kind relating to the extension, securing or administration of consumer credit, whether relating to secured or unsecured credit, real or personal security, advertising, solicitation, marketing, underwriting, origination, documentation, brokering, purchase, assignment, administration, servicing, collection or other activities relating thereto, in each case applicable to the Person, including any of the foregoing relating to consumer protection, usury, privacy, discriminatory or predatory practices, or unfair, deceptive or abusive acts or practices, and specifically including the Federal Consumer Credit Protection Act, Federal Fair Credit Reporting Act, Fair and Accurate Credit Transactions Act, Equal Credit Opportunity Act, Fair Debt Collections Practices Act, Real Estate Settlement Procedures Act, Magnuson-Moss Warranty Act, Servicemember's Civil Relief Act, Gramm-Leach-Bliley Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, Federal Trade Commission Act, Consumer Financial Protection Bureau Regulations B, M, N, O P, V, X and Z, and Federal Reserve Board Regulations B and Z.

Contingent Obligation: any obligation of a Person (without duplication) guaranteeing or having the economic effect of guaranteeing any Debt, lease, dividend or other obligation ("primary obligations") of another obligor ("primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations entered into in connection with any transaction permitted or not restricted by this Agreement (other than such obligations with respect to Debt). The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

<u>Contract Debtor</u>: each Person who is obligated to a Borrower to perform any duty under or to make any payment pursuant to the terms of a Contract.

<u>Contracts</u>: all of each Borrower's now owned and hereafter acquired loan agreements, accounts, revolving credit agreements, retail installment sale contracts, consumer loans, Instruments, notes, documents, chattel paper, and all other forms of obligations owing to such Borrower, including any collateral for any of the foregoing, including all rights under any and all security documents and merchandise returned to or repossessed by such Borrower, in each case excluding any Third Party Contract.

<u>Control</u>: the possession, directly or indirectly, of the power to direct or cause the direction of a Person's management or policies, whether through the ability to exercise voting power, by contract or otherwise.

Covenant Relief Period: shall have the meaning ascribed to it in the Senior Credit Facilities.

<u>Credit and Collection Guidelines: as the context requires, the guidelines applicable to the (a) Borrowers (other than Badcock) or (b) Badcock, in each case, which state the credit criteria used such Borrower in extending credit to Contract Debtors and the collection criteria used by ssuch Borrower in collection of amounts due from Contract Debtors.</u>

<u>Credit Card Account</u>: Accounts and all Payment Intangibles together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Borrower resulting from charges by a retail customer of a Borrower on credit or debit cards in connection with the sale of goods by a Borrower, or services performed by a Borrower, in each case in the Ordinary Course of Business.

<u>Credit Card Issuers</u>: any Person (other than a Borrower) who issues or whose members issue credit cards, including, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., VISA, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards approved by Revolving Agent in accordance with the Revolving Credit Agreement.

<u>Credit Card Processors</u>: with respect to each Borrower, any servicing or processing agent or any financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of such Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

<u>Cross-Acceleration Event</u>: the obligations of the Obligors under the Revolving Credit Agreement or Term Loan Agreement are not repaid in full at final maturity or such obligations are declared to be, or otherwise become, due and payable in full prior to its specified maturity as a result of an event of default (however described).

<u>Curative Equity</u>: common equity contributions made to Parent which Parent contributes as additional common equity contributions to any Borrower and which is designated "Curative Equity" by Borrower Agent under **Section 10.4** at the time it is contributed.

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

**DDTL** Facility: as defined in the Recitals.

<u>Debt</u>: as to any Person at a particular time, without duplication, all of the following, to the extent included as indebtedness or liabilities (excluding footnotes) in accordance with GAAP:

- (a) all indebtedness of such Person for borrowed money and all indebtedness of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) the maximum amount of all Contingent Obligations of such Person in respect of the Debt of any other Person of the type set forth in **clauses (a), (c), (d)** and **(f)** of this definition of "Debt" which are monetary obligations once they become primary obligations;
  - (c) net obligations of such Person under any Hedging Agreement;
- (d) all obligations of such Person to pay the deferred purchase price of property (other than (i) trade accounts payable and accrued liabilities, in each case in the Ordinary Course of Business and (ii) earn out obligations until such obligations appear in the liabilities section of the balance sheet and have not been paid within 60 days of the date when due);

- (e) Debt of the type set forth in **clauses** (a), (c), (d) and (f) of this definition of "Debt" (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse but, in the case of limited recourse indebtedness, the amount of such Debt shall be deemed equal to the lesser of the aggregate unpaid amount of such Debt and the fair market value (as reasonably estimated by the Borrower Agent) of the encumbered property;
  - (f) all obligations of such Person in respect of Capital Leases; and
- (g) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock).

For all purposes hereof, (i) the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person and (ii) Debt shall not include (A) amounts owed to Flooring Lenders on account of flooring arrangements paid in the Ordinary Course of Business, (B) Permitted Convertible Notes Hedging Agreements, (C) the endorsement of negotiable instruments for collection in the ordinary course of business, (D) prepaid or deferred revenue in the ordinary course of business and (E) any obligations that have been defeased in accordance with the agreements or instruments governing such obligations or where an amount in cash and cash equivalents equal to the aggregate principal amount of such obligations has been deposited with (or pledged for the benefit of) the holders of such obligations (or any trustee or agent acting on their behalf). The amount of any net obligation under any Hedging Agreement on any date shall be deemed to be the swap termination value thereof as of such date.

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

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations hereunder, and such failure is not cured within two (2) Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or generally under other credit facilities, or has made a public statement to that effect; (c) has failed, within three (3) Business Days following request by Agent or any Borrower, to confirm in a manner satisfactory to Agent and Borrowers that such Lender will comply with its prospective funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or Bail-In Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate, disavow, disaffirm or otherwise to reject any contracts or agreements made with such Lender.

<u>Default Rate</u>: means (a) when used with respect to any Delayed Draw Term Loan, (i) an interest rate equal to the Applicable Reference Rate (plus the Applicable Margin) otherwise applicable to such Delayed Draw Term Loan <u>plus</u> (ii) two percent (2.00%) *per annum*, and (b) with respect to all other Obligations, a rate equal to (i) the Base Rate, <u>plus</u> (ii) the Applicable Margin, <u>plus</u> two percent (2.00%) *per annum*.

<u>Delayed Draw Term Loan Commitment</u>: for any Lender, its obligation to make Delayed Draw Term Loans up to the maximum principal amount shown on **Schedule 1.1**, or as set forth in any Assignment and Acceptance to which it is a party. "<u>Delayed Draw Term Loan Commitments</u>" means the aggregate amount of such commitments of all Lenders which, as of the Closing Date, is \$50,000,000.

<u>Delayed Draw Term Loan Commitment Period</u>: means the period commencing on the Closing Date and ending on the Delayed Draw Term Loan Commitment Termination Date.

<u>Delayed Draw Term Loan Commitment Termination Date</u>: means the earliest to occur of (a) the date the Delayed Draw Term Loan Commitments are permanently reduced to zero pursuant to **Section 2.1**, (b) the date of the termination of the Delayed Draw Term Loan Commitments pursuant to **Section 11.2** and (c) the date that is ninety (90) days prior to the Delayed Draw Term Loan Termination Date.

<u>Delayed Draw Term Loan</u>: any loan made pursuant to **Section 2.1**.

<u>Delayed Draw Term Loan Termination Date</u>: <u>February 20 May 22</u>, <u>2026 2027</u>, <u>provided</u> that if such day is not a Business Day, the Term Loan Termination Date shall be the immediately preceding Business Day.

<u>Delayed Draw Term Note</u>: a promissory note to be executed by Borrowers in favor of a Lender in the form of **Exhibit A**, which shall be in the amount of such Lender's Delayed Draw Term Loan(s) and shall evidence the Delayed Draw Term Loan(s) made by such Lender.

<u>Designated Jurisdiction</u>: a country or territory that is the target of a Sanction.

Discharge of ABL Obligations: as defined in the ABL Intercreditor Agreement.

Disqualified Stock: means, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or, asset or similar event sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior Full Payment of the Obligations that are accrued and payable), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payment of dividends in cash or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the Delayed Draw Term Loan Termination Date in effect at the time of issuance thereof (provided, that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock). Notwithstanding the foregoing: (i) any Equity Interests issued to any employee or to any plan for the benefit of employees of the Borrowers or the Subsidiaries or by any such plan to such employees shall not constitute Disqualified Stock solely because they may be required to be repurchased by any Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability and (ii) any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of Equity Interests that ar

<u>Distribution</u>: (a) any payment of a distribution, interest or dividend on any Equity Interest and (b) any purchase, redemption, or other acquisition or retirement for value of any Equity Interest, excluding any distribution related to equity compensation plans of Parent and its Subsidiaries.

Dollars: lawful money of the United States.

#### Dominion Trigger Period: shall have the meaning ascribed to it in the Senior Credit Facilities.

EBITDA: for any period of measurement, determined on a consolidated basis for Parent and its Subsidiaries derived from financial statements prepared in accordance with GAAP, net income, calculated before

- (a) interest expense,
- (b) provision for taxes, including, without limitation, foreign, federal, state, local, franchise, excise and similar taxes, foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations, and including pursuant to any tax sharing arrangements),
  - (c) depreciation and amortization expense,
  - (d) stock based compensation,
  - (e) gains or losses arising from the sale of assets (other than the bulk sale of Contracts) outside the Ordinary Course of Business,
- (f) any extraordinary, unusual or non-recurring gains or losses (in each case, to the extent included in determining net income and including any book loss reserve with respect to Contracts),
  - (g) any non-cash asset write-offs relating to construction in process,
  - (h) any other non-cash charges, losses or expenses (other than the book loss reserve with respect to Contracts),
  - (i) [reserved],
  - (j) [reserved],
- (k) any increases in loss reserve resulting solely from a Borrower's repurchase of Contracts subject to a Permitted ABS Transaction occurring after such Permitted ABS Transaction has been deconsolidated from Parent and its Subsidiaries financial statements prepared in accordance with GAAP.
  - (1) any gain or loss from the Ordinary Course of Business sale of residual interests of cash flows subject to a Permitted ABS Transaction,
- (m) business optimization expenses and restructuring charges and reserves (which, for the avoidance of doubt, shall include retention, severance, systems establishment costs, excess pension charges, contract termination costs (including future lease commitments) and costs to consolidate facilities and relocate employees); provided that with respect to each business optimization expense or restructuring charge or reserve, Borrower Agent shall have delivered to Agent a certificate of a Senior Officer of Borrower Agent specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve, as the case may be; provided further that the aggregate amount added back to EBITDA pursuant to this **clause (m)**, in any period shall not exceed 20% of the EBITDA for such period (prior to giving effect to any such add back),

- (n) fees, costs and expenses incurred directly in connection with any transaction, including any equity issuance or offering, Investment, acquisition, disposition Asset Disposition, recapitalization or incurrence, repayment, amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extension and refinancing of Debt, including such fees, costs and expenses related to this Agreement, the Revolving Credit Agreement, the Term Loan Agreement, the Blade Acquisition, any Existing Securitization Facility, any other Permitted ABS Transaction, any Permitted HY Notes, any Permitted Convertible Notes or any Refinancing Debt (in each case, (A) not prohibited under this Agreement and (B) whether or not consummated) during such period,
- (o) to the extent reimbursable by third parties pursuant to indemnification provisions, insurance or similar contract, other transaction fees, costs and expenses, provided that Borrower Agent in good faith expects to receive reimbursement for such fees, costs and expenses within the next 4 Fiscal Quarters,
  - (p) costs of legal settlement, fines, judgments or orders,
  - (q) any unrealized losses in the fair market value of any Hedging Agreements,
- (r) (A) any charges or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, pension plan, any stock subscription or shareholder agreement or any distributor equity plan or agreement and (B) any charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of equity interests held by management, in each case under this **clause (B)**, to the extent such charges, costs, expenses, accruals or reserves are funded with the net cash proceeds of any issuance of Equity Interests, and
- (s) the proceeds of business interruption insurance, in an amount not to exceed the earnings for the applicable period that such proceeds are intended to replace; provided that the Borrowers in good faith expect to receive such business interruption proceeds within the next 4 Fiscal Quarters.
- EEA Financial Institution: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in **clause (a)** above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing **clauses (a)** or **(b)** and is subject to consolidated supervision with its parent.
  - EEA Member Country: any of the member states of the European Union, Iceland, Liechtenstein and Norway.
- <u>EEA Resolution Authority</u>: any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

<u>Electronic Signature</u>: 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.

<u>Electronic System</u>: any electronic system, including e-mail, e-fax, web portal access for such Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Agent or any of its Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

Eligible Assignee: (a) a Lender, an Affiliate of a Lender or an Approved Fund; (b) an assignee approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed) and Agent; or (c) during an Event of Default under Section 11.1(j), any assignee of a Lender.

Enforcement Action: any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

Environmental Laws: Applicable Laws (including programs, permits and guidance promulgated by regulators) relating to public health in respect of exposure to hazardous materials (other than occupational safety and health regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

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

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

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

Equity Interest Pledge Agreement: a pledge agreement in the form executed by Parent, CAIH and, CLL and/or any other Obligor in favor of Agent on the Closing Date or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent, in each case, granting a security interest in the Equity Interests in each of such grantor's Subsidiaries in favor of Agent for the benefit of the Secured Parties.

ERISA: the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

### ERISA Event:

- (a) Reportable Event with respect to a Pension Plan;
- (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;
- (c) complete or partial withdrawal of an Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization;

- (d) filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the institution of proceedings by the PBGC to terminate a Pension Plan;
  - (e) determination that a Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA;
- (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan;
- (g) imposition of any liability on an Obligor or ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; or
- (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

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

Event of Default: as defined in Section 11.1.

Excluded Accounts: any Deposit Account or Securities Account (i) containing Excluded Cash or (ii) otherwise constituting an "Excluded Account" under and as defined in the Senior Credit Facilities (as in effect on the Closing Date). that is (i) a Badcock Store Account (ii) exclusively used for Tax and Trust Funds or to hold funds constituting collateral for Permitted Liens of the type described in Section 10.2.2, (iii) used to service Third Party Contracts or to hold the proceeds of Third Party Contracts or (iv) containing not more than \$10,000 at any time.

Excluded Assets: (i) motor vehicles subject to certificate-of-title statutes; (ii) Excluded Accounts; (iii) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" (or equivalents thereof) with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law, and (iv) any property to the extent that such grant of a security interest of the type otherwise created hereby (A) is prohibited by any Applicable Law, (B) requires a consent not obtained of any Governmental Authority pursuant to such Law or (C) is prohibited by a negative pledge or anti-assignment provision or gives rise to any type of right of termination or default remedy under any contract, license, agreement, instrument or other document evidencing or giving rise to such property, except, in each case, to the extent that such Law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under Applicable Law (including Sections 9-406, 9-407, 9-408 or 9 409 of the UCC) and (v) cash (including, for the avoidance of doubt, all monies) and Cash Equivalents of Parent and the Borrowers solely as is necessary for any such cash or Cash Equivalents to be included in the calculation of "Liquidity" (as defined in the Senior Credit Facilities) ("Excluded Cash"); provided, that upon a Cross-Acceleration Event, cash and Cash Equivalents shall automatically and without further action cease to constitute Excluded Collateral.

Excluded Cash: as defined in the definition of "Excluded Assets".

Excluded Collateral: (i) any Excluded Assets, (ii) the Equity Interests of any Foreign Subsidiary to the extent such Equity Interests exceed 65% of the voting power of all classes of Equity Interests of such Foreign Subsidiary entitled to vote and (iii) the Equity Interests of a Subsidiary of a Foreign Subsidiary; provided that no asset shall constitute Excluded Collateral to the extent a Lien or security interest therein is granted to secure the Debt under the Revolving Credit Facility.

Excluded Taxes: (a) Taxes imposed on or measured by a Recipient's net income (however denominated), franchise Taxes and branch profits Taxes (i) as a result of such Recipient being organized under the laws of, or having its principal office or applicable Lending Office located in, the jurisdiction imposing such Tax, or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Delayed Draw Term Loan or Delayed Draw Term Loan Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.10**; and (d) U.S. federal withholding Taxes imposed pursuant to FATCA.

Exercise Price: the lower of (a) the closing price per share of Parent Common Stock as of the close of market on the trading day immediately preceding the date of an advance of a Delayed Draw Term Loan or (b) the Minimum Price.

Existing Securitization Facilities: (a) the transaction established pursuant to that certain Note Purchase Agreement, dated October 9, 2020, by and among Conn Appliances, Inc., Conn's Receivables Funding 2020-A, LLC, Conn Appliances Receivables Funding, LLC, Conn's, Inc. and the Initial Purchasers (as defined therein); (b) the transaction established pursuant to that certain Note Purchase Agreement, dated November 17, 2021, by and among Conn Appliances, Inc., Conn's Receivables Funding 2021-A, LLC, Conn Appliances Receivables Funding, LLC, Conn's, Inc. and the Initial Purchasers (as defined therein); and (c) the transaction established pursuant to that Note Purchase Agreement, dated July 14, 2022, by and among the Initial Purchasers (as defined therein), Conn Appliances, Inc., Conn's Inc., Conn Appliances Receivables Funding, LLC, and Conn's Receivables Funding 2022-A, LLC and (d) the transaction established pursuant to that Note Purchase Agreement, dated August 7, 2023, by and among the Initial Purchasers (as defined therein), Conn Appliances, Inc., Conn's Inc., Conn Appliances Receivables Funding, LLC, and Conn's Receivables Funding 2023-A, LLC; provided that any reference in this Agreement to "the Existing Securitization Facility" shall be a reference to any of the foregoing.

Extraordinary Expenses: all reasonable and documented out-of-pocket costs, expenses or advances that Agent may incur during the existence an Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor in accordance with the terms of this Agreement and the other applicable Loan Documents, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Obligations, including any lender liability or other Claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) [reserved]. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses; provided, that, notwithstanding the foregoing or anything to the contrary contained herein

attorneys' fees and expenses shall be limited to the reasonable and documented out-of-pocket fees, charges and disbursements of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent and, in the case of any actual or potential conflict of interest, one (1) additional counsel to all Lenders, taken as a whole and Extraordinary Expenses shall be subject to the limitations set forth herein.

<u>FATCA</u>: Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practice adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

<u>Federal Funds Effective Rate</u>: for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; <u>provided</u> that if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

Fee Letter: that certain Fee Letter between the Lenders and Borrowers dated as of even date herewith.

First Amendment Effective Date: December 18, 2023.

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

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

Floor: 5.00%.

<u>Flooring Intercreditor Agreement</u>: each intercreditor agreement entered into by Revolving Agent and a Flooring Lender prior to the Closing Date and, following the Closing Date, each intercreditor agreement entered into by a Flooring Lender, Agent and Revolving Agent, in form and substance reasonably satisfactory to Revolving Agent (or Agent to the extent there is a Discharge of ABL Obligations).

Flooring Lender: any lender which provides financing for the purchase of Inventory by a Borrower.

FLSA: the Fair Labor Standards Act of 1938.

Foreign Lender: any Lender that is not a U.S. Person.

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

<u>Foreign Subsidiary</u>: a Subsidiary of Parent that is a "controlled foreign corporation" under Section 957 of the Code, such that a guaranty by such Subsidiary of the Obligations or a Lien on the assets of such Subsidiary to secure the Obligations would result in material tax liability to Borrowers.

<u>Full Payment</u>: with respect to any Obligation (a) the full cash payment thereof (other than contingent obligations for which no claim or demand has been made), including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are contingent in nature (other than contingent obligations for which no claim or demand has been made), cash collateralization thereof in an amount equal 100% of the reasonably estimated liabilities in respect thereof, as Agent (acting at the direction of the Required Lenders) determines in its reasonable discretion (such cash collateral to be applied to the reimbursement of the applicable Obligations as and when they become due and payable and, once paid in full, to be remitted to the Borrowers).

GAAP: generally accepted accounting principles in effect in the United States from time to time. If Borrower Agent notifies Agent that it is required to report under the International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto ("IFRS") or has elected to do so through an early adoption policy, upon the execution and effectiveness of an amendment hereof in accordance therewith to accommodate such change in accordance with Section 1.2, "GAAP" means international financial reporting standards pursuant to IFRS, it being understood and agreed that all financial statements shall be prepared in accordance with IFRS.

<u>Governmental Approval</u>: any authorization, consent, approval, license or exemption of, or any registration or filing with, any Governmental Authority.

<u>Governmental Authority</u>: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, or regulatory authority (including the Consumer Financial Protection Bureau, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

Guarantor Payment: as defined in Section 5.11.3(b).

<u>Guarantors</u>: Parent, CAIH, CAIC, CLL, RTO and each other Person who guarantees payment or performance of the Obligations pursuant to the Guaranty.

<u>Guaranty</u>: a guaranty agreement in the form executed by the Guarantors in favor of Agent on the Closing Date or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent.

Hedging Agreement: any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one (1) or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or credit spread transaction, repurchase transaction, reserve repurchase transaction, securities lending transaction, weather index transaction, spot contracts, fixed price physical delivery contracts, or any similar transaction or any combination of these transactions, in each case whether or not exchange traded; provided that no phantom stock or other employee benefit or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management or consultants of Parent, Borrowers or any of their Subsidiaries shall be a Hedging Agreement.

IFRS: as defined in the definition of "GAAP".

<u>Indemnified Taxes</u>: (a) Taxes, other than Excluded Taxes, imposed on or relating to any payment of an Obligation; and (b) to the extent not otherwise described in **clause (a)**, Other Taxes.

Indemnitees: Agent Indemnitees and Lender Indemnitees.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all Licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

<u>Intellectual Property Security Agreements</u>: means one or more intellectual property security agreements contemplated to be executed and delivered pursuant to the applicable Security Documents.

Intercreditor Agreement: that certain Amended and Restated Third Lien Intercreditor Agreement, dated as of the July 31, 2023 First Amendment Effective Date, between Term Loan Agent, Revolving Agent and Agent, and acknowledged by the Obligors, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

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

Interest Coverage Ratio: the ratio, determined as of the end of any Fiscal Quarter on a consolidated basis for Parent and its Subsidiaries (including EBITDA and Interest Expense under the Existing Securitization Facility and any other Permitted ABS Transactions whether or not consolidated in Parent's financial statements), of (a) EBITDA divided by 2 in the case of Section 10.3.1(a) and 4 in the case of Section 10.3.1(b) to (b) Interest Expense shall have the meaning ascribed to it in the Senior Credit Facilities.

Interest Expense: with respect to Parent and its Subsidiaries on a consolidated basis, for any period of measurement, the interest expense (net of interest income to the extent not included in the calculation of EBITDA) for such period in each case paid or payable in cash (excluding (i) the amortization of debt discounts, (ii) the amortization of all closing fees incurred with respect to the initial closing of, any amendment to, or redemption or termination of (a) an Existing Securitization Facility or any other Permitted ABS Transaction, (b) any Permitted HY Notes or any Permitted Convertible Notes, (c) the Loan Documents and (d) any other documents evidencing Debt payable in connection with the incurrence of Debt to the extent included in interest expense, and (iii) backup servicing fees, field exam and other non-interest expenses but only if such expenses are otherwise deducted from ordinary operating expenses or the definition of EBITDA for covenant calculation purposes, and including (x) commissions, discounts and other fees and charges incurred in respect of letters of credit, (y) the portion of any payments or accruals with respect to Capital Leases allocable to interest expense and (z) net payments and receipts (if any) pursuant to interest rate Hedging Agreements).

Interest Payment Date: (a) the first day of each month, (b) the date of any repayment or prepayment of any Delayed Draw Term Loan, with respect to the portion of the Delayed Draw Term Loan so repaid or prepaid, and (c) the Delayed Draw Term Loan Termination Date.

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

<u>Investment</u>: as to any Person, an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests of another Person, or a loan or advance of money, or capital contribution to, another Person.

IRS: the United States Internal Revenue Service.

JPM: JPMorgan Chase Bank, N.A., a national banking association.

<u>Junior Lien Debt</u>: Debt (other than the Obligations, Term Loan Obligations or the Revolving Obligations) secured by Liens that are contractually subordinated to the Liens securing the Obligations pursuant to the terms of a customary intercreditor agreement or other lien subordination agreement in form and substance reasonably satisfactory to Revolving Agent (or Agent to the extent there is a Discharge of ABL Obligations).

LCT Election: as defined in Section 1.8.

LCT Test Time: as defined in Section 1.8.

Legal Action: any judicial action, suit, or proceeding at law, in equity, or before any Governmental Authority.

<u>Lender Indemnitees</u>: <u>Lenders each Lender and its Affiliates and its and their respective officers, directors, employees, Affiliates, agents and attorneys.</u>

<u>Lenders</u>: Stephens Investments Holdings LLC and Stephens Group, LLC, and any Person who hereafter becomes a "Lender" pursuant to an Assignment and Acceptance.

<u>Lending Office</u>: the office (including any domestic or foreign Affiliate or branch) designated as such by Agent or a Lender by notice to Borrower Agent and, if applicable, Agent.

Leverage Ratio: the ratio, determined as of the end of any Fiscal Quarter for Parent and its Subsidiaries, on a consolidated basis, of (a) the result of (i) all items that would be included as liabilities on a balance sheet in accordance with GAAP (but excluding, for avoidance of doubt, any lease which is not treated as a Capital Lease in accordance with the definition of "Capital Lease", which exclusion shall be made by reducing the amount of such liabilities on the balance sheet by an amount equal to the remainder of (1) the sum of current and long term "operating leases" minus (2) deferred rent) as of the last day of such Fiscal Quarter (including debt under the Existing Securitization Facility and any other Permitted ABS Transactions whether or not included as a liability on the balance sheet), minus (ii) the sum of Qualified Cash and ABS Qualified Cash as of such date of measurement to (b) Tangible Net Worth as of the last day of such Fiscal Quarter.

<u>License</u>: any written license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or <u>disposition</u>Asset <u>Disposition</u> of Collateral, any use of Property or any other conduct of its business.

<u>Lien</u>: with respect to any asset, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as the foregoing)), in each case, relating to such asset and in the nature of security.

<u>Limited Condition Transaction</u>: means (a) any Permitted Acquisition that the Parent or one or more of its Subsidiaries has contractually committed to consummate, the terms of which do not condition the Parent's or its Subsidiary's, as applicable, obligations to close such Permitted Acquisition on the availability of third-party financing and (b) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Debt requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

<u>Limited Repurchase Obligations</u>: any obligation of a Person that is a seller of Contracts directly or indirectly to a Securitization Subsidiary to repurchase such Contracts arising as a result of a breach of a representation, warranty or covenant, including as a result of a Contract or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

Loan Account: the loan account established by Agent on its books pursuant to Section 5.8.

<u>Loan Documents</u>: this Agreement, the Fee Letter, the Intercreditor Agreement, Security Documents, and each other agreement or instrument designated by the Borrowing Agent and Agent as a "Loan Document".

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: (a) a material adverse effect on the business, operations, Properties or financial condition of Obligors, taken as a whole; (b) a material adverse effect on the validity or enforceability of the Loan Documents or the rights or remedies of Agent and the Lenders thereunder, taken as a whole; or (c) a material adverse impairment of the ability of the Obligors, collectively, to perform any obligations under the Loan Documents, including repayment of any Obligations, or on the ability of any Lender to enforce or collect any Obligations under the Loan Documents or to realize upon any Collateral.

<u>Material Contract</u>: any agreement or arrangement to which any Obligor is a party (other than the Loan Documents) (a) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (b) that relates to Debt with an aggregate outstanding principal amount of \$43,750,000 or more.

Minimum Price: the lesser of (a) the Nasdaq Official Closing Price (as reflected on Nasdaq.com) of the Parent Common Stock immediately preceding the date of this Agreement First Amendment Effective Date or (b) the average Nasdaq Official Closing Price of the Parent Common Stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the date of this Agreement First Amendment Effective Date.

<u>Multiemployer Plan</u>: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

<u>Net Proceeds</u>: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by a Borrower or any of its Subsidiaries in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed.

Non-Consenting Lender: any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of **Section 14.1.1** and (ii) has been approved by the Required Lenders.

Non-Voting Parent Common Stock; non-voting common stock, par value \$0.01 per share, of Parent, authorization for the creation of which the Company is agreeing to pursue from its shareholders pursuant to the Badcock Transaction Documents and Section 8.5 hereof.

Notice of Borrowing: a request by Borrower Agent for a borrowing of Delayed Draw Term Loans, in the form of Exhibit F attached hereto.

NYFRB: the Federal Reserve Bank of New York.

NYFRB Rate: for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

NYFRB's Website: the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

Obligations: all (a) principal of and premium, if any, on the Delayed Draw Term Loans, (b) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under the Loan Documents and (c) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, in each case, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

Obligor: each Borrower, Guarantor or other Person that is liable for payment of any Obligations or that has granted a Lien on its assets in favor of Agent to secure any Obligations.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Ordinary Course of Business: the ordinary course of business of any Borrower or any of its Subsidiaries or consistent with past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, 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 Person.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Delayed Draw Term Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 13.4(c)).

Overnight Bank Funding Rate: for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

Parent: as defined in the Preamble to this Agreement.

Parent Common Stock: common stock, par value \$0.01 per share, of Parent.

Participant: as defined in Section 13.2.1.

<u>Patriot Act</u>: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment: as defined in Section 12.9.2.

<u>Payment Conditions</u>: with respect to (a) any Permitted Distribution, incurrence of Debt, payment of Debt, Permitted Acquisition or other Investment permitted hereunder, so long as immediately before and after giving effect thereto, (i) no Event of Default exists and (ii) the sum of (A) Qualified Cash plus (B) Availability is greater than 25% of the sum of (x) Qualified Cash plus (y) the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) and (b) in the case of a Permitted Distribution, so long as (i) immediately before and after giving effect thereto, no Event of Default exists and (ii) financial statements and Compliance Certificates delivered by Parent to Agent pursuant to **Section 10.1.2** for the most recent Fiscal Quarter ended reflect that Parent has achieved, on a Pro Forma Basis, an Interest Coverage Ratio of greater than or equal to 1.75:1.00 for the trailing two (2) Fiscal Quarters ending immediately prior to giving effect to such Distribution or payment.

Payment Notice: as defined in Section 12.9.2.

<u>PBGC</u>: the Pension Benefit Guaranty Corporation.

<u>Pension Funding Rules</u>: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in, for plan years ending prior to the Pension Protection Act of 2006 effective date, Section 412 of the Code and Section 302 of ERISA, both as in effect prior to such act, and thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

<u>Pension Plan</u>: any employee pension benefit plan (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

<u>Permitted ABS Agent</u>: with respect to a Permitted ABS Transaction, the entity acting as trustee, collateral agent or other secured party or pledgee under such Permitted ABS Transaction.

<u>Permitted ABS Documents</u>: the Permitted ABS Financing Agreements, the Permitted ABS Purchase Agreements and all documents, instruments and agreements executed in connection therewith.

<u>Permitted ABS Financing Agreement</u>: an agreement entered into in connection with a Permitted ABS Transaction, including an indenture, by and between a Securitization Subsidiary and a Permitted ABS Agent, whereby a Securitization Subsidiary grants a security interest in, or deposits into trust, Contracts.

Permitted ABS Intercreditor Agreement: an intercreditor agreement by and among Permitted ABS Agent, Revolving Agent and Agent.

<u>Permitted ABS Purchase Agreement</u>: any agreement by and between one or more Borrowers and a Securitization Subsidiary in connection with a Permitted ABS Transaction for the purpose of effecting one or more transfers of Contracts.

Permitted ABS Transaction: (A) any Existing Securitization Facility or (B) any other transaction pursuant to which a direct or indirect Subsidiary of Parent acquires or has the right to acquire, by capital contribution or sale, Contracts originated or acquired by one or more Borrowers or other direct or indirect Subsidiaries of Parent or a Borrower, which such Subsidiary acquires or has the right to acquire either (i) from time to time or (ii) in one or more contemporaneous transfers that taken together constitute one transaction, in either case for the purpose of pooling such assets and pledging or granting a security interest in such pool to secure indebtedness (whether in the form of a term or revolving loan or the issuance of securities, certificates or notes, including term notes or variable funding notes) or depositing such pool with a trustee for the purpose of issuing certificates or other instruments representing a beneficial interest in the assets of a trust, in each case so long as:

- (a) on each day on which a Borrower transfers a pool of Contracts thereunder, after giving effect to such transfer and any prepayment of the aggregate principal amount of Revolving Obligations, the Revolving Outstandings shall not exceed the Revolving Borrowing Base;
- (b) such transactions are entered into without recourse to any Obligor, other than Limited Repurchase Obligations and customary representations, warranties, covenants and indemnities made in connection with such transactions;
  - (c) such transaction is on current market terms for facilities of such type (as reasonably determined by Borrowers);

- (d) upon the closing of such transaction or within 10 days (or such later date as shall be reasonably acceptable to Revolving Agent) thereafter, Agent has received all of the material documentation related to such transaction; and
  - (e) in the case of any Permitted ABS Transaction entered into after the Closing Date:
  - (i) if (and only if) a Dominion Trigger Period exists before or would exist, after giving effect to any transfer of a pool of Contracts under such transaction, the net cash proceeds of such Permitted ABS Transaction payable to the Borrowers shall be used to repay an aggregate principal amount of Revolving Obligations in an amount equal to the net cash proceeds of such Permitted ABS Transaction received by the Borrowers;
  - (ii) if such Permitted ABS Transaction is a "revolving" transaction, for each transfer of a pool of Contracts thereunder, Agent has received copies of (x) evidence delivered to Revolving Agent and reasonably acceptable to Revolving Agent demonstrating that such pool of Contracts is randomly selected as of the related Cut-Off Date from the Contracts owned by the Obligors that are eligible to be advanced against under such Permitted ABS Transaction at such time (it being understood that, for purposes of determining whether such pool of Contracts is randomly selected, any Securitized Contracts with respect to any other Permitted ABS Transaction that are assigned and transferred to a Borrower upon the termination of such Permitted ABS Transaction shall be disregarded) and (y) a pro forma Borrowing Base Report; and
  - (iii) if such Permitted ABS Transaction is not a "revolving" transaction, (x) if fewer than 85% of the eligible Contracts owned by the Obligors at such time that are eligible to be contributed or sold to a Securitization Subsidiary as part of such Permitted ABS Transaction are contributed or sold to a Securitization Subsidiary as part of such Permitted ABS Transaction, Agent has received copies of evidence delivered to Revolving Agent and reasonably acceptable to Revolving Agent demonstrating that (A) the pool of Contracts to be transferred pursuant to such Permitted ABS Transaction is randomly selected as of the related Cut-Off Date from the Contracts owned by the Obligors that are eligible to be advanced against under such Permitted ABS Transaction (it being understood that, for purposes of determining whether such pool of Contracts is randomly selected, any Securitized Contracts with respect to any other Permitted ABS Transaction that are assigned and transferred to a Borrower upon the termination of such Permitted ABS Transaction shall be disregarded) or (B) immediately after giving effect to such Permitted ABS Transaction the characteristics of the pool of Contracts (excluding delinquent and charged-off Contracts that are not eligible to be advanced against under the terms of such Permitted ABS Transaction) that remain part of the Collateral shall, in Revolving Agent's reasonable determination, remain consistent in all material respects with the pool of Contracts (excluding delinquent and charged-off Contracts and Contracts that are not eligible to be advanced against under the terms of such Permitted ABS Transaction) that was part of the Collateral as it existed immediately prior to such Permitted ABS Transaction and (y) Borrower Agent shall deliver to Agent a pro forma Borrowing Base Report.

### Permitted Acquisition: any Acquisition as long as:

- (a) the assets, business or Person being acquired is located or organized within the United States;
- (b) the Acquisition is consensual;
- (c) the Payment Conditions are satisfied with respect to such Acquisition;

- (d) Obligors are in compliance with the financial covenants set forth in **Section 10.3** after giving effect to such Acquisition on a Pro Forma Basis; and
- (e) Parent delivers to Agent a certificate stating that the Acquisition is a "Permitted Acquisition" and demonstrating compliance with the foregoing requirements.

#### Permitted Asset Disposition: an Asset Disposition that is:

- (a) a sale of Inventory in the Ordinary Course of Business;
- (b) a dispositionan Asset Disposition of Equipment (other than those set forth in clause (e) below), that, in the aggregate during any 12-month period, has a book value of \$25,000,000 or less;
- (c) a disposition an Asset <u>Disposition</u> of Inventory or Property that is obsolete, worn out, unmerchantable or otherwise unsalable in the Ordinary Course of Business;
  - (d) a termination of a lease of real or personal Property that is not necessary for the Ordinary Course of Business;
- (e) a disposition an Asset Disposition of any Borrower's Real Estate and related Equipment affixed thereto in connection with a sale or sale-leaseback transaction;
  - (f) a Permitted Contract Transfer;
  - (g) an exchange of like property for use in a similar business of Parent and its Subsidiaries;
  - (h) a sale, lease, assignment, sublease, license or sublicense of any real or personal property in the Ordinary Course of Business;
- (i) exercise of termination rights under any lease, sublease, license, sublicense, concession or other agreement or pursuant to buy/sell arrangements under any joint venture or similar agreement or arrangement;
- (j) the grant in the Ordinary Course of Business of any licenses or sublicenses of Intellectual Property (including, for avoidance of doubt, licenses or sublicenses of Intellectual Property to dealers in the Ordinary Course of Business);
- (k) a discount of Inventory or notes receivable or the conversion of accounts receivable to notes receivable in the Ordinary Course of Business;
- (l) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind;
  - (m) a disposition in connection with the outsourcing of services in the Ordinary Course of Business;
  - (n) termination or unwinding of Hedging Agreements not resulting in an Event of Default pursuant to Section 11.1(f);

- (o) a sale or other disposition of Equity Interests under any compensation plan or agreement and other sales of Equity Interests which do not result in a Change of Control;
- (p) an Asset Disposition constituting a merger, combination, consolidation, liquidation, wind-up, dissolution or the disposition of all or substantially all of the assets of any Borrower or its Subsidiaries, in each case as permitted under **Section 10.2.9(a)**;
- (q) sales of accounts receivable in connection with the collection, settlement or compromise thereof or in an Insolvency Proceeding of the relevant account debtor, in each case, in the Ordinary Course of Business;
- (r) to the extent constituting a <u>disposition an Asset Disposition</u>, a Permitted Distribution or Investments permitted by the definition of "Restricted Investment" (other than **clause (m)** of the <u>definition</u> of "Restricted Investment");
  - (s) a disposition Asset Disposition of cash and Cash Equivalents in the Ordinary Course of Business; and
  - (t) approved in writing by the Required Lenders, such approval not to be unreasonably withheld, delayed or conditioned.

# <u>Permitted Contingent Obligations</u>: Contingent Obligations:

- (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business;
- (b) arising from Hedging Agreements permitted hereunder;
- (c) existing on the Closing Date, and any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing which does not increase the amount of such Contingent Obligation except by an amount equal to accrued and unpaid interest, penalties and premiums (including tender premiums) and defeasance costs, in each case on the primary obligation, and fees, commissions and expenses related to any such amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing of the Contingent Obligation and the underlying primary obligation;
- (d) incurred in the Ordinary Course of Business with respect to bids, trade contracts (other than for Borrowed Money), leases (other than Capital Leases), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, including those incurred to secure health, safety and environmental obligations in the ordinary course of business (including Debt in respect of letters of credit, bank guarantees or similar instruments in lieu of such items to support the issuance thereof);
- (e) arising from agreements of Parent and its Subsidiaries providing for indemnification, adjustment of purchase or acquisition price or similar obligations (including without limitation earn-out obligations), in each case, incurred or assumed in connection with any acquisition or Asset Disposition of any business or assets (including Equity Interests of Subsidiaries) of any Subsidiary of Parent permitted by Section 10.2.5 or Section 10.2.6, other than Contingent Obligations of Debt incurred by any Person acquiring all or any portion of such business or assets for the purpose of financing such acquisition;

- (f) arising under the Loan Documents and the Senior Credit Facilities;
- (g) relating to indemnification, guaranty or repurchase obligations arising under Permitted ABS Documents or Third Party Contract sales;
- (h) (i) all other Contingent Obligations in an aggregate amount not to exceed \$37,500,000 at any time outstanding and (ii) any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing which does not increase the outstanding principal amount thereof except by an amount equal to accrued and unpaid interest, penalties and premiums (including tender premiums) and defeasance costs on the underlying obligation, and fees, commissions and expenses related to such any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extensions or refinancing.

Permitted Contract Transfer: (a) a sale or other transfer by a Borrower to a Securitization Subsidiary of Contracts pursuant to the Permitted ABS Purchase Agreement, (b) a sale or other transfer of Contracts between Borrowers in connection with a Permitted ABS Transaction, (c) a sale or other transfer of Contracts between two (2) Securitization Subsidiaries in connection with a Permitted ABS Transaction, (d) a capital contribution of Contracts by a Borrower to a Securitization Subsidiary in connection with a Permitted ABS Transaction with the consent of Revolving Agent and (e) the granting by a Securitization Subsidiary to a Permitted ABS Agent of a security interest in Contracts subject to a Permitted ABS Transaction.

Permitted Convertible Notes: senior and/or subordinated convertible debt securities of Parent (a) that are unsecured, (b) that may be guaranteed by any or all of the Subsidiaries of Parent, including, without limitation, any Borrower, (c) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common stock of the Company, cash or a combination thereof as the Company may elect or (iii) an acceleration upon an event of default will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement), (d) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by Parent in good faith) and (e) have a scheduled maturity date at least that is at least ninety-one (91) days later than the Term Loan Termination Date (as in effect on the date of issuance of the Permitted Convertible Notes).

<u>Permitted Convertible Notes Hedging Agreements</u>: (a) a Hedging Agreement pursuant to which Parent acquires a call or a capped call option requiring the counterparty thereto to deliver to Parent shares of common Equity Interests of Parent, the cash value of such shares or a combination thereof from time to time upon exercise of such option and (b) if entered into by Parent in connection with any Hedging Agreement described in **clause (a)** above, a Hedging Agreement pursuant to which Parent issues to the counterparty thereto warrants to acquire common Equity Interests of Parent, in each case, entered into by Parent in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes; <u>provided</u> that the terms, conditions and covenants of each such Hedging Agreement shall be such as are typical and customary for hedging agreements of such type (as determined by Parent in good faith).

# Permitted Distribution:

and

- (a) Distributions declared and made by Parent or any of its Subsidiaries solely for the purpose of making, or permitting Parent to make, payments on account of obligations owed under any Permitted HY Notes and Permitted Convertible Notes which payments are permitted to be made under **Section 10.2.8**;
  - (b) Distributions payable solely in Equity Interests of Parent;

- (c) Distributions consisting of or constituting a Permitted Tax Distribution;
- (d) Distributions consisting of issuances of Equity Interests deemed to occur upon the exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;
- (e) Distributions by Borrowers, or by Borrowers to Parent to enable Parent, to purchase or redeem fractional shares (or cash payments in lieu thereof) of Equity Interests in connection with the exercise of warrants, options, other rights to acquire Equity Interests or other securities convertible or exchangeable for Equity Interests of Parent;
- (f) Distributions as shall be necessary to allow Parent to pay (i) operating expenses in the Ordinary Course of Business and other corporate overhead, legal, accounting and other professional fees and expenses (including, without limitation, those owing to third parties plus any customary indemnification claims made by directors, officers, employees, members of management or consultants of Parent), (ii) fees and expenses related to any debt or equity offering, Investment or acquisition permitted hereunder (in each case, whether or not successful), (iii) franchise or similar taxes and other fees and expenses required in connection with the maintenance of its existence and its ownership of Borrower, (iv) the consideration to finance any Investment permitted hereunder (provided that such Distribution under this **clause (f)(iv)** shall be made substantially concurrently with the closing of such Investment), (v) customary salary, bonus, severance, indemnification obligations and other fees, benefits or expense reimbursements payable to directors, officers, employees, members of management and consultants of Parent and any payroll, social security or similar taxes thereof, (vi) any incremental state or local income or franchise tax (net of any federal income tax benefits, as determined in good faith by Parent) payable by Parent as a result of any Permitted Distribution to such entity permitted hereby, and (vii) any amounts permitted to be paid pursuant to **clauses (b)**, (c), (d), (e) and (g) of Section 10.2.17;
- (g) Distributions made or expected to be made by Borrowers in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management or consultants of Parent or any of its Subsidiaries (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of the foregoing) and any repurchases of Equity Interests in consideration of such payments including demand repurchases in connection with the exercise of stock options;
- (h) Distributions made within 60 days after the date of declaration thereof, if at the date of declaration such Distribution would have complied with the provisions of this Agreement; and
  - (i) Distributions made by any Subsidiary of CAI to the holders of its Equity Interests on a pro rata basis according to their interests.

Permitted Holders: (a) Franchise Group Newco BHF, LLC, (b) Freedom VCM Interco Holdings, Inc., (c) each of the respective Affiliates or any "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934) of the Persons listed in clauses (a) and (b) and (c) the shareholders of Parent that, as of the Closing Date, own more than 12.5% of the Equity Interest of Parent, in each case, including their respective Affiliates, and any Person with whom such shareholders or their Affiliates form a "group" (within the meaning of Section 13(d) and 14(d) of the Securities Act of 1934).

Permitted HY Note Indenture: an indenture to be entered into in respect of any Permitted HY Notes between Parent and an indenture trustee.

Permitted HY Notes: senior or senior subordinated notes issued by Parent after the Closing Date with the following terms and conditions:

- (a) the obligations of Parent or any other Person (including guarantees by any Obligor) to repay such Debt are unsecured; and
- (b) no principal payments are required to be paid with respect thereto prior to the date which is ninety-one (91) days after the Delayed Draw Term Loan Termination Date other than principal payments which are required to be paid after acceleration of such Debt and principal payments due in connection with customary asset sale or change of control provisions

Permitted Liens: as defined in Section 10.2.2.

<u>Permitted Originator Notes</u>: one or more promissory notes made by a Securitization Subsidiary or a Borrower, as a purchaser of Contracts in a Permitted Contract Transfer, in favor of a Borrower or any Subsidiary of a Borrower, as a seller of Contracts in a Permitted Contract Transfer, evidencing that portion of the purchase price represented by Debt incurred by such purchaser in connection with its purchase of Contracts and related assets from such seller.

<u>Permitted Purchase Money Debt</u>: Purchase Money Debt and Capital Leases of Borrowers and its Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate outstanding principal amount does not exceed \$62,500,000 at any time.

<u>Permitted Securitization Hedging Transaction</u>: any Hedging Agreement with respect to any series of notes issued by a Securitization Subsidiary pursuant to a Permitted ABS Transaction.

<u>Permitted Tax Distributions</u>: for each taxable year or portion thereof with respect to which Parent, any Borrower and/or any of its Subsidiaries are members (or constituent parts) of a consolidated, combined, unitary or similar income or franchise tax group for U.S. federal and/or applicable state or local income or franchise Tax purposes of which Parent is the common parent (a "<u>Tax Group</u>"), aggregate distributions to Parent to pay the portion of any consolidated, combined, unitary or similar U.S. federal, state or local income and franchise Taxes (as applicable) of such Tax Group for such taxable year that are attributable to the income of the Subsidiaries of Parent; <u>provided</u> that the amount of such dividends or other distributions for any taxable year or portion thereof shall not exceed the amount of such Taxes that the Subsidiaries would have paid had the Subsidiaries been a stand-alone corporate taxpayer (or a stand-alone corporate group).

<u>Person</u>: any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, land trust, business trust, unincorporated organization, Governmental Authority or other entity.

<u>Plan</u>: an employee benefit plan (as defined in Section 3(3) of ERISA) maintained by any Obligor or any Subsidiary of an Obligor for its employees, or to which any Obligor or any Subsidiary of an Obligor is required to contribute on behalf of its employees.

PIK Component: as defined in the Fee Letter.

PIK Interest: as defined in Section 3.1.

PIK Amounts: collectively, PIK Interest, PIK Fees and PIK Component.

## PIK Fees: as defined in Section 3.2.2.

<u>Prime Rate</u>: the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest *per annum* interest rate published by the Board of Governors in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Agent) or any similar release by the Board of Governors (as determined by Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

Pro Forma Basis: as to any calculation of the Interest Coverage Ratio, the Leverage Ratio or the ABS Excluded Leverage Ratio or other financial ratio or metric for any events as described below that occur subsequent to the commencement of any relevant measurement period (the "Reference Period") for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred after giving effect thereto (it being understood and agreed that (x) unless otherwise specified for the calculation of any such financial ratio or metric, such Reference Period shall be deemed to be the relevant measurement period for such financial ratio or metric ending on the last day of the most recently ended Fiscal Quarter of Parent for which financial statements are available and such pro forma adjustments shall be excluded to the extent already accounted for in the calculation of EBITDA for such period and (y) if any Person that became a Subsidiary or was merged, amalgamated or consolidated with or into a Borrower or any Subsidiary of Parent shall have experienced any event requiring adjustments pursuant to this definition, then such calculation shall give pro forma effect thereto for such period as if such event occurred at the beginning of such period): (i) in making any determination of EBITDA, pro forma effect shall be given to any Asset Disposition of a Subsidiary of Parent or line of business, to any Acquisition, any discontinued operation or any operational change in each case that occurred during the Reference Period (or, in the case of determinations made with respect to any action the taking of which hereunder is subject to compliance on a Pro Forma Basis or otherwise with any ratio (any such action, a "Restricted Action") occurring during the Reference Period or thereafter and through and including the date of such determination) and (ii) in making any determination on a Pro Forma Basis, (x) all Debt (including Debt incurred or assumed and for which the financial effect is being calculated, whether incurred under this Agreement or otherwise, but excluding normal fluctuations in revolving Debt incurred for working capital purposes) incurred or permanently repaid, returned, redeemed or extinguished during the Reference Period (or, in the case of determinations made with respect to any Restricted Action, occurring during the Reference Period or thereafter and through and including the date of such determination) shall be deemed to have been incurred or repaid, returned, redeemed or extinguished at the beginning of such period (it being understood that for purposes of any calculation of any ratio and or financial metric, the use of proceeds of any such Debt shall be taken into account in such calculation) and (y) Interest Expense of such Person attributable to (A) interest on any Debt, for which pro forma effect is being given as provided in the preceding clause (x), bearing floating interest rates shall be computed on a pro forma basis utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of determination as if such rate had been actually in effect during the period for which pro forma effect is being given taking into account any interest hedging arrangements applicable to such Debt, (B) any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a Senior Officer of Parent or Borrower Agent to be the rate of interest implicit in such Capital Lease in accordance with GAAP and (C) interest on any Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered 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 Parent or any Subsidiary may designate.

Pro forma calculations made pursuant to the definition of the term "Pro Forma Basis" shall be determined in good faith by a Senior Officer of Parent or Borrower Agent and, for any fiscal period ending on or prior to the date that is 12 months following the date of any such Acquisition, Asset Disposition, discontinued operation or operational change, may include adjustments to reflect operating expense reductions and other operating improvements or synergies reasonably expected to result from such Acquisition, Asset Disposition, discontinued operation or operational change and for purposes of determining compliance with the such adjustments may reflect additional operating expense reductions and other additional operating improvements and synergies that (x) would be includable in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act (other than cost savings and synergies that are only permitted under Regulation S-X as "Management's Adjustments" by virtue of the amendments adopted on May 21, 2020 by the Securities & Exchange Commission) and (y) such other adjustments not includable in Regulation S-X under the Securities Act or which are included as "Management's Adjustments" by virtue of the amendments adopted on May 21, 2020 by the Securities & Exchange Commission, in each case, for which substantially all of the steps necessary for the realization thereof have been taken or are reasonably anticipated by Borrower to be taken in the next 12-month period following the consummation thereof and, are estimated on a good faith basis by Parent or Borrower Agent; provided, however that the aggregate amount of any such adjustments pursuant to clause (y) shall not exceed (together with the aggregate add backs to EBITDA pursuant to clause (m) of the definition of EBITDA with respect to the applicable period) 20% of the EBITDA of Parent and its Subsidiaries for any such period (prior to giving effect to any such add backs).

<u>Pro Rata</u>: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) immediately prior to the funding of the initial Delayed Draw Term Loans, by dividing the amount of such Lender's Delayed Draw Term Loan Commitment by the aggregate outstanding Delayed Draw Term Loan Commitments of all Lenders; or (b) following the funding of the initial Delayed Draw Term Loans, by dividing the amount of such Lender's Delayed Draw Term Loans by the aggregate amount of all outstanding Delayed Draw Term Loans.

<u>Properly Contested</u>: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not reasonably be expected to have a Material Adverse Effect; and (e) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

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

<u>Purchase Money Debt</u>: Debt incurred for the payment of the acquisition, construction, repair, replacement, additions, accessions and/or improvements (including any industrial revenue bond, industrial development bond and similar financings) incurred prior to or within two hundred seventy (270) days after the acquisition, construction, repair, replacement, addition, accession and/or improvement of the respective asset in order to finance such acquisition, construction, repair, replacement, addition, accession and/or improvement or to reimburse the costs thereof.

<u>Purchase Money Lien</u>: a Lien that secures Purchase Money Debt, encumbering only the fixed or capital assets acquired with such Debt (and any construction, repairs, replacements, additions, accessions and improvements thereto, any proceeds thereof or of the foregoing) or constituting a Capital Lease (it being understood that individual financings that constitute Purchase Money Debt or a Capital Lease provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates).

Qualified Cash: as of any date of determination, the aggregate amount of unrestricted cash of Parent and its Subsidiaries that (i) is subject to a first priority Lien in favor of Agent for the benefit of Secured Parties (subject only to the prior Liens consisting of Revolving Agent Liens and any Permitted Liens set forth in Section 10.2.2(i)) and (ii) is subject to (x) a Deposit Account Control Agreement if maintained in a Deposit Account and (y) a Securities Account Control Agreement if maintained in a Securities Account,

Qualified Equity Interests: any Equity Interest other than Disqualified Stock.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property and any buildings, structures, parking areas or other improvements thereon.

Recipient: Agent, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation under the Loan Documents.

Reference Period: as defined in the definition of "Pro Forma Basis".

Reference Time: with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting, or (2) if such Benchmark is not the Term SOFR Rate, the time determined by Agent in its reasonable discretion.

# Refinancing Conditions: the following conditions for Refinancing Debt:

- (a) the Refinancing Debt is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced (plus an amount necessary to pay all accrued and unpaid interest, penalties, premiums (including tender premiums) thereon and defeasance costs, and the fees, commissions and expenses related to such extension, renewal or refinancing) unless (i) such excess is otherwise permitted to be incurred under **Section 10.2.1** or (ii) the excess is used to repay the outstanding Revolver Loans (as defined in the Revolving Credit Agreement) and the Revolver Commitments (as defined in the Revolving Credit Agreement) are reduced by the amount of the repayment (and if no Revolver Loans are outstanding, the Revolver Commitments are reduced by the excess);
- (b) in respect of **Section 10.2.1(m)** and **Section 10.2.1(i)** (as it relates to Refinancing Debt in respect of Debt incurred under **Section 10.2.1(m)**), it has a final maturity no sooner than and a weighted average life no less than the Debt being extended, renewed or refinanced;
- (c) if the Debt being extended, renewed, or refinanced is subordinated to the Obligations such Debt being extended, renewed or refinanced is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced;
- (d) the representations, covenants and defaults applicable to it are not materially less favorable to Borrowers than those applicable to the Debt being extended, renewed or refinanced or such terms are current market terms (as determined by Borrower Agent);

- (e) no additional Lien is granted to secure it except to the extent otherwise permitted by Section 10.2.2; and
- (f) no additional Person is obligated on such Debt to the extent otherwise permitted under Section 10.2.1.

Refinancing Debt: Debt that is the result of an extension, renewal, refinancing or replacement of Debt permitted under Section 10.2.1(b), (c), (d), (e), (h), (k), (m) and (aa), including any expenses and premiums in connection therewith and under Section 10.2.1(i) in respect of the foregoing or any prior Refinancing Debt.

Regulatory Event: (a) a "Level One Regulatory Event", which shall mean the formal commencement by written notice by any Governmental Authority of any Legal Action against any of Borrowers or any of their Subsidiaries, or to the knowledge of Borrowers, any servicer or asset manager of their respective or collective portfolios of Contracts or Third Party Contracts owned or serviced by a Borrower or its Subsidiary, denying its authority to originate, hold, own, service, collect or enforce any category or group of Contracts or such Third Party Contracts, in each case that would reasonably be expected to have a material adverse effect on the business or financial condition of Borrowers and their Subsidiaries taken as a whole, which Legal Action is not released or terminated within 180 calendar days of commencement thereof; or (b) a "Level Two Regulatory Event", which shall mean the issuance or entering of any stay, cease and desist order, injunction, temporary restraining order, or other judicial or non-judicial sanction (other than the imposition of a monetary fine), against any of Borrowers or any of their Subsidiaries, or to the knowledge of Borrowers, any servicer or asset manager of their respective or collective portfolios of Contracts or Third Party Contracts owned or serviced by a Borrower or its Subsidiary, for material violations of Applicable Law regarding the originating, holding, pledging, collecting, servicing or enforcing of any Contracts or such Third Party Contracts, in each case that would reasonably be expected to have a material adverse effect on the business or financial condition of Borrowers and their Subsidiaries taken as a whole.

Related Parties: as to any Person, its officers, directors, employees, Affiliates, agent and attorneys.

<u>Relevant Governmental Body</u>: the Board of Governors or the NYFRB, or a committee officially endorsed or convened by the Board of Governors or the NYFRB or, in each case, any successor thereto.

Replacement Facility: as defined in Section 14.1.1.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30-day notice period has been waived.

<u>Required Lenders</u>: Lenders holding more than 50% of the aggregate outstanding Delayed Draw Term Loans and other Obligations under the Loan Documents.

Requirement of Law: as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator 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.

Resolution Authority: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Restricted Action: as defined in the definition of "Pro Forma Basis".

Restricted Investment: any Investment by Parent, a Borrower or any of their Subsidiaries, other than:

- (a) Investments in its Subsidiaries to the extent existing on the Closing Date;
- (b) Investments (i) by the Obligors in Subsidiaries that are Obligors, (ii) by any non-Obligor in an Obligor or any other Subsidiary and (iii) other than during the Covenant Relief Period (except with respect to Investment in any Securitization Subsidiary) by any Obligor in any non-Obligor in an outstanding amount not to exceed \$12,500,000 at any time;
  - (c) Cash Equivalents;
  - (d) Permitted Originator Notes;
- (e) Investments by CAI which are consistent with the corporate investment policy of CAI from time to time in effect, as approved by Revolving Agent (such approval not to be unreasonably withheld);
- (f) Investments (i) in and by a Securitization Subsidiary permitted under a Permitted ABS Transaction and (ii) other Investments in a Securitization Subsidiary in the form of (x) a direct investment in cash, (y) the purchase of any securities issued by a Securitization Subsidiary (whether by tender offer or otherwise) or (z) the transfer of any pool of Contracts by any Borrower to a Securitization Subsidiary (which may be in exchange for an underperforming pool of Contracts), in each case so long as (A) immediately before and after giving effect to such other Investment, no Event of Default exists, (B) the financial statements and Compliance Certificates delivered by Parent to Agent pursuant to Section 10.1.2 for the most recent Fiscal Quarter ended reflect that Parent is in compliance with the applicable financial covenants set forth in Section 10.3 measured on a Pro Forma Basis for such Fiscal Quarter and (C) the aggregate amount of such Investments under this clause (f)(ii) (and with respect to clause (f)(ii)(z) above, following the application of the Contract Advance Rate Amount in measuring the amount of any such Investment) do not exceed \$62,500,000 at any time outstanding;
- (g) Investments for the purpose of funding the repurchase of Contracts which are subject to (i) a Permitted ABS Transaction from a Securitization Subsidiary or (ii) such securitization arrangements entered into by Badcock on or prior to the First Amendment Effective Date and set forth on Schedule 1.1(g), so long as immediately before and after giving effect to each such repurchase, no Event of Default exists;
- (h) So long as the Covenant Relief Period is not in effect <u>and EBITDA on a Pro Forma Basis is equal to or greater than \$170,000,000</u>, Permitted Acquisitions;
- (i) Investments arising out of the receipt by Borrowers or any Subsidiary of promissory notes and other non-cash consideration for any Asset Dispositions permitted under **Section 10.2.6**;
- (j) accounts receivable, notes receivable, security deposits and prepayments arising and trade credit granted in the Ordinary Course of Business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers made in the Ordinary Course of Business;
  - (k) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 10.2.5;

- (l) Investments received in connection with the bankruptcy or reorganization of any Person, or settlement of obligations of, or other disputes with or judgments against, or foreclosure or deed in lieu of foreclosure with respect to any Lien held as security for an obligation, in each case in the Ordinary Course of Business;
- (m) Investments consisting of Debt, Liens, capital expenditures, Permitted Distributions, Asset Dispositions, payments and repurchases of Debt, fundamental change transactions, and affiliate transactions permitted under Section 10.2.1 (other than Section 10.2.1(v)), 10.2.2, 10.2.3, 10.2.4, 10.2.6, 10.2.8, 10.2.9 and 10.2.17 (other than Section 10.2.17(k)):
- (n) Investments by Borrowers or any Subsidiary in an outstanding aggregate amount (valued at the time of the making thereof, and without giving effect to any write-downs or write-offs thereof) not to exceed \$12,500,000 at any time (plus any returns, profits, distributions and similar amounts, repayments of loans and the release of guarantees in respect of Investments theretofore made by it pursuant to this **clause (n)**; provided, that during the Covenant Relief Period, Investments pursuant to this clause (n) shall be limited to \$1,250,000 in the aggregate for such period;
- (o) Investments in the Ordinary Course of Business consisting of (i) endorsements for collection or deposit or (ii) customary trade arrangements with customers;
- (p) Investments made in the Ordinary Course of Business in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees in the Ordinary Course of Business;
- (q) Investments made by any Subsidiary that is not an Obligor to the extent such Investments are made with the proceeds received by such Subsidiary from an Investment made by an Obligor in such Subsidiary which is permitted hereunder;
- (r) any Investment upon the satisfaction the Payment Conditions with respect thereto <u>provided that during the Covenant Relief Period this</u> clause (r) shall not be utilized for any Acquisition;
- (s) Investments in connection with Hedging Agreements, in each case entered into in the Ordinary Course of Business and not for speculative purposes (it being agreed that the Permitted Convertible Notes Hedging Agreements and any Permitted Securitization Hedging Transaction are permitted);
- (t) advances to any director, officer, employee, member or management or consultant for salary, travel expenses, commissions and similar items in the Ordinary Course of Business in an aggregate amount outstanding at any time not to exceed \$6,250,000;
  - (u) prepaid expenses and extensions of trade credit made in the Ordinary Course of Business;
  - (v) deposits with financial institutions permitted hereunder;
  - (w) loans made by a Borrower to a Contract Debtor pursuant to a Contract entered into in the Ordinary Course of Business;
  - (x) loans made pursuant to any Permitted Originator Note; and

(y) Investments in the form of payments required to be made pursuant to that certain Asset Purchase Agreement, dated as of March 11, 2022, among, inter alios, RTO, as buyer, and Tempoe, LLC, a Delaware limited liability company, as seller, in an amount not to exceed \$7,500,000 in the aggregate.

Restrictive Agreement: any agreement that prohibits, restricts or imposes any condition upon (a) the ability of Borrowers or any their respective Subsidiaries to create, incur or permit to exist any Lien upon any of its property to secure the Obligations, or (b) the ability of any Subsidiary of Borrowers to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to Borrowers or any other Subsidiary.

Reuters: as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

Revolving Agent: JP Morgan Chase Bank, N.A., in its capacity as administrative agent and collateral agent under the Revolving Credit Agreement.

Revolving Borrowing Base: the "Borrowing Base" under and as defined in the Revolving Credit Agreement.

Revolving Credit Agreement: (a) that certain Fifth Amended and Restated Loan and Security Agreement, dated as of March 29, 2021, by and among the Borrowers, the Parent, the other Obligors party thereto, the lenders party thereto, Revolving Agent and the other agents and arrangers from time to time party thereto, as the same may from time to time be, amended, restated, amended and restated, supplemented, modified (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions), replaced, increased, renewed or extended and (b) any Replacement Facility, in each case, in an aggregate principal amount, together with the Term Loan Agreement, not to exceed \$\frac{750,000,000}{750,000,000}.58,000,000.

Revolving Loan Documents: the "Loan Documents" under and as defined in the Revolving Credit Agreement.

Revolving Obligations: the "Obligations" under and as defined in the Revolving Credit Agreement.

Revolving Outstandings: the "Revolver Usage" as defined in the Revolving Credit Agreement.

Royalty: all royalties, fees, expense reimbursement and other amounts payable by a Borrower under a License.

RTO: New RTO, LLC, a Delaware limited liability company.

Sanction: any 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, or (b) the United Nations Security Council, the European Union, any European Union member state or His Majesty's Treasury of the United Kingdom or other relevant sanctions authority in each case having jurisdiction over any Borrower or its Subsidiaries.

Secured Parties: Agent and Lenders.

<u>Securitization Subsidiary</u>: one or more direct or indirect Subsidiaries of Parent formed for the purposes of entering into a Permitted ABS Transaction, including Conn Appliances Receivables Funding, LLC, Conn's Receivables Funding I, LP, Conn's Receivables Funding I GP, LLC, Conn's Receivables, LLC, Conn's Receivables Warehouse, LLC, Conn's Receivables Warehouse Trust, Conn's Receivables Funding 2021-A, LLC, Conn's Receivables 2021-A Trust, Conn's Receivables Funding 2022-A, LLC, and Conn's Receivables 2022-A Trust.

Securitized Contracts: the Contracts and related assets which are subject to a Permitted Transaction.

<u>Security Agreement</u>: a security agreement, in the form executed by each Guarantor on the Closing Date, pursuant to which such Guarantor shall grant to Agent a Lien (for the benefit of the Secured Parties) in all of such Guarantor's assets, or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent.

<u>Security Documents</u>: the Guaranty, each Security Agreement, Equity Interest Pledge Agreement, the Intellectual Property Security Agreements, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations, or otherwise in form and substance (including pursuant to a joinder) reasonably acceptable to Agent.

<u>Senior Credit Facilities</u>: the collective reference to the Revolving Credit Agreement and the Term Loan Agreement and related Revolving Loan Documents and Term Loan Documents.

Senior Credit Facility Default: a "Default" or "Event of Default" under and as defined in each of the Revolving Credit Agreement and Term Loan Agreement other than any such Default or Event of Default in respect of Sections 10.3.4 and Section 10.3.5 of each of the Revolving Credit Agreement and Term Loan Agreement or, Section 5.2.2 of the Revolving Credit Agreement or 5.2.3 of the Term Loan Agreement.

Senior Officer: the chairman of the board, president, chief executive officer, chief financial officer (or other officer holding a similar role), chief operating officer, treasurer or assistant treasurer of a Borrower or, if the context requires, an Obligor.

SOFR: a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator: the NYFRB (or a successor administrator of the secured overnight financing rate).

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "Fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Specified Financial Covenants: as defined in Section 10.4.1.

Subordinated Debt: Debt (other than the Obligations, Term Loan Obligations or the Revolving Obligations) incurred by a Borrower (other than Debt among Parent and its Subsidiaries) that is expressly subordinate and junior in right of payment to the Obligations and has a maturity no shorter than, at the time of such incurrence or issuance, ninety-one (91) days after the Delayed Draw Term Loan Termination Date and has subordination terms reasonably satisfactory to Revolving Agent (or Agent to the extent there is a Discharge of ABL Obligations).

## Subordination Provisions: as defined in Section 11.1(0).

<u>Subsidiary</u>: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a direct or indirect Subsidiary or Subsidiaries of Parent.

Tangible Net Worth: at any date, an amount equal to: (i) the net book value (after deducting related depreciation, obsolescence, amortization, valuation and other proper reserves) at which the Adjusted Tangible Assets of a Person would be shown on a balance sheet at such date in accordance with GAAP, less (ii) the amount at which such Person's liabilities would be shown on such balance sheet, and including as liabilities all reserves for contingencies and other potential liabilities, in each case, in accordance with GAAP.

# Tax and Trust Funds: cash, cash equivalents or other assets comprised solely of

- (a) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Person's employees in the current period (which may be monthly or quarterly, as applicable),
- (b) all taxes required to be collected, remitted or withheld in the current period (which may be monthly or quarterly, as applicable) (including, without limitation, federal and state withholding taxes (including the employer's share thereof)), and
- (c) any other funds which such Person holds in trust or as an escrow or fiduciary for another Person (which is not an Obligor) in the ordinary course of business.

Tax Group: as defined in the definition of "Permitted Tax Distributions".

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

Term Loan Agent: Pathlight Capital LPBRF Finance Co., LLC, in its capacity as administrative agent and collateral agent under the Term Loan Agreement.

Term Loan Agreement: (a) that certain Term Loan and Security Agreement, dated as of February 21, 2023the First Amendment Effective Date, by and among the Borrowers, the Parent, the other Obligors party thereto, the lenders party thereto, Term Loan Agent and the other agents and arrangers from time to time party thereto, as the same may from time to time, in each case, be amended, restated, amended and restated, supplemented, modified (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions), replaced, increased, renewed or extended and (b) any Replacement Facility, in each case, in an aggregate principal amount, together with the Revolving Credit Agreement, not to exceed \$750,000,000.

Term Loan Borrowing Base: the "Borrowing Base" under and as defined in the Term Loan Credit Agreement.

Term Loan Documents: the "Loan Documents" under and as defined in the Term Loan Agreement.

Term Loan Facility: the senior secured term loan facility established pursuant to the Term Loan Agreement.

Term Loan Obligations; the "Obligations" under and as defined in the Term Loan Agreement.

Term Loan Push-Down Reserve: the "Term Loan Push-Down Reserve" as defined in the Term Loan Agreement.

Term SOFR Rate: at any time of determination for any month, the greater of (a) the Floor and (b) the rate *per annum* equal to the Term SOFR Reference Rate two U.S. Government Securities Business Days prior to the first day of such month for Dollar deposits with a term equivalent to three months; <u>provided</u> that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR Rate means the Term SOFR Reference Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case. Term SOFR shall be determined on a monthly basis as of the first day of each month.

<u>Term SOFR Reference Rate</u>: the forward-looking SOFR term rate administered by CME Term SOFR Administrator and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Agent from time to time).

Third Party Contracts: any loan agreement, account, revolving credit agreement, retail installment sale contract, consumer loan, Instrument, note, document, chattel paper, and all other forms of obligations owing to any Borrower or any Subsidiary of a Borrower, including any collateral for any of the foregoing, including all rights under any and all security documents, in each case which does not satisfy the credit criteria under the Credit and Collection Policy Guidelines and is intended to be sold to a third party in the Ordinary Course of Business promptly following the execution thereof (and delivery of the product financed thereby); provided, that (x) any purchase and sale agreement related to such Third Party Contract shall provide that such Third Party Contract shall be purchased by such third party within two (2) Business Days of its origination and the applicable Borrower or Subsidiary shall take commercially reasonable efforts to consummate such sale within two (2) Business Days of origination and (y) the aggregate outstanding balance of Third Party Contracts owned by Borrowers and their Subsidiaries shall at no time exceed \$1,250,000.

Threshold Amount: \$31,250,000.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

<u>UCC</u>: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

<u>UK Financial Institutions</u>: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

<u>UK Resolution Authority</u>: the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

<u>Unadjusted Benchmark Replacement</u>: the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

<u>U.S. Government Securities Business Day</u>: 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. Person: "United States Person" as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in Section 5.10.2(b)(iii).

Warrant: a warrant that entitles the holder thereof to purchase shares of the Applicable Parent Common Stock in the form of Exhibit E attached hereto that may be issued from time to time to each of the Lenders or an Affiliate of such Lenders or another assignee, transferee, or designee of such Lenders, on the terms and subject to the conditions set forth in Section 8.

Write-Down and Conversion Powers: (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.

Zenith Debt: Debt incurred pursuant to that certain sale/payment agent agreement, among Zenith Group Holdings, LLC (or an Affiliate thereof) and Conn's, Inc. (or an Affiliate thereof), and such other documents entered into in connection therewith, as each may be amended, restated, amended and restated, supplemented, modified (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions), replaced, increased, renewed or extended.

1.2 Accounting Terms. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that if Borrower Agent notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if Agent notifies Borrower Agent that Agent requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until

such notice shall have been withdrawn or such provision amended in accordance herewith and, if an amendment is requested by Borrower Agent or Agent, then Borrower Agent and Agent shall negotiate in good faith to enter into an amendment of such affected provisions (without the payment of any amendment or similar fees to Agent or the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof subject to the approval of the Required Lenders (not to be unreasonably withheld, conditioned or delayed).

- 1.3 <u>Uniform Commercial Code</u>. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "<u>Account</u>", "<u>Account Debtor</u>", "<u>Chattel Paper</u>", "<u>Commercial Tort Claim</u>", "<u>Deposit Account</u>", "<u>Document</u>", "<u>Equipment</u>", "<u>General Intangibles</u>", "<u>Goods</u>", "<u>Instrument</u>", "<u>Investment Property</u>", "<u>Letter-of-Credit Right</u>", "<u>Securities Account</u>" and "<u>Supporting Obligation</u>".
- 1.4 Certain Matters of Construction. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders and the neuter form. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan Document, the parties agree that the rule of ejusdem generis shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement (including any Loan Document and any Organic Document) include any amendments, restatements, amendments and restatements, supplements, modifications, replacements, renewals, extensions and refinancings from time to time (to the extent permitted or not restricted by the Loan Documents); (c) any section means, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and permitted assigns; and (f) time of day means Central time (daylight or standard, as applicable). All determinations (including calculations of financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time (as adjusted in accordance with the terms hereof). No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to a Borrower's "knowledge" or words of similar import means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained in good faith and diligent performance of his or her duties. The use of the phrase "subject to" as used in connection with Permitted Liens or otherwise and the permitted existence of any Permitted Liens or any other Liens in this Agreement or any other Loan Document shall not be interpreted to expressly or impliedly subordinate any Liens granted in favor of Agent and the other Secured Parties as there is no intention to subordinate the Liens granted in favor of Agent and the other Secured Parties, expect as expressly set forth in this Agreement or such other Loan Documents.
- 1.5 <u>Payment and Performance</u>. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.
- 1.6 <u>Compliance with this Agreement</u>. For purposes of determining the permissibility of any action, change, transaction or event that by the terms of the Loan Documents requires a calculation of any financial ratio or test, such financial ratio or test shall be calculated at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio

or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

1.7 <u>Classification</u>. For purposes of determining compliance at any time with Sections 10.2.1, 10.2.2, 10.2.4, 10.2.5, 10.2.6, 10.2.8, 10.2.9, 10.2.14, and 10.2.17 (and, in each case, any definition used therein) in the event that any Debt, Lien, Distribution, Restricted Investment, Asset Disposition, payment, prepayment, redemption, repurchase, retirement, defeasance or acquisition, merger, combination, consolidation, liquidation, winding up or dissolution, Restrictive Agreement, or Affiliate transaction meets the criteria of more than one (1) of the categories of transactions or items permitted pursuant to any clause of such Sections 10.2.1, 10.2.2, 10.2.4, 10.2.5, 10.2.6, 10.2.8, 10.2.9, 10.2.14, and 10.2.17 (and, in each case, any definition used therein), the Borrowers, in their sole discretion, may classify or reclassify such transaction or item (or portion thereof) and will only be required to include the amount and type of such transaction (or portion thereof) in any one (1) category.

# 1.8 Certain Calculations.

- (a) Subject to the immediately succeeding **clauses** (b) and (c) and **Section 1.6** above, notwithstanding anything to the contrary contained herein, financial ratios and tests (including the Interest Coverage Ratio, the Leverage Ratio and the ABS Excluded Leverage Ratio) pursuant to this Agreement shall be calculated in the manner prescribed by the definition of "Pro Forma Basis."
- (b) Notwithstanding anything to the contrary herein (including in connection with any calculation made on a Pro Forma Basis), to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including the Interest Coverage Ratio, the Leverage Ratio and the ABS Excluded Leverage Ratio and the component definitions of any of the foregoing), (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default) or (iii) the making of any representation or warranty, in each case as a condition to (A) the consummation of any transaction in connection with any acquisition or similar Investment (including the assumption or incurrence of Debt), (B) the making of any Distribution and/or (C) the making of any restricted Debt payment, in each case in connection with a Limited Condition Transaction, at the election of Borrowers (the "LCT Election"), the determination of whether the relevant condition is satisfied may be made at the time (the "LCT Test Time") of (or on the basis of the financial statements for the most recently ended fiscal period at the time of) the execution of the definitive agreement with respect to such Limited Condition Transaction. If Borrowers have made an LCT Election, then, in connection with any calculation of any financial ratio or test (other than with respect to determining actual (as opposed to pro forma) compliance with the Financial Covenants) following such LCT Test Time and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the definitive agreement with respect thereto is terminated, any such financial ratio or test shall be calculated (and tested) on a Pro Forma Basis assuming such Limited Condition Transaction and other subject transactions in connection therewith have been consummated.
- (c) Notwithstanding anything to the contrary contained in this **Section 1.8** or otherwise, for purposes of determining actual compliance with the financial covenants set forth in **Section 10.3**, any such adjustments shall only include events that occurred during the relevant measurement period for such financial covenant.
- 1.9 <u>Interest Rates; Benchmark Notification</u>. The interest rate on a Term Loan 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, **Section 3.6(b)** provides a mechanism for determining an alternative rate of interest. Agent will promptly notify the

Borrower Agent, pursuant to **Section 3.6(d)**, of any change to the reference rate upon which the interest rate on a Term Loan is based. However, Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, 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, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability (it being understood that this sentence does not limit Agent's obligation to make any determination or calculation of such reference rate as expressly required to be made by Agent pursuant to the terms of this Agreement). Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate 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. Agent (acting at the direction of the Required Lenders) may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced 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 com

1.10 **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 and acquired on the first date of its existence by the holders of its Equity Interests at such time.

# **SECTION 2. CREDIT FACILITIES**

# 2.1 Delayed Draw Term Loans.

- 2.1.1 <u>Delayed Draw Term Loans</u>. Each Lender agrees, severally on a Pro Rata basis, on the terms set forth herein, to make one or more delayed draw term loans (collectively, the "<u>Delayed Draw Term Loans</u>") to Borrowers during the Delayed Draw Term Loan Commitment Period in an aggregate amount not to exceed its Delayed Draw Term Loan Commitment; <u>provided</u> that after giving effect to the making of any Delayed Draw Loan, in no event shall the aggregate principal amount of all Delayed Draw Loans pending extension exceed the unused Delayed Draw Term Loan Commitments at such time. Any amount borrowed under this **Section 2.1** and subsequently repaid or prepaid may not be reborrowed. Each Lender's Delayed Draw Term Loan Commitment shall automatically and permanently be reduced by the amount of each Delayed Draw Term Loan made hereunder.
- 2.1.2 <u>Delayed Draw Term Notes</u>. The Delayed Draw Term Loans made by each Lender and interest accruing thereon shall be evidenced by the records of Agent and such Lender. At the request of any Lender, Borrowers shall deliver a Delayed Draw Term Note to such Lender.
- 2.1.3 <u>Use of Proceeds</u>. The proceeds of the Delayed Draw Term Loans shall be used by Borrowers for working capital and other lawful corporate purposes of Borrowers and their Subsidiaries in accordance with this Agreement. No Borrower shall, directly or, to its knowledge, indirectly, use any Delayed Draw Term Loan proceeds, nor use, lend, contribute or otherwise make available any Delayed

Draw Term Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of funding of the Delayed Draw Term Loan, is the target of any Sanction; or (ii) in any manner that would result in a violation of a Sanction by such Person.

2.1.4 <u>Termination of Delayed Draw Term Loan Commitments</u>. The Delayed Draw Term Loan Commitments shall terminate immediately and without further action on the Delayed Draw Term Loan Commitment Termination Date.

## SECTION 3. INTEREST, FEES AND CHARGES

3.1 Interest.

# 3.1.1 Rates and Payment of Interest.

- (a) The Obligations under the Loan Documents shall bear interest at a rate per annum equal to the Applicable Reference Rate in effect from time to time, plus the Applicable Margin. Interest shall accrue from the date a Delayed Draw Term Loan is advanced or the Obligation is payable, until paid by Borrowers. If a Delayed Draw Term Loan is repaid on the same day made, one day's interest shall accrue.
- (b) During an Insolvency Proceeding with respect to any Obligor, or during any other Event of Default if Required Lenders or Agent (acting at the direction of the Required Lenders) in their discretion so elect, the Obligations under the Loan Documents shall bear interest at the Default Rate (whether before or after any judgment), payable on demand.
- (c) Interest accrued on the Delayed Draw Term Loans shall be due and payable in cash in arrears on each Interest Payment Date; provided, however, to the extent the payment in cash of all or any portion of the interest then due and payable on the applicable Interest Payment Date would result in a "Default" or "Event of Default" under any of the Senior Credit Facilities, the Borrowers may pay such portion of the outstanding interest in kind (i.e. by adding such outstanding interest to the aggregate principal amount of the Delayed Draw Term Loans, any such capitalized interest, "PIK Interest") as is necessary to avoid any such "Default" or "Event of Default". On each Interest Payment Date, each Lender will be entitled to receive an amount equal to their pro rata share of the cash interest then due and owing (if any), as well as any such PIK Interest then due and owing. Amounts representing PIK Interest which are added to the outstanding principal of Loans and other Obligations accruing once capitalized and added to the principal of the Obligations shall thereafter bear interest in accordance with this Section 3.1 and otherwise be treated as Delayed Draw Term Loans for purposes of this Agreement. All accrued and unpaid interest shall be payable in full in cash in immediately available funds in Dollars on the applicable Delayed Draw Term Loan Termination Date.

3.2 Fees.

3.2.1 <u>Fee Letter</u>. The Borrowers shall pay to Agent and the Lenders, for their own respective accounts, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

- 3.2.2 <u>Delayed Draw Commitment Fees</u>. The Borrowers shall pay to Agent for the account of each Lender holding a Delayed Draw Term Loan Commitment in accordance with its Pro Rata share, a commitment fee equal to 5.0% per annum times the actual daily amount of the aggregate unused Delayed Draw Term Loan Commitments (the "<u>Delayed Draw Commitment Fee</u>"). The Delayed Draw Commitment Fee shall accrue at all times from the Closing Date until the Delayed Draw Term Loan Commitment Termination Date and shall be due and payable in arrears in cash on the first day of each month, commencing with the first full calendar month to occur after the Closing Date, and on the Delayed Draw Term Loan Commitment Termination Date; <u>provided</u>, <u>however</u>, (i) to the extent the payment in cash of all or any portion of the Delayed Draw Commitment Fee on the applicable payment date would result in a "Default" or "Event of Default" under any of the Senior Credit Facilities then, in each case, the Borrowers may pay such portion of such Delayed Draw Commitment Fee in kind (i.e. by adding such Delayed Draw Commitment Fee to the aggregate principal amount of the Delayed Draw Term Loans, any such capitalized fees, the "<u>PIK Fees</u>") as is necessary to avoid any such "Default" or "Event of Default." The commitment fee referred to in this Section 3.2.2 shall be calculated monthly in arrears.
- 3.3 Computation of Interest and Fees. All interest, as well as fees and other charges calculated on a *per annum* basis, shall be computed for the actual days elapsed (including the first day but excluding the last day), based on a year of 360 days (or 361 days in a leap year), except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under Section 3.2 are either compensation for services or liquidated damages and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate setting forth in reasonable detail the calculation of the amount or amounts payable by Borrowers under Section 3.4, 3.6, 3.7, 3.9 or 5.9, submitted to Borrower Agent by Agent or the affected Lender, as applicable, shall be final, conclusive and binding for all purposes, absent manifest error; provided that such certificate from each such Lender shall contain a certification to Borrowers that such Lender is generally requiring reimbursement for the relevant amounts from similarly situated borrowers under comparable credit facilities. The Borrowers shall pay such amounts to the appropriate party within 30 days following receipt of the certificate.
- 3.4 Reimbursement Obligations. The Borrowers shall pay all Extraordinary Expenses within 30 days of receipt of an invoice (in reasonable detail and accompanied by backup documentation). Without duplication of the foregoing sentence, the Borrowers shall also reimburse Agent within 30 days of receipt of an invoice (in reasonable detail and accompanied by backup documentation) for all reasonable and documented out-of-pocket legal, examination and appraisal fees and expenses (in the case of legal fees and expenses, fees and expenses of one lead firm of counsel to Agent and, if necessary, one (1) local counsel in each relevant local jurisdiction to Agent) incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any modification thereof and (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral.
- 3.5 <u>Illegality</u>. If any Lender reasonably determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund Delayed Draw Term Loans bearing interest by reference to the Term SOFR Rate, or to determine or charge interest based on the then applicable Benchmark, then, on written notice thereof by such Lender to Agent and Borrower Agent, all Delayed Draw Term Loans shall bear interest at the Base Rate (without reference to any Benchmark component thereof) until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist.

# 3.6 Alternate Rate of Interest.

- (a) Subject to clauses (b), (c), (d), (e) and (f) of this Section 3.6:
- (i) Agent reasonably determines (which determination shall be conclusive absent manifest error) in connection with the determination of the applicable rate of interest for the Delayed Draw Term Loans on any month, that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis); or
- (ii) Agent is advised by the Required Lenders that in connection with the determination of the applicable rate of interest for the Delayed Draw Term Loans on any month the Term SOFR Rate will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan);

then Agent shall give notice thereof to the Borrower Agent and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark (which Agent agrees to deliver promptly when such circumstances cease to exist), the Delayed Draw Term Loans shall bear interest based on the Base Rate until Agent notifies the Borrower Agent and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark (which Agent agrees to deliver promptly when such circumstances cease to exist).

- (b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.
- (c) Notwithstanding anything to the contrary herein or in any other Loan Document, Agent, in consultation with the Borrower, will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.
- (d) Agent will promptly notify the Borrower Agent and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any Agreed Tenor, and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent (acting at the direction of the Required Lenders) or, if applicable, or any Lender (or group of Lenders) pursuant to this Section 3.6, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.6.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) an Agreed Tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent (acting at the direction of Required Lenders) in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that an Agreed Tenor for such Benchmark is or will be no longer representative, then Agent may modify the definition of "Agreed Tenor" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to **clause (i)** above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Agent may modify the definition of "Agreed Tenor" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Delayed Draw Term Loans shall bear interest at the Base Rate until such time as a Benchmark Replacement is implemented pursuant to this **Section 3.6**.

# 3.7 Increased Costs; Capital Adequacy.

- 3.7.1 <u>Increased Costs Generally</u>. If any Change in Law shall:
- (a) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender;
- subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Term Loan or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or
- (b) impose on any Lender or the applicable offshore interbank market any other condition affecting this Agreement or any other Loan Document or any Term Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining, any Loan (or of maintaining its obligation to make any such Term Loan), or to reduce the amount of any sum received or receivable by a Lender hereunder (whether of principal, interest or any other amount) then, within 30 days of receipt of a certificate of the type specified in **Section 3.3** from such Lender, Borrowers will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered.

3.7.2 <u>Capital Requirements</u>. If a Lender determines that a Change in Law affecting such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or holding company's capital as a consequence of this Agreement, or such Lender's Term Loan Commitments, or the Term Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time within 30 days of receipt of a certificate of the type specified in **Section 3.3**, Borrowers will pay to such Lender, as the case may be, such additional amounts as will compensate it or such Lender's holding company for the reduction suffered.

- 3.7.3 <u>Compensation</u>. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender for any increased costs or reductions suffered more than 90 days (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender notifies Borrower Agent of the applicable Change in Law and of such Lender's intention to claim compensation therefor.
- 3.8 <u>Mitigation</u>. If any Lender gives a notice under Section 3.5 or requisite requests compensation under Section 3.7, or if Borrowers are required to pay any Indemnified Taxes or additional amounts with respect to a Lender under Section 5.9, then such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be materially disadvantageous to it or unlawful. The Borrowers shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

# 3.9 Funding Losses.

- 3.9.1 If for any reason (a) any borrowing of a Delayed Draw Term Loan does not occur on the date specified therefor in a Notice of Borrowing, or (b) Borrowers fail to repay a Delayed Draw Term Loan when required hereunder, then Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event (other than loss of margin). A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to Borrower Agent and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.
- 3.10 Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law ("maximum rate"). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations under the Loan Documents or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations under the Loan Documents.

## **SECTION 4. LOAN ADMINISTRATION**

## 4.1 Manner of Borrowing and Funding Delayed Draw Term Loans.

- 4.1.1 Notice of Borrowing. To request a Delayed Draw Term Loan, Borrower Agent shall give the Lenders a Notice of Borrowing no later than 12:00 noon, at least three (3) Business Days (or such shorter period agreed by Agent) prior to the requested funding date.
- 4.1.2 <u>Funding by Lenders</u>. Each Lender shall fund its Pro Rata share of a Delayed Draw Term Loan in immediately available funds not later than 2:00 p.m. on the requested funding date, unless Borrower's notice is received after the time provided above, in which case Lender shall fund by 1:00 p.m. on the next Business Day, Lenders shall disburse the proceeds of any Delayed Draw Term Loan in a manner directed by Borrower Agent.
- 4.1.3 <u>Minimum Amount</u>. Delayed Draw Term Loans shall be made in a minimum amount of Five Hundred Thousand Dollars (\$500,000) and shall be in integral multiples of One Hundred Thousand Dollars (\$100,000) in excess of thereof or, if the available Delayed Draw Term Loan Commitments are less than such minimum amounts, then in an amount equal to the remaining Delayed Draw Term Loan Commitments.
  - 4.2 [Reserved].

4.3 [<u>Reserved</u>].

- 4.4 **Borrower Agent**. Each Borrower hereby designates CAI ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Delayed Draw Term Loans, delivery or receipt of communications, payment of Obligations, requests for waivers, amendments or other modifications, accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower. Agent and Lenders may give any notice or communication with a Borrower hereunder to Borrower Agent on behalf of such Borrower. Each of Agent and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for any or all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking by Borrower Agent shall be binding upon and enforceable against such Borrower.
- 4.5 <u>One Obligation</u>. The Delayed Draw Term Loans and other Obligations constitute one general obligation, on a joint and several basis, of Borrowers and are secured by Agent's Lien on all Collateral; <u>provided</u>, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.
- 4.6 Effect of Termination. Until Full Payment of all Obligations under the Loan Documents, all undertakings of Borrowers contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. Sections 3.4, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2, this Section and each indemnity (and related provisions (including the obligation to return any payments to which an indemnitee was not entitled to payment)) or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations subject to the limitations set forth in such Sections, if any.

## **SECTION 5. PAYMENTS**

- 5.1 General Payment Provisions. All payments or prepayments of Obligations under the Loan Documents shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes (except as provided in Section 5.9), and in immediately available funds, prior to 2:00 p.m. (or such later time as Agent (acting at the direction of the Required Lenders) may agree in its reasonable discretion) on the due date or the date fixed for any prepayment hereunder. Any amounts received after such time may, at the discretion of Agent (acting at the direction of the Required Lenders), be deemed made on the next Business Day for purposes of calculating interest thereon. Except as expressly provided herein, all such payments shall be made to Lenders at their offices as set forth in Section 14.3.
- 5.2 **Repayment of Obligations**. The Borrowers shall repay the aggregate principal amount of the Delayed Draw Term Loan (giving effect to any prepayments applied thereto under **Section 5.6**) in full on the Delayed Draw Term Loan Termination Date. The Delayed Draw Term Loan may be prepaid at any time, or from time to time, in whole or in part, without premium or penalty.
  - 5.3 [Reserved].

5.4 [Reserved].

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- 5.5 <u>Marshaling; Payments Set Aside</u>. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers is made to Agent or any Lender, or if Agent or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person in any Insolvency Proceeding, then to the extent of such recovery, the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.
  - 5.6 Application and Allocation of Payments.
- 5.6.1 <u>Application of Payments Generally.</u> Subject to **Section 5.6.2** and **Section 5.6.3**, payments made by Borrowers hereunder shall be applied (a) <u>first</u>, to Obligations under the Loan Documents then due and owing, if any; (b) <u>second</u>, to other Obligations specified by Borrowers, and (c) <u>third</u>, as determined by Agent (acting at the direction of the Required Lenders) in its discretion.
- 5.6.2 <u>Application of Voluntary Prepayments</u>. Subject to **Section 5.6.3**, any payment made by Borrowers to Agent pursuant to **Section 5.2**, in each case, shall be applied to prepay the remaining scheduled installments of the Delayed Draw Term Loans in inverse order of maturity.

5.6.3 <u>Post-Default Allocation</u>. Notwithstanding anything in any Loan Document to the contrary, but subject to the terms of the Intercreditor Agreement, during the existence of an Event of Default under **Section 11.1(j)**, or during any other Event of Default at the discretion of Required Lenders or Agent (acting at the direction of the Required Lenders), monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows:

first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent;

second, to all other amounts owing to Agent;

third, to all Obligations constituting fees, indemnification, costs or expenses owing to Lenders;

fourth, to all Obligations constituting interest;

fifth, to all Delayed Draw Term Loans;

sixth, to all remaining Obligations; and

LAST, to Borrowers.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. The allocations in this Section are solely to determine the priorities among Secured Parties and may be changed by agreement of affected Secured Parties without the consent of any Obligor. No Obligor has any right to direct the application of payments or Collateral proceeds subject to this **Section 5.6.3**.

5.6.4 <u>Erroneous Application</u>. Agent shall not be liable for any application of amounts made by it in good faith and, subject to **Section 12.9.2**, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been paid shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.7 [Reserved].

5.8 Account Stated. Agent shall maintain, in accordance with its customary practices, loan account(s) (collectively the "Loan Account") evidencing the Debt of Borrowers hereunder, and each Borrower confirms that such arrangement shall have no effect on the joint and several character of its liability for the Obligations. Any failure of Agent to record anything in a Loan Account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries made in a Loan Account shall constitute presumptive evidence of the information contained therein. If any information contained in a Loan Account is provided to any Person for verification (or inspected in the case of any Person other than Borrowers), the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt (or inspection, as applicable) that specific information is subject to dispute; provided that payment by Borrowers to Agent of any amounts owed hereunder which are under dispute by Borrowers shall not be deemed a waiver of Borrowers' right to continue such dispute.

# 5.9 **Taxes**.

# 5.9.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.

- (a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Agent (acting at the direction of Required Lenders) in its discretion) requires the deduction or withholding of any Tax from any such payment by Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding based on information and documentation provided pursuant to Section 5.10.
- (b) If Agent or any Obligor is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) Agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.
- (c) If Agent or any Obligor is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.
- 5.9.2 <u>Payment of Other Taxes</u>. Without limiting the foregoing, Borrowers shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

# 5.9.3 Tax Indemnification.

- (a) Each Borrower shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any penalties, interest and reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Borrower shall indemnify and hold harmless Agent against any amount that a Lender fails for any reason to pay to Agent as required pursuant to this Section. Each Borrower shall make payment within 30 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.
- (b) Each Lender shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender (but only to the extent Borrowers have not already paid or reimbursed Agent therefor and without limiting Borrowers' obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a

Participant register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error.

- 5.9.4 Evidence of Payments. If Agent or an Obligor pays any Taxes pursuant to this Section, then upon request and as soon as practicable after payment, Agent shall deliver to Borrower Agent or Borrower Agent shall deliver to Agent, respectively, a copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment or other evidence of payment reasonably satisfactory to Agent or Borrower Agent, as applicable.
- 5.9.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender, nor have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of a Lender. If a Recipient determines in its discretion that it has received a refund of any Taxes as to which it has been indemnified by Borrowers or with respect to which a Borrower has paid additional amounts pursuant to this Section, it shall pay Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrowers agree, upon request by the Recipient, to repay the amount paid over to Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to Borrowers if such payment would place the Recipient in a less favorable net after-Tax position than it 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. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its taxes that it deems confidential) available to any Obligor or other Person.
- 5.9.6 <u>Survival</u>. Each party's obligations under **Sections 5.9** and **5.10** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender and the repayment, satisfaction, discharge or Full Payment of any Obligations under the Loan Documents.

# 5.10 Lender Tax Information.

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5.10.1 Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrowers and Agent properly completed and executed documentation reasonably requested by Borrowers or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrowers or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrowers or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in Sections 5.10.2(a), (b) and (d)) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

- 5.10.2 Documentation. Without limiting the foregoing, if any Borrower is a U.S. Person,
- (a) Any Lender that is a U.S. Person shall deliver to Borrowers and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), executed originals of IRS Form W 9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;
- (b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of originals as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Agent), whichever of the following is applicable:
  - (i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
    - (ii) executed originals of IRS Form W 8ECI;
  - (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3) (A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code ("U.S. Tax Compliance Certificate"), and (y) executed originals of IRS Form W 8BEN or IRS Form W 8BEN-E, as applicable; or
  - (iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; <u>provided</u>, <u>however</u>, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct or indirect partner;
- (c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of Borrowers or Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers or Agent to determine the withholding or deduction required to be made; and

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrowers and Agent at the time(s) prescribed by law and otherwise as reasonably requested by Borrowers or Agent, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for them to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

5.10.3 <u>Redelivery of Documentation</u>. If any form or certification previously delivered by a Lender pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrowers and Agent in writing of its inability to do so.

# 5.11 Nature and Extent of Each Borrower's Liability.

5.11.1 Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and Lenders the prompt payment and performance of, all Obligations. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Full Payment of the Obligations under the Loan Documents, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Obligations or any action, or the absence of any action, by Agent or any Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any Lender against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Obligations under the Loan Documents.

# 5.11.2 Waivers.

(a) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations under the Loan Documents and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is a Borrower. It is agreed among each Borrower, Agent and Lenders that the provisions of this Section 5.11 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Lenders would decline to make Delayed Draw Term Loans. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(b) During the continuance of an Event of Default, Agent (acting at the direction of Required Lenders) and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this Section 5.11. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Agent may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 5.11, notwithstanding that any present or future law or court decisio

## 5.11.3 Extent of Liability; Contribution.

- (a) Notwithstanding anything herein to the contrary, each Borrower's liability under this **Section 5.11** shall not exceed the greater of (i) all amounts for which such Borrower is primarily liable, as described in **clause (c)** below, and (ii) such Borrower's Allocable Amount.
- (b) If any Borrower makes a payment under this **Section 5.11** of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, ratably based on their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this **Section 5.11** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.
- (c) This **Section 5.11.3** shall not limit the liability of any Borrower to pay or guarantee Delayed Draw Term Loans made directly or indirectly to it (including Delayed Draw Term Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.

- 5.11.4 Joint Enterprise. Each Borrower has requested that Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. The Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. The Borrowers acknowledge that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.
- 5.11.5 <u>Subordination</u>. Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of all Obligations under the Loan Documents.

# SECTION 6. CONDITIONS PRECEDENT

# 6.1 Conditions Precedent.

- 6.1.1 The obligations of the Lenders to make Delayed Draw Term Loans hereunder shall not become effective until the date ("<u>Closing Date</u>") on which each of the following conditions is satisfied (or waived in accordance with **Section 14.1**), in each case, in form and substance satisfactory to the Lenders:
- (a) The Loan Documents shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor (to the extent a party thereto) shall be in compliance with all terms thereof.
- (b) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral (and all filing and recordation fees shall be paid concurrently with such filing or recordation), as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.
- (c) Agent shall have received certificates from a Senior Officer of Borrower Agent certifying that, after giving effect to the making of Delayed Draw Term Loans (if any) and the transactions contemplated hereby, (i) Borrowers and their Subsidiaries, taken as a whole on a consolidated basis, are Solvent; (ii) no Default or Event of Default exists; and (iii) the representations and warranties set forth in **Section 9** are true and correct (in accordance with **Section 6.1.2(c)** below).
  - (d) Agent shall have received a customary written opinion of Sidley Austin LLP.
- (e) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.
- (f) Agent shall have received copies of the charter documents of each Obligor, certified as of a recent date by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization. Agent shall have received good standing certificates for each Obligor, issued as of a recent date by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.

- (g) Since April 30, 2023, there has been no change in the financial condition of Parent or any of its Subsidiaries (when taken as a whole) that could reasonably be expected to have a Material Adverse Effect.
- (h) The Borrowers shall have paid all fees and expenses due and payable to Lenders on the Closing Date, including, to the extent invoiced at least one (1) Business Day prior to the Closing Date, reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the Borrowers hereunder.
- (i) an amendment to the Permitted ABS Intercreditor Agreement, to among other things, permit the transactions contemplated by the Loan Documents.
- (j) The Lenders shall have received all documentation and other information, including a duly executed W-9 tax form (or such other applicable IRS tax form) of the Obligors, required by such institution or its bank regulatory authorities under applicable economic sanctions laws, "know your customer" and other terrorism, counter-terrorism and anti-money laundering rules and regulations, including the PATRIOT Act and the United States Executive Order No. 13224 on Terrorist Financing.
- (k) Each Obligor shall have obtained all Governmental Approvals and all consents of other Persons, in each case that are necessary in connection with the entering into of the Loan Documents to be delivered on the Closing Date, and each of the foregoing shall be in full force and effect.
- (l) There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that (i) is related to this Agreement or the other Loan Documents or (ii) in the reasonable opinion of Agent, singly or in the aggregate, could have a Material Adverse Effect.
- 6.1.2 The Lenders' obligation to fund a Delayed Draw Term Loan on or after the Closing Date is subject to the satisfaction of the following condition (unless waived in accordance with **Section 14.1**):
- (a) Agent shall have received a Notice of Borrowing with respect to such Delayed Draw Term Loan no less than three (3) Business Days (or such shorter period agreed by Agent) prior to the requested funding date.
- (b) No Default or Event of Default or Senior Credit Facility Default exists or would result from the funding of the Delayed Draw Term Loan or from the application of the proceeds thereof on the Closing Date.
- (c) The representations and warranties of each Obligor in the Loan Documents are true and correct in all material respects (and in all respects with respect to any representations and warranties which are expressly qualified with materiality) on the Closing Date, and upon giving effect to, the funding of the Delayed Draw Term Loans (except for representations and warranties that relate solely to an earlier date, in which case they are true in correct in all material respects (and in all respects with respect to any representations and warranties which are expressly qualified with materiality) as of such earlier date).

(d) Upon the request of any Lender, Borrower shall have executed and delivered an executed Delayed Draw Term Note.

## **SECTION 7. COLLATERAL**

- 7.1 Grant of Security Interest. To secure the prompt payment and performance of up to \$50,000,000 in the aggregate of the Obligations (or such greater amount as is permitted and otherwise available to constitute secured Junior Lien Debt (as defined in each of the Senior Credit Facilities)), each Borrower hereby assigns and transfers to Agent, and hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all of the following Property of such Borrower (other than any such property that constitutes Excluded Collateral), whether now owned or hereafter acquired, and wherever located:
  - (a) all Contracts and all Third Party Contracts;
  - (b) all Accounts including Credit Card Accounts;
  - (c) all Chattel Paper, including electronic chattel paper;
  - (d) all Commercial Tort Claims, including those shown as of the Closing Date on Schedule 9.1.16;
  - (e) all Deposit Accounts;
  - (f) all Documents;
  - (g) all General Intangibles, including Intellectual Property and the CARES Act Tax Refund Claim;
  - (h) all Goods, including Inventory, Equipment and fixtures;
  - (i) all Instruments;
- (j) all Investment Property, including the Equity Interests of each Borrower in its Subsidiaries set forth on Schedule 7.1(j) and all Class C Retained Notes;
  - (k) all Letter-of-Credit Rights;
  - (l) all Supporting Obligations;
- (m) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender;
- (n) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (o) all books and records (including customer lists, files, correspondence, tapes, computer programs, print outs and computer records) pertaining to the foregoing.

Each Contract and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor directly or indirectly from the sale of the securities in a Permitted ABS Transaction on account of such Contract becoming a Securitized Contract) shall be released from Agent's security interest automatically upon becoming a Securitized Contract without further action by Agent or any other Person. Each Third Party Contract and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor on account of the sale thereof) shall be released from Agent's security interest automatically upon being sold to a third party in accordance with the terms of the Loan Documents without further action by Agent or any other Person. Each Class C Retained Note and its related assets (other than, in each case, net distributions or other net proceeds received by an Obligor on account of the sale thereof) shall be released from Agent's security interest automatically upon being sold to a third party in accordance with Section 10.2.6(b) without further action by Agent or any other Person. Agent shall execute a release evidencing the foregoing upon any Borrower's request; provided that only Agent or its designee may file any UCC-3 financing statements in connection with the foregoing (which Agent agrees to do promptly upon Borrower Agent's request). If a Securitized Contract is transferred from a Securitization Subsidiary back to a Borrower (other than a defaulted Securitized Contract being transferred back solely for tax rebate purposes), it shall cease being a Securitized Contract upon such transfer back and, together with its related security shall again constitute Collateral hereunder.

7.2 Deposit Accounts. To further secure the prompt payment and performance of all Obligations, each Borrower hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all amounts credited to any Deposit Account of such Borrower (other than Excluded Accounts), including any sums in any blocked or lockbox accounts (if any) or in any accounts into which such sums are swept. Each Borrower authorizes and directs each bank or other depository to deliver all balances in each such Deposit Account maintained by such Borrower with such depository promptly following the receipt by such bank or other depository institution of a notice of a Dominion Trigger Period, to (a) first, the Revolving Obligations (as provided in the Revolving Credit Agreement, including the cash collateralization of any such Revolving Obligations), (b) second, the Term Loan Obligations (as provided in the Term Loan Documents, including the cash collateralization of any such Term Loan Obligations), and (c) third such accounts directed by Agent, in its sole discretion, for application to the Obligations. Each Borrower irrevocably appoints Agent as such Borrower's attorney-in-fact to collect such balances to the extent any such delivery is not so made.

Notwithstanding anything herein in to the contrary, the security interest and Lien granted to Agent and Lenders under this Section 7.1 shall only secure the Obligations up to a maximum amount of \$50,000,000 in the aggregate (or such greater amount as is permitted and otherwise available to constitute secured Junior Lien Debt (as defined in each of the Senior Credit Facilities)). Any Obligations in excess of \$50,000,000 (or such greater amount as is permitted and otherwise available to constitute secured Junior Lien Debt (as defined in each of the Senior Credit Facilities)) shall, for the avoidance of doubt, shall be unsecured for all purposes of the Loan Documents.

7.2 [Reserved].
7.3 [Reserved].
7.4 [Reserved].
7.5 Other Collateral.

7.5.1 <u>Commercial Tort Claims</u>. Borrowers shall promptly notify Agent in writing if any Borrower has a Commercial Tort Claim (other than, as long as no Event of Default exists, a Commercial Tort Claim for less than \$5,000,000) and shall take such actions as Agent deems appropriate to subject such claim to a Lien (subject only to Permitted Liens) in favor of Agent for the benefit of the Lenders.

#### 7.5.2 [Reserved]

- 7.5.2 Certain After-Acquired Collateral. The Borrowers (a) shall promptly notify Agent if a Borrower obtains an interest in any Deposit
  Account (other than an Excluded Account) and (b) shall notify Agent concurrently with the delivery of any Compliance Certificate delivered pursuant to
  Section 10.1.1(d)(i), if, during the most recently ended Fiscal Quarter to which such Compliance Certificate relates, any Borrower obtains any interest in Collateral (other than Contracts and related assets) consisting of Intellectual Property and Investment Property and, subject to Section 7.5.4, upon
  Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority Lien (subject to other Permitted Liens and the Intercreditor Agreement) on such Collateral including obtaining any appropriate control agreement.
- 7.5.3 <u>Limitations</u>. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Borrowers relating to any Collateral.
- 7.5.4 <u>Further Assurances</u>. All Liens granted to Agent for the benefit of the Secured Parties under the Loan Documents are for the benefit of Secured Parties. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, no perfection actions other than (<u>i) obtaining appropriate control agreements on Deposit Accounts</u>, (<u>ii) customary filings for Intellectual Property</u>, (<u>iii)</u> the filing of a Uniform Commercial Code financing statement in the jurisdiction of organization of each Obligor, and (<u>iv</u>) subject to Section 14.19, those satisfied by delivery of possession in respect of possessory collateral as satisfied by the terms of the Intercreditor Agreement shall be required with respect to the Collateral prior to any Default or Event of Default. Each Borrower authorizes Agent to file any financing statement that describes the Collateral as "all assets", "all personal property" or "all assets of the debtor, wherever located, whether now owned or hereafter acquired or arising, and all products and proceeds of the foregoing" of such Borrower, or words to similar effect.

# **SECTION 8. WARRANTS**

8.1 <u>Warrants</u>. In connection with each Delayed Draw Term Loan, Parent shall issue to each Lender (or its Affiliate or other designee) a Warrant (in the form of Exhibit E attached hereto) to purchase a number of shares of <u>Applicable</u> Parent Common Stock equal to (a) (i) 20% of the aggregate principal amount of such Delayed Draw Term Loan funded by a Lender divided by (b) the Exercise Price (as applicable from time to time, the "Warrant Shares"). Each such Warrant shall, subject to the limitations set forth in Section 8.2, be issued to (x) a Lender (or its Affiliate or other designee) on each Borrowing Date or (y) a Third Party Designee (as defined below), as promptly as practicable following the date Parent or the Borrowers receives receive written designation of such Third Party Designee in accordance with Section 8.2 below. For the avoidance of doubt, to the extent a Warrant is issued for the purchase of Parent Common Stock prior to the Parent having issued Non-Voting Parent Common Stock, such Warrant shall automatically become exercisable for the purchase of Non-Voting Parent Common Stock from and after the authorization of such Non-Voting Parent Stock and Parent shall execute any and all amendments reasonably requested by the holder of such Warrant to evidence the same.

- 8.2 Beneficial Ownership Limitation . Notwithstanding anything to the contrary contained herein, for so long as the Applicable Parent Common Stock is the Parent Common Stock, the number of shares of Parent Common Stock subject to any Warrant shall be limited pursuant to this Section 8.2 to the extent necessary to ensure that, following exercise of such Warrant, the total number of shares of Parent Common Stock then beneficially owned by such Lender and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with such Lender's for purposes of Section 13 of the Securities Exchange Act of 1934 (the "Exchange Act" and, such Persons whose ownership would be aggregated, the "Lender Group"), does not exceed 19.99% of the total number of issued and outstanding shares of Parent Common Stock (including for such purpose the shares of Parent Common Stock issuable upon such exercise) as of the date of this Agreement (the "Beneficial Ownership Limit"). If the number of shares of Parent Common Stock that would otherwise be subject to any Warrant pursuant to Section 8.1 would cause a Lender Group to exceed the Beneficial Ownership Limit, then (a) Parent shall issue to the applicable Lender or another member of the Lender Group designated by such Lender a Warrant to purchase the maximum number of shares of Parent Common Stock as would not exceed the Beneficial Ownership Limit at the Exercise Price and (b) such Lender may designate, in writing to Parent, one or more third parties that are not part of the applicable Lender Group (a "Third Party Designee") to whom Parent shall issue a Warrant to purchase a number of shares of Parent Common Stock equal to the number of shares calculated in accordance with Section 8.1 minus the number of shares subject to the Warrant issued pursuant to the immediately preceding clause (a) with the same Exercise Price; provided, that any such Third Party Designee shall be required to certify in writing to Parent that such Third Party Designee is an "accredited investor" as defined in Rule 501(a) under the Securities Act of 1933 (the "Securities Act") and make such other representations and certifications as Parent may reasonably request; provided, further, that any issuance of a Warrant to a Third Party Designee pursuant to the immediately preceding clause (b) shall be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities blue sky laws. For the purposes of this Section 8.2, beneficial ownership shall be determined in accordance with Section 13 of the Exchange Act and the rules and regulations promulgated thereunder.
- 8.3 19.99% Cap Limitation. Notwithstanding anything to the contrary contained herein, the number of shares of Applicable Parent Common Stock (but, from and after such time, if ever, as the stockholders of Parent approve the issuance of the shares of Non-Voting Parent Common Stock underlying any and all Warrants to be issued pursuant to the terms of this Agreement (for this purpose, without application of the limitations set forth in this Section 8.3) not any Non-Voting Common Stock) subject to any and all Warrants issued shall be limited pursuant to this Section 8.3 to the extent necessary to ensure that the aggregate number of shares of Parent Common Stock subject to the Warrants issued hereunder does not exceed 4,855,1594,907,567, which equals 19.99% of the 24,287,94224,550,113 shares of Parent Common Stock issued and outstanding as of the Closing First Amendment Effective Date.
- 8.4 <u>PIK Amounts</u>. Notwithstanding anything herein to the contrary, the aggregate amount of the PIK Amounts capitalized and added to the principal amount of the Delayed Draw Term Loans shall be disregarded for all purposes under this **Section 8** and shall not factor into the calculation of the number of shares of <u>Applicable</u> Parent Common Stock subject to any Warrant.
- 8.1 Authorization of Non-Voting Parent Stock. Parent covenants and agrees to comply with its obligations set forth in the Badcock Transaction Documents with respect to soliciting the approval of its stockholders of the authorization and issuance of the Non-Voting Parent Common Stock (the "Non-Voting Stock Solicitation") and, in connection with such solicitation, to also solicit (on the same terms and subject to the same conditions as apply to the Non-Voting Stock Solicitation pursuant to the Badcock Transaction Documents) authorization to issue the maximum amount of Non-Voting Parent Common Stock upon exercise of the maximum number of Warrants that could be issued hereunder (i.e., assuming Term Loans issued hereunder in an aggregate principal amount of \$50,000,000.00 and for an Exercise Price of \$0.01) (the "Warrant Stock Solicitation"). The Warrant Stock Solicitation shall be reasonably satisfactory to the Agent and Lenders in all material respects.

#### SECTION 9. REPRESENTATIONS AND WARRANTIES

- 9.1 General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to provide the DDTL Facility, Parent and each Borrower represents and warrants that:
- 9.1.1 <u>Organization and Qualification</u>. Each Obligor is duly organized, validly existing and in good standing under the laws of the jurisdiction of their organization, except where the failure to be so organized or validly existing (other than in the case of a Borrower) or in good standing could not reasonably be expected to have a Material Adverse Effect. Each Obligor is duly qualified, authorized to do business and in good standing in each other jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect.
- 9.1.2 <u>Power and Authority</u>. Each Obligor is duly authorized to execute, deliver and perform its obligations under the Loan Documents to which it is a party. The execution, delivery and performance by each Obligor of the Loan Documents to which it is a party have been duly authorized by all necessary corporate or organizational action, and do not (a) require any consent or approval of any holders of Equity Interests of any Obligor, other than those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a default under any Applicable Law or Material Contract; or (d) result in or require the imposition of any Lien (other than Permitted Liens) on any Property of any Obligor, except, in the case of clauses (c) and (d), for any contravention, violation or imposition of a Lien as could not reasonably be expected to result in a Material Adverse Effect.
- 9.1.3 Enforceability. Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable against such Obligor in accordance with its terms, except as enforceability may be limited by bankruptcy, fraudulent transfer, insolvency, reorganization, moratorium, administration or similar laws relating to, limiting or otherwise affecting creditors' rights or by equitable principles or principles of public order relating to enforceability.
- 9.1.4 <u>Capital Structure</u>. **Schedule 9.1.4** sets forth, as of the Closing Date, for each Subsidiary of Parent, its name, its jurisdiction of organization and its authorized and issued Equity Interests. Parent or its applicable Subsidiary has good title to its Equity Interests in its Subsidiaries, subject only to Permitted Liens, and all such Equity Interests are duly issued, fully paid and non-assessable. As of the Closing Date, except as set forth in Schedule 9.1.4, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Subsidiaries of Parent.
- 9.1.5 <u>Corporate Names; Locations</u>. During the five years preceding the Closing Date, except as shown on **Schedule 9.1.5**, neither Parent nor any of its Subsidiaries has been known as or used any corporate, fictitious or trade names, has been the surviving corporation of a merger or combination, or has acquired any substantial part of the assets of any Person. As of the Closing Date, the chief executive offices and other places of business of Parent and its Subsidiaries are shown on **Schedule 8.7.1**.

- 9.1.6 <u>Title to Properties; Priority of Liens</u>. Each of Parent and its Subsidiaries has good title to all of its personal Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except (i) Permitted Liens, (ii) minor defects in title to its Real Estate that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purpose and (iii) except as could not reasonably be expected to have, <u>individually or in the aggregate</u>, a Material Adverse Effect. Each of Parent and its Subsidiaries has paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, in each case other than Permitted Liens. Subject to actions required to be taken by Agent, all Liens of Agent in the Collateral will be duly perfected Liens, <u>subject only to Permitted Liens and solely to the extent such Lien can be perfected by the filing of a UCC-1 financing statement and the priority afforded thereby.</u>
- 9.1.7 Financial Statements. The consolidated balance sheets, and related statements of income, cash flow and shareholder's equity, of Parent and its Subsidiaries that have been delivered to Agent and Lenders, have been prepared in accordance with GAAP, and fairly present the financial positions and results of operations of Parent and its Subsidiaries at the dates and for the periods indicated, subject, in the case of certain interim statements, to the absence of footnotes and normal year-end adjustments. All projections pertaining to Parent and its Subsidiaries heretofore delivered to Agent and Lenders by or on behalf of the Obligor have been prepared in good faith, based on assumptions believed to be reasonable in light of the circumstances at such time, it being understood that (a) whether or not such projections are in fact achieved will depend upon future events which are beyond the control of Parent or any of its Subsidiaries, (b) no assurance can be given that such projections will be realized, (c) actual results may vary from the projections and such variations may be material and (d) the projections should not be regarded as a representation by Parent or any of its Subsidiaries that the projected results will be achieved. Since April 30, 2023, there has been no change in the financial condition of Parent or any of its Subsidiaries (when taken as a whole) that could reasonably be expected to have a Material Adverse Effect. As of the Closing Date, the Borrowers and their Subsidiaries, taken as a whole on a consolidated basis, are Solvent.

# 9.1.8 [Reserved].

9.1.9 <u>Taxes</u>. Parent and each of its Subsidiaries have filed all federal and other material tax returns that it is required by Applicable Law to file, and has paid, caused to be paid or made provision for the payment of, all material Taxes upon it, its income and its Properties that are due and payable, except in each case to the extent constituting Permitted Liens.

# 9.1.10 [Reserved].

9.1.11 Intellectual Property. Each of Parent and its Subsidiaries owns or has the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others except for any such failure to own or have rights, conflict or infringement that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There is no pending or, to Parent's or any Borrower's knowledge, Intellectual Property Claim threatened in writing with respect to Parent, any of its Subsidiaries or any of their Intellectual Property which could reasonably be expected to result in a Material Adverse Effect. All material federally registered Intellectual Property owned, used or licensed by, or otherwise subject to any interests of, Parent or its Subsidiaries is shown on Schedule 9.1.11 (as such Schedule may be updated by Borrowers from time to time at the time of the delivery of a Compliance Certificate in accordance with Section 10.1.2). It is understood and agreed that the representation and warranty set forth in this Section 9.1.11, as it relates to items disclosed on Schedule 9.1.11, shall be deemed not to have been breached to the extent any information set forth on such Schedule changes, so long as such Schedule is updated to reflect such changes in connection with the next succeeding delivery of a quarterly Compliance Certificate.

- 9.1.12 Governmental Approvals. Each of Parent and its Subsidiaries have, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. To each Borrowers' knowledge, all necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Parent and its Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, in each case except where the failure to have such license, permit or certificate or noncompliance could not reasonably be expected to have a Material Adverse Effect.
- 9.1.13 <u>Compliance with Laws</u>. Each of Parent and its Subsidiaries has duly complied, and its Properties and business operations are in compliance, in all material respects with all Applicable Law (including all Consumer Finance Laws), except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There are no citations, notices or orders of material non-compliance issued to Parent or any of its Subsidiaries under any Applicable Law, except as could not reasonably be expected to result in a Material Adverse Effect.
- 9.1.14 Compliance with Environmental Laws. Except as disclosed on **Schedule 9.1.14**, to Parent's or any Borrower's knowledge, neither Parent's nor any of its Subsidiaries' past or present operations, Real Estate or other Properties are subject to any federal, state or local investigation to determine whether any remedial action is needed to address any Environmental Release that could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Subsidiaries has received any Environmental Notice that could reasonably be expected to have a Material Adverse Effect. Neither Parent nor any of its Subsidiaries has knowledge of any facts or conditions that would reasonably be expected to result in any material contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or, to Parent's or any Borrower's knowledge, previously owned, leased or operated by it, in each case which could reasonably be expected to result in a Material Adverse Effect.
- 9.1.15 <u>Burdensome Contracts</u>. Neither Parent nor any of its Subsidiaries is a party or subject to any contract, agreement or charter restriction that could reasonably be expected to have a Material Adverse Effect.
- 9.1.16 <u>Litigation</u>. Except as shown on Schedule 9.1.16, there are no proceedings or investigations pending or, to Parent's or any Borrower's knowledge, threatened in writing against Parent or its Subsidiaries, or any of their businesses, operations or Properties that (a) as of the Closing Date, relate to any Loan Documents or transactions contemplated thereby or (b) could reasonably be expected to have a Material Adverse Effect. Neither Parent nor its Subsidiaries are in default with respect to any order, injunction or judgment of any Governmental Authority that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.
  - 9.1.17 No Defaults. No event or circumstance has occurred or exists that constitutes a Default or Event of Default.
- 9.1.18 ERISA. Except as could not reasonably be expected, whether individually or in the aggregate, to result in a Material Adverse Effect:
- (a) Each Plan is in compliance in all respects with the applicable provisions of ERISA, the Code, and other federal and state laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter has been submitted to the IRS with respect thereto and, to the knowledge of Borrowers, nothing has occurred which would prevent, or cause the loss of, such qualification. Each Obligor and ERISA Affiliate has met all applicable requirements under the Code, ERISA and the Pension Protection Act of 2006, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Plan.

- (b) There are no pending or, to the knowledge of Borrowers, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. To the knowledge of the Borrowers, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.
- (c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60% (iii) no Obligor or ERISA Affiliate has incurred any liability to the PBGC except for the payment of premiums, and no premium payments are due and unpaid; (iv) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; and (v) no Pension Plan has been terminated by its plan administrator or the PBGC such that there remains material liability in connection therewith.
- (d) With respect to any Foreign Plan, (i) all employer contributions required by law or by the terms of the Foreign Plan have been made and (ii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.
- 9.1.19 <u>Trade Relations</u>. There exists no actual or threatened termination, limitation or modification of any business relationship between Parent or its Subsidiaries and any customer or supplier, or any group of customers or suppliers, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.
- 9.1.20 <u>Labor Relations</u>. Except as described on **Schedule 9.1.20**, as of the Closing Date, neither Parent nor its Subsidiaries are party to or bound by any collective bargaining agreement. There are no material grievances, disputes or controversies with any union or other organization of Parent or its Subsidiaries' employees that could reasonably be expected to have a Material Adverse Effect, or, to any Borrower's knowledge, any asserted or threatened strikes, material work stoppages or material demands for collective bargaining that could reasonably be expected to have a Material Adverse Effect.
- 9.1.21 Not a Regulated Entity. No Obligor is an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940.
- 9.1.22 <u>Margin Stock</u>. No Obligor is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No proceeds of the Delayed Draw Term Loans will be used by Borrowers to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose in any manner that would result in a violation of Regulations T, U or X of the Board of Governors.
- 9.1.23 OFAC. No Obligor or, to the knowledge of any Obligor, any director, officer, employee, agent or representative thereof, is or is owned or controlled by any individual or entity that is currently the target of any Sanction or is located, organized or resident in a Designated Jurisdiction.
- 9.1.24 Benefit Plans. Parent and each Borrower represents and warrants as of the Closing Date that Parent nor any of its Subsidiaries is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans.

9.2 <u>Complete Disclosure</u>. As of the Closing Date only, none of the written reports, Loan Documents, financial statements, certificates or other written information (other than any projections, pro formas, budgets, and other forward-looking information and information of a general economic or industry nature) concerning Parent and its Subsidiaries furnished by or at the direction of any Obligor to the Lenders prior to the Closing Date in connection with the negotiation of this Agreement or any other Loan Document, when taken as a whole, contains, as of the date furnished, any material misstatement of fact or omits to state any material fact necessary to make the statements therein not materially misleading in light of the circumstances under which such statements were made.

#### SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

- 10.1 <u>Affirmative Covenants</u>. As long as any Delayed Draw Term Loan Commitments are outstanding and the Full Payment of all Obligations has not occurred, Parent and each Borrower shall, and shall cause each of their Subsidiaries to:
- 10.1.1 Inspections. Permit Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice and during normal business hours, to visit and inspect the Properties of the Obligors, inspect, audit and make extracts from Obligors' books and records, and discuss with its officers, employees, agents, advisors and independent accountants Obligors' business, financial condition, assets and results of operations (it being understood that a representative of Parent shall be allowed to be present in any discussions with independent accountants). Lenders may participate in any such visit or inspection, at their own expense. None of Agent or Lenders shall have any duty to any Obligor to make any inspection, nor shall Agent have any obligation to (but Agent may) share any results of any inspection, appraisal or report with any Obligor. The Borrowers acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them. Notwithstanding anything to the contrary contained in the Loan Documents, none of Parent, Borrowers and any of their Subsidiaries shall be required to disclose or provide any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of such Person or any of its Subsidiaries or any of their respective customers and/or suppliers, (ii) in respect of which disclosure to Agent or any Lender (or any of their respective representatives) is prohibited by any Applicable Law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which Parent, Borrowers or any Subsidiary owes confidentiality obligations to any third party, including dealers (information of the type set forth in clauses (i) through (iy) collectively, "Confidential Information").
- 10.1.2 <u>Financial and Other Information</u>. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent (<u>provided</u>, that the documents required to be delivered pursuant to **clauses (a), (b)** and **(e)** below shall be deemed to have been delivered on the date on which such documents are posted on the Securities and Exchange Commission's website at www.sec.gov):
- (a) as soon as available, and in any event no later than 90 days after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders' equity for such Fiscal Year, on a consolidated basis for Parent and its Subsidiaries, which consolidated statements shall be audited and certified by a firm of independent certified public accountants of nationally recognized standing selected by Parent or otherwise acceptable to Agent (which audit shall be without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit (except for any such qualification pertaining to the maturity of any Debt occurring within 15 months of the relevant audit or any breach or anticipated breach of any financial covenant)), and shall set forth in comparative form corresponding figures for the preceding Fiscal Year;

(b) as soon as available, and in any event no later than 45 days after the end of each Fiscal Quarter that is not the last (or 60 days solely with respect to the Fiscal Quarter of a Fiscal Yearending January 31, 2024), unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income and cash flow for such Fiscal Quarter and for the portion of the Fiscal Year then elapsed, on a consolidated basis for Parent and its Subsidiaries (excluding Badcock in respect of any Fiscal Quarter ending prior to April 30, 2024), setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer (or other officer holding a similar role) of Parent as prepared in accordance with GAAP and fairly presenting in all material respects the financial position and results of operations of Parent and its Subsidiaries on a consolidated basis as of such date and for such Fiscal Quarter and period, subject to normal year-end adjustments and the absence of footnotes;

#### (c) [reserved];

- (d) within the time frame specified for the delivery of financial statements under clauses (a) and (b) above, a Compliance Certificate executed by the chief financial officer (or other officer holding a similar role) of Parent;
  - (e) at the request of Agent or Lenders:
    - (i) copies of all material notices sent under or received in respect of the Senior Credit Facilities;
  - (ii) a copy of the final management letters (if any) submitted to Borrowers by their accountants in connection with financial statements delivered pursuant to Section 10.1.2(a)(i), if any;
  - (iii) copies of any projections prepared in respect of the Senior Credit Facilities of Parent's consolidated balance sheets, results of operations, cash flow and Availability for such Fiscal Year, month by month;
  - (iv) copies of any proxy statements, financial statements or reports that Parent or any Borrower has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that Parent or any Borrower files with any Governmental Authority, except the Securities and Exchange Commission (which shall be deemed to have been delivered when filed), or any securities exchange; and copies of any press releases or other statements made available by Parent or a Borrower to the public concerning material changes to or developments in the business of Parent or such Borrower; and
  - (v) such other reports and information (financial or otherwise) as Agent may reasonably request (in its reasonable discretion or at the reasonable request of any Lender) from time to time in connection with any Collateral or the financial condition or business of any Obligor.

Information required to be delivered pursuant to this **Section 10.1.2** shall be deemed to have been delivered if such information, or one or more annual or quarterly reports containing such information, shall have been posted by Agent on SyndTrak, IntraLinks or a similar site to which Agent and the Lenders have been granted access or shall be available on the website of the Securities and Exchange Commission at http://www.sec.gov or on the website of Parent. Information required to be delivered pursuant to this **Section 10.1.2** may also be delivered by electronic communications pursuant to procedures approved by Agent. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

10.1.3 Notices. Notify Agent and Lenders in writing, promptly after a Senior Officer of Borrower Agent obtains knowledge thereof, of any of the following that affects an Obligor (a) the commencement of any proceeding or investigation which would reasonably be expected to have a Material Adverse Effect; (b) any default under or termination of a Material Contract; (c) the existence of any Default or Event of Default; (d) the occurrence of any event (including any Intellectual Property Claim, violation or asserted violation of Applicable Law (including ERISA, OSHA, FLSA and Environmental Laws), an Environmental Release, ERISA Event or Regulatory Event) that would reasonably be expected to have a Material Adverse Effect and (e) any judgment in an amount exceeding the Threshold Amount.

#### 10.1.4 [Reserved].

- 10.1.5 Compliance with Laws. Comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws with which the Borrowers and their Subsidiaries shall comply in all material respects) or maintain could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if an Environmental Release which could reasonably be expected to result in a Material Adverse Effect requiring remediation under Environmental Laws occurs at or on any Properties of Parent or its Subsidiaries, Parent, the relevant Borrower or the applicable Subsidiary shall act, or shall cause the legally responsible party to act, in each case promptly and diligently to investigate and report to Agent and, as required by Environmental Laws, to all appropriate Governmental Authorities the extent of, and to undertake or cause the legally responsible party to undertake appropriate and necessary remedial action to address such Environmental Release as required by applicable Environmental Laws.
- 10.1.6 <u>Taxes</u>. Pay and discharge all material Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are not overdue by more than 30 days or (i) such Taxes are being Properly Contested or (ii) the failure to pay such Taxes could not reasonably be expected to result in a Material Adverse Effect.
- 10.1.7 <u>Insurance</u>. Maintain insurance with insurers with respect to the Properties and business of Borrowers and its Subsidiaries of such type, in such amounts, and with such coverages and deductibles as are customary for companies similarly situated and operating in the same or similar locations.
- 10.1.8 <u>Licenses</u>. Except as could not reasonably be expected to result in a Material Adverse Effect: keep each License affecting any Collateral (including the manufacture, distribution or <u>disposition Asset Disposition</u> of Inventory) or any other material Property of Borrowers and its Subsidiaries in full force and effect; notify Agent, upon its request, of any modification to any such License; pay all Royalties when due; and notify Agent of any default or breach asserted by any Person to have occurred under any such License.
- 10.1.9 <u>Future Subsidiaries</u>. Promptly notify Agent upon any Person becoming a Subsidiary of Parent and, if such Person is not a Foreign Subsidiary or a Securitization Subsidiary, cause it to guaranty the Obligations in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall reasonably require to evidence and perfect a Lien in favor of Agent (for the benefit of Secured Parties) on all assets of such Person; <u>provided</u>, that to the extent any Subsidiary of a Securitization Subsidiary shall be subject to the requirements of this **Section 10.1.9**, it is understood and agreed that no pledge by the applicable Securitization Subsidiary of the Equity Interests of such Subsidiary shall be required under the Loan Documents and such Equity Interests shall otherwise constitute Excluded Collateral.

- 10.1.10 [Reserved].
- 10.1.11 [Reserved].
- 10.1.12 [Reserved].
- 10.1.13 [Reserved].
- 10.1.14 <u>Know Your Customer</u>. Promptly following any request therefor, provide information and documentation reasonably requested by Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation (including Beneficial Ownership certification).
- 10.1.15 <u>Deposit Accounts</u>. From time to time upon request by Agent, the Borrowers shall deliver to Agent a list of all Deposit Accounts and Securities Accounts (including Excluded Accounts) maintained by the Obligors, which list shall identify the account owner, the depositary bank, the account number and type of account <u>and indicate whether such Deposit Account or Securities Account is subject to a control agreement in favor of Agent or an Excluded Account and the basis therefor.</u>

# 10.1.16 Post-Closing Covenants.

- (a) Within ninety (90) days (or such later date as agreed by Required Lenders) of the Closing Date, Agent shall have received customary certificates from Obligors' insurance broker, evidencing that Agent, on behalf of the Lenders, is as additional insured and loss payee; and
- (b) Within thirty (30) days (or such later date as agreed by Required Lenders) of the Closing Date, Obligors shall have delivered to Agent an Intellectual Property Security Agreement in form and substance substantially consistent with the corresponding agreements delivered under the Senior Credit Facilities.

# 10.2 Negative Covenants.

As long as any Delayed Draw Term Loan Commitments are outstanding and the Full Payment of all Obligations has not occurred, Parent and each Borrower shall not, and shall not permit any of its Subsidiaries to:

- 10.2.1 Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:
  - (a) the Obligations;
- (b) (i) Subordinated Debt; and (ii) unsecured Debt of Parent or its Subsidiaries so long as (other than with respect to the Zenith Debt), in the case of this **clause** (b)(ii), after giving effect to such Debt, Parent shall be in Pro Forma Compliance with the covenants set forth in Section 10.3.1 and 10.3.2 10.3 and such Debt shall have a maturity no earlier than the date that is ninety-one (91) days after the Delayed Draw Term Loan Termination Date;
  - (c) Permitted Purchase Money Debt;

- (d) Debt (other than the Obligations) outstanding (or pursuant to commitments outstanding) on the <u>(i)</u> Closing Date <u>or (ii) solely</u> with respect to Badcock, the First Amendment Effective Date;
- (e) Debt that is assumed or acquired in connection with any Acquisition permitted hereunder or the acquisition of any asset or group of assets so long as (i) such Debt was not incurred in contemplation of such Acquisition or acquisition of assets and (ii) either does not exceed (x) \$31,250,000 in the aggregate outstanding at any time or (y) after giving effect to each such assumption or acquisition of such Debt, the Payment Conditions are satisfied:
  - (f) Permitted Contingent Obligations;
- (g) Debt owed to a Flooring Lender; provided, that such Flooring Lender has entered into a Flooring Intercreditor Agreement with respect to such Debt;
- (h) Debt incurred for the acquisition of Real Estate by an Obligor so long as the purchase price of such Real Estate does not exceed the fair market value of the Real Estate at the time of its acquisition (as determined by the Borrower Agent in good faith) and the Debt incurred in connection therewith does not exceed 100% of the purchase price (including fees, costs and expenses, prepaid interest and similar items in connection therewith) of such Real Estate; provided, that the aggregate outstanding Debt permitted under this subsection (h) does not at any time exceed \$37,500,000;
  - (i) Refinancing Debt as long as each Refinancing Condition is satisfied with respect to such Refinancing Debt;
- (j) Debt incurred by a Securitization Subsidiary pursuant to one or more Permitted ABS Transactions so long as at or prior to the initial transfer of Contracts under any such transaction, the applicable Permitted ABS Agent has entered into a Permitted ABS Intercreditor Agreement;
  - (k) Debt incurred under Permitted Originator Notes;
  - (l) [Reserved];
  - (m) Debt evidenced by the Permitted Convertible Notes or by the Permitted HY Notes;
  - (n) Debt in the form of guarantees by Parent or any of its Subsidiaries of Debt permitted under this Section 10.2.1;
- (o) obligations of Parent or any of its Subsidiaries under any Hedging Agreements not entered into for speculative purposes (including any Hedging Agreement entered into by any Securitization Subsidiary in connection with a Permitted ABS Transaction and by Parent or any Subsidiary in connection with any Permitted Securitization Hedging Transaction);
- (p) (i) Debt incurred in the Ordinary Course of Business in respect of netting services, overdraft protections, employee credit card programs, cash management services and otherwise in connection with Deposit Accounts and Securities Accounts and (ii) Debt incurred in connection with letters of credit, bankers' acceptances, bank guarantees, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, warehouse receipts or similar facilities, in each case incurred or undertaken in the Ordinary Course of Business;

- (q) Debt among Parent and its Subsidiaries; <u>provided</u> that (i) Debt of any Subsidiary that is not an Obligor owing to any Obligor shall be permitted under **Section 10.2.5** (other than under clause (m) of the definition of "Restricted Investments") and (ii) Debt of the Obligors owing to any Subsidiary that is not an Obligor shall be expressly subordinated to the Obligations under the Loan Documents on terms reasonably acceptable to Revolving Agent (or Agent to the extent there is a Discharge of ABL Obligations) (it being understood that such subordination terms shall permit the repayment of interest and/or principal with respect to such Debt in the absence of notification by Agent during the existence of an Event of Default that such payments shall no longer be made);
- (r) Debt consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the Ordinary Course of Business;
- (s) Debt incurred by Parent and its Subsidiaries representing (i) deferred compensation to directors, officers, employees, members of management and consultants of Parent and its Subsidiaries in the Ordinary Course of Business or in connection with any Permitted Acquisition or any Investment permitted hereby and (ii) deferred purchase price or other similar arrangements in connection with any Permitted Acquisition or any Investment permitted hereby;
- (t) Debt arising out of the creation of any Lien (other than for Liens securing debt for Borrowed Money) permitted under Section 10.2.2;
- (u) Debt incurred in the Ordinary Course of Business in respect of obligations of Parent and its Subsidiaries to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services;
  - (v) Debt incurred by Parent and its Subsidiaries representing Investments permitted under the definition of "Restricted Investment";
- (w) unfunded pension fund and other employee benefit plan obligations and liabilities incurred in the Ordinary Course of Business to the extent that they are permitted to remain unfunded under Applicable Law;
- (x) Debt owed to (including obligations in respect of letters of credit, bank guarantees or similar instruments for the benefit of) any Person providing workers' compensation, securing unemployment insurance and other social security laws or regulation, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other similar obligations to Parent or any Subsidiary;
- (y) Debt supported by a Letter of Credit (as defined in the Revolving Credit Agreement), in a principal amount not in excess of the face amount of such Letter of Credit;
- (z) Debt in respect of any letter of credit issued in favor of any Issuing Bank or Swingline Lender (each as defined in the Revolving Credit Agreement) to support any Defaulting Lender's (as defined in the Revolving Credit Agreement) participation in Letters of Credit (as defined in the Revolving Credit Agreement) issued, or Swingline Loans (as defined in the Revolving Credit Agreement) made under the Revolving Credit Agreement;
  - (aa) Debt with an aggregate principal amount not exceeding \$93,750,00062,500,000 in the aggregate outstanding at any time;
  - (bb) the Senior Credit Facilities; and

- (cc) all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Debt described in **paragraphs** (a) through (bb) above.
- 10.2.2 <u>Permitted Liens</u>. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "<u>Permitted Liens</u>"):
  - (a) any Lien created under the Loan Documents;
  - (b) Purchase Money Liens securing Permitted Purchase Money Debt;
- (c) Liens for Taxes that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, (i) which are being Properly Contested or (ii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;
- (d) statutory Liens arising in the Ordinary Course of Business including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the Ordinary Course of Business and securing obligations that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, (i) which are being Properly Contested or (ii) are subject to a Lien Waiver, or (iii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;
- (e) (i) Liens incurred or pledges or deposits made in the Ordinary Course of Business to secure the performance of bids, trade contracts (other than for Borrowed Money), leases (other than Capital Leases), statutory obligations, surety, stay, customs and appeal bonds, performance, performance and completion and return of money bonds, government contracts, financial assurances and completion guarantees and similar obligations, including those incurred to secure health, safety and environmental obligations in the Ordinary Course of Business or arising as a result of progress payments under government contracts and (ii) obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support payment of the items set forth in **clause (i)** of this **Section 10.2.2(e)**;
  - (f) Liens arising in the Ordinary Course of Business that are subject to Lien Waivers;
- (g) Liens arising by virtue of a judgment or judicial order against Parent or its Subsidiaries, or any Property of Parent or its Subsidiaries, not constituting an Event of Default;
- (h) (i) easements, rights-of-way, restrictions, trackage rights, leases (other than in respect of Capital Lease Obligations Leases), licenses, special assessments, covenants or other agreements of record, and other similar charges or encumbrances on Real Estate, that do not secure any Borrowed Money and do not materially interfere with the Ordinary Course of Business and (ii) Liens and other matters disclosed in any mortgagee title policy and any replacement, modification, extension or renewal of such Lien;
- (i) (i) contractual rights of set-off (A) relating to the establishment of depository relationships with banks not given in connection with the issuance of Borrowed Money, (B) relating to pooled deposit, sweep accounts and netting arrangements of Parent and its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the Ordinary Course of Business, and (C) relating to purchase orders and other agreements entered into with customers of Parent and its Subsidiaries in the Ordinary Course of Business and (ii) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights (including overdraft protection);

- (j) Liens in favor of a Flooring Lender so long as such Liens do not attach to any assets of a Borrower other than the Inventory floored by such Flooring Lender (which may include Liens on all Inventory of a given manufacturer, brand or line which is floored by such Person);
  - (k) Liens securing only the Real Estate owned by a Borrower to secure Debt permitted under Section 10.2.1(h);
- (l) existing Liens shown on **Schedule 10.2.2**, and any refinancing, modification, replacement, renewal or extension thereof; <u>provided</u>, that the Lien does not extend to any additional property other than after-acquired property that is affixed to or incorporated in the property covered by such Lien and the proceeds and products thereof:
- (m) Liens on the Equity Interests of Parent which are held by Parent, to the extent such Equity Interests are deemed to be Margin Stock;
- (n) Liens on the Securitized Contracts of a Securitization Subsidiary and Liens on the assets of a Securitization Subsidiary, in each case, in favor of a Permitted ABS Agent and subject to a Permitted ABS Intercreditor Agreement;
- (o) Security interests as described in 9-109(a)(3) of the UCC created in connection with sales of accounts, chattel paper, payment intangibles or promissory notes permitted by or not otherwise prohibited by this Agreement or any other Loan Document;
- (p) any interest or title of a lessor, sublessor, licensor or sublicensee under any leases, subleases, licenses or sublicenses entered into by Parent or any Subsidiary in the Ordinary Course of Business;
- (q) (i) leases, subleases, licenses or sublicenses of property in the Ordinary Course of Business or (ii) rights reserved to or vested in any Person by the terms of any lease, license, franchise, grant or permit held by Parent or any Subsidiary or by a statutory provision to terminate any such lease, license, franchise, grant or permit or to require periodic payments as a condition to the continuance thereof;
- (r) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (s) Liens (i) arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by Parent or the Subsidiaries in the Ordinary Course of Business and (ii) arising by operation of law under Article 2 of the Uniform Commercial Code;
  - (t) Liens on insurance policies and the proceeds thereof securing the financing of Debt permitted pursuant to Section 10.2.1(r)(i);
- (u) ground leases in the Ordinary Course of Business in respect of Real Estate on which facilities owned or leased by Parent or any Subsidiary are located;
- (v) Liens securing obligations under Hedging Agreements permitted by **Section 10.2.1(o)** (including any Hedging Agreement entered into by any Securitization Subsidiary in connection with a Permitted ABS Transaction and by Parent or any Subsidiary in connection with any Permitted Securitization Hedging Transaction);

- (w) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;
  - (x) Liens deemed to exist in connection with permitted repurchase obligations or set-off rights;
- (y) Liens securing Debt permitted under **Section 10.2.1(e)**; <u>provided</u>, <u>however</u>, such Liens are not created or incurred in connection with, or in contemplation of, such acquisition and such Liens shall be limited to all or part of the same assets (including after acquired property to the extent it would have been subject to a Lien in respect of the arrangements under which such Liens arose) that secured the obligations to which the original Liens relate (plus improvements on such Property);
- (z) Liens securing obligations in respect of letters of credit, banker's acceptances, bank guarantees or similar instruments permitted under Sections 10.2.1(p), (x) and (z);
- (aa) Liens (i) solely on any cash earnest money deposits or cash equivalents in connection with any letter of intent or purchase agreement or otherwise in connection with any escrow arrangements with respect to any Permitted Acquisition or other Investment permitted hereunder and (ii) consisting of an agreement to dispose of any property in a transaction permitted hereunder;
- (bb) Liens arising from precautionary UCC financing statements (or similar filings under Applicable Law) regarding operating leases or consignment or bailee arrangements;
- (cc) other Liens with respect to property or assets of Parent or any of its Subsidiaries; <u>provided</u> that the aggregate principal amount of the Debt or other obligations secured by such Liens does not exceed \$62,500,000 at any time outstanding; <u>provided</u>, <u>further</u>, that if such Liens attach to any Collateral included in the Revolving Borrowing Base and/or Term Loan Borrowing Base, such Liens will be subject to an intercreditor agreement in form and substance satisfactory to Revolving Agent (or Agent to the extent there is a Discharge of ABL Obligations);
- (dd) Liens on cash or cash equivalents pledged to defease or otherwise satisfy and discharge any Debt or other obligations that are permitted or not prohibited hereunder; and
  - (ee) Liens securing obligations under the Senior Credit Facilities:;
  - (ff) Liens arising out of a sale-leaseback transaction permitted hereunder;
  - (gg) Liens filed against dealers (excluding Parent or its Subsidiaries) with respect to property or assets of Parent or any of its

# Subsidiaries.

- 10.2.3 <u>Capital Expenditures</u>. Make Capital Expenditures in excess of \$125,000,000 in the aggregate during any period of four (4) consecutive Fiscal Quarters, measured as at the end of each Fiscal Quarter.
  - 10.2.4 Distributions. Declare or make any Distributions, except Permitted Distributions.

10.2.5 <u>Restricted Investments</u>. Make any Restricted Investment. Notwithstanding the foregoing, to the extent any Investment that is permitted hereunder is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through an Investment of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to **Section 11.3**) in favor of Agent.

- 10.2.6 <u>Disposition of Assets</u>. Make any Asset Disposition, except:
- (a) (i) a Permitted Asset Disposition and (ii) to the extent constituting an Asset Disposition of the assets subject to thereto, any Hedging Agreement permitted under Section 10.2.1;
- (b) (i) Asset Dispositions to effect a Permitted ABS Transaction, (ii) so long as no Default or Event of Default shall then exist or would result therefrom, the sale to any third party of the Class C Retained Notes in the ordinary course of business or consistent with past practice and (iii) after all Debt has been repaid under a Permitted ABS Transaction, any distribution to a Borrower of the remaining ABS Contract Portfolio of the applicable Securitization Subsidiary related to such Permitted ABS Transaction;
- (c) a transferan Asset <u>Disposition</u> of Property by (i) an Obligor to a Borrower or any other Obligor, (ii) by a Subsidiary that is not an Obligor to an Obligor or any other <u>Subsidiary or</u>, (iii) by an Obligor to a non-Obligor, in each case to the extent permitted by the definition of "Restricted Investments", or (iv) an Obligor to a dealer in the <u>Ordinary Course of Business</u>;
  - (d) an Asset Disposition of Margin Stock by Parent;
  - (e) the disposition an Asset Disposition of charged-off receivables in the Ordinary Course of Business;
- (f) dispositions an Asset Disposition of Property subject to casualty, condemnation or similar proceedings (including in lieu thereof) upon receipt of the Net Proceeds therefor;
- (g) dispositions an Asset Disposition of Real Estate and related assets in the Ordinary Course of Business in connection with relocation activities for directors, officers, employees, members of management, or consultants of Parent and the Subsidiaries;
- (h) the transferan Asset Disposition or abandonment of Intellectual Property rights no longer used or useful in the business in accordance with the reasonable business judgement of Borrower Agent; and
- (i) so long as no Default or Event of Default is continuing or would arise therefrom, as of the earlier of the date of execution of the definitive documentation for any Asset Disposition (so long as such Asset Disposition is consummated within 120 days of such date) and the date of such Asset Disposition, an Asset Disposition, an Asset Disposition of other assets and property in exchange for reasonably equivalent value, provided that any such Disposition shall be made for fair market value.

Notwithstanding the foregoing, to the extent any such Asset Disposition is to a Person that is not an Obligor (or will not become an Obligor concurrently in connection therewith) and includes (including, for the avoidance of doubt, through the Asset Disposition of any Equity Interests in any Subsidiary that owns) Intellectual Property that is reasonably necessary for Agent's ability to exercise rights and remedies under this Agreement, the other Loan Documents and Applicable Law in connection with the Collateral and to realize upon the value of the Collateral, the Distribution of such Intellectual Property shall be made expressly subject to a non-exclusive royalty-free worldwide license (substantially consistent with the license granted pursuant to Section 11.3) in favor of Agent.

#### 10.2.7 [Reserved].

#### 10.2.8 Restrictions on Payment of Certain Debt.

- (a) Make any payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to any Subordinated Debt or Junior Lien Debt, except:
- (i) regularly scheduled payments of principal, interest, fees, expenses and indemnities, but only to the extent permitted or not restricted under any subordination agreement or intercreditor agreement relating to such Debt;
- (ii) payments made in respect of a Permitted Originator Note subject to any subordination provisions in respect of such Permitted Originator Note;

# (iii) [reserved];

- (iv) the conversion of any such Subordinated Debt or Junior Lien Debt to, or payment with the proceeds of, Equity Interests (other than Disqualified Stock);
- (v) additional payments and prepayments in respect of the Subordinated Debt or Junior Lien Debt with net proceeds from the incurrence of Subordinated Debt, Junior Lien Debt or other unsecured Debt permitted hereunder;
  - (vi) payments made with the proceeds of Refinancing Debt in respect of such Subordinated Debt or Junior Lien Debt;
- (vii) payments of, and cash payments due upon conversion with respect to, any Permitted Convertible Notes in accordance with the terms thereof; and
- (viii) other than during the Covenant Relief Period, additional cash payments and prepayments so long as, in each case, the Payment Conditions are satisfied.
- (b) Make any payment with respect to a Permitted ABS Transaction other than (i) payments made with the proceeds of the Securitized Contracts of the corresponding Permitted ABS Transaction; (ii) payments made in connection with the repurchase of Contracts which are permitted under clause (g) of the definition of Restricted Investments; (iii) payments so long as immediately before and after giving effect to any such repayment no Default or Event of Default exists and immediately after giving effect thereto Availability exceeds the greater of (x) \$50,000,000 and (y) 12.5% of the Revolving Borrowing Base (calculated without giving effect to the Term Loan Push-Down Reserve) then in effect; (iv) payments using the proceeds of Investments permitted under clause (f)(ii) of the definition of Restricted Investments and (v) payments in respect of Permitted Originator Notes.
- (c) Make any principal payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to unsecured Debt (including the Permitted HY Notes <u>but excluding Debt among Parent and its Subsidiaries</u>), except:

- (i) regularly scheduled payments of principal and scheduled payments at maturity;
- (ii) principal payments made with the proceeds of the incurrence of other unsecured Debt, Permitted HY Notes, and Subordinated Debt permitted hereunder;

# (iii) [reserved];

- (iv) the conversion of any such Debt to, or payment with the proceeds of, Equity Interests (other than Disqualified Stock);
- (v) payments made with the proceeds of Refinancing Debt in respect of such unsecured Debt;
- (vi) principal payments of, and cash payments due upon conversion with respect to, any Permitted Convertible Notes in accordance with the terms thereof; and

(vii) other than during the Covenant Relief Period, if the outstanding principal amount of such unsecured Debt is (A) greater than \$18,750,000, any other principal payments with respect to such Debt so long as the Payment Conditions are satisfied with respect to each such payment and (B) \$18,750,000 or less, immediately before and after giving effect to such payment, no Event of Default exists—; and

(viii) Make any payments (whether voluntary or mandatory, or a prepayment, redemption, repurchase, retirement, defeasance or acquisition) with respect to any Debt among Parent and its Subsidiaries that is expressly subordinate and junior in right of payment to the Obligations unless such payment is permitted pursuant to the subordination agreement or subordination terms applicable thereto.

Notwithstanding anything herein to the contrary, other than with respect to the Zenith Debt, any Refinancing Debt, Replacement Facility Debt or pursuant to any intercreditor, subordination or similar agreement entered into with Agent, no Obligor (I) may make any (i) interest payments or payments of commitment or unused fees on any Subordinated Debt or Junior Lien Debt during any corresponding interest period where the Obligors have made a PIK Interest payment or (ii) principal payments (whether mandatory or voluntary) or payments of exit fees on any Subordinated Debt or Junior Lien Debt while any Obligations are outstanding or (II) may enter into any Subordinated Debt, Junior Lien Debt, Permitted Convertible Notes, or Permitted HY Notes following the Closing Date which (i) does not permit the Obligor to pay interest, charges, and other fees thereunder in-kind rather than in cash (other than commitment, upfront or similar fees paid in connection with the issuance of such Debt) or (ii) contains mandatory amortization or sinking fund payments while the Obligations or Delay Draw Term Loan Commitments are outstanding (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior Full Payment of the Obligations that are accrued and payable).

# 10.2.9 Fundamental Changes.

(a) Merge, combine or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions, except (i) Parent and its Subsidiaries may engage in Permitted Acquisitions, (ii) any non-Obligor Subsidiary may be merged into or consolidated with, or transfer all or substantially all of its property to, (1) any Borrower or Guarantor (other than Parent), so long as such Borrower or such Guarantor is the surviving entity or the

surviving entity assumes the Obligations in a manner satisfactory to Agent, or (2) another non-Obligor Subsidiary, (iii) any Borrower or Guarantor (other than Parent) may merge into or consolidate with any Borrower so long as a Borrower is the surviving entity or the surviving entity assumes the Obligations in a manner satisfactory to Agent, (iv) any Guarantor (other than Parent) may merge into or consolidate with any other Guarantor (other than Parent) and (v) any Subsidiary may liquidate or dissolve so long as (1) such Subsidiary determines in good faith that such liquidation or dissolution is in its best interest, (2) a Borrower shall only liquidate or dissolve with or into another Borrower with at least one Borrower surviving and (3) a Guarantor shall only liquidate or dissolve into an Obligor or such liquidation or dissolution is an Investment permitted hereunder.

(b) Without providing Agent at least thirty (30) days' prior written notice thereof (or such shorter period as Agent may agree), (i) change its name (ii) change its charter or other organizational identification number or (iii) change its entity type or state of organization.

# 10.2.10 [Reserved].

10.2.11 Organic Documents. Except as required by Applicable Law, amend, modify or otherwise change any of its Organic Documents as in effect on the Closing Date in a manner that would reasonably be expected to be materially adverse to the rights or interests of Agent or Lenders.

#### 10.2.12 [Reserved].

- 10.2.13 <u>Accounting Changes</u>. Change its Fiscal Year without the consent of Agent (acting at the direction of the Required Lenders); <u>provided</u> that the Borrowers and the Subsidiaries may change their fiscal year end to align to that of Parent.
  - 10.2.14 Restrictive Agreements. Become a party to any Restrictive Agreement, except Restrictive Agreements as follows:
- (a) in effect on the Closing First Amendment Effective Date and any replacements, renewals, extensions, refinancings, refundings or exchanges of or any amendment, restatement, amendment and restatement, supplement or other modification expanding the scope of, such restriction or condition, in each case, so long as not done so in a manner materially adverse to the Lenders taken as a whole;
- (b) relating to secured Debt permitted hereunder (including any Refinancing Debt in respect thereof), as long as the restrictions apply only to collateral for such Debt (other than the Collateral);
  - (c) constituting customary restrictions on assignment in leases and other contracts;
  - (d) the Permitted HY Note Indentures (as amended as permitted hereunder);
- (e) any guaranty by any Subsidiary of Parent of Parent's obligations under any Permitted HY Notes as permitted under **Section 10.2.1(n)**;
  - (f) pursuant to any Loan Document or the Senior Credit Facilities;
- (g) pursuant to any Permitted ABS Documents entered into by a Securitization Subsidiary or any Organic Document of any Securitization Subsidiary;

- (h) restrictions and conditions imposed by Applicable Law;
- (i) in the case of any Subsidiary that is not a wholly-owned Subsidiary, restrictions and conditions imposed by its organizational documents or any related joint venture or similar agreement;
- (j) customary restrictions and conditions contained in agreements relating to Asset Dispositions pending such Asset Disposition; provided such restrictions and conditions apply only to the Person and/or assets subject to such Asset Disposition and such sale is permitted hereunder;
- (k) restrictions and conditions that were binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as the agreements providing for such restrictions and conditions were not entered into in contemplation of such Person becoming a Subsidiary;
  - (l) restrictions and conditions imposed by agreements relating to non-Obligor Subsidiaries;
  - (m) customary provisions in joint venture agreements and other similar agreements entered into in connection with any joint venture;
- (n) restrictions on cash or other deposits imposed by suppliers and customers under contracts entered into in the Ordinary Course of Business; and
  - (o) customary net worth provisions contained in Real Estate leases entered into by Parent or any of its Subsidiaries.

#### 10.2.15 [Reserved].

- 10.2.16 <u>Conduct of Business</u>. Engage in any lines of business, other than as a conducted on the Closing Date any activities incidental, ancillary or reasonably related thereto (including providing proprietary credit solutions for customers).
- 10.2.17 <u>Affiliate Transactions</u>. Enter into or be party to any transaction with an Affiliate <u>(with Franchise Group Newco BHF, LLC, Freedom VCM Interco Holdings, Inc. and any of their respective Affiliates being treated as Affiliates of Parent and its Subsidiaries for purposes of this <u>Section 10.2.17</u>) except:</u>
- (a) transactions among Parent and its Subsidiaries on the one hand and the Secured Parties on the other hand contemplated by the Loan Documents;
- (b) payment of reasonable compensation to officers and employees for services actually rendered, and loans and advances permitted under this Agreement;
  - (c) payment of customary directors' fees and indemnities;
  - (d) transactions solely among Obligors to the extent permitted or not restricted hereunder;
- (e) transactions with Affiliates (i) that were consummated prior to the Closing Date or (ii) in existence on or prior to the First Amendment Effective Date or arising out of the transactions contemplated by the Badcock Purchase Agreement and set forth on Schedule 10.2.17 and, in each case, any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect;

- (f) transactions with Affiliates no less favorable than would be obtained in a comparable arm's-length transaction with a non-
- Affiliate;
- (g) entry into a Permitted ABS Purchase Agreement, any other Permitted ABS Documents, and Permitted Originator Notes and all transactions contemplated thereunder;
- (h) entry into a guaranty of any Permitted HY Notes or Permitted Convertible Notes facility as permitted under Section 10.2.1 and all transactions contemplated thereunder;
- (i) servicing agreements and administration agreements, and all transactions contemplated thereunder, entered into in connection with a Permitted ABS Transaction;
  - (i) transactions solely among non-Obligor Subsidiaries;
- (k) any Investment not prohibited by the definition of "Restricted Investment" or any merger, consolidation or combination not prohibited by Section 10.2.9;
- (l) (i) any employment or severance agreements or arrangements entered into by Borrowers or any of the Subsidiaries in the Ordinary Course of Business, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers, directors, members of management or consultants, and (iii) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract or arrangement and transactions pursuant thereto;
  - (m) any purchase by Parent of or contributions to, the Equity Interests of Borrowers;
- (n) transactions among Borrowers and the Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the Ordinary Course of Business;
- (o) transactions with customers, clients, suppliers or joint ventures for the purchase or sale of goods and services entered into in the Ordinary Course of Business; and
  - (p) Distributions permitted under Section 10.2.4:; and
- (g) for the avoidance of doubt, the transactions under the Term Loan Documents and the Loan Documents, in each case, as amended, amended and restated, supplemented, waived or otherwise modified to the extent such modification or waiver is not prohibited by the ABL Intercreditor Agreement, the Third Lien Intercreditor Agreement or Section 10.2.18 hereof, as applicable.
- 10.2.18 <u>Amendments to Senior Credit Facilities</u>. Notwithstanding anything to the contrary contained herein, in no event shall the Senior Credit Facilities be amended, restated, amended and restated, supplemented, modified, replaced, increased, renewed, extended or refinanced in contravention of Section 6(e)6.3 of the Intercreditor Agreement.

10.2.19 <u>Amendments to Subordinated Debt and Permitted HY Notes</u>. Amend, supplement or otherwise modify any document, instrument or agreement relating to any Subordinated Debt or Permitted HY Notes, if, in any case, such modification (a) increases the principal balance of such Debt except as permitted by **Section 10.2.1**; (b) accelerates the date on which any installment of principal is due; (c) shortens the final maturity date (except to a date that is no earlier than ninety-one (91) days after the Delayed Draw Term Loan Termination Date); or (d) in the case of Subordinated Debt, results in the Obligations not being fully benefited by any subordination provisions thereof (it being understood that this **Section 10.2.19** is not intended to restrict any amendment, restatement, amendment and restatement, supplement, modification, replacement, renewal, extension and refinancing of Subordinated Debt or Permitted HY Notes that is otherwise not restricted under this Agreement or the applicable subordination agreement).

10.2.20 [Reserved].

10.2.21 [Reserved].

- 10.3 <u>Financial Covenants</u>. As long as any Delayed Draw Term Loan Commitments are outstanding and the Full Payment of all Obligations has not occurred, Parent shall on a consolidated basis with its Subsidiaries:
- 10.3.1 <u>Maximum Leverage Ratio</u>. Maintain a Leverage Ratio not greater than 4.75:1.00, measured quarterly as of the last day of each Fiscal Quarter.
- 10.3.2 <u>Maximum ABS Excluded Leverage Ratio</u>. Maintain an ABS Excluded Leverage Ratio not greater than 2.75:1.00, measured quarterly as of the last day of each Fiscal Quarter.
- 10.3.3 Minimum EBITDA. As of the last day of each Fiscal Quarter, commencing with the Fiscal Quarter ending January 31, 2024, have EBITDA of no less than (a) \$40,000,000, measured on a trailing two Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending July 31, 2024; (b) \$72,000,000, measured on a trailing three Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending October 31, 2024; (c) \$100,000,000, measured on a trailing four Fiscal Quarter basis commencing with the Fiscal Quarter ending January 31, 2024 and ending on the last day of the Fiscal Quarter ending January 31, 2025; (d) \$120,000,000, measured on a trailing four Fiscal Quarter basis commencing with the Fiscal Quarter ending April 30, 2024 and ending on the last day of the Fiscal Quarter ending April 30, 2025; and (e) for each four Fiscal Quarter period ending on or after July 31, 2025, \$140,000,000, measured on a trailing four Fiscal Quarter basis.

10.4 Curative Equity.

10.4.1 Subject to the limitations set forth in Section 10.4.6, Borrowers may cure an Event of Default arising out of a breach of any of the financial covenants set forth in Sections 10.3.1 and 10.3.2 Section 10.3 (the "Specified Financial Covenants") (as the case may be) by way of an investment of Curative Equity prior to the date on which the Compliance Certificate is delivered to Agent pursuant to Section 10.1.2(d) in respect of the Fiscal Quarter with respect to which any such breach occurred; provided, that Borrowers' right to so cure an Event of Default shall be contingent on the timely delivery of such Compliance Certificate as required under Section 10.1.2(d).

10.4.2 [Reserved].

10.4.3 Subject to the limitations set forth in **Section 10.4.6**, any investment of Curative Equity shall be in an amount that is sufficient to cause Parent and its Subsidiaries to be in compliance with all of the Specified Financial Covenants as at the last day of the most recently ended month or Fiscal Quarter (as the case may be), calculated for such purpose as if such amount were additional EBITDA and increase in Tangible Net Worth, and a decrease in total liabilities, as necessary, of Parent and its Subsidiaries as at such date and had been included in the financial calculations of Parent and its Subsidiaries on such date.

10.4.4 In the Compliance Certificate delivered pursuant to Section 10.1.2(d) in respect of the month end or Fiscal Quarter end (as the case may be) on which Curative Equity is used to cure any breach of the Specified Financial Covenants, Borrowers shall (i) include evidence of its receipt of Curative Equity proceeds, and (ii) set forth a calculation of the financial results and balance sheet of Parent and its Subsidiaries as at such month end or Fiscal Quarter end (as the case may be) (including for such purposes the proceeds of such Curative Equity as either deemed EBITDA for such month end or Fiscal Quarter end (as the case may be), or increased Tangible Net Worth and decreased total liabilities for such month end or Fiscal Quarter end (as the case may be), as if received on such date), which shall confirm that on a pro forma basis taking into account the application of Curative Equity proceeds, Parent and its Subsidiaries would have been in compliance with the Specified Financial Covenants (as at such date).

10.4.5 Upon delivery of a Compliance Certificate pursuant to **Section 10.1.2(d)** conforming to the requirements of this Section, any Event of Default that is continuing from a breach of any of the Specified Financial Covenants shall be deemed cured with no further action required by the Lenders. In the event Borrowers do not cure all financial covenant violations as provided in this Section 10.4, the existing Event of Default shall continue unless waived by the Required Lenders in writing.

10.4.6 Notwithstanding the foregoing, (i) Borrowers' rights under this **Section 10.4** may be exercised not more than two times during the term of this Agreement, and (ii) the amount of each investment of Curative Equity may not be less than \$1,000,000 or greater than \$20,000,000.

10.5 [Reserved].

# SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

- 11.1 Events of Default. Each of the following shall be an "Event of Default" hereunder, if the same shall occur for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:
- (a) A Borrower fails to pay (i) principal on any Delayed Draw Term Loan when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any interest, fees or other amounts due under this Agreement within three (3) Business Days of the date due;
- (b) any representation or warranty of an Obligor made in connection with any Loan Document or any certificate or instrument required to be furnished in connection with or pursuant to any Loan Document is incorrect or misleading in any material respect when given;
  - (c) A Borrower breaches or fail to perform any covenant contained in Section 10.1.1, 10.1.3, 10.1.6(b)(i), 10.2 and 10.3;
- (d) An Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives written notice thereof from Agent, whichever is sooner;

- (e) (i) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; (ii) an Obligor denies in writing or contests the validity or enforceability of any Loan Documents; (iii) other than with respect to items of Collateral with a value not exceeding \$7,500,000 in the aggregate, any Lien granted to Agent ceases to be a valid and perfected Lien (or ceases to have the extent perfection ispriority required hereunder or under any other Loan Document), except to the extent that any such loss of (x) validity, perfection or priority results from the failure of Agent to maintain possession of Collateral requiring perfection through control or to file or record any document delivered to it for filing or recording possession or the failure to file UCC financing or continuation statements or (y) priority is related to a Permitted Lien; or (iv) any Loan Document ceases to be in full force or effect for any reason (other than in accordance with its terms or a waiver or release by Agent and Lenders);
- (f) Any final judgment or order for the payment of money is entered against an Obligor in an amount that exceeds, individually or cumulatively with all such unsatisfied judgments or orders against all Obligors, the Threshold Amount (net of insurance coverage therefor that has not been denied by the insurer), and there is a period of 60 consecutive days during which (i) such judgment or order is not discharged, satisfied, vacated or bonded pending appeal or (ii) a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect;
- (g) Other than with respect to the Revolving Credit Agreement and the Term Loan Agreement, any material breach or default of an Obligor occurs under (i) any Hedging Agreement or (ii) any instrument or agreement to which it is a party or by which it or any of its Properties is bound, in each case relating to any Debt (other than the Obligations) with an aggregate outstanding principal amount in excess of the Threshold Amount (including the documents related to the Permitted ABS Documents) and beyond the period of grace, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach, in each case (x) unless such Debt has been paid in full or the failure has been waived or otherwise cured prior to the acceleration of the Obligations under the Loan Documents, (y) with respect to such Debt consisting of obligations under Hedging Agreements, termination events or equivalent events relating to the breach by Parent, any Borrower or any Subsidiary of the terms thereof and (z) this clause (g) shall not apply to secured Debt that becomes due as a result of the voluntary sale, transfer of the property or assets subject to such Debt or as a result of an event not constituting a Change of Control under this Agreement and such Debt is paid when due or prior to acceleration of the Obligations;
- (h) An Obligor suffers the loss, revocation or termination any material license or permit which is necessary for the continued operation of a material part of such Obligor's business and such loss, revocation or termination could reasonably be expected to have a Material Adverse Effect, an Obligor agrees to or commences any liquidation, dissolution or winding up of its affairs; or an Obligor is not Solvent;
- (i) An Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any of the business of an Obligor; or an Insolvency Proceeding is commenced against an Obligor and the Obligor consents to institution of the proceeding (it being understood that any involuntary Insolvency Proceeding, petition or appointment described in this clause (i) shall not constitute an Event of Default unless such proceeding, petition or appointment shall continue undismissed for 60 days or an order for relief is entered in the proceeding, petition or appointment);
- (j) (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; (ii) an Obligor or ERISA Affiliate

fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or (iii) any event similar to the foregoing occurs or exists with respect to a Foreign Plan, but, in each case in this **clause (j)** only if such occurrence or event would either individually or in the aggregate reasonably be expected to result in an Obligor or the Obligors incurring a liability which would have a Material Adverse Effect;

- (k) Parent breaches or fails to perform any covenant in a Warrant, and such breach or failure is not cured within 5 days after a Senior Officer receives written notice thereof from Agent or Lenders;
  - (1) A Change of Control occurs;
  - (m) A Cross-Acceleration Event occurs; and
- (n) The provisions of the subordination provisions of the documents evidencing or governing the subordination of any Junior Lien Debt or Subordinated Debt with an aggregate outstanding principal amount in excess of the Threshold Amount (the "Subordination Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Junior Lien Debt or Subordinated Debt; or (ii) any Obligor shall disavow in writing the effectiveness, validity or enforceability of the Intercreditor Agreement;
- (o) An Obligor or any of its Senior Officers is criminally indicted or convicted for (i) a felony committed in the conduct of the Obligor's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any Collateral with an aggregate fair market value in excess of \$10,000,000; or
- (p) An Obligor breaches or fails to perform any other covenant contained in Section 8.5 and such breach or failure is not cured within 15 days after a Senior Officer of such Obligor has knowledge thereof or receives written notice thereof from Agent, whichever is sooner.
- 11.2 **Remedies upon Default**. Upon the occurrence and during the continuance of an Event of Default described in **Section 11.1(i)** with respect to any Borrower, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable, without any action by Agent or notice of any kind and the Delayed Draw Term Loan Commitments shall automatically terminate. In addition, or if any other Event of Default exists, subject to the penultimate paragraph of **Section 14.1.1**, Agent (acting at the direction of Required Lenders) may do any one or more of the following from time to time:
- (a) declare any Obligations immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law and terminate the Delayed Draw Term Loan Commitments;
  - (b) [reserved];
  - (c) [reserved]; and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrowers to assemble Collateral, at Borrowers' expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Borrower, Borrowers agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent (acting at the direction of Required Lenders), in its discretion, deems advisable. Each Borrower agrees that 10 days' notice of any proposed sale or other disposition Asset Disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable so long as otherwise conducted in accordance with Applicable Law. Agent shall have the right to conduct such sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

- 11.3 <u>License</u>. For the purpose of enabling Agent to exercise rights and remedies under this Agreement at such time as Agent shall be lawfully entitled to exercise such rights and remedies under this Agreement, except as is prohibited by an existing and enforceable anti-assignment provision of any license of Intellectual Property Rights (and solely with respect to the Intellectual Property Rights subject to such license, and other than to the extent that any such term would be rendered ineffective pursuant to the UCC or any other Applicable Law or principles of equity), Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of Royalty or other compensation to any Person) any or all Intellectual Property of Borrowers, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral.
- 11.4 Setoff. At any time during the existence of an Event of Default, Agent, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, such Lender or such Affiliate (other than, for the avoidance of doubt, Tax and Trust Funds) to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have. Each Lender agrees to promptly notify the Borrowers and Agent after any such setoff and application.

#### 11.5 Remedies Cumulative; No Waiver.

11.5.1 <u>Cumulative Rights</u>. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations under the Loan Documents.

11.5.2 <u>Waivers</u>. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Delayed Draw Term Loan during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Except as provided in Section 10.4, any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

#### **SECTION 12. AGENT**

#### 12.1 Appointment, Authority and Duties of Agent.

- 12.1.1 Appointment and Authority. Each Secured Party appoints and designates Stephens Investments Holdings LLC as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute, deliver and perform its obligations as Agent under each Loan Document, including the Intercreditor Agreement and any other intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise.
- 12.1.2 <u>Duties</u>. The title of "Agent" is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.
- 12.1.3 <u>Agent Professionals</u>. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.
- 12.1.4 <u>Instructions of Required Lenders</u>. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and

may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

#### 12.2 Agreements Regarding Collateral.-

- 12.2.1 <u>Lien Releases; Care of Collateral</u>. Agent will release (and the Secured Parties authorize Agent to release) any Lien on any Collateral (a) upon Full Payment of the Obligations under the Loan Documents; (b) that is the subject of a disposition or Lien that Borrowers certify in writing is a Permitted Asset Disposition or a disposition permitted by **Section 10.2.6** (and Agent may rely conclusively on such certificate without further inquiry); (c) that does not constitute a material part of the Collateral (as agreed by Agent and Borrower); (d) to the extent required by the Intercreditor Agreement; or (e) subject to **Section 14.1**, with the consent of Required Lenders. Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.
- 12.2.2 <u>Possession of Collateral</u>. Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.
- 12.3 Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, email or other electronic means) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person (including, for the avoidance of doubt, in connection with Agent's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page). Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.
- 12.4 Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in Section 6, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party (other than Agent) agrees that, except as otherwise provided in any Loan Documents or with the written consent of Required Lenders or Agent (acting at the direction of Required Lenders), it will not take any Enforcement Action, accelerate Obligations or assert any rights relating to any Collateral.

- 12.5 **Ratable Sharing**. If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with Section 5.6.3, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. No Lender shall set off against a Deposit Account or Securities Account without Required Lender's prior consent.
- 12.6 Indemnification. EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's (acting at the direction of Required Lenders) discretion, it may reserve for any Claims made against an Agent Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.
- 12.7 <u>Limitation on Responsibilities of Agent</u>. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Contract Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.
- 12.8 Successor Agent. Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrowers. Required Lenders may appoint a successor to replace the resigning Agent that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Event of Default exists pursuant to Section 11.1(a) or (j)) Borrowers. If no successor is appointed by the effective date of Agent's resignation then on such date, Agent may appoint a successor acceptable to the Required Lenders and the Borrowers (provided no Event of Default exists pursuant to Section 11.1(a) or (j)) (which shall be a Lender unless no Lender accepts the role) or in the absence of such appointment, Required Lenders automatically assume all rights and duties of Agent, the successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. The retiring Agent shall be discharged from its duties hereunder on the effective date of its resignation or removal, but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or Claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including the indemnification set forth in Sections 12.6 and 14.2, and all rights and protections under this Section 12. Any successor to Stephens Investments Holdings LLC by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

#### 12.9 Acknowledgments of Lenders and Secured Parties.

12.9.1 Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Delayed Draw Term Loans hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Delayed Draw Term Loans, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

12.9.2(a) Each Lender hereby agrees that (i) if Agent notifies such Lender that Agent has determined in its sole discretion that any funds received by such Lender from Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one (1) Business Day thereafter, return to Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to Agent at the Default Rate for a Delayed Draw Term Loans, and (ii) to the extent permitted by Applicable Law, such Lender shall not assert, and hereby waives, as to Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of Agent to any Lender under this Section 12.9.2 shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from Agent or any of its Affiliates (i) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (ii) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify Agent of such occurrence and, upon demand from Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to Agent at the Default Rate for a Delayed Draw Term Loans.

(c) The Borrowers and each other Obligor hereby agrees that (i) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, Agent shall be subrogated to all the rights of such Lender with respect to such amount if any, under and pursuant to the terms of this Agreement and (ii) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrowers or any other Obligor, except, in each case, to the extent such erroneous Payment (or any portion thereof) is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds of the Borrower or any other Obligor.

(d) Each party's obligations under this **Section 12.9.2** shall survive the resignation or replacement of Agent or any transfer of rights or obligations by, or the replacement of, a Lender or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

# 12.10 Remittance of Payments and Collections.

- 12.10.1 Remittances Generally. Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 12:00 noon, on a Business Day, then payment shall be made by the Secured Party by 2:00 p.m., on such day, and if request is made after 12:00 noon, then payment shall be made by 12:00 noon, on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.
- 12.10.2 <u>Failure to Pay</u>. If any Secured Party fails to deliver when due any amount payable by it to Agent hereunder, such amount shall bear interest, from the due date until paid in full, at the Default Rate for a Delayed Draw Term Loans. In no event shall Borrowers be entitled to credit for any interest paid by a Secured Party to Agent.
- 12.10.3 Recovery of Payments. If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then, notwithstanding any other term of any Loan Document, Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, on demand, its share of the amounts required to be returned
- 12.11 <u>Individual Capacities</u>. As a Lender, Stephens Investments Holdings LLC shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include Stephens Investments Holdings LLC in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide bank products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Contract Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

12.12 [Reserved].
12.13 [Reserved].

12.14 No Third Party Beneficiaries. This Section 12 is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations under the Loan Documents. Other than with respect to Sections 12.1, 12.2, 12.4, 12.5, 12.8, 12.9, 12.11 and 12.15, this Section 12 does not confer any rights or benefits upon Borrowers or any other Person. As between Borrowers and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

# SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS

13.1 <u>Successors and Assigns</u>. This Agreement shall be binding upon and inure to the benefit of Borrowers, Agent, Lenders, Secured Parties and their respective successors and permitted assigns, except that (a) no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents other than as set forth in **Section 10.2.9**; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Delayed Draw Term Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

# 13.2 Participations.

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- 13.2.1 Permitted Participants; Effect. Subject to Section 13.3.3, any Lender may sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Delayed Draw Term Loans for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.9 unless Borrowers agree otherwise in writing.
- 13.2.2 <u>Voting Rights</u>. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Delayed Draw Term Loan in which such Participant has an interest, postpones the Delayed Draw Term Loan Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Delayed Draw Term Loans, or releases any Borrower, Guarantor or substantially all of the Collateral.

- 13.2.3 <u>Participant Register</u>. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in the Delayed Draw Term Loans (and stated interest). Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code.
- 13.2.4 <u>Benefit of Setoff</u>. Each Participant shall have a right of set-off pursuant to **Section 11.4** in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off pursuant to **Section 11.4** with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.
- 13.2.5 <u>Increased Costs/Break Funding/Taxes</u>. A Participant shall not be entitled to receive any greater payment under **Section 3.7, 3.9, 5.9** or **5.10** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent expressly acknowledging such Participant may receive a greater benefit. A Participant shall not be entitled to the benefits of **Section 5.9** and **5.10** to the extent such Participant fails to comply with **Section 5.10.1** as though it were a Lender.

# 13.3 Assignments.

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- 13.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$2,500,000 (unless otherwise agreed by Agent (acting at the direction of Required Lenders) and the Borrower Agent, each in their discretion) and integral multiples of \$100,000 in excess of that amount and (b) the parties to each such assignment shall execute and deliver to Agent an Assignment and Acceptance. Nothing herein shall limit the right of a Lender to pledge or assign any rights under this Agreement to (i) any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors and any Operating Circular issued by such Federal Reserve Bank or (ii) counterparties to swap agreements relating to any Delayed Draw Term Loans; provided, that (x) no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto and (y) any payment by the Borrowers to the assigning Lender in respect of any Obligations assigned as described in this sentence shall satisfy the Borrowers' obligations hereunder to the extent of such payment, and no such assignment shall release the assigning Lender from its obligations hereunder.
- 13.3.2 Effect; Effective Date. Upon delivery to Agent of an assignment notice in the form of **Exhibit C** and a processing fee of \$3,500 (unless otherwise agreed by Agent (acting at the direction of Required Lenders) in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, (i) the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder and (ii) the assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than any rights it may have

pursuant to **Section 14.2** which will survive) 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). Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.10**.

- 13.3.3 <u>Certain Assignees</u>. No assignment or participation may be made to a Borrower, Affiliate of a Borrower or natural person. Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents.
- 13.3.4 Register. Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names and addresses of each Lender and the Delayed Draw Term Loans and stated interest owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.
- 13.4 Replacement of Certain Lenders. If a Lender (a) is a Non-Consenting Lender or, (b) Defaulting Lender, or (c) gave a notice under Section 3.5 or requested payment or compensation under Section 3.7 or 5.9 (and has not designated a different Lending Office pursuant to Section 3.8), then Agent or Borrower Agent may, upon notice to such Lender and Agent, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment and Acceptance(s). Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment and Acceptance if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.
- 13.5 <u>Assignments/Participations with Respect to Securities Laws</u>. Each Lender agrees that, without the prior written consent of Borrower Agent, it will not make any assignment or sell a participation hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in respect of, any Delayed Draw Term Loan or other Obligation under the securities laws of the United States of America or of any jurisdiction.

# **SECTION 14. MISCELLANEOUS**

- 14.1 Consents, Amendments and Waivers.
- 14.1.1 <u>Amendment</u>. Subject to the proviso to **Section 1.2**, and **Section 3.6(b)**, **(c)**, **(d)** and **(e)** no modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of the Required Lenders) and each Obligor party to such Loan Document; <u>provided</u> that:
- (a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

#### (b) [reserved];

(c) without the prior written consent of each Lender directly and adversely affected thereby, no modification shall (i) increase the Delayed Draw Term Loan Commitment of such Lender to fund Delayed Draw Term Loans hereunder; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender; (iii) extend the Delayed Draw Term Loan Termination Date applicable to such Lender's Obligations; (iv) amend this clause (c); or (v) alter Section 5.6.3; provided that for purposes of this clause (c), it being understood that (A) waivers or modifications of conditions precedent, covenants or Defaults or Events of Default shall not constitute an increase of the Delayed Draw Term Loan Commitment of any Lender; (B) a waiver or reduction of the Default Rate (or other post-petition increase in interest) shall be effective with the consent of the Required Lenders (and shall not require the consent of each directly and adversely affected Lender); and (C) any modification to the Leverage Ratio or the component definitions thereof shall not constitute a reduction in the rate of interest or a reduction of fees; and

(d) without the prior written consent of all Lenders, no modification shall (i) alter this **Section 14.1.1**; (ii) release all or substantially all of the Collateral; (iii) amend the definition of Pro Rata or Required Lenders; or (iv) except in connection with a merger, disposition or similar transaction expressly permitted hereby, including pursuant to **Section 10.2.9**, release any Obligor from liability for any Obligations.

Notwithstanding anything contained herein (including, without limitation, this Section 14.1.1) or any other Loan Document to the contrary, but other than with respect to a Replacement Facility (as defined below), in the event the Borrowers and the Revolving Agent and/or Term Loan Agent, as applicable, enters into any amendment, restatement, amendment and restatement, supplement, replacement, renewal, extension, waiver or consent in respect of any of the Senior Credit Facilities, as applicable, for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any of the Senior Credit Facilities or changing in any manner the rights of any parties thereunder, then such amendment, restatement, amendment and restatement, supplement, replacement, renewal, extension, waiver or consent shall apply automatically to the Loan Documents without the consent of or action by the Agent or any Lender; provided that, (i) any such amendment, restatement, amendment and restatement, supplement, replacement, renewal, extension, waiver or consent that materially and adversely affects the rights of the Secured Parties and does not affect the Senior Priority Secured Parties (as defined in the Intercreditor Agreement) in a like or similar manner shall not apply to the Loan Documents without the consent of the Agent (acting at the direction of the Required Lenders) and (ii) no such amendment, restatement, amendment and restatement, supplement, replacement, renewal, extension, waiver or consent may, directly or indirectly, alter the (x) commitment of any Lender or conditions precedent to the funding under Section 6; provided that, for the avoidance of doubt, in no event shall this clause (x) apply to amendments, restatements, amendment and restatements, supplements, replacements, renewals, extensions, waivers or consents in respect of any other provision of the Senior Credit Facilities (including, without limitation, the representations and warranties, affirmative covenants, negative covenants, financial covenants and events of default) other than the express provisions of the conditions precedent of Section 6, (y) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to a Lender, or (z) extend the Delayed Draw Term Loan Termination Date or Delayed Draw Term Loan Commitment Termination Date (clauses (i) and (ii), collectively, the "Specified Consent Rights"). Notwithstanding the foregoing, the Specified Consent Rights shall not apply to any amendments, restatements, amendment and restatements, supplements, replacements, renewals, extensions, waivers or consents that secure additional extensions of credit and/or add additional secured creditors and do not violate the express provisions of the

Notwithstanding anything contained herein (including, without limitation, this **Section 14.1.1**) or any other Loan Document to the contrary, in the event any Obligor enters into any amendment, restatement, amendment and restatement, replacement (whether upon or after termination or otherwise), refinancing, extension, substitution, renewal, supplement, modification or other change to, or issuance of Debt in exchange or replacement for, any of the Senior Credit Facilities (each, a "Replacement Facility") and any of the terms (including, without limitation, the representations and warranties, affirmative covenants, negative covenants, financial covenants and events of default) of any such Replacement Facility are more favorable to such Obligors than the terms of the Loan Documents, then such favorable terms shall apply automatically to any comparable provision of the corresponding Loan Documents (with appropriate covenant cushions and exceptions consistent with the Loan Documents compared to the Senior Credit Facilities in effect on the Closing Date) without the consent of or action by the Agent or any Lender (it being understood that at the request of Borrower Agent the Agent and Lenders shall enter into an amendment to this Agreement and the other applicable Loan Documents to reflect the foregoing).

- 14.1.2 <u>Limitations</u>. The agreement of Borrowers shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders and/or Agent as among themselves. Only the consent of the parties to any agreement relating to fees shall be required for modification of such agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.
- 14.1.3 <u>Payment for Consents</u>. No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.
- 14.1.4 <u>Errors</u>. If Agent and the Borrowers shall have jointly identified an obvious error or any error or omission of a technical nature in the Loan Documents, then Agent and the Borrowers shall be permitted to amend such provision without any further action or consent of any other party to such Loan Document if the same is not objected to in writing by the Required Lenders to Agent within five (5) Business Days following receipt of notice thereof.
- 14.2 Indemnity. EACH BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE AS SET FORTH BELOW) OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless any Indemnitee with respect to a Claim that (i) is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or its Related Parties, or (y) material breach by such Indemnitee or its Related Parties of their obligations hereunder or under the Loan Documents or (ii) is brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding brought by or against Agent, acting in its capacity as Agent) that does not involve any act or omission of any Obligor and arises out of disputes among the Lenders and/or their transferees.

# 14.3 Notices and Communications.

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14.3.1 <u>Notices</u>. (a)Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to <u>paragraph (b)</u> below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to any Obligor, to Borrower Agent at: 2445 Technology Forest Blvd. Building 4, Suite 800 The Woodlands, TX 77381 Attention: Office of General Counsel

(ii) if to Agent, at: 111 Center Street Little Rock, AR 72201 Attention: Jackson Farrow, Jr.

(iii) if to STEPHENS INVESTMENTS HOLDINGS LLC, at:

111 Center Street Little Rock, AR 72201

Attention: Jackson Farrow, Jr.

WITH A COPY TO (WHICH SHALL NOT CONSTITUTE NOTICE):

Holland & Knight LLP 1722 Routh Street, Suite 1500 Dallas, Texas 75201 Attn: M. Matthew Fontane, Esq.

(iv) if to STEPHENS GROUP, LLC, at: 100 River Bluff Dr., Suite 500

Little Rock, AR 72202 Attn: Ronald M. Clark

WITH A COPY TO (WHICH SHALL NOT CONSTITUTE NOTICE):

Holland & Knight LLP 1722 Routh Street, Suite 1500 Dallas, Texas 75201

Attn: M. Matthew Fontane, Esq.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received or (B) sent by facsimile shall be deemed to have been given when sent, <u>provided</u> that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (C) delivered through Electronic Systems to the extent provided in <u>paragraph</u> (b) below shall be effective as provided in such paragraph.

(b) Unless Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal

business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; <u>provided</u> that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

- (c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.
- (d) Notwithstanding the foregoing, no notice to Agent pursuant to Section 2.3, 3.1.2 or **4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any notice received by Borrower Agent shall be deemed received by all Borrowers.

14.3.2 [Reserved].

## 14.3.3 [Reserved].

- 14.3.4 <u>Public Information</u>. Obligors and Secured Parties acknowledge that "public" information may not be segregated from material non-public information. Secured Parties acknowledge that information provided in connection with the Loan Documents may include Obligors' material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor's securities.
- 14.3.5 Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of a Borrower; provided that such indemnity shall not, as to any such Indemnitee, be available to the extent that such liabilities, losses, costs or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

14.4 [Reserved].

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14.5 [Reserved].

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14.6 <u>Severability</u>. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7 <u>Cumulative Effect; Conflict of Terms</u>. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations, tests or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

## 14.8 Counterparts; Electronic Execution.

14.8.1 Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto.

14.8.2 Delivery of an executed counterpart of a signature page of (a) this Agreement, (b) any other Loan Document and/or (c) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 14.3.1). 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 telecopy, 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 telecopy, 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 Agent to accept Electronic Signatures in any form or format without its prior written consent (acting at the direction of the Required Lenders) and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent Agent has agreed to accept any Electronic Signature, (A) Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of a Borrower or any other Obligor without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (B) the Obligors shall be entitled to rely on such Electronic Signature purportedly given on behalf of Agent or any Lender 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 any Obligor, Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each of the parties hereto hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Agent, the Lenders, the Borrowers and the other Obligors, Electronic Signatures transmitted by telecopy, emailed .pdf or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original and (ii) each other party hereto may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record).

- 14.9 **Entire Agreement**. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.
- 14.10 Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.
- 14.11 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Borrowers acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrowers and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Borrowers have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Borrowers are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrowers, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrowers and their Affiliates, and have no obligation to disclose any of such interests to Borrowers or their Affiliates. To the fullest extent permitted by Applicable Law, each Borrower hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.
- 14.12 Confidentiality. Each of Agent and Lenders shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, auditors, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority (such as the National Association of Insurance Commissioners) purporting to have jurisdiction over it or its Affiliates; provided that unless specifically prohibited by Applicable Law or it is not practicable to do so prior to the required disclosure, each of Agent and each Lender shall endeavor to notify Borrower Agent (without any liability for a failure to so notify Borrower Agent) of any request made to such Lender or Agent prior to disclosure of such Information; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto or any party to the Revolving Credit Agreement or Term Credit Agreement; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or Eligible Assignee or any actual or prospective party (or its advisors) to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender or any of their Affiliates on a nonconfidential basis from a source other than Borrowers; (h) subject to an agreement containing provisions substantially the same as this Section, to the extent required by a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit

Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrowers' logos, trademarks or product photographs in advertising materials. As used herein, "Information" means information received from or on behalf of an Obligor or Subsidiary relating to it or its business, including any information obtained by Agent, any Secured Party, any Indemnitee and their respective Affiliates and its and their respective directors, officers, employees, agents, advisors and attorneys in connection with any inspection, audit, appraisal or review of properties, assets, books and records of Parent and/or its Subsidiaries and/or discussions with Parent's independent accountants. A Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent and Lenders acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

14.13 [<u>Reserved</u>].

14.14 **GOVERNING LAW**. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE AND WHETHER AT LAW OR IN EQUITY) SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

## 14.15 Consent to Forum; Bail-In of Affected Financial Institutions.

14.15.1 Forum. EACH BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN THE BOROUGH OF MANHATTAN OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS (WHETHER IN CONTRACT, TORT OR OTHERWISE AND WHETHER AT LAW OR IN EQUITY), AND AGREES THAT ANY SUCH DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

14.15.2 Other Jurisdictions. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

- 14.15.3 <u>Acknowledgement and Consent to Bail-In of Affected Financial Institutions</u>. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:
- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
  - (b) the effects of any Bail-In Action on any such liability, including, if applicable:
    - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent 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 the applicable Resolution Authority.
- 14.16 Waivers by Borrowers. To the fullest extent permitted by Applicable Law, each Borrower waives (a) the right to trial by jury (which Agent, Lenders and all other Secured Parties hereby also waive) in any proceeding or dispute of any kind (whether in contract, tort or otherwise and whether at law or in equity) relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which a Borrower may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against an Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Borrower acknowledges that the foregoing waivers are a material inducement to Agent and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Borrowers. Each Borrower has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.
- 14.17 Patriot Act Notice. Agent and Lenders hereby notify Borrowers that pursuant to the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding any personal guarantor, and may require information regarding Borrowers' management and owners, such as legal name, address, social security number and date of birth. The Borrowers shall, promptly upon request, provide all documentation and other information as Agent or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.

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

14.19 INTERCREDITOR AGREEMENT. Notwithstanding anything herein to the contrary, Borrowers acknowledge and agree that Agent and Lenders may accept so long as the Senior Credit Facilities remain outstanding, any covenant under this Agreement requiring (or any representation or warranty hereunder to the extent that it would have the effect of requiring) the delivery of possession or control to Agent of any Collateral turned over to the Agent and/or Lenders pursuant to and (including, without limitation, Instruments, Documents, tangible Chattel Paper and any Certificated Security (as defined in Section 8-102 of the UCC)) shall be deemed to have been satisfied (or, in the case of any representation and warranty, shall be deemed to be true) if such possession or control shall have been delivered to Revolving Agent (or any Person acting on behalf of Revolving Agent) or Term Loan Agent (or any Person acting on behalf of Term Loan Agent), with any such holder serving as bailee and custodian for Agent during its physical possession or control for so long as this Agreement would otherwise require any Borrower to cause Agent to be in such physical possession. To the extent any provision of this Agreement conflicts with the Intercreditor Agreement, such provision in the Intercreditor Agreement shall govern and control.

Loan Agreement, No Novation. This Agreement does not extinguish the obligations for the payment of money outstanding under the Existing Loan Agreement or discharge or release the Obligations or the Liens or priority of any mortgage, pledge, security agreement or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Existing Loan Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby or by instruments executed concurrently herewith. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of any Borrower from any of its obligations or liabilities under the Existing Loan Agreement or any of the security agreements, pledge agreements, mortgages, or other Loan Documents executed in connection therewith. Each Borrower hereby (a) confirms and agrees that each Loan Document to which it or its predecessor in interest is a party or to which it is a successor by operation of law is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the First Amendment Effective Date all references in any such Loan Document to "the Loan Agreement", "thereto", "thereof", "thereof", "thereunder" or words of like import referring to the Existing Loan Agreement shall mean the Existing Loan Agreement as amended and restated by this Agreement; and (b) confirms and agrees that to the extent that any such Loan Document purports to assign or pledge to Agent, for the benefit of the Lenders, or to grant to Agent, for the benefit of the Lenders a lien on, any Collateral as security for the Obligations of Borrowers from time to time existing in respect of the Existing Loan Agreement, such pledge, assignment or grant of the security interest or lien is hereby ratified and confirmed in all respects.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreeme and year first above written.	nt to be duly executed by their respective authorized officers as of the day
	CONN'S, INC.,
	a Delaware corporation
	Ву:
	Name: George Bchara
	Title: Executive Vice President and Chief Financial Officer
	CONN APPLIANCES, INC.,
	a Texas corporation
	By:
	Name: George Bchara
	Title: Executive Vice President and Chief Financial Officer
	CONN CREDIT I, LP,
	a Texas limited partnership
	By: CAI HOLDING, LLC,
	a Delaware limited liability company, its General
	Partner
	By:
	Name: Mark Prior
	Title: Vice President, General Counsel and Secretary

**CONN CREDIT CORPORATION, INC.,** a Texas corporation

By:

Name: George Bchara
Title: Executive Vice President and Chief Financial

Officer

[Signature Page to Delayed Draw Term Loan and Security Agreement]

STEPHENS INVESTMENTS HOLDINGS LLC, as Agent and a Lender
By:Name: Title:
STEPHENS GROUP, LLC, as a Lender
By: Name: Title:

[Signature Page to Delayed Draw Term Loan and Security Agreement]

#### Form of Warrant

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED, ASSIGNED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER.

# WARRANT TO PURCHASE [NON-VOTING] COMMON STOCK

Company:		CON	CONN'S, INC., a Delaware corporation							

Class of Stock: [Non-Voting] Common Stock, par value, \$0.01 per share

**Number of Shares:** [ ], subject to adjustment as set forth herein

**Exercise Price:** \$[], as adjusted from time to time in accordance with Section 2

Issue Date: []

**Expiration Date:** 10 years from the Issue Date

This WARRANT TO PURCHASE [NON-VOTING] COMMON STOCK (this "Warrant") certifies that, for good and valuable consideration, [ ] (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, "Holder") is entitled to purchase the number of fully paid and non-assessable shares (the "Shares") of the above-stated class, series and type of stock (the "Class") of Conn's, Inc., a Delaware corporation (the "Company") at the above-stated Exercise Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant. This Warrant is issued in connection with that certain Delayed Draw Term Loan and Security Agreement, dated as of July 31, 2023 (as amended, restated and supplemented from time to time, the "DDTL Agreement"), among the Company, Conn Appliances, Inc., Conn Credit I, LP, Conn Credit Corporation, Inc., W.S. Badcock LLC, the lenders party thereto and Stephens Investments Holdings LLC, as Administrative Agent. Capitalized terms used but not defined in this Warrant have the meanings given such terms in the DDTL Agreement.

#### SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time and on or before the Expiration Date exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 (the "Notice of Exercise"). Within the earlier of: (i) two Trading Days (as defined below); and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) following the date of the Notice of Exercise, Holder shall deliver payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Shares as to which this Warrant was so exercised (which shall not exceed the number of shares set forth above) in cash or via wire transfer of immediately available funds if Holder did not notify the Company in such Notice of Exercise that such exercise was made pursuant to a Cashless Exercise (as defined below). Notwithstanding anything herein to the contrary, to the extent this Warrant is issued for Parent Common Stock prior to the authorization of the Non-Voting Parent Common Stock, the Shares shall automatically be deemed to be shares of Non-Voting Parent Common Stock from and after the date of such authorization of the Non-Voting Parent Common Stock (such date, the "Shift Date").

1.2 <u>Cashless Exercise</u>. On any exercise of this Warrant, in lieu of payment of the aggregate Exercise Price in the manner as specified in <u>Section 1.1</u> above, but otherwise in accordance with the requirements of <u>Section 1.1</u>, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, The Company shall issue to Holder such number of fully paid and non-assessable Shares as are computed using the following formula (a "Cashless Exercise"):

X = Y(A-B)/A

where:

X = the number of Shares to be issued to Holder;

Y = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares surrendered to the Company in payment of the aggregate Exercise Price);

A = equals the average of the Closing Sale Prices of the shares of Parent Common Stock (as reported by Bloomberg Financial Markets) for the five consecutive Trading Days ending on the date immediately preceding the date of the Notice of Exercise.

B = the Exercise Price.

If the Shares are issued in a Cashless Exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Shares take on the registered characteristics of the Warrants being exercised. For purposes of Rule 144(d) promulgated under the Securities Act, as in effect on the Issue Date, it is intended that the Shares issued in a Cashless Exercise shall be deemed to have been acquired by Holder, and the holding period for the Shares shall be deemed to have commenced on the Issue Date.

For purposes of this Section 1.2, "Closing Sale Price" means, for any security as of any date, the last trade price for such security on the Trading Market for such security, as reported by Bloomberg Financial Markets, or, if such Trading Market begins to operate on an extended hours basis and does not designate the last trade price, then the last trade price of such security prior to 4:00 P.M., New York City time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid and ask prices, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and Holder. If the Company and Holder are unable to agree upon the fair market value of such security, then the Board of Directors of the Company shall use its good faith judgment to determine the fair market value. The Board of Directors' determination shall be binding upon all parties absent demonstrable error. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period. "Trading Market" means the national securities exchange or other trading market on which the shares of Parent Common Stock are primarily listed and quoted for trading, which, as of the Issue Date, shall be the Nasdaq Global Select Market.

## 1.3 Delivery of Shares Upon Exercise and New Warrant.

(a) The Company shall cause the Shares purchased hereunder to be transmitted by the transfer agent of the Class to Holder by crediting Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system if the Company is then a participant in such system and either: (A) there is an effective registration statement permitting the issuance of the Shares to or resale of the Shares by Holder; or (B) the Shares are eligible for resale by Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by crediting the account of Holder in the DRS book entry system maintained by the transfer agent for the Class, registered in the Company's stock register in the name of Holder or its designee, for the number of Shares to which Holder is entitled pursuant to such exercise to the address specified by Holder in the Notice of Exercise by the date that is the earliest of: (i) two Trading Days after the delivery to the Company of the Notice of Exercise; (ii) one Trading Day after delivery of the aggregate Exercise Price to the Company; and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Share Delivery Date"). Upon delivery of the Notice of Exercise, Holder shall be deemed for all corporate purposes to have become the holder of record of the Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Shares, provided that payment of the aggregate Exercise Price (other than in the case of a Cashless Exercise) is received within the earlier of: (i) two Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Parent Common Stock as in effect on the date of delivery of the Notice of Exercise; "Trading Day" means any day on which the Trading Market is open for trading, including any day on which the Trading Market is open for trading for a period of time less than the customary time.

- (b) If this Warrant shall have been exercised in part, the Company shall, at the request of Holder and upon surrender of this Warrant certificate, at the time of delivery of the Shares, deliver to Holder a new Warrant evidencing the rights of Holder to purchase the unpurchased Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.
- (c) If the Company fails to cause the transfer agent of the Class to transmit to Holder the Shares pursuant to Section 1.3(a) by the Share Delivery Date, then Holder will have the right to rescind such exercise.
- 1.4 <u>Replacement of Warrant; Substitution of Warrant.</u> On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount. If this Warrant is issued prior to a Shift Date, then upon the occurrence of a Shift Date, the Company and the holder of this Warrant shall take such actions as may be required to terminate this warrant and deliver a new Warrant of like tenor and amount but with respect to Non-Voting Parent Common Stock in accordance with Section 8 of the DDTL Agreement.

## 1.5 Treatment of Warrant at Acquisition.

- (a) In the event of an Acquisition (as defined below) in which the consideration to be received by the Company's stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a "Cash/Public Acquisition"), and the Closing Share Price of one Share as determined in accordance with Section 1.3 above would be greater than the Exercise Price in effect on such date immediately prior to such Cash/Public Acquisition, and Holder has not exercised this Warrant pursuant to Section 1.1 above as to all Shares, then this Warrant shall automatically be deemed to be cashless exercised pursuant to Section 1.2 above as to all Shares effective immediately prior to and contingent upon the consummation of a Cash/Public Acquisition. In connection with such cashless exercise, Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as the date thereof and the Company shall promptly notify Holder of the number of Shares (or such other securities) issued upon exercise.
- (b) Upon the closing of any Acquisition other than as described in <u>subsection (a)</u> above, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities, instruments, rights and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition (provided that if such number of Shares outstanding is zero, then the Warrant shall expire), subject to further adjustment from time to time in accordance with the provisions of this Warrant.
- (c) (i) "Acquisition" means a transaction or series of transactions involving (A) the sale or other disposition of all or substantially all assets of the Company, (B) any merger or consolidation of the Company into or with another person or entity, or any other corporate reorganization, as a result of which the stockholders of the Company immediately prior to such transaction own less than a majority of the Company's (or the surviving or successor entity's) outstanding voting power immediately after such transaction, (C) any sale or other transfer by the stockholders of the Company of capital stock of the Company representing at least a majority of the Company's outstanding combined voting power, as of such date of determination, or (D) a business combination with a special purpose acquisition company, and (ii) "Marketable Securities" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Securities Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition, Holder to exercise this Warrant on or prior to the closing thereof is then traded in Trading Market, and (iii) following the closing of such Acquisition, Holder would not be restricted from publicly re-selling all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six months from the closing of such Acquisition.

#### SECTION 2. ADJUSTMENTS TO THE SHARES AND EXERCISE PRICE.

- 2.1 Stock Dividends, Splits, Etc. If the Company, at any time while this Warrant is outstanding, declares or pays a dividend or distribution on the outstanding shares of the Class payable in Parent Common Stock, Non-Voting Parent Common Stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Exercise Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Exercise Price shall be proportionately increased and the number of Shares shall be proportionately decreased.
- 2.2 <u>Reclassification, Exchange, Combinations or Substitution</u>. Upon any event whereby all of the outstanding shares of the Class are reclassified, converted, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this <u>Section 2.2</u> shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.
- 2.3 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the Closing Sale Price of a full Share, less (ii) the then-effective Exercise Price.
- 2.4 Notice/Certificate as to Adjustments. Upon each adjustment of the Exercise Price, Class and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Exercise Price, class and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Financial Officer, including computations of such adjustment and the Exercise Price, class and number of Shares in effect upon the date of such adjustment.

# SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

- 3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, Holder as follows:
- (a) The Company shall reserve from its duly authorized and unreserved capital stock not less than the number of shares of [Non-Voting] Parent Common Stock that may be issuable pursuant to an exercise of this Warrant, provided that if at any time the Company no longer has sufficient number of authorized and unreserved shares of Shares not less than the number of Shares then issuable upon exercise of this Warrant of the maximum amount available to be issued upon exercise of this Warrant, then the Company shall immediately take all action necessary to increase its authorized and unreserved shares to an amount sufficient to cure such shortfall. In the event that upon any delivery of a Notice of Exercise there are insufficient authorized and unreserved Shares to deliver in satisfaction of such Notice of Exercise, then Holder may elect to void or amend such Notice of Exercise. Upon issuance of Shares upon an exercise of this Warrant, such shares shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, and shall be free of any restrictions on transfer, except for any restrictions under Federal or state securities laws.

- (b) With a view to making available to Holder the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the Securities and Exchange Commission (the "SEC") that may at any time (unless and until the Company files a certificate of dissolution in the State of Delaware and/or deregisters its securities under the Exchange Act) permit Holders to sell Shares to the public without registration, the Company shall: (1) make and keep public information available, as those terms are understood and defined in Rule 144, until six months after such date as all of Shares issued may be sold without restriction by Holders pursuant to Rule 144 or any other rule of similar effect; (2) file with the SEC in a timely manner (or obtain extensions in respect thereof and file within the applicable grace period) all reports and other documents required of the Company under the Exchange Act; and (3) furnish to Holder, upon request, as long as Holder owns any Shares, such information as may be reasonably requested in order to avail Holder of any rule or regulation of the SEC that permits the selling of any Shares issued without registration.
- (c) The issuance of this Warrant and the issuance of the Shares issuable upon exercise hereof, does not entitle any other party to exercise preemptive rights, except to the extent waived prior to the Issue Date.
  - 3.2 Notice of Certain Events. If, while this Warrant is outstanding, the Company proposes at any time to:
- (a) declare any dividend or distribution upon the outstanding shares of the Class, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;
- (b) offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights);
- (c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Class; or
  - (d) effect an Acquisition or the voluntary dissolution, liquidation or winding up of the affairs of the Company;
- then, in connection with each such event, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall give Holder:
- (1) in the case of the matters referred to in (a) and (b) above, at least five Business Days prior written notice of the earlier to occur of the effective date thereof or the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of outstanding shares of the Class will be entitled thereto) or for determining rights to vote, if any; and
- (2) in the case of the matters referred to in (c) and (d) above at least ten days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event and copies of all documents to be entered into in connection with such transaction and other information as Holder may require in connection with such transaction and the treatment of this Warrant in connection with such event giving rise to the notice).
- 3.3 <u>Registration</u>. Holder is entitled to the registration rights set forth on <u>Schedule 1</u> hereto with respect to the Shares when issued. Notwithstanding the foregoing, in the event that the Company deregisters its securities under the Exchange Act, the Company's obligations under this <u>Section 3.3</u> and related <u>Schedule 1</u> shall terminate.

# SECTION 4. REPRESENTATIONS, WARRANTIES OF HOLDER.

Holder represents and warrants to the Company as follows:

4.1 <u>Purchase for Own Account</u>. This Warrant and the Shares to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Securities Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

- 4.2 <u>Disclosure of Information</u>. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.
- 4.3 <u>Investment Experience</u>. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.
  - 4.4 Accredited Investor Status, Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act.
- 4.5 <u>The Securities Act</u>. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Securities Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Securities Act.
- 4.6 No Voting Rights. Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant and then only to the extent the Shares have voting rights.

## SECTION 5. MISCELLANEOUS.

- 5.1 <u>Term</u>. Subject to the provisions of <u>Section 1.5</u> above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 5:00 PM, Houston, Texas time, on the Expiration Date and shall be void thereafter.
- 5.2 <u>Restrictive Legends</u>. Any certificate or book-entry evidencing the Shares shall contain a securities legend restricting the transfer thereof, in substantially the following form:

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT MAY NOT BE OFFERED, SOLD, TRANSFERRED, PLEDGED, HYPOTHECATED, ASSIGNED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER.

5.3 <u>Compliance with Securities Laws on Transfer.</u> This Warrant and the Shares issuable upon exercise of this Warrant may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company shall not require Holder to provide an opinion of counsel if the transfer is to any affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Securities Act.

- 5.4 <u>Transfer Procedure</u>. Subject to the provisions of <u>Section 5.3</u> and upon providing the Company with written notice, Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant to any transferee; provided, however, in connection with any such transfer, Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further that any subsequent transferee shall agree in writing with the Company to be bound by all of the terms and conditions of this Warrant and to have made all of the representations and warranties in this Warrant as of the date of transfer and any other applicable date required by this Warrant.
- 5.5 Notices. All notices and other communications hereunder from the Company to Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. Notice to Holder shall be addressed to its address, facsimile or email set forth herein or on the books and records of the Company. Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Conn's, Inc.
2445 Technology Forest Blvd.
Building 4, Suite 800
The Woodlands, Texas 77381
Attn: [ ]
Email: [ ]

With a copy to (but not constituting notice):

Sidley Austin LLP 1000 Louisiana Street, Suite 5900 Houston, Texas 77002

Attention: Kevin P. Lewis; Ryan M. Scofield Email: klewis@sidley.com; rscofield@sidley.com

- 5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.
- 5.7 <u>Counterparts; Facsimile/Electronic Signatures</u>. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.
- 5.8 <u>Governing Law</u>. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles regarding conflicts of law.
- 5.9 <u>Headings</u>. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.
- 5.10 <u>Business Days</u>. "**Business Day**" means any day that is not a Saturday, Sunday or a day on which commercial banks in the State of New York are required or permitted to be closed.

(REMAINDER OF PAGE LEFT BLANK INTENTIONALLY)

COMPANY:
CONN'S, INC.
By: Name: Title:
HOLDER:
[]
By: Name:

Title:

SIGNATURE PAGE TO WARRANT TO PURCHASE [NON-VOTING] COMMON STOCK

IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase [Non-Voting] Common Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

# NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right to purchase shares of _ "Company") in accordance with the attached Warrant to Purchase [Non-Voting] Common Stock, and to for such shares as follows:	of Conn's, Inc. (the enders payment of the aggregate Exercise Price
[ ] check in the amount of \$ payable to order of the Company enclosed herewith	1
[ ] Wire transfer of immediately available funds to the Company's account	
[ ] Cashless Exercise pursuant to <u>Section 1.2</u> of the Warrant	
[ ] Other [Describe]	
2. Please issue a certificate or certificates representing the Shares in the name specified below:	
[ ]	
[ ]	
[ ]	
DTC Participant Number and Name (if electronic book entry transfer):	
Account Number (if electronic book entry transfer):	
3. By its execution below and for the benefit of the Company, Holder hereby restates each of the Warrant to Purchase [Non-Voting] Common Stock as of the date hereof.	representations and warranties in <u>Section 4</u> of the
HOLDER:	
[]	
By:	
Name:	
litle:	
Date:	

ACKNOWLEDGMENT				
The Company hereby acknowledges the Notice of Exercise and hereby directsshares of [Non-Voting] Parent Common Stock of Conn's, Inc. as set forth therein.	(Transfer Agent) to issue the above indicated number of			
	CONN'S, INC.			
	By: Name: Title:			

#### REGISTRATION RIGHTS

For purposes of this Schedule 1, capitalized terms used and not otherwise defined shall have the following meanings:

"Affiliate" means, with respect to a specified Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with such specified Person. For the purposes of this definition, "control" means the power to direct or cause the direction of the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"Effective Date" means, with respect to a particular Registration Statement, the date of effectiveness of such Registration Statement.

"Effectiveness Period" shall have the meaning set forth in Section 1 below.

"Holder" means the holder from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 4.3.

"Indemnifying Party" shall have the meaning set forth in Section 4.3.

"Losses" shall have the meaning set forth in Section 4.1.

"National Securities Exchange" means an exchange registered with the SEC under Section 6(a) of the Exchange Act (or any successor to such Section) and any other securities exchange (whether or not registered with the SEC under Section 6(a) of the Exchange Act or (any successor to such Section)) that Company shall designate as a National Securities Exchange.

"Permitted Transferee" means, with respect to any Holder, any Affiliate, direct or indirect partners, shareholders, members or other holders of other equity interests of such Holder.

"Person" means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization, government or any agency, instrumentality or political subdivision thereof or any other form of entity.

"Proceeding" means any claim, action, arbitration, mediation, audit, hearing, investigation, proceeding, litigation, subpoena or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, arbitrator, or mediator.

"Prospectus" means the prospectus or prospectuses (whether preliminary or final) included in any Registration Statement and relating to Registrable Securities, as amended or supplemented and including all material incorporated by reference in such prospectus or prospectuses.

"Registrable Securities" means the Shares issued or issuable pursuant to the Warrants and any securities issued with respect to, or in exchange for or in replacement thereof upon any stock split, stock dividend, recapitalization, subdivision, merger or similar event; provided, however, that the applicable Holder has completed and delivered to the Company a Selling Stockholder Questionnaire. Any Registrable Securities shall cease to be a Registrable Security upon the earliest to occur of the following: (1) when a Registration Statement covering such Registrable Security has been declared effective by the SEC and such Registrable Security has been sold or disposed of pursuant to such effective Registration Statement; (2) when such Registrable Security has been sold or disposed of pursuant to any section of Rule 144 (or any similar provision then in effect) under the Securities Act or in a private transaction exempt from registration under the Securities Act; and (3) when such Registrable Security becomes eligible for sale pursuant to Rule 144(b)(1)(i) without limitation under any other requirements of Rule 144 under the Securities Act (or any similar provision then in effect) (the "Rule 144 Fall-Away Date").

Schedule 1-1

"Registration Statement" means any registration statement of the Company under the Securities Act that covers any of the Registrable Securities pursuant to the provisions of Section 2 hereof, including the Prospectus, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all documents incorporated by reference in such Registration Statement.

"Rule 144" means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

"Rule 415" means Rule 415 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

"Selling Stockholder Questionnaire" means a questionnaire in the form attached as <u>Annex B</u> hereto, or such other form of questionnaire as may reasonably be requested by the Company from time to time.

"Warrants" means the warrants issued pursuant to the DDTL Agreement.

## 1. REGISTRATION STATEMENT.

1.1 After the Issue Date, upon the written request of Holders holding a majority of the Registrable Securities, the Company shall use its commercially reasonable efforts to prepare and file, within 45 days after receipt of such written request, a Registration Statement with the SEC to permit the resale of the Registrable Securities on the terms and subject to the conditions specified in this Section 1. The Registration Statement filed with the SEC pursuant to this Section 1 shall be on Form S-3 or, if Form S-3 is not then available to the Company, on Form S-1 or such other form of registration statement as is then available to effect a registration for resale of the Registrable Securities, and shall contain a prospectus in such form as to permit any Holder covered by such Registration Statement to sell such Registrable Securities pursuant to Rule 415 under the Securities Act (or any successor or similar provision adopted by the SEC then in effect) at any time beginning on the Effective Date for such Registration Statement, subject to the terms of this Agreement. During the Effectiveness Period, subject to the terms of this Agreement, the Company shall use its commercially reasonable efforts to (i) cause a Registration Statement filed pursuant to this Section 1 to be declared effective as soon as practicable after the filing thereof, and (ii) cause a Registration Statement filed pursuant to this Section 1 to remain continuously effective, and to be supplemented and amended to the extent necessary to ensure that such Registration Statement is available or, if not available, that another registration statement is available for the resale of the Registrable Securities until such Registration Statement, but in any event within three Business Days of such date, the Company shall notify the Selling Holders of the effectiveness of such Registration Statement.

1.2 The Company may delay the filing or effectiveness of, or by written notice to Holders suspend the use of, the Registration Statement in conjunction with a registration of Registrable Securities pursuant to Section 1.1, but in each such case only if the Company determines in good faith that (a) such delay would enable the Company to avoid disclosure of material information, the disclosure of which at that time would be adverse to the Company (including by interfering with, or jeopardizing the success of, any pending or proposed acquisition, disposition or reorganization), (b) such filing or use would render the Company unable to comply with applicable securities laws or (c) obtaining any financial statements (including required consents) required to be included in the Registration Statement (or incorporated therein) would be impracticable. Any period during which the Company has delayed the filing, effectiveness or use of the Registration Statement pursuant to this Section 1.2 is herein called a "Suspension Period." In no event shall (i) the number of consecutive days covered by any one Suspension Period exceed 60 days and (ii) the number of days covered by all Suspension Periods in any 360 day period exceed 150 days. Holders shall keep the existence of each Suspension Period confidential.

Schedule 1-2

#### 2. REGISTRATION PROCEDURES.

- 2.1 In connection with the Company's registration obligations hereunder, the Company shall:
- (a) use commercially reasonable efforts to prepare and file with the SEC such amendments and supplements to the Registration Statement and the Prospectus used in connection therewith as may be necessary to comply with the applicable requirements of the Securities Act and to keep the Registration Statement effective during the Effectiveness Period:
- (b) furnish to each selling Holder (i) as far in advance as reasonably practicable before filing the Registration Statement or any supplement or amendment thereto (other than reports under the Exchange Act that are deemed to be supplements or amendments), upon request, copies of reasonably complete drafts of all such documents proposed to be filed, and provide each such Holder the opportunity to object to any information pertaining to such Holder and its plan of distribution that is contained therein and make the corrections reasonably requested by such Holder with respect to such information prior to filing the Registration Statement and the Prospectus included therein or any supplement or amendment thereto, and (ii) an electronic copy of the Registration Statement and the Prospectus included therein and any supplements and amendments thereto in order to facilitate the public sale or other disposition of the Registrable Securities covered by the Registration Statement;
- (c) use commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of the Registration Statement, or the lifting of any suspension of the qualification or exemption from qualification of any Registrable Securities for sale in any jurisdiction in the United States;
- (d) if applicable, use commercially reasonable efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such U.S. jurisdictions as Holders reasonably request and continue such registration or qualification in effect in such jurisdictions for as long as the applicable Registration Statement may be required to be kept effective under this Agreement (provided, that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 2.1(d), (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);
- (e) cause the Registration Statement when it is declared effective (including the documents incorporated therein by reference) to comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus contained in the Registration Statement, in the light of the circumstances under which a statement is made, except insofar as the same are made in reliance and in conformity with information furnished in writing to the Company by any Holder for use in connection with the Registration Statement or Prospectus, or amendment or supplement thereto);
- (f) promptly notify Holders, at any time when delivery of a Prospectus relating to its Registrable Securities would be required under the Securities Act, of (i) the occurrence of any event as a result of which the Prospectus included in the Registration Statement contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and prepare, as soon as practical, a supplement or amendment to such Prospectus so that, as thereafter delivered to any prospective purchasers of such Registrable Securities, such Prospectus shall not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; (ii) the Company's receipt of any written comments from the SEC with respect to any filing referred to in clause (i) and any written request by the SEC for amendments or supplements to the Registration Statement or any Prospectus thereto, the issuance or threat of issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement, or the initiation of any proceedings for that purpose, and (iii) the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the applicable securities or blue sky laws of any jurisdiction. The Company agrees to as promptly as practicable amend or supplement the Prospectus or take other appropriate action so that the Prospectus does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and to take such other action as is necessary to remove a stop order, suspension, threat thereof or proceedings related thereto;
- (g) upon request, furnish to each selling Holder, subject to appropriate confidentiality obligations, copies of any and all transmittal letters or other correspondence with the SEC or any other governmental agency or self-regulatory body or other body having jurisdiction (including any domestic or foreign securities exchange) relating to such offering of Registrable Securities;

- (h) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as promptly as practicable, an earnings statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder; and
- (i) use commercially reasonable efforts to cause all such Registrable Securities to be listed on each National Securities Exchange on which securities of the same class issued by the Company are then listed.
- 2.2 It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Schedule that Holders shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as the Company shall reasonably request and as shall be required in connection with the action to be taken by the Company.
- 2.3 Holders agree by having their Shares treated as Registrable Securities hereunder that, upon being advised in writing by the Company of the occurrence of an event pursuant to Section 2.1(f) when the Company is entitled to do so pursuant to Section 1.2, Holders will immediately discontinue (and direct any other Persons making offers and sales of Registrable Securities to immediately discontinue) offers and sales of Registrable Securities pursuant to the Registration Statement until it is advised in writing by the Company that the use of the Prospectus may be resumed and is furnished with a supplemented or amended Prospectus as contemplated by Section 2.1(f), and, if so directed by the Company, Holders will deliver to the Company all copies, other than permanent file copies then in Holders' possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice.
- 2.4 The Company may prepare and deliver an issuer free writing prospectus (as such term is defined in Rule 405 under the Securities Act) in lieu of any supplement to a Prospectus, and references herein to any "supplement" to a Prospectus shall include any such issuer free writing prospectus. No seller of Registrable Securities may use a free writing prospectus to offer or sell any such Registrable Securities without the Company's prior written consent

## 3. REGISTRATION EXPENSES.

All expenses incurred in connection with any Registration pursuant to Section 1.1 of this Agreement, including, without limitation, all registration, filing and qualification fees, word processing, duplicating, printers' and accounting fees, listing fees, messenger and delivery expenses, all fees and expenses of complying with state securities or blue sky laws, fees of the Company's transfer agent and registrar, the fees and disbursements of counsel for the Company and reasonable fees and expenses of one counsel incurred by any Holder in connection with any sale or disposition of securities pursuant to this Schedule, up to an amount not to exceed \$5,000 ("Registration Expenses"), shall be paid by the Company. Holders shall bear and pay the underwriting discounts and commissions applicable to securities offered for their account and the legal expenses not included within the definition of Registration Expenses.

## 4. INDEMNIFICATION.

4.1 The Company shall indemnify, to the fullest extent permitted by law, Holders and their respective directors, officers, Affiliates, employees, agents and each Person who controls such Holder (within the meaning of the Securities Act or the Exchange Act), against all losses, claims, damages, liabilities (joint or several), judgments, costs (including reasonable costs of investigation) and expenses (including reasonable attorneys' fees) relating to the Registrable Securities arising out of or based upon any untrue or alleged untrue statement of a material fact contained in the Registration Statement or Prospectus or any amendment thereof or supplement thereto or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except insofar as the same are made in reliance on and in conformity with information furnished in writing to the Company by any Holder for use in connection with the Registration Statement or Prospectus, or amendment or supplement thereto.

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- 4.2 In connection with the Registration Statement in which any Holder is participating, such Holder shall furnish to the Company in writing such information as the Company reasonably requests for use in connection with the Registration Statement or Prospectus, or amendment or supplement thereto, and such Holder shall indemnify to the fullest extent permitted by law, the Company and its respective directors, officers, Affiliates, employees, agents and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act), against all losses, claims, damages, liabilities (joint or several), judgments, costs (including reasonable costs of investigation) and expenses (including reasonable attorneys' fees) arising out of or based upon any untrue or alleged untrue statement of material fact contained in the Registration Statement or Prospectus, or any amendment or supplement thereto, or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, but only to the extent that the same are made in reliance on and in conformity with information furnished in writing to the Company by or on behalf of such participating Holder expressly for use therein.
- 4.3 Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying Person of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying Person to assume the defense of such claim with counsel reasonably satisfactory to the indemnified Person. Failure of the indemnified Person to so notify the indemnifying Person shall not relieve the indemnifying Person from any liability that it may have to an indemnified Person except to the extent that such failure increases the liability or potential liability of the indemnifying person hereunder. The indemnifying Person shall not be subject to any liability for any settlement made by the indemnified Person without its consent (but such consent will not be unreasonably withheld). An indemnifying Person who is entitled to, but elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (in addition to one local counsel) for all Persons indemnified (hereunder or otherwise) by such indemnifying Person with respect to such claim (and all other claims arising out of the same circumstances), unless in the reasonable judgment of any indemnified Person there may be one or more legal or equitable defenses available to such indemnified Person that are in addition to or may conflict with those available to another indemnified Person with respect to such claim, in which case each such indemnified Person shall be entitled to use separate counsel. The indemnifying Person shall not consent to the entry of any judgment or enter into or agree to any settlement relating to a claim or action for which any indemnified Person would be entitled to indemnified Person hereunder unless such judgment or settlement imposes no ongoing obligations on any such indemnified Person and includes as an unconditional term the giving, by all relevant claimants and plaintiffs to such indemnified Person, of a release, reasonably satisfactory in form and substance to such indemn
- 4.4 The indemnification provided for under this Schedule shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified Person or any officer or director of such indemnified Person and shall survive the transfer of securities and the termination of this Agreement, but only with respect to offers and sales of Registrable Securities made before such termination.
- 4.5 If the indemnification provided for in or pursuant to this Section 4 is due in accordance with the terms hereof, but is held by a court to be unavailable or unenforceable in respect of any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying Person, in lieu of indemnifying such indemnified Person, shall contribute to the amount paid or payable by such indemnified Person as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying Person, on the one hand, and of the indemnified Person, on the other hand, in connection with the statements or omissions which result in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of the indemnifying Person, on the one hand, and of the indemnified Person, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying Person or by the indemnified Person, and by such Person's relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

#### 5. RULE 144.

As long as any Holder owns any Registrable Securities, the Company covenants to use its commercially reasonable efforts to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Section 13(a) or 15(d) of the Exchange Act. As long as any Holder owns any Registrable Securities, if the Company is not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, it will prepare and furnish to Holder and make publicly available in accordance with Rule 144 annual and quarterly financial statements, together with a discussion and analysis of such financial statements in form and substance substantially similar to those that would otherwise be required to be included in reports required by Section 13(a) or 15(d) of the Exchange Act, as well as any other information required thereby, in the time period that such filings would have been required to have been made under the Exchange Act. The Company further covenants that it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Person to sell the Shares without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act, including providing any legal opinions relating to such sale pursuant to Rule 144.

## 6. MISCELLANEOUS.

- 6.1 Remedies. The Parties hereto agree that money damages would not be a sufficient remedy for any breach of this Agreement and that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is hereby agreed that the Parties hereto shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, to prevent breaches of this Schedule, and to specifically enforce compliance with this Schedule. In connection with any request for specific performance or equitable relief, each of the Parties hereto hereby waives any requirement for security or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available at law or equity to such party. The Parties further agree that, by seeking the remedies provided for in this Section 6.1, no Party hereto shall in any respect waive its right to seek any other form of relief that may be available to it under this Agreement, including monetary damages in the event that this Agreement has been terminated or in the event that the remedies provided for in this Section 6.1 are not available or otherwise are not granted.
- 6.2 <u>Assignment of Registration Rights</u>. The rights to cause the Company to register Registrable Securities under Section 1 may be transferred or assigned by each Holder to any transferee of Registrable Securities only (a) by operation of law, (b) if the transferee is a Permitted Transferee or (c) if such transfer of such rights is not made in accordance with clauses (a) and (b), with express prior written consent of Company, provided, in each case, (i) the Company is given written notice prior to any transfer or assignment, stating the name and address of each transferee or assignee and identifying the Registrable Securities with respect to which such registration rights are being transferred and (ii) that any such transferee shall not be entitled to the rights provided in this Schedule unless each such transferee or assignee assumes in writing responsibility for its portion of the obligations of such transferring Holder under this Schedule. Notwithstanding anything to the contrary contained in this Section 6.2, any Holder may elect to transfer all or a portion of its Registrable Securities to any third party without assigning its rights hereunder with respect thereto; provided, that in any such event all rights under this Schedule with respect to the Registrable Securities so transferred shall cease and terminate. References to a Party in this Schedule shall be deemed to include any such transferee or assignee permitted by this Section 6.2.
- 6.3 <u>Notices and Communications to Holder</u>. Unless otherwise indicated in a written notice by Holder to the Company, the Company may deliver all notices, materials and other correspondence that is permitted or required to be delivered to Holder in accordance with Section 5.6 of the Warrant.

Exhibit B

# **Amended and Restated Security Agreement**

# Exhibit C

# **Amended and Restated Equity Interest Pledge Agreement**

# Exhibit D

# Amended and Restated Permitted ABS Intercreditor Agreement

# Exhibit E

# Amended and Restated Third Lien Intercreditor Agreement

Schedule 1.1(g)

**Badcock Securitization Arrangements** 

Schedule 7.1(j)

**Equity Interests** 

Schedule 8.5

**Deposit Accounts** 

Schedule 8.7.1

**Business Locations** 

Names and Capital Structure

**Former Names and Companies** 

Patents, Trademarks, Copyrights and Licenses

Litigation

**Schedule 10.2.17** 

**Affiliate Transactions**