

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the year ended December 31, 2023

OR

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

For the transition period from to
Commission File Number 001-40836

Brilliant Earth Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

300 Grant Avenue, Third Floor
San Francisco, CA

(Address of principal executive offices)

87-1015499

(I.R.S. Employer Identification Number)

94108

(Zip Code)

(800) 691-0952

(Registrant's telephone number, including area code)

N/A

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

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A common stock, \$0.0001 par value per share	BRLT	The Nasdaq Global Market

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No

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

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

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatement that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the registrant's Class A common stock held by non-affiliates as of June 30, 2023, was \$46.1 million based on the closing price as reported on the Nasdaq Global Market on such date.

As of March 25, 2024, there were 13,012,299 shares of the registrant's Class A common stock, \$0.0001 par value per share, outstanding, 35,728,172 shares of the registrant's Class B common stock, \$0.0001 par value per share, outstanding, 49,119,976 shares of the registrant's Class C common stock, \$0.0001 par value per share, outstanding and no shares of the registrant's Class D common stock, \$0.0001 per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE:

Specifically identified portions of the registrant's definitive proxy statement for the 2024 annual meeting of stockholders, which will be filed no later than 120 days after the end of the registrant's fiscal year ended December 31, 2023, are incorporated by reference into Part III of this Annual Report on Form 10-K.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical facts contained in this Annual Report on Form 10-K may be forward-looking statements. Statements regarding our future results of operations and financial position, business strategy, plans and objectives of management for future operations, including, among others, statements regarding expected growth, introduction of new products, future capital expenditures, and debt service obligations, are forward-looking statements. In some cases, you can identify forward-looking statements by terms, such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “evolve,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “seek,” “should,” “strategy,” “target,” “will,” or “would,” or the negative of these terms or other similar expressions. Accordingly, we caution you that any such forward-looking statements are not guarantees of future performance and are subject to risks, assumptions, and uncertainties that are difficult to predict.

We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. Although we believe that the expectations reflected in these forward-looking statements are reasonable as of the date made, actual results may prove to be materially different from the results expressed or implied by the forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties, and assumptions, including the important factors described in Part I, Item 1A “Risk Factors” and elsewhere in this Annual Report on Form 10-K. Other sections of this Annual Report on Form 10-K include additional factors that could adversely impact our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment and new risks emerge from time to time. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this Annual Report on Form 10-K may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. This Annual Report on Form 10-K and the documents that we have filed as exhibits should be read with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements. These forward-looking statements speak only as of the date of this Annual Report on Form 10-K. Except as required by applicable law, we undertake no obligation to update or revise any forward-looking statements contained in this Annual Report on Form 10-K, whether as a result of any new information, future events or otherwise.

MARKET AND INDUSTRY DATA

Unless otherwise indicated, information contained in this Annual Report on Form 10-K concerning our industry, competitive position, and the markets in which we operate is based on information from independent industry and research organizations, other third-party sources, and management estimates. Management estimates are derived from publicly available information released by independent industry analysts and other third-party sources, as well as data from our internal research, and are based on assumptions made by us upon reviewing such data, and our experience in, and knowledge of, such industry and markets, which we believe to be reasonable. In addition, projections, assumptions and estimates of the future performance of the industry in which we operate and our future performance are necessarily subject to uncertainty and risk due to a variety of factors, including those described in “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements.” These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

The sources of certain statistical data, estimates, and forecasts contained in this Annual Report on Form 10-K are in the following independent industry reports:

- Bain & Company, The Global Diamond Industry 2021-22, February 2022 (“The Bain Report”).
- Statista, Revenue of the Jewelry Industry Worldwide 2019-2028, 2024 (“Statista”).

BASIS OF PRESENTATION

As used in this Annual Report on Form 10-K, unless the context otherwise requires, references to:

- “we,” “us,” “our,” the “Company,” “Brilliant Earth,” and similar references refer to Brilliant Earth Group, Inc., and, unless otherwise stated, all of its subsidiaries, including Brilliant Earth, LLC.
- “Continuing Equity Owners” refers collectively to holders of LLC Interests (as defined below) and our Class B common stock and Class C common stock, including our Founders (as defined below) and Mainsail (as defined below), who may, exchange at each of their respective options, in whole or in part from time to time, their LLC Interests (along with an equal number of shares of Class B common stock or Class C common stock (and such shares shall be immediately cancelled)), as applicable, for, at our election (determined solely by our independent directors (within the meaning of the Nasdaq rules) who are disinterested), cash or newly-issued shares of our Class A common stock or Class D common stock, as applicable.
- “Founders” refers to Beth Gerstein, our Co-Founder and Chief Executive Officer, Eric Grossberg, our Co-Founder and Executive Chairman, and Just Rocks (as defined below).
- “Just Rocks” refers to Just Rocks, Inc., a Delaware corporation, which is jointly owned and controlled by our Founders.
- “LLC Interests” or “LLC Units” refers to the common units of Brilliant Earth, LLC, including those that we purchased with the net proceeds from our initial public offering (“IPO”), which occurred on September 23, 2021.
- “LLC Agreement” refers to Brilliant Earth, LLC’s amended and restated limited liability company agreement, which became effective prior to the consummation of the IPO.
- “Mainsail” refers to Mainsail Partners III, L.P., our sponsor and a Delaware limited partnership, and certain funds affiliated with Mainsail Partners III, L.P., including Mainsail Incentive Program, LLC, and Mainsail Co-Investors III, L.P.
- “TRA” refers to the Tax Receivable Agreement with Brilliant Earth, LLC and the Continuing Equity Owners that provides for the payment by Brilliant Earth Group, Inc. to the Continuing Equity Owners of 85% of the amount of tax benefits, if any, that Brilliant Earth Group, Inc. actually realizes (or in some circumstances is deemed to realize) related to certain tax basis adjustments and payments made under the TRA.

SUMMARY RISK FACTORS

Our business is subject to numerous risks and uncertainties, including those described in Part I, Item 1A. “Risk Factors” in this Annual Report on Form 10-K. Investors should carefully consider these risks and uncertainties when investing in our Class A common stock. The principal risks and uncertainties affecting our business include the following:

- Fluctuations in the pricing and supply of diamonds, other gemstones, and precious metals, particularly responsibly sourced natural and lab-grown diamonds and recycled precious metals such as gold, which account for the majority of our merchandise costs, increases in labor costs for manufacturing such as wage rate increases, as well as inflation, and energy prices could adversely impact our sales, earnings and cash availability;
- An overall decline in the health of the economy and other factors impacting consumer spending, such as recessionary or inflationary conditions, governmental instability, war and fears of war, and natural disasters may affect consumer purchases, which could reduce demand for our products and harm our business, financial condition, and results of operations;
- If we fail to cost-effectively turn existing customers into repeat customers or to acquire new customers, our business, financial condition, and results of operations would be harmed;
- We have grown rapidly in recent years and have limited operating experience at our current scale of operations. If we are unable to manage our growth effectively, our brand, company culture, and financial performance may suffer;
- Increased lead times, and supply shortages and supply changes could disrupt our business and have an adverse effect on our operations, financial condition, and results;
- We plan to expand showrooms in the United States (“U.S.”), which may expose us to significant risks;
- The fine jewelry retail industry is highly competitive, and if we do not compete successfully, our business may be adversely impacted;
- If we fail to maintain and enhance our brand, our ability to engage or expand our base of customers may be impaired and our business, financial condition, and results of operations may suffer;
- Our marketing efforts may not be effective, and failure to effectively develop and expand our sales and marketing capabilities could harm our ability to increase our customer base and achieve broader market acceptance of our e-commerce and omnichannel approach to shopping for fine jewelry;
- Our profitability and cash flows may be negatively affected if we are not successful in managing our inventory balances and inventory shrinkage;
- We derive a significant portion of our revenue from sales of our Design Your Own rings. A decline in sales of our Design Your Own rings would negatively affect our business, financial condition, and results of operations;
- Because we have a short history of operating at our current scale, we may be unable to sustain growth and profitability;
- We rely heavily on our information technology systems, as well as those of our third-party vendors and service providers, for our business to effectively operate and to safeguard confidential information and any

significant failure, inadequacy or interruption of these systems, security breaches or loss of data could materially adversely affect our business, financial condition and operations;

- Environmental, social, and governance matters may adversely impact our business and reputation;
- Our e-commerce and omnichannel business face distinct risks, and our failure to successfully manage those risks could have a negative impact on our profitability;
- If we are unable to effectively anticipate and respond to changes in consumer preferences and shopping patterns, or are unable to introduce new products or programs that appeal to new or existing customers, our sales and profitability could be adversely affected;
- Our principal asset is our interest in Brilliant Earth, LLC, and, as a result, we depend on distributions from Brilliant Earth, LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement (as defined herein). Brilliant Earth, LLC's ability to make such distributions may be subject to various limitations and restrictions;
- The Tax Receivable Agreement with the Continuing Equity Owners requires us to make cash payments to them in respect of certain tax benefits to which we may become entitled, and we expect that such payments will be substantial; and
- Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Continuing Equity Owners that will not benefit holders of our Class A common stock to the same extent that it will benefit the Continuing Equity Owners.

Part I - Financial Information

Item 1. Business

Overview

Brilliant Earth is an innovative, digitally native omnichannel jewelry company, and a global leader in ethically sourced fine jewelry. We offer exclusive designs with superior craftsmanship and supply chain transparency, delivered to customers through a highly personalized omnichannel experience.

Our extensive collection of premium-quality diamond engagement and wedding rings, gemstone rings, and fine jewelry is conceptualized by our leading in-house design studio and then brought to life by expert jewelers. From our award-winning jewelry designs to our responsibly sourced materials, at Brilliant Earth we aspire to exceptional standards in everything we do.

Our mission is to create a more transparent, sustainable, compassionate, and inclusive jewelry industry, and we are proud to offer customers distinctive and thoughtfully designed products that they can truly feel good about wearing.

Our Company

We were founded in 2005 as an e-commerce company with an ambitious mission and a single showroom in San Francisco. We have rapidly scaled our business while remaining focused on our mission and elevating the omnichannel customer experience. Through our intuitive digital commerce platform and personalized individual appointments in our showrooms, we cater to the shopping preferences of tech-savvy next-generation consumers. We create an educational, joyful, and approachable experience that is unique in the jewelry industry. Today, Brilliant Earth has sold to consumers in over 50 countries.

Throughout our history, we have invested in technology to create a seamless customer experience, inform our data-driven decision-making, improve efficiencies, and advance our mission. Our technology enables dynamic product visualization, augmented reality try-on, blockchain-verified transparency, and rapid fulfillment of our flagship Design Your Own product, a custom design process. We leverage data capabilities to improve our marketing and operational efficiencies, personalize the customer experience, curate showroom inventory and merchandising, inform real estate decisions, and develop new product designs that reflect consumer preferences. We believe the Brilliant Earth digital experience drives higher satisfaction, engagement, and conversion both online and in-showroom.

Our made-to-order capabilities and virtual inventory model generate attractive inventory turns and negative working capital, which we define as our current assets less cash minus our current liabilities. We have achieved strong financial performance and rapid growth since our founding and believe we are in the early stages of realizing our potential in a significant market opportunity.

Below is a summary of our performance for the year ended December 31, 2023:

- Net sales of \$446.4 million, compared to \$439.9 million for the year ended December 31, 2022;
- Net income of \$4.7 million compared to \$19.0 million for the year ended December 31, 2022; and
- Net income margin of 1.1% compared to 4.3% for the year ended December 31, 2022.

Our Opportunity

Global Jewelry Market

The global jewelry industry was estimated to be approximately \$300 billion in 2023, according to Statista. Despite its size, the jewelry industry is highly fragmented and includes players like mall jewelers, local independent stores, and department stores, among others. According to The Bain Report, approximately 65% of the diamond jewelry retail industry is composed of small retailers. Many small jewelry retailers are struggling to address evolving consumer preferences for personalization and e-commerce, and are further limited by reduced purchasing power and an inventory-heavy model. Many mall jewelers have also been slow to modernize an outdated retail experience, and

face declining foot traffic. We believe the rapidly changing industry provides ample opportunity for Brilliant Earth to take share.

The bridal category—where we currently derive a large portion of our business—is among the most resilient in the jewelry industry. Engagement and wedding rings are an enduring tradition. Each year, there are approximately two million marriages in the U.S. alone, according to U.S. government statistics.

Engagement rings also have a high average order value (“AOV”) and are a highly considered purchase, often one of the largest purchases that a consumer will make. Given the emotional significance of this purchase, customers often form strong connections with the company from which they buy bridal jewelry and return for special occasions or self-gifting fine jewelry purchases.

Changing consumer preferences

Millennial and Gen Z consumers are the largest opportunity for the jewelry industry. These consumers represent the core consumer of bridal-related products and a significant portion of the fine jewelry market. They are drawn to purpose-driven brands, are digitally savvy, and expect to shop whenever and wherever they want.

As consumers continue to shift purchases online, we believe consumers seek authentic brands with a strong digital presence and an engaged community. They are highly active on social media, where many proposees look for engagement ring inspiration.

While Millennial and Gen Z consumers appreciate digitally native brands, many also want an in-person experience where they can see, touch, and feel products, especially for a high value purchase. They expect to be able to shop when and where they want with a seamless journey between brick-and-mortar and online. This requires strong digital capabilities and a true omnichannel experience. Millennial and Gen Z consumers also seek purpose-driven brands that are authentic, engaged with social and environmental issues, and help them express their individuality.

The Brilliant Earth Difference

Exceptional Omnichannel Customer Experience

We have reimagined the jewelry shopping experience with our seamless omnichannel model—allowing our customers to shop anywhere, anytime. Customers have joyful, personalized, and meaningful experiences on our website and in our reimagined showrooms. For those who shop online, we deliver a leading mobile-first digital platform with dynamic visualization that brings the product to life, and innovative technology that streamlines the customer journey. For those who want to shop in-store, we provide personalized and curated individual appointments. Customers meet with a dedicated jewelry specialist in a fun, relaxing, and educational environment that fosters lasting connections and propels strong engagement and conversion across channels.

Digitally Native, Tech-Driven and Customer-Obsessed

We are digitally native, and take a tech-driven, analytical approach to deliver our exceptional customer experience. The customer is at the forefront of our decision making, and we closely track their feedback and satisfaction across all our channels. We then use this data to create a personalized, premium experience however or wherever our customer chooses to shop.

Our custom e-commerce site guides customers through an intuitive, immersive shopping experience. Our advanced Virtual Try On and product visualization technology allow customers to envision our ring designs with diamonds and gemstones of many sizes, shapes, and colors. Dynamic product customization and an intelligent diamond recommendation engine simplify and personalize the shopping experience.

While many customers shop with us exclusively online, others also want an in-person experience. From early in our history, we have offered personalized individual appointments in our modern showrooms, with curated selections based on data collected from the customer. Our customers enjoy a fun, relaxing, and educational environment while learning about our mission and browsing gemstones and jewelry selected just for them.

Dedicated jewelry specialists are available at every step of their journey via chat, phone, email, virtual appointment, or in our showrooms, which we believe drives strong engagement and high customer satisfaction. These specialists strive to create lasting connections with customers.

Unique and Award-Winning Designs

We believe that customers should never have to compromise between beauty, quality, and conscience. Our commitment to our core values is matched by our passion for innovative design and exceptional craftsmanship.

Our award-winning in-house design studio keeps thoughtful design at the heart of everything we do and allows us to quickly adapt to consumer insights and marketplace trends. We utilize our customer dataset, strong relationships with our customers, and highly engaged social media following to continuously uncover consumer insights and trends. We track over 50 attributes associated with our products to inform our development and merchandising decisions. We create unique, exclusive styles that are expertly crafted to be beautiful from every angle and have been featured in leading publications, including Vogue, Forbes, and Women's Wear Daily. Approximately two-thirds of our ring collection is proprietary and available exclusively at Brilliant Earth.

Our engagement rings are highly personalized to reflect our customers' individuality and unique preferences. Through our Design Your Own model, customers choose their ideal ring design, precious metal type, and ring size, and select their diamond or gemstone from our marketplace. The customer's one-of-a-kind ring is crafted with extraordinary care to fit the exact specifications of their chosen diamond and made just for them, typically in six to twelve business days. We believe the exacting standards of our made-to-order process deliver a higher quality finished product as compared to other offerings that use pre-fabricated rings retrofitted to accommodate a new center gemstone and ring size.

Mission-Driven Ethos

Our mission is to create a more transparent, sustainable, compassionate, and inclusive jewelry industry. We founded the company to provide an ethical alternative to historical jewelry industry practices, which have raised environmental and social concerns and lacked transparency.

- *Transparency:* We go above and beyond current industry standards to offer Beyond Conflict Free™ Diamonds that have been selected for their ethical and environmentally responsible origins. As part of our commitment to transparent sourcing, we expect our suppliers to adhere to our strict Supplier Code of Conduct. We also integrate blockchain technology to showcase the journey of a select collection of blockchain-verified diamonds.
- *Sustainable:* Our jewelry is crafted from primarily recycled precious metals and arrives in our iconic ring boxes crafted with wood sourced from Forest Stewardship Council ("FSC") certified forests. Our paper-based shipping boxes are FSC Recycled and made from 100% post-consumer or pre-consumer recycled content.
- *Compassion:* Compassion has been core to our Mission since day one. In 2021, we started the Brilliant Earth Foundation (a corporate advised fund with Silicon Valley Community Foundation) to further our impact. Since then, we have donated \$2 million to the areas where diamonds, gemstones and precious metals are mined and the communities where our teams and customers live.
- *Inclusion:* We are deeply committed to diversity, equity, and inclusion, and we strive to embody our values through our product collections, customer experience, non-profit initiatives, and internal practices. We are proud that women comprise the majority of our employees, senior executive team, and our board of directors (the "Board").

Our Strengths

The Brilliant Earth Brand

We are a mission-driven, premium brand founded on core values of transparency, sustainability, inclusivity and giving back. These values resonate strongly with Millennial and Gen Z customers. We thoughtfully develop our

brand messaging and customer experience to appeal to all genders, which is important because couples are increasingly shopping together for engagement and wedding rings.

Alongside our mission, we believe our joyful, premium customer experience and unique, exclusive jewelry designs drive our strong brand affinity and loyalty. Since our founding, we have fostered deep connections with our highly engaged community, leading to an outsized social media presence. We believe our brand resonance, authentic content, and focus on staying ahead of social trends have contributed to our leading engagement rates.

Exceptional Customer Experience and Differentiated Omnichannel Model Drive Growth and Conversion

We have reimagined the jewelry shopping experience. Customers have joyful, personalized, and premium experiences on both our e-commerce site and in our reimagined showrooms. We deliver a leading digital platform, dynamic product customization, innovative technology, and a seamless omnichannel experience. For customers who wish to shop in-store, we provide personalized and curated individual appointments. Customers meet with a dedicated jewelry specialist in a fun, relaxing, and educational environment that fosters lasting connections and propels strong engagement and conversion across channels. We believe our showrooms accelerate our financial performance in the markets where they are located.

Unique and Exclusive Products

Our award-winning in-house design studio creates unique, exclusive styles that are expertly crafted to be beautiful from every angle. We leverage our data to curate collections and inform new product development strategy, so our offerings are current, fresh, and reflect consumer preferences. We have a vast collection of Beyond Conflict Free™ natural diamonds and lab-grown diamonds that meet what we believe are rigorous standards for sourcing and quality. Our collection offers extensive coverage across quality characteristics and price points. Through our Design Your Own model, customers can customize their jewelry to reflect their individuality and personal preferences, creating one-of-a-kind jewelry pieces. In 2020, we also released one of the industry's first gender-fluid collections.

Innovative, Data-Driven Technology

As a digitally native company, we use technology to deliver a superior customer experience, improve marketing and operational efficiencies, curate showroom inventory and merchandising, inform real estate decisions, and develop new product designs that reflect consumer preferences. Our proprietary technology includes dynamic visualization, augmented reality try-on, and automated rapid fulfillment of our flagship Design Your Own product. We utilize leading technology for key business functions, including product design and personalization, customer relationship management ("CRM") and data analytics, inventory and supply chain management, order fulfillment, and more.

We apply cutting-edge technology to innovate and transform our supply chain. We were among the first retail jewelers to offer blockchain diamonds at scale, defining next-generation traceability standards in the jewelry industry, and offer thousands of blockchain-verified diamonds. This technology tracks a diamond from its origins at the mining operator, through cutting and polishing, to the customer. This provides even greater transparency into the responsible origins of these blockchain-verified diamonds.

Capital Efficient Operating Model

We have an asset-light operating model with attractive working capital dynamics, capital efficient showrooms, and a vast virtual inventory of premium natural and lab-grown diamonds. We are able to offer a broad selection of diamonds while keeping our balance sheet inventory low, which has driven our attractive inventory turns. Our limited owned-inventory and rapid cash cycle—where we are typically paid by our customers before we pay our suppliers—allow us to scale with limited capital outlays. Our showroom strategy generates highly favorable unit economics and avoids the inefficiencies of traditional jewelers that have too many physical stores, employees, and inventory. Our showrooms are appointment-driven with large catchment regions, so we are less reliant on high foot traffic locations—with their high rents—than traditional retailers. We curate showroom inventory for scheduled visits and need limited inventory for each location. When not in appointment, our tech-enabled team of jewelry specialists supports online customers, maximizing workforce utilization.

Founder-Led and Diverse Leadership Team Committed to Inclusion

We care deeply about diversity, equity, and inclusion. We are led by our chief executive officer (“CEO”) and co-founder Beth Gerstein. We consider our commitment to inclusion integral to our company, helping to inform our product offerings and customer experience.

Our Growth Strategies

There is a significant growth opportunity ahead. We are less than one percent penetrated in the jewelry category today. With our purpose-driven brand, digitally-driven omnichannel experience, award-winning products, and loyal customers, we believe we have significant opportunities to grow in both our existing and new markets.

Increase Brand Awareness

Increasing brand awareness and growing favorable brand equity have been and remain central to our growth. We believe we will continue to drive brand awareness through marketing, earned media, showroom expansion, and word-of-mouth referrals.

Expand Omnichannel Reach

We are expanding our showrooms nationwide, and expect to focus in the near term on major urban markets in the U.S. where we can maximize our growth potential. Expanding our number of showrooms has driven bookings uplift, accelerated growth, increased total order volume, and improved conversion in the showrooms’ metro regions.

Because our showrooms serve as destinations with some customers traveling long distances, we believe we can achieve broad national showroom coverage with far fewer locations than many traditional retailers. We expect this highly efficient showroom model to complement our digital strategy and will continue to drive growth and profitability.

Expand Purchase Occasions with Existing and New Customers

Fine jewelry, which includes earrings, necklaces, bracelets, and rings (other than engagement or wedding), represented 65% of the global jewelry market in 2022, according to The Bain Report. We believe we have significant opportunity to expand our relationship with our deeply loyal customer base beyond our current core engagement and wedding ring category into special occasions and self-purchases.

Our customer typically begins their Brilliant Earth journey with an engagement ring, so we are often the first significant jewelry purchase in our customer’s life, which we believe creates a lasting, emotional connection with the Brilliant Earth brand. While engagement ring purchases have historically been male-dominated, we thoughtfully built our brand messaging and customer experience to appeal to all genders. Our brand values of beauty, quality, and ethics resonate strongly with Brilliant Earth couples. For all of these reasons, we believe we are uniquely positioned in the industry to build on our brand loyalty to increase future purchases.

To capture these opportunities, we are investing in our fine jewelry assortment, and we will continue to enhance our customer lifetime marketing and data-segmentation capabilities, which we believe will more effectively extend customer relationships beyond engagement and wedding purchases, whether customers are buying a gift or a piece for themselves. With our strong brand resonance with Millennials and Gen Z consumers, we also believe our fine jewelry assortment and strategic customer acquisition will continue to drive fine jewelry orders from new customers.

Expand Internationally

We are in the early stages of expanding globally and believe there is significant opportunity for expansion. We have sold to customers from over 50 countries despite minimal existing language, logistics and currency support for those geographies. We believe that there is substantial potential to launch e-commerce in new overseas markets, and new showrooms in countries where we have already established a localized digital presence.

Product Assortment and Merchandising

We are passionate about beautiful and innovative product design. We are proud to offer our customers exclusive and thoughtfully curated collections of diamond engagement rings, wedding and anniversary rings, gemstone rings, and fine jewelry.

Our diamond engagement rings are made-to-order through our Design Your Own ring digital tool. Customers choose their ideal ring setting, precious metal type, and ring size, and select their favorite Beyond Conflict Free™ natural diamond or lab-grown diamond to create their one-of-a-kind ring.

Our collection of wedding and anniversary rings includes classic precious metal bands and bands accented with diamonds or gemstones. Many of these rings are designed to complement engagement rings and may be purchased with the engagement ring to provide a perfect match. These rings can also be styled alone for everyday wear or stacked to make a distinctive statement. Our diamond bands, including eternity rings, are popular anniversary gifts. Our gemstone rings feature vibrant and distinctive center gemstones, including sapphires, emeralds, moissanites, aquamarines, and other unique colored gemstones. Through our Design Your Own ring digital tool, customers can choose their ideal ring setting, precious metal type, and ring size, and select their favorite gemstone type, shape, color, and size. We also offer pre-set gemstone rings with our most popular gemstones for customers seeking a more curated choice.

Our collection of fine jewelry includes earrings, necklaces, and bracelets. We offer a broad and evolving assortment for gifting and self-purchase, from classic diamond stud earrings and tennis bracelets to unique pendants and distinctive gemstone styles. Our emphasis on personalization is reflected in our collection of engravable jewelry and Design Your Own earrings and necklaces set with natural or lab-grown diamonds.

Diamond Assortment

Customers can purchase loose diamonds or select from our vast inventory to create their own diamond ring, earrings, or necklace. Our inventory of independently graded diamonds spans a wide variety of shapes, sizes, premium qualities, and price points to cater to unique customer preferences. We offer both our Beyond Conflict Free™ natural diamonds with a listed origin and lab-grown diamonds to appeal to different customer preferences. Our Beyond Conflict Free™ natural diamonds have been selected based on their ethical and environmentally responsible origins, and we believe we are pioneers in offering diamonds with listed and transparent origins. Our lab-grown diamonds have the same physical, chemical, and optical characteristics as natural diamonds, exhibit the same sparkle and provide a mining-free alternative to naturally sourced diamonds. We were one of the first jewelers to offer lab-grown diamonds in 2012.

In-House Design Studio

Our award-winning in-house design team creates distinctive new jewelry designs and updates classic styles with fresh modern appeal. Over two-thirds of our ring collection is proprietary and available exclusively at Brilliant Earth. Our head of product development has been driving innovation at Brilliant Earth for over ten years. Our team uses state-of-the-art technology and the artistry of hand-drawn sketches to create hundreds of new designs per year. Each design is perfected using computer-aided design (“CAD”) technology to ensure beauty from all angles, high quality and manufacturability.

We also release exclusive jewelry collections throughout the year to highlight our passion for design. We believe our customers love our beautiful and unique styles—using our Virtual Try On feature, they frequently visualize rings with different diamond shapes and sizes on their own hand, then share their unique creations on social media.

Data-Driven Merchandising

We thoughtfully curate our collections to offer beautiful and differentiated designs with broad appeal. Our data-driven merchandising strategy leverages our robust dataset, strong relationships with our customers, and highly engaged social media community to continuously uncover new insights and trends. We also analyze over 50 attributes associated with our products to optimize our merchandising and inventory decisions.

Our in-house expertise drives an agile product development cycle, with new products developed in as little as four months. This agility enables us to rapidly launch, test, and learn based on performance feedback with minimal capital outlay. We regularly refresh our product assortment and maintain a curated online collection of fresh, trend-forward styles that resonate strongly with our customers. We merchandise our showrooms with styles that have sold well online, keeping our inventory costs low.

Partnership Collections

We partner with designers and organizations aligned with our mission and values to create exclusive product collections and support social causes we are passionate about. Collections allow us to broaden our assortment, reinforce our brand ethos, increase engagement with customers and feature like-minded designers.

Technology and Data

Since our founding, we have been a leader in incorporating technology and a data-driven approach in an industry that has historically been slow to embrace technology. Our core technologies serve as a foundation for our operating, sales, marketing, and merchandising functions. To deliver our exceptional customer experience and drive efficiencies across our company, we develop proprietary technology solutions and leverage leading third-party solutions.

We have a customized e-commerce architecture that enables us to efficiently develop and launch new functionality, customer experiences, and content. Our agile development sprints allow for rapid innovation and testing, and we continually release new functionality to optimize the user experience. For example, our proprietary Diamond Quiz curates recommendations unique to each customer based on an analysis of thousands of diamond demand categories.

We offer our customers a wide variety of powerful decision-making tools, including real diamond videos, and dynamic product visualization. Our advanced Virtual Try On tool allows customers to see any ring with any gemstone size, shape, and color on their own hand, then seamlessly shop, save or share their one-of-a-kind creation. Our Find My Matching Wedding Band tool offers customers an engaging way to explore and discover rings that match their engagement rings, enables the visualization of the ring set and provides us cross-selling and upselling opportunities.

Our technology systems, including our customized enterprise resource planning ("ERP"), CRM, supply chain, inventory management, order fulfillment and other systems, provide a unified data source and single view of our customer, and ensure quality standards and a more efficient turnaround for our flagship Design Your Own product. We also use a leading data visualization platform for real-time business intelligence across our teams to drive decision making and continuous improvement.

Direct to Consumer, Omnichannel Sales Model

We sell directly to consumers through our omnichannel sales platform, including e-commerce and showrooms. With a customer-centric and data-driven approach, we offer an elevated, personalized, and educational experience. Our omnichannel approach enhances the customer journey, provides a deeper connection with our jewelry specialists, and drives higher conversion rates.

Our mobile-first design approach enables an exceptional user experience across devices. On www.brilliantearth.com, customers can engage with our experienced jewelry specialists via chat, e-mail, and virtual appointments, and can experience our products using our Virtual Try On and product visualization technology.

We offer personalized individual appointments at our modern showrooms, where customers can experience Brilliant Earth in person, touch, and feel our products, and receive valuable diamond and gemstone education from our jewelry specialists. We make visiting our showrooms a seamless experience where customers can easily book their appointment and share their preferences online. We also use data from our customers' digital interactions to personalize their appointments and curate the inventory they see in the showroom.

As of December 31, 2023, we had 37 showrooms across the United States. Our showrooms are in prime destinations in major metro areas, including ground, mall or upper floor locations in areas with premium retail adjacencies. We

leverage data—including our own first-person customer data, revenue, e-commerce behavior, population and demographic data, and market growth—to inform our showroom real estate decisions.

Jewelry Specialists

We have a dedicated team of jewelry specialists available to our customers through every step of their journey via chat, phone, email, virtual appointment, and in our showrooms. Our team serves customers across more than 50 countries on inquiries ranging from diamond education, style recommendations, jewelry care, and payment options.

We maintain a flexible and high utilization staffing model in which specialists can seamlessly support online customers when not in customer appointments. We host thousands of individual consultations per month, where we provide diamond and jewelry guidance and education in a relaxing environment, and we provide personalized product recommendations and styling advice for our customers. Jewelry specialists leverage our unified view of the customer to ensure a personalized experience and create a fun, approachable, and educational environment that fosters lasting connections.

We have tens of thousands of customer interactions per month on average. We respond to most inbound inquiries within 24 hours. In addition, outbound initiatives such as proactive live chats and marketing emails to visit showrooms increase customer engagement and conversion.

Marketing

We employ a variety of dynamic brand marketing and performance marketing strategies to broaden our customer reach, build brand awareness, and maximize lifetime customer value. We use data-driven insights to produce targeted marketing content across a variety of mediums and optimize our marketing efficiency. Our customers are deeply involved with the Brilliant Earth brand, sharing thousands of images, videos, and stories of their proposals and weddings every year.

Brand Marketing

Our in-house social media team prioritizes a mix of aspirational yet approachable product and lifestyle imagery, authentic user-generated content, unique educational content, and purpose-driven storytelling that aligns with our audience's values. Our strong connection with our audience allows us to stay ahead of trends and adapt to reflect their interests.

We also collaborate with key influencers who are deeply passionate about our mission and products. We partner with them to create authentic and unique product collections and content, which helps to expand our reach to new and highly relevant audiences. This amplifies the effectiveness of our strategy and contributes to our outsized number of followers and engagement with our community.

Our marketing efforts deliver growing brand awareness and frequent press mentions in leading publications, including Forbes, Vogue, and Women's Wear Daily.

Performance Marketing

We take a data-driven and digital-centric approach to performance marketing including search engine optimization, paid search and product listing advertisements, paid and earned social, retargeting, email, display, direct mail, and more. We continuously track performance and make adjustments across channels, campaigns, and creative assets to optimize performance. Our performance marketing drives attractive customer acquisition and retention metrics.

Sourcing and Supply Chain

Responsible sourcing is an important aspect of our mission and values. We work with a complex, global network of trusted suppliers and manufacturers who agree to our strict Supplier Code of Conduct and with whom we have developed deep relationships, generally over many years. As part of our commitment to social and environmental responsibility, we offer Beyond Conflict Free™ Diamonds, recycled precious metals and FSC-certified wood ring

boxes. We strive to offer products sourced in alignment with responsible labor and environmental practices, and continually work with our suppliers to seek to improve standards and traceability.

Beyond Conflict Free™ Diamonds

We go above and beyond current industry standards to offer Beyond Conflict Free™ Diamonds that have been selected for their ethical and environmentally responsible origins. Jewelers that offer “conflict free” diamonds meet the minimum standards of the Kimberley Process’ definition, which narrowly defines conflict diamonds as “rough diamonds used to finance wars against governments.” This minimum standards definition still allows large numbers of diamonds that are tainted by violence, human rights abuses, poverty, environmental degradation, and other issues.

Mining Practices and Standards

Our select group of natural diamond suppliers demonstrate a robust chain of custody protocol for their diamonds and have the ability to track and segregate diamonds by origin. These suppliers are required to source diamonds that originate from specific mine operations in specific countries that have demonstrated their commitment to follow internationally recognized labor, trade, and environmental standards. Our natural diamonds are sourced from approved mines in countries ranked low to moderate risk according to the Gemstones and Jewellery Community Platform Index for Conflict-Affected High-Risk Areas.

We are continuously improving our processes and working with our partners toward ever more rigorous procedures for diamond sourcing and handling. Our goal is to work with our suppliers and industry partners to continue leading the diamond industry in traceability.

Blockchain-Verified

To further our commitment to transparency and responsible sourcing, we have partnered with a leading technology enterprise that uses blockchain to securely track and trace the provenance of diamonds. This technology tracks a diamond from its origins at the mining operator, through cutting and polishing, to the customer. We offer thousands of blockchain-verified diamonds.

Capture Collection

In 2023, we introduced our Capture Collection, the world’s largest collection of lab-grown diamonds created using CO₂ captured before it is released into the atmosphere.

100% Renewable Collection

In 2023, we introduced our Renewable Collection, a collection of lab diamonds grown, cut, and polished with 100% renewable energy from wind and solar farms. Diamonds from these collections can be set in a variety of styles, including bridal and fine jewelry through Brilliant Earth's Design Your Own experience.

Lab-Grown Diamonds

Lab-grown diamonds are created in highly controlled laboratory environments using advanced technological processes that duplicate the conditions under which diamonds develop in nature. These diamonds have the same physical, chemical, and optical characteristics as natural diamonds, and exhibit the same fire, scintillation, and sparkle. Lab-grown diamonds provide a mining-free alternative to natural diamonds.

Recycled Precious Metals

We strive to use 100% recycled gold and silver and generate year-over-year increases in the use of recycled platinum for our products. Our precious metals are sourced from certified responsible refiners who also hold recycling certifications from the Responsible Jewellery Council or other third-party validation. Currently our gold and silver fine jewelry is made primarily of recycled materials, and we continue to work with our suppliers to increase the usage of recycled metal in our products.

Metal mining, and gold mining in particular, is one of the most environmentally destructive types of mining, and gold miners often earn low wages in dangerous working conditions. Our objective is to help reduce the negative impacts of dirty gold and other metals by reducing demand for newly mined metals, focusing on recycled precious metals, and contributing to programs dedicated to improving mining practices.

Colored Gemstones

Our colored gemstone offerings include sapphires, emeralds, moissanites, and aquamarines. We strive to offer gemstones sourced in alignment with safe working conditions and environmentally responsible principles. By working with our colored gemstone suppliers to improve standards and traceability, we strive to promote higher standards for gemstone sourcing and encourage responsible practices. In 2021, we launched our Moyo Gems Collection, which empowers female artisanal miners in Tanzania through safer work environments, better mining practices, and improved equity in fair trade markets.

Recycled Diamonds

Recycled diamonds consist of existing polished diamonds that were previously sold, and are either in original condition or were re-polished and re-graded. Our recycled diamonds have been graded by an independent gemological lab and can be compared to newly mined diamonds for their quality characteristics. This product category is still nascent in the industry.

Operations, Manufacturing and Fulfillment

We manage complex global operations, manufacturing, and logistics networks to enable rapid turnaround times without compromising our commitment to quality, craftsmanship, and ethical sourcing. We have built a sophisticated technology platform to manage our supplier network, resulting in high-quality, customized jewelry produced at scale.

Inventory Management

We are able to offer a vast virtual inventory of diamonds while keeping our asset inventory low. Our sophisticated inventory management system and deep integration with our suppliers allow us to rapidly bring in inventory for appointments. Using our customer data, we curate the inventory for our in-person appointments, ensuring showroom visitors see a personalized and relevant selection. Pricing with our suppliers is determined based on product specifications, market conditions, and other variables. For example, diamond prices are determined based on market conditions, competition, and other factors, including the diamond's attributes.

Manufacturing

We have relationships with long-term manufacturing partners, who have demonstrated and who we expect to continue to demonstrate their ability to meet our commitments for ethical sourcing, high quality, fast turnarounds and scalability. Pricing with our manufacturing partners is established and renegotiated based on product specifications, market conditions, and other variables. Our partners go through a rigorous onboarding process to ensure they meet our strict compliance and quality standards, including recycled metal content. Because we own the designs created by our in-house studio, we have flexibility to determine where the jewelry is manufactured to optimize cost, manufacturing capabilities and turnaround times.

Fulfillment and Logistics

Many of our products are made-to-order, and delivered in as little as six to twelve business days. For products that sell in higher, more consistent volumes, such as certain rings and finished jewelry, we batch produce and stock items to enable even faster customer delivery, typically in just two to five business days. Orders are shipped to customers directly from our fulfillment centers or from our manufacturing partners.

Packaging

Our responsibly sourced wood ring boxes are designed to be as iconic as the jewelry they hold. They are crafted with wood sourced from FSC certified forests, which are responsibly managed to protect the forests for future generations. Our paper-based shipping boxes are FSC Recycled and made from 100% post-consumer or pre-consumer recycled content.

Our People

We are extremely proud of our team who we believe embody our culture of diversity, equity and inclusion. As of December 31, 2023, we employed 668 full-time employees and 11 part-time employees in the U.S. We are deeply committed to fostering an inclusive work environment, and we strive to embody our values through our internal practices. We are proud that women comprise majorities of our employees, senior executive team, and the Board. We believe that our diversity makes us a stronger company.

None of our employees are currently represented by a labor union or are party to a collective bargaining agreement, and we have had no labor-related work stoppages. We believe that we have good relationships with our employees.

Our Culture

A defining part of working at Brilliant Earth is our culture, and it is a key ingredient of our success. It attracts talent, and we evaluate, celebrate, and promote team members based on our Pillars of Culture. Our Pillars of Culture are:

- *Commitment to the Customer:* Providing an exceptional customer experience is always our top priority.
- *Partnership and Positivity:* Foster a community of collaboration, inclusivity, respect, and encouragement. Celebrate each other's differences and each other's victories, big, and small.
- *Bias toward Action:* When you see a need, step up rather than stand by. Discuss, test efficiently, and take action.
- *Embrace Growth and Change:* Be a champion of continuous improvement. Look for new opportunities to support business goals.
- *Mission Mindset:* Be an educated, passionate advocate of our mission in your role and beyond.
- *Ownership:* Be accountable for your actions, take pride in your work and inspire others with your example.

Competition

The global jewelry industry is highly fragmented. We operate in a competitive industry with other global jewelry retailers and brands, department stores, and independent stores, many of which have an online presence. Our primary competitors include:

- *Jewelry retailers and brands*, which sell directly to consumers through their own retail stores and online sites;
- *Department stores*, which sell an assortment of jewelry brands, and in some cases their own products, through stores and online sites; and
- *Independent stores*, including boutiques and "mom and pop" shops, who sell primarily through one or more local stores.

In addition, other retail categories and forms of expenditure, such as electronics and travel, also compete for consumers' discretionary spending. The price of fine jewelry relative to other products also influences consumer spending on fine jewelry.

We compete based on brand differentiation, including our mission and values, product selection and quality, customization, price, consumer experience, and turnaround time. We believe that we compete favorably in the market for bridal and other fine jewelry products by focusing on these factors as well as our core values of transparency, sustainability, inclusivity, and giving back.

We believe our premium omnichannel customer experience, unique and exclusive designs, and purpose-driven brand create limited overlap with other industry participants.

Intellectual Property and Other Proprietary Rights

Our long-term commercial success is connected to our ability to obtain and maintain intellectual property protection for our brand, products, and technology; defend and enforce our intellectual property rights; preserve the confidentiality of our trade secrets; operate our business without infringing, misappropriating, or otherwise violating the intellectual property or proprietary rights of third parties; and prevent third parties from infringing, misappropriating, or otherwise violating our intellectual property rights. We seek to protect our investments made into the development of our products, technologies, brand, and design by relying on a combination of copyrights, trademarks, domain names, and trade secrets, as well as confidentiality procedures and contractual provisions. Our principal trademark assets include the registered trademark “Brilliant Earth” and our tagline and logos. Our trademarks are valuable assets that support our brand and consumers’ perception of our services and merchandise. The current registrations of these trademarks are effective for varying periods of time and may be renewed periodically, provided that we, as the registered owner, or our licensees where applicable, comply with all applicable renewal requirements, including, where necessary, the continued use of the trademarks in connection with the relevant goods or services. We expect to pursue additional trademark registrations to the extent we believe they would be beneficial and cost-effective. In addition to trademark protection, we also hold the registration to the “brilliantearth.com” internet domain name and various related domain names.

We primarily rely on copyright and trade secret laws to protect our proprietary technologies and processes, including the algorithms we use throughout our business. Trade secrets can be difficult to protect, however. Although we take steps to protect and preserve our trade secrets and our know-how, unpatented technology and other proprietary information, including by entering into intellectual property assignment agreements, non-compete agreements, and non-disclosure and confidentiality agreements and by maintaining physical security of our premises and physical and electronic security of our information technology systems, such measures can be breached, and we may not have adequate remedies for any such breach. In addition, our trade secrets may otherwise become known or be independently discovered by competitors. As a result, we may not be able to meaningfully protect our trade secrets. For more information regarding the risks related to our intellectual property, see “Risk Factors—Risks related to Our Legal and Regulatory Environment—Failure to adequately obtain, maintain, protect and enforce our intellectual property and proprietary rights or prevent third parties from making unauthorized use of such rights could harm our brand, devalue our proprietary content and technology, and adversely affect our ability to compete effectively.”

Government Regulation

We are required to comply with numerous laws and regulations covering areas such as consumer protection, consumer privacy, data protection, privacy, consumer credit, payment processing, marketing and advertising, insurance, health and safety, waste disposal, supply chain integrity, truth in advertising and employment. We monitor changes in these laws to maintain compliance with applicable requirements.

We are subject to numerous local, state, federal and foreign laws and regulations regarding privacy and data protection. Regulators throughout the United States and around the world have adopted or proposed and continue to adopt and propose limitations on, or requirements regarding, the collection, disclosure, distribution, use, security and storage of personal information, payment card information or other confidential information of individuals and the FTC and many state attorneys general are applying federal and state consumer protection laws to impose standards on the online collection, use and dissemination of data. In the event of a security breach, these laws may subject us to incident response, notice and remediation costs. Failure to safeguard data adequately or to destroy data securely could subject us to regulatory investigations or enforcement actions under applicable data protection, data security, unfair practices or consumer protection laws. U.S. federal and state and foreign laws and regulations are constantly evolving. The scope and interpretation of these laws could change and the associated burdens and our compliance costs could increase in the future. For more information regarding the risks related to our privacy, data security and data protection practices, see “Risk Factors—Risks Related to Our Legal and Regulatory Environment—We are subject to rapidly changing and increasingly stringent laws and industry standards relating to privacy, data security, and data protection. The restrictions and costs imposed by these laws, or our actual or perceived failure to comply with them, could subject us to liabilities that adversely affect our business, operations, and financial performance.”

Seasonality

A larger share of our annual revenues traditionally occurs in the fourth quarter because it includes the November and December holiday sales period.

Corporate and Available Information

Our internet website address is www.brilliantearth.com. In addition to the information about us and our subsidiaries contained in this Annual Report on Form 10-K, information about us can be found on our website. The information on our website is not, and will not be deemed to be, a part of this Annual Report on Form 10-K or incorporated into any of our other filings with the Securities and Exchange Commission (the "SEC"), except where we expressly incorporate such information.

Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act are available free of charge through our website at www.brilliantearth.com as soon as reasonably practicable after they are electronically filed with or furnished to the SEC. Additionally, the SEC maintains an internet site that contains reports, proxy and information statements and other information. The address of the SEC's website is www.sec.gov.

Item 1A. Risk Factors

Our business involves significant risk. Stockholders should consider and read carefully all of the risks and uncertainties described below, together with all of the other information included in this Annual Report on Form 10-K, including our audited consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The realization of any of these risks and uncertainties could materially and adversely affect our business, financial condition, results of operations, reputation and future prospects. In such case, the market price of our Class A common stock could decline, and you may lose some or all of your investment. This Annual Report on Form 10-K also contains forward-looking statements that involve risks and uncertainties. See "Cautionary Note Regarding Forward-Looking Statements." Our actual results could differ materially and adversely from those anticipated in these forward-looking statements as a result of certain important factors, including those set forth below.

Risks Related to Our Business and Industry

Fluctuations in the pricing and supply of diamonds, other gemstones, and precious metals, particularly responsibly sourced natural and lab-grown diamonds and recycled precious metals such as gold, which account for the majority of our merchandise costs, increases in labor costs for manufacturing such as wage rate increases, as well as inflation, and energy prices could adversely impact our sales, earnings and cash availability.

The jewelry industry generally is affected by fluctuations in the price and supply of responsibly sourced natural diamonds, lab-grown diamonds, gold, and other precious and semi-precious metals and gemstones.

The mining, production, and inventory policies followed by major producers of rough diamonds can have a significant impact on natural diamond prices and demand, as can the inventory and buying patterns of jewelry retailers and other parties in the supply chain. The availability of diamonds is significantly influenced by the political situation in diamond producing countries and by the Kimberley Process, an inter-governmental agreement for the international trading of rough diamonds. Until acceptable alternative sources of diamonds can be developed, any sustained interruption in the supply of diamonds from significant producing countries, or to the trading in rough and polished diamonds, which could occur as a result of disruption to the Kimberley Process, could adversely affect our business, as well as the retail jewelry market as a whole. In addition, the current Kimberley Process decision-making procedure is dependent on reaching a consensus among member governments, which can result in the protracted resolution of issues, and there is little expectation of significant reform. The impact of this review process on the supply of diamonds, and consumers' perception of the diamond supply chain, is unknown. The possibility of constraints in the supply of diamonds we require to meet our Beyond Conflict Free™ Diamonds requirements or our recycled or lab-grown diamonds requirements may result in changes in our supply chain practices. Additionally, in response to Russian military forces launching a major assault against Ukraine, on March 11, 2022, the U.S. announced sanctions on multiple products of Russian origin, including diamonds. In December 2023, the European

Union and the Group of Seven nations announced additional sanctions and import restrictions on diamonds that are mined, processed or produced in Russia. Although we ceased selling Russian-sourced diamonds in February 2022, because approximately 30% of the world's rough diamonds are of Russian origin, these sanctions and import restrictions limiting or prohibiting the importation of Russian diamonds could negatively affect the worldwide supply of diamonds which could, in turn, affect our supply chain practices.

Similarly, we use primarily recycled precious metals in our gold and silver fine jewelry. There is a limited supply of recycled platinum, so we work with our suppliers to source recycled platinum when available and from refiners that are known to use recycled materials in their platinum products. In addition, we may from time to time choose to hold more inventory, purchase raw materials at an earlier stage in the supply chain, or enter into commercial agreements of a nature that we currently do not use. Such actions could require the investment of cash and/or additional management skills and may not resolve supply issues or result in the expected returns and other projected benefits anticipated by management.

An inability to increase retail prices to reflect higher diamond, gemstone, or precious metal costs would result in lower profitability. There could also be a lag time before particularly sharp increases or other volatility in diamond, gemstones, and precious metal costs can be reflected in retail prices. Even if price changes are implemented, there is no certainty that these changes will be sustainable or sufficient. Additionally, a substantial increase in the supply of natural or lab-grown diamonds could result in a change in consumer perception of the value of diamonds as well as a decrease in the price of diamonds, which could result in lower retail prices for natural or lab grown diamonds. These factors may cause decreases in sales, gross margins and earnings. In addition, any sustained increases in the cost of diamonds, other gemstones, and precious metals could increase costs, disrupt sales, or require higher inventory levels or changes in the merchandise available to customers.

In addition, increases in labor costs for manufacturing due to compensation, wage pressure, and other expenses may adversely affect our profitability. Increases in minimum wages and other wage and hour regulations can exacerbate this risk. Additional tariffs or other future cost increases, such as increases in the cost of merchandise, shipping rates, raw material prices, freight costs, and store occupancy costs, may reduce our profitability. Inflationary pressures have and could continue to further reduce our sales or profitability. Increases in other operating costs, including changes in energy prices and lease and utility costs, may increase our cost of products sold or selling, general, and administrative expenses. Our model and competitive pressures in the fine jewelry industry may inhibit our ability to reflect these increased costs in the prices of our products, in which case such increased costs could have a material adverse effect on our business, financial condition, and results of operations.

An overall decline in the health of the economy and other factors impacting consumer spending, such as recessionary or inflationary conditions, governmental instability, wars and fears of war, and natural disasters, may affect consumer purchases, which could reduce demand for our products and harm our business, financial conditions, and results of operations.

Our business depends on consumer demand for our products and, consequently, is sensitive to a number of factors that influence consumer confidence and spending, such as general economic conditions, consumer disposable income, energy and fuel prices, recession and fears of recession, unemployment, minimum wages, availability of consumer credit, consumer debt levels, conditions in the housing market, interest rates, tax rates and policies, inflation, consumer confidence in future economic conditions and political conditions, fears of war, political and geopolitical instability, inclement weather, natural disasters, terrorism, outbreak of diseases or widespread illness, and consumer perceptions of personal well-being and security. Unfavorable economic conditions may lead consumers to delay or reduce purchases of our products and services and consumer demand for our products and services may not grow as we expect. Prolonged or pervasive economic downturns could also slow the pace of new showroom openings or cause current locations to close.

If we fail to cost-effectively turn existing customers into repeat customers or to acquire new customers, our business, financial condition, and results of operations would be harmed.

The growth of our business is dependent upon our ability to continue to grow by cost-effectively turning existing customers into repeat customers and acquiring new customers. Although we believe that many of our customers originate from word-of-mouth and other non-paid referrals, we have expended and expect to continue to expend resources and run marketing campaigns to acquire and retain additional customers, all of which could impact our overall profitability. If we are not able to continue to expand our customer base or fail to retain customers, our net sales may grow more slowly than expected or decline.

Gaining market acceptance of the e-commerce and omnichannel approach to shopping for fine jewelry is critical to our continued customer retention and growth. Historically, consumers have been slower to adopt online shopping for fine jewelry than e-commerce offerings in other industries like consumer electronics and apparel. Transitioning the consumer in-store experience to an online platform for fine jewelry is difficult because jewelry tends to be considered a high-value purchase that consumers like to physically see and touch before making a purchase. Moreover, even if more consumers begin to shop for fine jewelry online, if we are unable to address their changing needs and anticipate or respond to market trends and new technologies in a timely and cost-efficient manner, we could experience increased customer churn and other negative impacts on our business and results of operations.

Our ability to attract new customers and increase net sales from existing customers also depends in large part on our ability to enhance and improve our existing products and to introduce new products and services, in each case, in a timely manner. We also must be able to identify and originate trends, as well as anticipate and react to changing consumer demands in a timely manner. The success of new products and services depends on several factors, including their timely introduction and completion, sufficient demand, and cost effectiveness. We are building and improving machine learning models and other technological capabilities to drive improved customer experience, as well as efficiencies in our operations, such as virtual try-ons, virtual appointments with jewelry specialists, optimized payment processing and customer service, and automated key support workflows. The continuous development, maintenance and operation of our machine learning models is complex, and may involve significant expense and unforeseen difficulties including material performance problems, and undetected defects or errors, for example, with new capabilities incorporating artificial intelligence. While we expect these technologies to lead to improvements in the performance of our business and operations, including inventory prediction and customer traffic prediction and management, any flaws or failures of such technologies could cause interruptions or delays in our service, which could result in customer dissatisfaction with us and could impair our ability to grow our customer base, which may harm our business, financial condition, and results of operations.

Our number of customers may decline materially or fluctuate as a result of many factors, including, among other things:

- dissatisfaction with the quality, pricing of, or changes we make to our products and services;
- the quality, consumer appeal and price of products and services offered by us;
- intense competition in the fine jewelry retail industry, including certain competitors ability to offer lower prices by not charging sales tax;
- negative publicity related to our brand;
- lack of market acceptance of our business model, particularly in new geographies where we seek to expand; or
- a future outbreak of disease or similar public health concern.

In addition, if we are unable to provide high-quality support to customers or help resolve issues in a timely and acceptable manner, our ability to attract and retain customers could be adversely affected. If our number of customers declines or fluctuates for any of these or other reasons, our business would suffer.

We have grown rapidly in recent years and have limited operating experience at our current scale of operations. If we are unable to manage our growth effectively, our brand, company culture, and financial performance may suffer.

We have grown rapidly over the last several years, and our recent growth rates and financial performance should not necessarily be considered indicative of our future performance. We were founded in 2005 and since then, we have grown to 37 showrooms across the U.S. as of December 31, 2023. To effectively manage and capitalize on our growth, we must continue to expand our sales and marketing, continue to evolve our omnichannel experience across both our website and showroom locations, focus on innovative product, and upgrade our management information systems and other processes. Our continued growth has in the past, and could in the future, strain our existing resources, and we could experience ongoing operating difficulties in managing our business across numerous jurisdictions, including difficulties in hiring, training, and managing a geographically distributed and growing employee base. Failure to scale and preserve our company culture with growth could harm our future success, including our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives.

Moreover, the vertically integrated nature of our business, where we create our designs, source natural and lab-grown diamonds and other gemstones, customize our IT systems, and sell our products through our own showrooms and custom e-commerce site, exposes us to risk and disruption at many points that are critical to successfully operating our business and may make it more difficult for us to scale our business. If we do not adapt to meet these evolving challenges, or if our management team does not effectively scale with our growth, we may experience erosion to our brand, the quality of our products and services may suffer, and our company culture may be harmed.

Our growth strategy contemplates potential increases in our advertising and other marketing spending, expanding our product offerings, and expanding our showroom presence. Many of our existing showrooms are relatively new, and we cannot be certain of the net sales, earnings and cash flows that will be generated by these showrooms or future showrooms, especially as we move to new geographic markets. There may also be delays in the development of our planned new showrooms. Moreover, certain occurrences outside of our control such as, for example, the COVID-19 pandemic, have in the past and may again result in the closure of our showrooms or delay the development of new showrooms. Further, many of our showrooms are leased pursuant to multi-year short-term leases, and our ability to negotiate favorable terms on an expiring lease or for a lease renewal option may depend on factors that are not within our control. In addition, our ability to expand our showroom presence depends on our ability to find suitable showroom locations and negotiate acceptable lease terms. Successful implementation of our growth strategy will require significant expenditures before any substantial associated revenue is generated, and we cannot guarantee that these increased investments will result in corresponding and offsetting revenue growth. Failure to manage our future growth effectively could have an adverse effect on our business, financial condition, and operating results.

The industry for design-driven, responsibly-sourced fine jewelry is rapidly evolving and may not develop as we expect. Even if our net sales continue to increase, our net sales growth rates may decline in the future as a result of a variety of factors, including macroeconomic factors, changes in supply and in the supply chain, changes in consumer preferences, increased competition, and the maturation of our business. As a result, you should not rely on our net sales growth rate for any prior period as an indication of our future performance. Overall growth of our net sales will depend on a number of factors, including our ability to:

- price our products and services effectively so that we are able to attract new customers, expand our relationships with existing customers, and maintain or grow our gross profit margins;
- accurately forecast our net sales and plan our operating expenses;
- successfully compete with other companies that are currently in, or may in the future enter, the markets in which we compete, and respond to developments from these competitors such as pricing changes and the introduction of new products and services;
- comply with laws and regulations applicable to our business;
- successfully expand in existing markets and enter new markets, including new geographies and categories;

- successfully launch new offerings and enhance our products and services and their features, including in response to new trends or competitive dynamics or the needs or preferences of customers or potential customers;
- successfully identify and acquire or invest in businesses, products, or technologies that we believe could complement or expand our business;
- avoid interruptions or disruptions in distributing our products and services;
- manage potential fluctuations in the supply or market conditions for natural or lab-grown diamonds and other inputs that could result in fluctuations in diamond prices and other input costs;
- provide customers with high-quality support that meets their needs;
- hire, integrate, and retain talented sales, customer service, and other personnel;
- effectively manage growth of our business, personnel, and operations, including new showroom openings;
- effectively manage our costs related to our business and operations; and
- maintain and enhance our reputation and the value of our brand.

Because we have a limited history operating our business at its current scale, it is difficult to evaluate our current business and future prospects, including our ability to plan for and model future growth. We also expect to continue to expend substantial financial and other resources to ready our business for growth, and we may fail to allocate our resources in a manner that results in increased net sales growth in our business. Additionally, we may encounter unforeseen operating expenses, challenges, complications, delays, and other unknown factors that may result in losses in future periods. Our limited operating experience at this scale, combined with the rapidly evolving nature of the market in which we sell our products and services, substantial uncertainty concerning how these markets may develop, and other economic factors beyond our control, impacts our ability to accurately forecast quarterly or annual revenue and profitability. Failure to manage our future growth effectively could have an adverse effect on our business, financial condition, and operating results. If our net sales growth does not meet our expectations in future periods, our business, financial condition, and results of operations may be harmed, and we may not sustain or increase profitability in the future.

Increased lead times, supply shortages, and supply changes could disrupt our business and have an adverse effect on our operations, financial condition, and results.

Meeting customer demand partially depends on our ability to obtain timely and adequate delivery of materials for our products and services. The materials that go into the manufacturing of our products and services are sourced from a limited number of suppliers that are expected to adhere to our strict Supplier Code of Conduct and compliance requirements. Additionally, our natural diamonds in particular are subject to our Beyond Conflict Free™ Diamonds standards and Chain of Custody Protocol, requiring our suppliers to source diamonds that originate from specific mine operators that follow internationally recognized labor, trade, and environmental standards. Similarly, our gold and silver fine jewelry is crafted from recycled precious metals. Limited supply in the market poses a challenge to source recycled platinum, so we work with our suppliers to source recycled platinum when available and from refiners that are known to use recycled materials in their platinum products. We do not have long-term arrangements with most of our materials suppliers, and disruptions in the supply chain, have affected, and may in the future affect the availability and cost of recycled precious metal, Beyond Conflict Free™ Diamonds, and other materials used in our products. Additionally, our Beyond Conflict Free™ Diamonds standards go beyond the Kimberly Process definition of “conflict free” diamonds, which limits our supply of ethically and environmentally sourced diamonds more than other fine jewelers.

In addition, the lead times associated with certain materials are lengthy and may impede or preclude rapid changes in design, quantities, and delivery schedules. Our ability to meet increases in demand has been, and may in the future be, impacted by our reliance on the availability of materials. We have in the past and may in the future experience supply shortages, and the predictability of the availability of these materials may be limited. In the event of a shortage or interruption of supply of these materials, we may not be able to develop alternate sources in a timely or cost-effective manner. Developing alternate sources of supply for these materials may be time-consuming, difficult, and costly, and we may not be able to source these materials on terms that are acceptable to us, or at all, which may undermine our ability to fill orders in a timely manner. Any interruption or delay in the supply of any of these parts

or materials, or the inability to obtain these materials from alternate sources at acceptable prices and within a reasonable amount of time, would harm our ability to timely ship products to our customers.

Moreover, volatile economic conditions may make it more likely that our suppliers and logistics providers may be unable to timely deliver supplies, or at all, and there is no guarantee that we will be able to timely locate alternative suppliers of comparable quality who meet our compliance standards at an acceptable price. In addition, international supply chains may be impacted by events outside of our control and limit our ability to procure timely delivery of supplies or finished goods and services. Importing and exporting has involved more risk as since at least the beginning of 2018, there has been increasing rhetoric, in some cases coupled with legislative or executive action, from several U.S. and foreign leaders regarding tariffs against foreign imports of certain materials. Several of the materials that go into the manufacturing of our products are sourced internationally. We have seen, and may continue to see, increased congestion and/or new import/export restrictions implemented at ports that we rely on for our business. These tariffs have an impact on our materials costs and have the potential to have an even greater impact depending on the outcome of the current trade negotiations. Increases in our materials costs could have a material effect on our gross margins. The loss of a significant supplier, an increase in materials costs, or delays or disruptions in the delivery of materials, could adversely impact our ability to generate future net sales and earnings and have an adverse effect on our business, financial condition, and operating results.

We plan to expand showrooms in the U.S., which may expose us to significant risks.

Our growth strategy includes opening new showrooms throughout the U.S. There can be no assurance that we will be able to successfully expand or acquire critical market presence for our brand in new geographical markets in the U.S. Consumer characteristics and competition in new markets may differ substantially from those in the markets where we currently operate. Additionally, we may be unable to develop brand recognition, successfully market our products, or attract new customers in such markets, and we may be unable to identify appropriate locations in such markets. We face many other challenges in opening additional showrooms in the U.S., including:

- selection and availability of and competition for suitable showroom locations;
- the impact of the opening of new showrooms upon our prior showrooms in nearby geographies;
- negotiation of acceptable lease terms;
- strategically picking new markets to expand into;
- placement of showrooms in easily accessible locations with high visibility;
- securing required applicable governmental permits and approvals;
- impact of natural disasters and other acts of nature and terrorist acts or political instability;
- employment, training, and retention of qualified personnel;
- incurrence or assumption of debt to finance acquisitions or improvements and/or the assumption of long-term, non-cancelable leases;
- availability of financing on acceptable terms; and
- general economic and business conditions.

Should we not succeed in effectively expanding our showroom footprint, there may be adverse impacts to our growth strategy and to our ability to generate additional sales, profits and cash flows, which in turn could materially and adversely affect our business and results of operations.

The fine jewelry retail industry is highly competitive, and if we do not compete successfully, our business may be adversely impacted.

We operate in a competitive industry. Our primary competitors include global jewelry retailers and brands, department stores, and independent retailers, many of which have an online presence and/or physical stores. In addition, other retail categories and forms of expenditure, such as electronics and travel, also compete for consumers' discretionary spending, particularly during the holiday gift giving season. The price of fine jewelry relative to other products also influences consumer spending habits for fine jewelry.

Many of our competitors have greater financial and operational resources, longer operating histories, greater brand recognition, and broader geographic presence than we do. As a result, they may be able to engage in extensive and prolonged price promotions or otherwise offer competitive prices, which may adversely affect our business. They may also be able to spend more than we do for advertising. We may be at a substantial disadvantage to larger competitors with greater economies of scale. If our costs are greater compared to those of our competitors, the pricing of our products and services may not be as attractive, thus depressing sales or the profitability of our products and services. Our competitors may expand into markets in which we currently operate, and we remain vulnerable to the marketing power and high level of customer recognition of these larger competitors and to the risk that these competitors or others could attract our customer base. Some of our competitors are vertically integrated and are also engaged in the manufacture and distribution of responsible fine jewelry. These competitors can advantageously leverage this structure to better compete with us, and certain vertically-integrated organizations with significant market power could potentially utilize this power to make it more difficult for us to compete. We purchase some of our products from suppliers who are affiliates of our competitors. In addition, if any of our competitors were to consolidate operations, such consolidation could exacerbate these risks.

We may not be able to successfully compete with existing or future competitors. Our inability to respond effectively to competitive pressures, improved performance by our competitors, and changes in the retail markets could result in lost market share and have material adverse effects on our business, financial condition, and results of operations.

If we fail to maintain and enhance our brand, our ability to engage or expand our base of customers may be impaired and our business, financial condition, and results of operations may suffer.

Maintaining and enhancing our reputation as an authentic, socially conscious, inclusive, and innovative company is critical to attracting and expanding our relationships with customers. The successful promotion of our brand and the market's awareness of our products and services will depend on a number of factors, including our marketing efforts, ability to continue to develop our products and services, and ability to successfully differentiate our offerings and customer experiences from those of our competitors. We have invested and expect to continue to invest substantial resources to promote and maintain our brand, but there is no guarantee that our brand development strategies will enhance the recognition of our brand or lead to increased sales. The strength of our brand depends largely on our ability to provide quality products, services, and customer experiences. Brand promotion activities may not yield increased net sales, and even if they do, the increased net sales may not offset the expenses we incur in promoting and maintaining our brand and reputation. In order to protect our brand, we also expend substantial resources to register and defend our trademarks, and to prevent others from using the same or substantially similar marks. Despite these efforts, we may not always be successful in protecting our trademarks, and we may suffer dilution, loss of reputation, or other harm to our brand. If our efforts to cost-effectively promote and maintain our brand are not successful, our results of operations and our ability to attract and engage customers, partners, and employees may be adversely affected.

Unfavorable publicity about our brand or products, including perceived quality and safety, customer service, or privacy practices, whether true or untrue, could also harm our reputation and diminish confidence in, and the popularity of, our products and services. In addition, negative publicity related to key brands with which we have partnered or with our third-party suppliers, including any reputational issues arising from their failure to comply with applicable law, including environmental law, may damage our reputation, even if the publicity is not directly related to us. Our brand or reputation could also be adversely impacted if industry organizations were to find we did not or no longer meet their standards or membership criteria. If we fail to maintain, protect, and enhance our brand successfully or to maintain loyalty among customers, or if we incur substantial expenses in unsuccessful attempts to maintain, protect, and enhance our brand, we may fail to attract or increase the engagement of customers, and our business, financial condition, and results of operations may suffer.

Our marketing efforts may not be effective, and failure to effectively develop and expand our sales and marketing capabilities could harm our ability to increase our customer base and achieve broader market acceptance of our e-commerce and omnichannel approach to shopping for fine jewelry.

Promoting awareness of our products and services is important to our ability to grow our business, and attracting new customers can be costly. Our marketing efforts include traditional media and online advertising, as well as third-party social media platforms as marketing tools. As traditional advertising, online, and social media platforms

continue to rapidly evolve or grow more competitive, we must continue to maintain a presence on these platforms and establish a presence on new or emerging popular social media and advertising and marketing platforms.

Many customers locate our platform through internet search engines, such as Google, and advertisements on social networking sites such as Meta (formerly, Facebook), Instagram and TikTok and online streaming services. If we are listed less prominently or fail to appear in search results or advertisements for any reason, visits to our website could decline significantly, and we may not be able to replace this traffic. Search engines revise their algorithms from time to time in an attempt to optimize their search results. If the search engines or advertising partners on which we rely for algorithmic listings modify their algorithms, we may appear less prominently or not at all in search results or advertisements, which could result in reduced traffic to our website that we may not be able to replace. Additionally, if the costs of search engine marketing services, such as Google AdWords, or the costs of other advertisements increase, we may incur additional marketing expenses, we may be required to allocate a larger portion of our marketing spend to this channel or we may be forced to attempt to replace it with another channel (which may not be available at reasonable prices, if at all), and our business, financial condition, and results of operations could be adversely affected. Furthermore, advertising, social media platforms, search engines, and video streaming services may change their advertising policies from time to time. If any change to these policies delays or prevents us from advertising through these channels, it could result in reduced traffic to our website and sales. If we cannot cost effectively use these marketing tools, if we fail to promote our products and services efficiently and effectively, or if our marketing campaigns attract negative media attention, our business, financial condition, and results of operations may be adversely affected.

Additionally, changes in regulations could limit the ability of search engines, social media platforms and other advertising partners, including, but not limited to, Google and Facebook, to collect data from users and engage in targeted advertising, making them less effective in disseminating our advertisements to our target customers. For example, the proposed Designing Accounting Safeguards to Help Broaden Oversight and Regulations on Data (DASHBOARD) Act would mandate annual disclosure to the SEC of the type and “aggregate value” of user data used by harvesting companies, such as, but not limited to, Facebook, Google, and Amazon, including how net sales is generated by user data and what measures are taken to protect the data. In addition, laws, regulations, and rules around the use of cookies and tracking technologies may limit our ability to effectively reach audiences for marketing. If the costs of advertising on search engines, social media platforms or other advertising platforms increase, or if legal requirements limit how effectively we can market, we may incur additional marketing expenses or be required to allocate a larger portion of our marketing spend to other channels and our business and operating results could be adversely affected. In addition, governmental entities may enact restrictions on the use or reach of certain platforms that are material to our marketing efforts, which may limit our ability to utilize these channels and may adversely affect our business and operating results.

Our ability to grow our marketing efforts depends to a significant extent on our ability to expand our sales and marketing organization. We plan to continue expanding our sales force, and may further expand internationally in the future. We also plan to dedicate significant resources to sales and marketing programs. All of these efforts will require us to invest significant financial and other resources, including in channels and locations in which we have limited experience to date. We may not achieve anticipated net sales growth from expanding our sales force if we are unable to hire, develop, integrate, and retain talented and effective sales personnel, or if our new and existing sales personnel are unable to achieve desired productivity levels in a reasonable period of time. In addition, our efforts to acquire customers through direct marketing may subject us to increased regulatory scrutiny by state regulators pursuant to unfair methods of competition or unfair or deceptive acts or practices laws, which may impact our ability to achieve anticipated net sales growth from increased direct marketing.

Our profitability and cash flows may be negatively affected if we are not successful in managing our inventory balances and inventory shrinkage.

Efficient inventory management is a key component of our business success and profitability. Our inventory management requires us to maintain the optimal mix of products to meet customer demand. To be successful, we keep our inventory low while still maintaining sufficient inventory levels, both in store and virtually, to meet our customers' demands without allowing those levels to increase to such an extent that the costs to hold the goods unduly impacts our financial results. We must balance the need to maintain inventory levels that are sufficient to ensure competitive lead times against the risk of inventory obsolescence because of changing customer requirements, fluctuating commodity prices, changes to our products, product transfers or the life cycle of our products. If our buying and distribution decisions do not accurately predict customer trends or spending levels in general or at particular stores or if we inappropriately price products, we may have to take unanticipated markdowns and discounts to dispose of obsolete or excess inventory or record potential write-downs relating to the value of obsolete or excess inventory. Conversely, if we underestimate future demand for a particular product or do not respond quickly enough to replenish our best performing products, we may have a shortfall in inventory of such products, likely leading to unfulfilled orders, reduced net sales, and customer dissatisfaction.

Maintaining adequate inventory requires significant attention and monitoring of market trends, local markets, developments with suppliers, and our distribution network, and it is not certain that we will be effective in our inventory management. We are subject to the risk of inventory loss, damage, or theft and we may experience higher rates of inventory shrinkage or incur increased security costs to combat inventory theft. In addition, any casualty or disruption to our facilities or those of our third-party suppliers may damage or destroy our inventory located there. As we expand our operations, it may be more difficult to effectively manage our inventory. If we are not successful in managing our inventory balances, it could have a material adverse effect on our business, financial condition, and results of operations.

We derive a significant portion of our revenue from sales of our Design Your Own rings. A decline in sales of our Design Your Own rings would negatively affect our business, financial condition, and results of operations.

We derive a significant portion of our revenue from the sale of our Design Your Own rings. Our fine jewelry is sold in highly competitive markets with limited barriers to entry. Introduction by competitors of comparable products at lower price points, a maturing product lifecycle, a decline in consumer spending, or other factors could result in a material decline in our revenue. Because we derive a significant amount of our revenue from the sale of our Design Your Own rings, any material decline in sales of our Design Your Own rings would have a material adverse impact on our business, financial condition, and operating results.

Because we have a short history of operating at our current scale, we may be unable to sustain sales and profitability.

Because we have a short operating history at scale, it is difficult for us to predict our future operating results. We will need to generate and sustain increased revenue and manage our costs to sustain profitability. Even if we do, we may not be able to sustain or increase our profitability.

While we have experienced significant revenue growth in recent periods, it is possible that this growth rate will decline or reverse in future periods.

Our ability to generate sales and profit depends on our ability to grow our number of customers and drive operational efficiencies in our business to generate better margins. We expect to incur increased operating costs in the near term in order to:

- increase the engagement of customers;
- drive adoption of our products and services, and increase awareness of our brand, through marketing and other campaigns;
- attract and retain qualified personnel to support the expansion of our business;
- enhance our products and services with new designs and offerings; and

- invest in our operations to support the growth in our business, including by opening additional showrooms.

We may discover that these initiatives are more expensive than we currently anticipate, and we may not succeed in increasing our net sales sufficiently to offset these expenses or realize the benefits we anticipate. We also face greater compliance costs associated with the increased scope of our business and being a public company. Any failure to adequately increase net sales or manage operating costs could prevent us from sustaining or increasing profitability. As we expand our offerings and our showroom presence, we may be less profitable than we are now. Additionally, we may not realize the operating efficiencies we expect to achieve through our efforts to scale the business, reduce friction in the shopping experience, and optimize costs such as payments to raw material suppliers, payment processing, and customer support. As such, we may not be able to sustain or increase profitability in the near term or at all and the value of our business and the trading price of our Class A common stock may be negatively impacted.

We rely heavily on our information technology systems, as well as those of our third-party vendors and service providers, for our business to effectively operate and to safeguard confidential information and any significant failure, inadequacy or interruption of these systems, security breaches or loss of data could materially adversely affect our business, financial condition and operations.

We rely heavily on computer systems, hardware, software, technology infrastructure and online sites and networks for both internal and external operations that are critical to our business (collectively, "IT Systems") for many critical functions across our operations, including managing our supply chain and inventory, processing customer transactions, our financial accounting and reporting, compensating our employees, and operating our websites. Our ability to effectively manage our business and coordinate the sourcing, distribution, and sale of our products depends significantly on the reliability and capacity of these IT Systems. We also collect, process, and store sensitive and confidential information, including our proprietary business information, trade secrets, and personal information and that of our customers, employees, suppliers, and business partners (collectively, "Confidential Information"). The secure and reliable processing, maintenance, and transmission of this Confidential Information is critical to our operations.

We also rely on third-party providers for a number of our IT Systems, including website services. Although alternative providers could support our business on a substantially similar basis to our current third-party providers, transitioning our current infrastructure to alternative providers could potentially be disruptive, and we could incur significant one-time costs. If we are unable to renew our agreements with our third-party vendors on commercially acceptable terms, our agreements are prematurely terminated, or we add additional website or other third-party vendors, we may experience costs or downtime in connection with the transfer to, or the addition of, new third-party vendors. If our third-party vendors increase the costs of their services, our business, financial condition, or results of operations could be materially and adversely affected.

Our IT Systems may be subject to damage or interruption from power outages or damages, telecommunications problems, data corruption, software errors, network failures, physical or electronic break-ins, acts of war or terrorist attacks, fire, flood and natural disasters, and our existing safety systems, data backup, access protection, user management, and information technology emergency planning may not be sufficient to prevent data loss or long-term network outages. In addition, we may have to upgrade our existing IT Systems or choose to incorporate new technology systems from time to time for such systems to support the increasing needs of our expanding business. Costs and potential problems and interruptions associated with the implementation of new or upgraded systems and technology or with maintenance or adequate support of existing systems could disrupt or reduce the efficiency of our operations and could result in significant expense. Further, any material disruption or slowdown of our IT Systems or those of our third-party service providers and business partners, could have a material adverse effect on our business, financial condition, and operations.

In addition, our IT Systems and those of our third-party service providers and business partners may be vulnerable to data breaches, cyberattacks, phishing, social engineering, ransomware, and other security incidents compromising the confidentiality, integrity, and availability of our IT Systems and Confidential Information, acts of vandalism, computer viruses and malware, malicious code embedded in open-source software, or misconfigurations, "bugs" or other vulnerabilities in commercial software that is integrated into our (or our suppliers' or service providers') IT systems, products or services, errors or malfeasance of personnel, security vulnerabilities in the software or systems

on which we rely, or other similar events. If unauthorized parties gain access to our networks or databases, or those of our third-party service providers or business partners, they may be able to steal, publish, delete, use inappropriately, or modify information we process, including credit card information and personal identification information. While we employ security measures to prevent, detect, and mitigate potential for harm from the misuse of user credentials on our network, these measures may not be effective in every instance. Cyberattacks are expected to accelerate on a global basis in frequency and magnitude, and the techniques and tools used to circumvent security (including artificial intelligence) can be highly sophisticated, change frequently, are often not recognized until launched against a target, can originate from a wide variety of sources (including outside groups such as external service providers, organized crime affiliates, terrorist organizations, or hostile foreign governments or agencies), and may originate from less regulated and remote areas around the world. As a result, we may be unable to detect, investigate, remediate or recover from future attacks or incidents or to proactively address all possible techniques or implement adequate preventive measures for all situations. There can also be no assurance that our cybersecurity risk management program and processes, including our policies, controls or procedures, will be fully implemented, complied with or effective in protecting our IT Systems and Confidential Information. Successful cyberattacks that disrupt or result in unauthorized access to third party IT Systems can materially impact our operations and financial results. Remote and hybrid working arrangements at our company (and at many third-party providers) also increase cybersecurity risks due to the challenges associated with managing remote computing assets and security vulnerabilities that are present in many non-corporate and home networks.

We and certain of our third-party providers experience cyberattacks and other incidents, and we expect such attacks and incidents to continue in varying degrees. While to date no incidents have had a material impact on our operations or financial results, we cannot guarantee that material incidents will not occur in the future. Any adverse impact to the availability, integrity or confidentiality of our IT Systems or Confidential Information can result in legal claims or proceedings (such as class actions), regulatory investigations and enforcement actions, fines and penalties, negative reputational impacts that cause us to lose existing or future customers, and/or significant incident response, system restoration or remediation and future compliance costs. Any or all of the foregoing could materially adversely affect our business, results of operations, and financial condition.

Moreover, while we maintain cybersecurity insurance that may help provide coverage for these types of incidents, we cannot be certain that our insurance will be adequate to cover costs and liabilities related to these incidents. Any such breach, attack, virus, or other event could result in costly investigations, litigation, and remediation expenses exceeding applicable insurance coverage, civil or criminal penalties, operational changes or other response measures, loss of consumer confidence in our security measures, and negative publicity that could adversely affect our business, financial condition, and results of operations.

If the IT Systems of our third-party service providers become subject to disruptions or security breaches, we may have insufficient recourse against such third parties and we may have to expend significant resources to mitigate the impact of such an event, and to develop and implement protections to prevent future events of this nature from occurring.

The regulatory environment surrounding information security, cybersecurity and the protection of data is increasingly demanding, with the frequent imposition of new and changing requirements across our business. For example, if we are unable to comply with the security standards established by banks and the payment card industry, we may be subject to fines, restrictions, and expulsion from card acceptance programs, which could adversely affect our retail operations. Our business partners may have contractual rights of indemnification against us or seek to terminate our contracts with them in the event that their customer or proprietary business information is released as a result of a breach of our information technology. Security breaches could also expose us to liability under various laws and regulations across jurisdictions and increase the risk of litigation and governmental investigation. Due to concerns about data security and integrity, a growing number of national and international legislative and regulatory bodies have adopted breach notification and other requirements in the event that information subject to such laws is misused or accessed by unauthorized persons and additional regulations regarding the use, access, accuracy and security of such data are possible. In the United States, we are subject to laws in all states and numerous territories that require notification. Complying with such numerous and complex regulations in the event of unauthorized access would be expensive and difficult, and failure to comply with these regulations could subject us to regulatory scrutiny and additional liability.

Additionally, under certain regulatory schemes, such as the California Consumer Privacy Act, as subsequently amended by the California Privacy Rights Act (collectively, the “CCPA”), we may be liable for statutory damages on a per breached record basis, irrespective of any actual damages or harm to the individual or significant administrative fines. This means that in the event of a security breach we could face government scrutiny, regulatory fines, remediation costs, or consumer class actions alleging statutory damages amounting to hundreds of millions, and possibly billions of U.S. dollars. We may also be subject to civil claims under foreign laws such as the European Union and U.K. data protection laws, including representative actions and other class action type litigation. The successful assertion of one or more large claims against us that exceed available insurance coverage, denial of coverage as to any specific claim, or any change or cessation in our insurance policies and coverages, including premium increases or the imposition of large deductible requirements, could have a material adverse effect on our business, results of operations, and financial condition. Any of these events could have a significant effect on our business and financial condition. As information security, cybersecurity and data protection laws and regulations change, we may incur additional compliance costs.

Environmental, social, and governance matters may adversely impact our business and reputation.

Investors, employees, customers, governmental and regulatory bodies and other stakeholders are increasingly judging companies’ performance on a variety of environmental, social, and governance (“ESG”) matters, which are considered to contribute to the long-term sustainability of companies’ performance.

A variety of organizations measure the performance of companies on ESG topics, and the results of these assessments are widely publicized. In addition, investment in funds that specialize in companies that perform well in such assessments are increasingly popular, and major institutional investors have publicly emphasized the importance of ESG measures to their investment decisions with some relying on proprietary or third-party ESG ratings to measure the performance of companies on ESG topics. Topics taken into account in such assessments include, among others, the company’s efforts and impacts, including impacts associated with our suppliers or other partners, on climate change and human rights, ethics and compliance with law, diversity, and the role of the Board in supervising various ESG issues.

In light of investors’ increased focus on ESG matters, there can be no certainty that we will manage such issues successfully, or that we will successfully meet society’s expectations as to our proper role or our own ESG goals and values, including in respect of our diamond sourcing standards. This could lead to risk of litigation or reputational damage relating to our ESG policies or performance. As we continue to focus on developing ESG practices, and as investor and other stakeholder expectations, voluntary and regulatory ESG disclosure standards and policies continue to evolve, we have made disclosures in these areas. Such disclosures may reflect aspirational goals, targets, and other expectations and assumptions, which are necessarily uncertain and may not be realized. Failure to realize (or timely achieve progress on) such aspirational goals and targets could adversely affect our third-party ESG ratings, our reputation or otherwise adversely affect our business and operating results.

In addition, various regulatory authorities have imposed, and may continue to impose, mandatory substantive and/or disclosure requirements with respect to ESG matters. For example, we may be subject to the requirements of the European Union Corporate Sustainability Reporting Directive and its implementing laws and regulations and other European Union directives or European Union and European Union member state regulations, various disclosure requirements (such as information on greenhouse gas emissions, climate risks, use of offsets, and emissions reduction claims) from the State of California as well as the SEC’s climate disclosure rules, among other regulations or requirements. These requirements may not always be uniform across jurisdictions, which may result in increased complexity, and cost, for compliance. Separately, various regulators have adopted, or are considering adopting, regulations on environmental marketing claims, including but not limited to the use of “sustainable”, “eco-friendly”, “organic”, “recyclable” or similar language in product marketing. Any of the foregoing may require us to make additional investments in facilities and equipment, require us to incur additional costs for the collection of data and/or preparation of disclosures and associated internal controls, may impact the availability and cost of key raw materials used in the production of our products or the demand for our products, and, in turn, may adversely impact our business, operating results, and financial condition. Additionally, many of our suppliers and business partners may be subject to similar requirements, which may augment or create additional risks, including risks that may not be known to us.

Further, our emphasis on ESG issues may not maximize short-term financial results and may yield financial results that conflict with the market's expectations. We have and may in the future make business decisions that may reduce our short-term financial results if we believe that the decisions are consistent with our ESG goals, which we believe will improve our financial results over the long-term. These decisions may not be consistent with the short-term expectations of our stockholders and may not produce the long-term benefits that we expect, in which case our business, financial condition, and operating results could be harmed. Finally, it is also possible that opinions regarding companies like ours that emphasize ESG might shift in a way that reduces the perceived value of such companies to investors, employees, customers, and other stakeholders, changing their perception of the value of our Company.

Our e-commerce and omnichannel business faces distinct risks, and our failure to successfully manage those risks could have a negative impact on our profitability.

As an e-commerce and omnichannel retailer, we encounter risks and difficulties frequently experienced by internet-based businesses. The successful operation of our business as well as our ability to provide a positive shopping experience that will generate orders and drive subsequent visits depends on efficient and uninterrupted operation of our order-taking and fulfillment operations. Risks associated with our e-commerce and omnichannel business include:

- uncertainties associated with our technology platforms and websites, including changes in required technology interfaces, website downtime, and other technical failures, costs, and technical issues as we upgrade our website software, inadequate system capacity, computer viruses, human error, security breaches, legal claims related to our website operations, and e-commerce fulfillment;
- disruptions in internet service or power outages;
- reliance on third parties for computer hardware and software, as well as delivery of merchandise to our customers;
- rapid technology changes;
- credit or debit card fraud and other payment processing related issues;
- changes in applicable federal, state, and international regulations;
- liability for online content;
- cybersecurity and data privacy concerns and regulations; and
- natural disasters or adverse weather conditions.

In addition, we must keep up to date with competitive technology trends, including the use of new or improved technology, creative user interfaces, virtual and augmented reality, and other e-commerce marketing tools such as paid search and mobile applications ("apps"), and social media platforms, among others, which may increase our costs and may not increase sales or attract customers. Our competitors, some of whom have greater resources than we do, may also be able to benefit from changes in e-commerce technologies, which could harm our competitive position. If we are unable to allow real-time and accurate visibility to product availability when customers are ready to purchase, quickly and efficiently fulfill our customers' orders using the fulfillment and payment methods they demand, provide a convenient and consistent experience for our customers regardless of the ultimate sales channel, or effectively manage our online sales, our ability to compete and our results of operations could be adversely affected.

If we are unable to effectively anticipate and respond to changes in consumer preferences and shopping patterns, or are unable to introduce new products or programs that appeal to new or existing customers, our sales and profitability could be adversely affected.

Our continued success depends on our ability to anticipate and respond in a timely and cost-effective manner to changes in consumer preferences for jewelry, natural and lab-grown diamonds and gemstones in particular, and other luxury goods, as well as attitudes towards the global jewelry industry as a whole, and the manner and locations in which consumers purchase such goods. Our business is subject to rapidly changing consumer preferences and future sales may suffer if the consumer preferences shift away from our product offerings or styles. Changes in fashion could also affect the popularity and, therefore, the value of engagement rings and fine jewelry designs and

products as well as diamonds and gemstones. Any event or circumstance resulting in reduced market acceptance of one or more of our designs or offerings could reduce our sales. Unanticipated shifts in consumer preferences may also result in excess inventory. We recognize that consumer tastes cannot be predicted with certainty and are subject to change, which is compounded by the expanding use of digital and social media by consumers and the speed by which information and opinions are shared. Our product development strategy is to introduce new design collections, primarily jewelry, and/or expand certain existing collections regularly. If we are unable to anticipate and respond in a timely and cost-effective manner to changes in consumer preferences and shopping patterns, including the development of an engaging omnichannel experience for our customers, our sales and profitability could be adversely affected.

We expect a number of factors to cause our results of operations and operating cash flows to fluctuate on a quarterly and annual basis, which may make it difficult to predict our future performance.

Our results of operations could vary significantly from quarter to quarter and year to year because of a variety of factors, many of which are outside of our control. As a result, comparing our results of operations on a period-to-period basis may not be meaningful. In addition to other risk factors discussed in this section, factors that may contribute to the variability of our quarterly and annual results include:

- our ability to accurately forecast net sales and appropriately plan our expenses, capital expenditures and expenditures on inventory;
- changes to financial accounting standards and the interpretation of those standards, which may affect the way we recognize and report our financial results;
- the effectiveness of our internal controls;
- the seasonality of our business; and
- our ability to collect payments from customers on a timely basis.

The impact of one or more of the foregoing and other factors may cause our results of operations to vary significantly. As such, quarter-to-quarter and year-over-year comparisons of our results of operations may not be meaningful and should not be relied upon as an indication of future performance.

Refunds, cancellations, and warranty claims could harm our business.

We allow our customers to return our products, subject to our refund policy, which generally allows customers to return our products within the first 30 days of when a purchase is available for shipment or pickup and receive a full refund or an exchange. At the time of sale, we establish a reserve for returns, based on historical experience and expected future returns, which is recorded as a reduction of sales. If we experience a substantial increase in refunds, our cancellation reserve levels might not be sufficient and our business, financial condition, and results of operations could be harmed.

In addition, we generally offer one complimentary resizing within 60 days of when a purchase is available for shipment or pickup. We could incur significant costs to honor this guarantee. Outside of the 60 day complimentary resize period, rings can be resized for a fee when within jeweler's recommended sizing range.

We face the risk of theft, loss, or damage to our products from inventory or during shipment.

We have experienced and may continue to experience theft, loss, or damage to our products during the course of shipment to our customers by third-party shipping carriers or from our inventory. Additionally, as of December 31, 2023, we had 37 showrooms across the U.S. While these showrooms differ from traditional retailers in that they do not stock significant amounts of inventory to sell to consumers, they do have some products on display, and we allow customers to pick-up and return products purchased online to the store. We have taken steps to prevent loss of, damage to and theft of our products. However, if operational or security measures fail, losses exceed our insurance coverage or we are not able to maintain insurance at a reasonable cost, we could incur significant losses from theft, loss or damage which would substantially harm our business and results of operations.

Russia's invasion of Ukraine, and the military, political, and economic impacts of the conflict there, could have a material adverse effect on our operations and financial condition.

In February 2022, Russian military forces launched a major assault against Ukraine, and sustained conflict, instability, and disruption in the region is continuing. In response to the Russian military action, the U.S., Canada, the United Kingdom, the European Union, and others imposed sanctions against government officials, companies, individuals, regions, and industries in Russia, Ukraine, and Belarus. On March 11, 2022, the U.S. announced sanctions on multiple products of Russian origin, including diamonds. In December 2023, the European Union and the Group of Seven nations announced additional sanctions and import restrictions on diamonds that are mined, processed or produced in Russia. Because approximately 30% of the world's rough diamonds are of Russian origin, these sanctions and import restrictions limiting or prohibiting the importation of Russian diamonds could negatively affect the worldwide supply of diamonds. A reduction in the supply of diamonds could result in increased prices for diamonds, which, in turn, could have a material adverse effect on our operations in the form of increased costs for us and potentially lower margins. It remains unclear what impact the conflict and sanctions have on consumer demand for diamond jewelry. We have no way to predict the outcome of the situation in Ukraine, as the conflict and governmental responses are evolving and are beyond our control. Further escalation of the military conflict, more extensive sanctions, and instability impacting the region each could have a material adverse effect on our results of operations and financial condition.

In addition, as a result of the ongoing conflict between Russia and Ukraine, we may experience other risks, difficulties and challenges in the way we conduct our business and operations generally. For example, there may be an increased risk of cybersecurity attacks due to the current conflict between Russia and Ukraine, including cybersecurity attacks perpetrated by Russia or others at its direction in response to economic sanctions and other actions taken against Russia as a result of its invasion of Ukraine. Any increase in such attacks on us or our third-party providers or other systems could adversely affect our network systems or other operations.

We plan to expand into international markets, which will expose us to significant risks.

As we expand our operations to other countries, significant resources and management attention is required and doing so subjects us to regulatory, economic, and political risks in addition to those we already face in the U.S., Canada, Australia, and the United Kingdom. There are significant risks and costs inherent in doing business in international markets, including:

- difficulty establishing and managing international operations and the increased operations, travel, infrastructure, including establishment of showrooms and customer service operations, and legal compliance costs associated with locations in different countries or regions;
- the need to vary pricing and margins to effectively compete in international markets;
- the need to adapt and localize products for specific countries;
- increased competition from local providers of similar products and services;
- varying degrees of consumer acceptance of e-commerce and omnichannel business, specifically of fine jewelry;
- challenges in obtaining, maintaining, protecting, and enforcing intellectual property rights abroad;
- potentially higher marketing customer support, payment processing, order fulfillment and other operational costs;
- the need to offer content and customer support in various languages;
- increased costs for fraud mitigation;
- difficulties in understanding and complying with local laws, regulations, and customs in other jurisdictions;
- compliance with anti-bribery laws, such as the U.S. Foreign Corrupt Practices Act ("FCPA"), and the U.K. Bribery Act 2010 ("U.K. Bribery Act"), by us, our employees, and our business partners;
- complexity and other risks associated with current and future legal requirements in other countries, including legal requirements related to consumer protection, consumer product safety, and data privacy

frameworks, such as the Personal Information Protection and Electronic Documents Act (“PIPEDA”), the U.K. Data Protection Act, and the U.K. and E.U. General Data Protection Regulations;

- varying levels of internet technology adoption and infrastructure, and increased or varying network and hosting service provider costs;
- tariffs and other non-tariff barriers, such as quotas and local content rules, as well as tax consequences;
- fluctuations in currency exchange rates and the requirements of currency control regulations, which might restrict or prohibit conversion of other currencies into U.S. dollars; and
- political or social unrest or economic instability in a specific country or region in which we operate.

We have limited experience with international regulatory and business environments and market practices and may not be able to penetrate or successfully operate in the markets we choose to enter. In addition, we may incur significant expenses as a result of our international expansion, and we may not be successful. We may face limited brand recognition in certain parts of the world that could lead to non-acceptance or delayed acceptance of our products and services by consumers in new markets. Our failure to successfully manage these risks could harm our international operations and have an adverse effect on our business, financial condition, and operating results.

Our revenue could decline due to changes in credit markets and decisions made by credit providers.

Some of our customers finance their purchase of our products through third-party financing providers. If we are unable to maintain our relationships with our third-party financing providers, there is no guarantee that we will be able to find replacement partners who will provide our customers with financing on similar terms, and our ability to sell our products may be adversely affected. Further, reductions in consumer lending and the availability of consumer credit could limit the number of customers with the financial means to purchase our products. Higher interest rates or other factors could increase our costs or the monthly payments for consumer products financed through other sources of consumer financing. We also offer layaway payments for both U.S. and international customers. After an initial deposit, our layaway plan allows customers to make monthly payments on any purchase. There is a risk that if credit is extended to consumers during times when economic conditions are strong, and then economic conditions subsequently deteriorate, consumers may not meet their then-current payment obligations. In the future, we cannot be assured that third-party financing providers will continue to provide consumers with access to credit or that available credit limits will not be reduced. Such restrictions or reductions in the availability of consumer credit, or the loss of our relationship with our current financing partners, could have an adverse effect on our business, financial conditions, and operating results.

Our business is affected by seasonality.

A larger share of annual revenues traditionally occurs in the fourth quarter because it includes the November and December holiday sales period. Any adverse changes in the economy and other negative impacts on discretionary spending by consumers during peak shopping quarters could unfavorably impact sales and earnings. A number of factors, such as higher unemployment, the level of consumers' disposable income, the availability of credit, interest rates, consumer debt, and asset values, delays in the issuance of tax refunds, or deteriorating economic conditions can impact consumer spending decisions. Jewelry purchases are discretionary and are dependent on many factors relating to discretionary consumer spending, particularly as jewelry is often perceived to be a luxury purchase. In addition, in order to prepare for our peak shopping quarters, we must increase the staffing at our showrooms and order and keep in stock more merchandise than we carry during other parts of the year. This staffing increase and inventory build-up may require us to expend cash faster than is generated by our operations during these periods. We may be unable to increase staffing levels to meet our requirements, and additional staff may not perform at the levels required to support our business. Any unanticipated decrease in demand for our products during such a period could require us to sell excess inventory at a substantial markdown, which could have a material adverse effect on our business, financial condition, and results of operations.

Furthermore, our rapid growth in recent years may obscure the extent to which seasonality trends have affected our business and may continue to affect our business. Accordingly, yearly or quarterly comparisons of our operating results may not be useful and our results in any particular period will not necessarily be indicative of the results to be expected for any future period.

We depend on highly skilled personnel to grow and operate our business, and if we are unable to hire, retain, and motivate our personnel, we may not be able to grow effectively.

Our success and future growth depend largely upon the continued services of our management team, including our Co-Founders, Beth Gerstein and Eric Grossberg. From time to time, there may be changes in our executive management team resulting from the hiring or departure of these personnel. Our executive officers are employed on an at-will basis, which means they may terminate their employment with us at any time. The loss of one or more of our executive officers, or the failure by our executive team to effectively work with our employees and lead our company, could harm our business.

In addition, our future success will depend, in part, upon our continued ability to identify and hire skilled personnel with the skills and technical knowledge that we require, including engineering, software design and programming, jewelry design, marketing, sales, and other key management personnel. Such efforts will require significant time, expense, and attention as there is intense competition for such individuals, particularly in the Denver and San Francisco areas, and new hires require significant training and time before they achieve full productivity, particularly for new products and territories. In addition to hiring new employees, we must continue to focus on developing, motivating, and retaining our best employees, all of whom are at-will employees. If we fail to identify, recruit, and integrate strategic personnel hires, our business, financial condition, and results of operations could be adversely affected. We may need to invest significant amounts of cash and equity to attract and retain new employees, and we may never realize returns on these investments. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached various legal obligations, resulting in a diversion of our time and resources. In addition, prospective and existing employees often consider the value of the equity awards they receive in connection with their employment. If the perceived value of our equity awards declines, experiences significant volatility, or increases such that prospective employees believe there is limited upside to the value of our equity awards, it may adversely affect our ability to recruit and retain key employees. If we are not able to effectively add and retain employees, our ability to achieve our strategic objectives will be adversely impacted, and our business and future growth prospects will be harmed.

Acquisitions, strategic investments, partnerships, or alliances could be difficult to identify, pose integration challenges, divert the attention of management, disrupt our business, dilute stockholder value, and adversely affect our business, financial condition, and results of operations.

Our success will depend, in part, on our ability to expand our services and grow our business in response to changing technologies, customer demands, and competitive pressures. In some circumstances, we may choose to expand our services and grow our business through the acquisition of complementary businesses and technologies rather than through internal development. The identification of suitable acquisition candidates can be difficult, time-consuming, and costly, and we may not be able to successfully complete identified acquisitions. In addition, once we have completed an acquisition, we may not be able to successfully integrate the acquired business. The risks we face in connection with acquisitions include:

- an acquisition may negatively affect our financial results because it may require us to incur charges or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by stockholders and third parties, including intellectual property claims and disputes, may not generate sufficient financial return to offset additional costs and expenses related to the acquisition, or may not perform as well financially as expected;
- we may encounter difficulties or unforeseen expenditures in integrating the business, offerings, technologies, personnel, or operations of any company that we acquire, particularly if key personnel of the acquired company decide not to work for us;
- an acquisition may disrupt our ongoing business, divert resources, increase our expenses, and distract our management;
- an acquisition may result in a delay or reduction of customer purchases for both us and the company acquired due to customer uncertainty about continuity and effectiveness of service from either company;
- we may encounter difficulties in, or may be unable to, successfully sell any acquired products;
- our use of cash to pay for an acquisition would limit other potential uses for our cash;

- if we incur debt to fund such acquisition, such debt may subject us to material restrictions on our ability to conduct our business, as well as financial maintenance covenants; and
- if we issue a significant amount of equity securities in connection with future acquisitions, existing stockholders may be diluted and earnings per share may decrease.

The occurrence of any of these foregoing risks could adversely affect our business, financial condition, and results of operations, and expose us to unknown risks or liabilities.

We may require additional capital to support the growth of our business, and this capital might not be available on acceptable terms, if at all.

We fund our operations primarily through revenue generated from our products and services, borrowings under our Silicon Valley Bank (“SVB”) Credit Agreement (as defined herein), and equity financings. We cannot be certain that our operations will continue to generate sufficient cash to fully fund our ongoing operations and the growth of our business. We intend to continue to make investments to support the development of our products and services and will require additional funds for such development. We may need additional funding for marketing expenses and to develop and expand sales resources, develop new features or enhance our products and services, improve our operating infrastructure, support our operations, or acquire complementary businesses and technologies. Accordingly, we might need or may want to engage in future equity or debt financings to secure additional funds.

Our current debt holders and potential future debt holders have or would have rights senior to holders of common stock to make claims on our assets, and the terms of any debt could restrict our operations, including our ability to pay dividends on our common stock. Furthermore, if we issue additional equity securities, stockholders will experience dilution, and the new equity securities could have rights senior to those of our common stock. Because our decision to issue securities in the future will depend on numerous considerations, including factors beyond our control, we cannot predict or estimate the amount, timing, or nature of any future issuances of debt or equity securities. As a result, our stockholders bear the risk of future issuances of debt or equity securities reducing the value of our common stock and diluting their interests.

Additional financing may not be available on terms favorable to us, if at all and, due to market conditions, we may be unable to access or experience delays in accessing our existing credit facilities. If adequate funds are not available on acceptable terms, we may be unable to invest in future growth opportunities, which could harm our business, financial condition, and results of operations. If we are unable to obtain adequate financing or financing on terms satisfactory to us or access our existing credit facilities, our ability to develop our products and services, support our business growth, and respond to business challenges could be significantly impaired, and our business may be adversely affected.

In addition, the Company maintains the majority of its cash and cash equivalents in accounts with major financial institutions, and our deposits at certain of these institutions exceed insured limits. Market conditions can impact the viability of these institutions. In the event of failure of any of the financial institutions where we maintain our cash and cash equivalents, there can be no assurance that we would be able to access uninsured funds in a timely manner or at all. Any inability to access or delay in accessing these funds could adversely affect our business and financial position.

Our level of indebtedness could have a material adverse effect on our ability to generate sufficient cash to fulfil our obligations under such indebtedness, to react to changes in our business, and to incur additional indebtedness to fund future needs.

As of December 31, 2023, we had outstanding \$60.1 million aggregate principal amount of borrowings under our SVB Term Loan (as defined herein). If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay investments and capital expenditures, or to sell assets, seek additional capital, or restructure or refinance our indebtedness. Our ability to restructure or refinance our current or future debt will depend on the condition of the capital markets and our financial condition at such time. Any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. The terms of existing or future debt instruments may restrict us from adopting some of these alternatives. Any failure to make payments of interest and principal on our outstanding

indebtedness on a timely basis or failure to comply with certain restrictions in our debt instruments would result in a default under our debt instruments. In the event of a default under any of our current or future debt instruments, the lenders could elect to declare all amounts outstanding under such debt instruments to be due and payable.

In addition, our indebtedness under our SVB Term Loan bears interest at variable rates. Because we have variable rate debt, fluctuations in interest rates may affect our cash flows or business, financial condition, and results of operations.

Our SVB Credit Agreement contains financial covenants and other restrictions on our actions that may limit our operational flexibility or otherwise adversely affect our business, financial condition, and results of operations.

The terms of our SVB Credit Agreement include a number of covenants that limit our ability to (subject to negotiated exceptions), among other things, incur additional indebtedness, incur liens on any of our property, enter into agreements related to mergers and acquisitions, dispose of property, or pay dividends and make distributions. In addition, we are required to comply with a minimum fixed charge coverage ratio and maximum leverage ratios, tested on a quarterly basis. The terms of our SVB Credit Agreement may restrict our current and future operations and could adversely affect our ability to finance our future operations or capital needs. In addition, complying with these covenants may make it more difficult for us to successfully execute our business strategy and compete against companies that are not subject to such restrictions.

A failure by us to comply with the covenants specified in the SVB Credit Agreement could result in an event of default under the agreement, which would give the lenders the right to stop advancing money or extending credit and to declare all obligations to pay the loans when due, together with principal interest, fees, and expenses, to be immediately due and payable. If the debt under the SVB Credit Agreement were to be accelerated, we may not have sufficient cash or be able to borrow sufficient funds to refinance the debt or sell sufficient assets to repay the debt, and the lenders may foreclose on collateral, which could adversely affect our business, financial condition and results of operations.

The effects of climate change and related regulatory, customer, and investor responses may adversely impact our business.

The intensifying effects of climate change present physical, liability, and transition risks with both macro and micro implications for companies and financial markets. There is increasing concern that a gradual increase in global average temperatures due to increased concentration of carbon dioxide and other greenhouse gases in the atmosphere are causing significant changes in weather patterns around the globe and an increase in the frequency and severity of natural disasters. Changes in weather patterns and an increased frequency, intensity and duration of extreme weather events (such as floods, droughts, wildfires and severe storms) could, among other things, disrupt the operation of our supply chain, disrupt retail operations and foot traffic at our showrooms, damage or destroy our showrooms, cause shipping delays, and increase our product costs. Such events have the potential to disrupt our operations, cause showroom closures, disrupt the business of our suppliers and impact our customers, all of which may cause us to suffer losses and additional costs to maintain or resume operations. As a result, the effects of climate change could have an adverse impact on our business and results of operations. The Company's failure to identify climate and other environmental risks, to mitigate these risks, or to meet consumer expectations regarding sustainability may adversely affect our ability to attract and retain top talent, negatively impact our reputation and consumer loyalty, disrupt our supply chain, and result in lost sales. In addition, implementing changes to mitigate these risks may result in substantial short and long-term additional operational expenses, which may materially affect our profitability.

In many countries, governmental bodies are increasingly enacting legislation and regulations in response to the potential impacts of climate change. These laws and regulations, which may be mandatory, have the potential to impact our operations indirectly as a result of required compliance by our suppliers. For example, governmental authorities in various countries have proposed, and are likely to continue to propose, legislation and regulation to reduce or mitigate the impacts of climate change, or to require substantial disclosures regarding the same. Various countries and regions are following different approaches to the regulation of climate change, as well as climate-related disclosures, which could increase the complexity of, and potential cost related to complying with, such regulations. For more detail, see our risk factor titled "Environmental, social, and governance matters may adversely impact our business and reputation." As we may take steps to voluntarily mitigate our impact on climate change and

other ESG issues, we may experience increases in energy and transportation costs, operating expenses, capital expenditures or insurance premiums and deductibles. Inconsistency of legislation and regulations among jurisdictions may also affect the costs of compliance with such laws and regulations. Any assessment of the potential impact of future climate change legislation, regulations or industry standards, as well as any international treaties and accords, is uncertain given the wide scope of potential regulatory change in the countries in which we operate or conduct business.

Our business could be adversely affected by extreme weather conditions and natural disasters.

Extreme weather conditions in the areas in which our showrooms are located may negatively impact sales and could negatively affect our business and results of operations in the future. For example, frequent or unusually heavy snowfall, ice storms, or other extreme weather conditions, whether as a result of climate change or otherwise, over a prolonged period could make it difficult for our salesforce or customers to travel to our showrooms and thereby reduce our sales and profitability, particularly if such events occur during the holiday season. In addition, natural disasters such as hurricanes, tornadoes, earthquakes, or wildfires, or a combination of these or other factors, could damage or destroy our facilities or make it difficult for the salesforce or customers to travel our showrooms, thereby negatively affecting our business and results of operations. At times throughout the past several years, volatile conditions have impacted the financial markets. Significant market volatility, and government actions taken in response, may exacerbate some of the risks we face. These actions have a significant effect on macroeconomic conditions, give rise to regional instability, and may impact our ability to manufacture and ship our merchandise for sale to customers. Given that the Company's control over such issues is limited, we may not have the ability to mitigate the impacts of such occurrences on our business and operations.

Risks Related to Our Legal and Regulatory Environment

Failure to comply with laws, regulations, and enforcement activities, or changes in statutory, regulatory, accounting, and other legal requirements could potentially impact our operating and financial results.

We are subject to numerous federal, state, local, and foreign laws and governmental regulations, including those relating to environmental protection, personal injury, intellectual property, consumer product safety, building, land use and zoning requirements, workplace regulations, wage and hour, privacy and information security, consumer protection laws, immigration, and employment law matters. If we fail to comply with existing or future laws or regulations, or if these laws or regulations are violated by importers, manufacturers, or distributors, we may be subject to governmental or judicial fines or sanctions, while incurring substantial legal fees and costs. In addition, our capital expenditures could increase due to remediation measures that may be required if we are found to be noncompliant with any existing or future laws or regulations.

Further, the Federal Trade Commission ("FTC") has authority to investigate and prosecute practices that constitute "unfair trade practices," "deceptive trade practices" or "unfair methods of competition." State attorneys general typically have comparable authority, and many states also permit private plaintiffs to bring actions on the basis of these laws. Federal and state consumer protection laws and regulations may apply to our operations and retail offers.

Our transactions with suppliers and other parties outside the U.S. may subject us to FCPA, U.S. export controls, including the Export Administration Regulations, and trade sanction laws, and similar anti-corruption, anti-bribery, and international trade laws, any violation of which could create substantial liability for us and also harm our reputation. Our operations may subject us to various federal, state, and local laws, regulations, and other requirements pertaining to protection of the environment, public health, and employee safety, including regulations governing the management of hazardous substances and the maintenance of safe working conditions, such as the Occupational Safety and Health Act of 1970, as amended. These laws also apply generally to all our properties. Our failure to comply with these laws can subject us to criminal and civil liabilities. In connection with our philanthropic endeavors, we must also comply with additional federal, state, and local tax and other laws and regulations.

Failure to adequately obtain, maintain, protect and enforce our intellectual property and proprietary rights or prevent third parties from making unauthorized use of such rights could harm our brand, devalue our proprietary content and technology, and adversely affect our ability to compete effectively.

Our success depends to a significant degree on our ability to obtain, maintain, protect, and enforce our intellectual property rights, including our brand, proprietary designs, technology, and know-how. We rely on a variety of mechanisms to protect our intellectual property rights, including trademark and copyright laws, design patent laws, trade secret protection, domain name registration, confidentiality agreements, and other contractual arrangements with our employees, affiliates, clients, strategic partners, and others. However, the protective steps we have taken and plan to take may be inadequate to deter infringement, misappropriation or other violations of our intellectual property, proprietary designs, technology, know-how, and our brand. We may not learn of, or may be unable to detect, the unauthorized use of our intellectual property rights. Even if we are able to detect unauthorized uses, we nevertheless may be unable to effectively enforce our intellectual property rights. Effective intellectual property protection may not be available to us or available in every jurisdiction in which we offer or may offer our products and services. Failure to adequately protect our intellectual property could harm our brand, devalue our proprietary designs, technology, and other intellectual property, and adversely affect our ability to compete effectively. Further, defending our intellectual property rights could result in the expenditure of significant financial resources and divert attention of management, which could adversely affect our business, financial condition, and results of operations.

If we fail to protect our intellectual property rights adequately, our competitors may exploit our intellectual property and develop and commercialize substantially identical products and we may lose an important advantage in the markets in which we compete. In addition, defending our intellectual property rights might entail significant expense. Any trademarks, copyrights, patents, or other intellectual property rights that we have or may obtain may be challenged or circumvented by others or invalidated or held unenforceable through administrative processes, including re-examination, *inter partes* review, interference and derivation proceedings, and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings), or litigation. Any challenge to our intellectual property rights could result in them being narrowed in scope or declared invalid or unenforceable. We do not currently own any issued patents, and even if we seek patent protection in the future, we may be unable to obtain or maintain such protection. In addition, any patents issued from future patent applications or licensed to us in the future may not provide us with competitive advantages or may be successfully challenged by third parties. Further, the laws of some foreign countries may not be as protective of intellectual property rights as those in the U.S., and mechanisms for enforcement of intellectual property rights in those countries may be inadequate. Moreover, policing unauthorized use of our technologies, trade secrets, and intellectual property may be difficult, expensive, and time-consuming. Despite our precautions, it may be possible for unauthorized third parties to copy our offerings and capabilities and use information that we regard as proprietary to create offerings that compete with ours. If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected. The value of our intellectual property could diminish if others assert rights in or ownership of our trademarks and other intellectual property rights, or trademarks that are similar to our trademarks. We may be unable to successfully resolve these types of conflicts to our satisfaction.

We enter into confidentiality and invention assignment agreements with our employees and consultants and enter into confidentiality agreements with other third parties, including suppliers and other partners. However, we cannot guarantee that we have entered into such agreements with each party that has or may have had access to our proprietary information, know-how, and trade secrets or may have developed intellectual property on our behalf. Moreover, no assurance can be given that these agreements will be effective in controlling access to our proprietary information or the distribution, use, misuse, misappropriation, reverse engineering, or disclosure of our proprietary information, know-how, and trade secrets. Invention assignment agreements may not be self-executing, further any of these agreements may be breached, and we may not have adequate remedies for breaches of the confidentiality, invention assignment, or other agreements. Additionally, we may be subject to claims that our employees misappropriated relevant rights from their previous employers. Further, these agreements may not prevent our competitors from independently developing technologies that are substantially equivalent or superior to our offerings and capabilities.

In order to protect our intellectual property rights, we may be required to spend significant resources to monitor and protect our intellectual property rights. Litigation may be necessary in the future to enforce our intellectual property rights and to protect our trade secrets. Litigation brought to protect and enforce our intellectual property rights could be costly, time-consuming, and distracting to management, and could result in the impairment or loss of portions of

our intellectual property. Further, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims, and countersuits attacking the validity and enforceability of our intellectual property rights, and if such defenses, counterclaims, or countersuits are successful, we could lose valuable intellectual property rights. Our inability to protect our intellectual property against unauthorized copying or use, as well as any costly litigation or diversion of our management's attention and resources, could delay further sales or the implementation of our offerings and capabilities, impair the functionality of our offerings and capabilities, delay introductions of new offerings, or injure our reputation.

Third parties may assert rights in or ownership of our trademarks and other intellectual property rights, or trademarks that are similar to our trademarks, or claim that we are infringing, misappropriating or otherwise violating their intellectual property rights. Intellectual property-related litigations and proceedings are expensive and time consuming to defend, and, if resolved adversely, could materially adversely impact our business, financial condition and results of operations.

Our commercial success depends in part on avoiding infringement, misappropriation or other violations of the intellectual property and proprietary rights of third parties and other intellectual property-related disputes. Our registered or unregistered trademarks or trade names may be challenged, infringed, circumvented, diluted or declared generic or determined to be infringing on other marks. Effective trademark protection may not be available or may not be sought in every country in which our products are made available, and contractual disputes may affect the use of marks governed by private contract. Further, at times, competitors may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. In addition, there could be potential trade name or trademark infringement claims brought by owners of other trademarks or trademarks that incorporate variations of our registered or unregistered trademarks or trade names.

Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business may be adversely affected. Similarly, not every variation of a domain name may be available or be registered, even if available. The occurrence of any of these events could result in the erosion of our brand and limit our ability to market our brand using our various domain names, as well as impede our ability to effectively compete against competitors with similar products or technologies.

As we face increasing competition, the possibility of intellectual property rights claims against us grows. Such claims and litigation may involve adverse intellectual property rights holders who have no relevant product revenue, and, therefore, our own issued and pending copyrights, trademarks, and other intellectual property rights may provide little or no deterrence to these rights holders in bringing intellectual property rights claims against us. There may be intellectual property rights held by others that cover significant aspects of our offerings and we cannot assure that we are not infringing or violating, and have not infringed or violated, any third-party intellectual property rights, or that we will not be held to have done so or be accused of doing so in the future. Some third-party intellectual property rights may prove to be extremely broad, and it may not be possible for us to conduct our operations in such a way as to avoid violating those intellectual property rights. In addition, any disputes with third parties with respect to any third-party intellectual property agreements could narrow what we believe to be the scope of our rights to the relevant intellectual property or increase our obligations under such agreements, either of which could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

Any claim that we have violated intellectual property or other proprietary rights of third parties, with or without merit, and whether or not it results in litigation, is settled out of court or is determined in our favor, could be expensive and time-consuming to address and resolve, and could divert the time and attention of management and technical personnel from our business. The litigation process is subject to inherent uncertainties, and we may not prevail in litigation matters regardless of the merits of our position. Intellectual property lawsuits or claims may become extremely disruptive if plaintiffs were to succeed in blocking the trade of our products and services. An adverse outcome of a dispute may result in an injunction and could require us to pay substantial monetary damages, including treble damages and attorneys' fees, if we are found to have willfully infringed a party's intellectual property rights. Further, our liability insurance may not cover potential claims of this type adequately or at all. We may be unable to successfully resolve these types of conflicts to our satisfaction and may be required to enter into costly license agreements, if available at all; be required to pay significant royalty, settlements costs, or damages; be required to rebrand our products; and/or be prevented from selling some of our products. The terms of such a settlement or judgment may require us to cease some or all of our operations or pay substantial amounts to the other

party. Even if we have an agreement to indemnify us against such costs, the indemnifying party may be unable or unwilling to uphold its contractual obligations. In addition, we may have to seek a license to continue practices found to be in violation of a third party's rights. If we are required, or choose to enter into royalty or licensing arrangements, such arrangements may not be available on reasonable terms, or at all, and may significantly increase our operating costs and expenses. Such arrangements may also only be available on a non-exclusive basis, such that third parties, including our competitors, could have access to use the same intellectual property to compete with us. We may also have to redesign our products so they do not infringe, misappropriate, or otherwise violate third-party intellectual property rights, which may not be possible or may require substantial monetary expenditures and time, during which our products may not be available for commercialization or use. Such outcomes would increase our operating expenses, and if we cannot redesign our products in a non-infringing manner or obtain a license for any allegedly infringing aspect of our business, we may be forced to limit our product offerings, which could adversely affect our ability to compete effectively.

We are subject to rapidly changing and increasingly stringent laws, regulations, and industry standards relating to privacy, data security, and data protection. The restrictions and costs imposed by these laws, or our actual or perceived failure to comply with them, could subject us to liabilities that adversely affect our business, operations, and financial performance.

We collect, process, store, and use a wide variety of data from current and prospective customers, including personal information, such as home addresses and geolocation. These activities are regulated by a variety of federal, state, local, and foreign privacy, data security, and data protection laws and regulations, which have become increasingly stringent in recent years. Further, these laws are not consistent, and compliance with them in the event of a widespread data breach is complex and costly.

Domestic privacy and data security laws are complex and changing rapidly. In the U.S., we are subject to a variety of laws and regulations, including regulation by federal government agencies, including the FTC, and state and local agencies. In addition to federal laws such as Section 5 of the Federal Trade Commission Act, the Gramm-Leach-Bliley Act, and the Fair Credit Reporting Act, many states have enacted laws regulating the collection, use, and disclosure of personal information and requiring that companies implement reasonable data security measures. Laws in all states and U.S. territories also require businesses to notify affected individuals, governmental entities, and/or credit reporting agencies of certain security breaches affecting personal information.

In addition, certain states have adopted new or modified privacy and security laws and regulations that may apply to our business. The CCPA imposes obligations on businesses that process personal information of California residents. The enactment of the CCPA is prompting a wave of similar legislative developments in other states in the United States, which creates the potential for a patchwork of overlapping but different state laws. For example, since the CCPA went into effect, comprehensive privacy statutes that share similarities with CCPA are now in effect and enforceable in Virginia, Colorado, Connecticut, and Utah and will soon be enforceable in several other states as well. These comprehensive state privacy laws may increase our compliance costs and potential liability, particularly in the event of a data breach, and could have a material adverse effect on our business, including how we use personal information for advertising and other purposes, our financial condition, and the results of our operations or prospects. Similar laws have been proposed in other states and at the federal level, reflecting a trend toward more stringent privacy legislation in the U.S. The enactment of such laws could have potentially conflicting requirements that would increase the challenge of compliance.

In addition, laws, regulations, and standards covering marketing, advertising, and other activities conducted by telephone, email, mobile devices, and the internet, may be or become applicable to our business, such as the Federal Communications Act, the Federal Wiretap Act, the Electronic Communications Privacy Act, the Telephone Consumer Protection Act (the "TCPA"), the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act"), and similar state consumer protection and communication privacy laws, such as California's Invasion of Privacy Act. In particular, the TCPA imposes significant restrictions on the ability to make telephone calls or send text messages to mobile telephone numbers without the prior consent of the person being contacted. Claims that we have violated the TCPA could be costly to litigate, and if successful, expose us to substantial statutory damages.

Foreign privacy laws are also undergoing a period of rapid change, have become more stringent in recent years, and may increase the costs and complexity of offering our products in new geographies. In Canada, where we operate, PIPEDA, and various provincial laws require that companies give detailed privacy notices to consumers, obtain consent to use personal information, with limited exceptions, allow individuals to access and correct their personal information, and report certain data breaches. In addition, Canada's Anti-Spam Legislation ("CASL") prohibits email marketing without the recipient's consent, with limited exceptions. Failure to comply with PIPEDA, CASL, or provincial privacy or data protection laws could result in significant fines and penalties or possible damage awards.

We operate in the European Union which has adopted strict data privacy and security regulations in its General Data Protection Regulations (the "E.U. GDPR") and the U.K. which has adopted the U.K. General Data Protection Regulation and Data Protection Act 2018 (the "U.K. GDPR" and together with the EU GDPR, the "GDPR"). The GDPR imposes strict requirements on controllers and processors of personal data. The GDPR also provides individuals with various rights in respect of their personal data, including rights of access, erasure, portability, rectification, restriction, and objection.

In addition, the E.U. GDPR and U.K. GDPR each regulate cross-border transfers of personal data out of the EEA and the U.K. We expect the existing legal complexity and uncertainty regarding international personal data transfers to continue. In particular, we expect international transfers to the United States and to other jurisdictions more generally to continue to be subject to enhanced scrutiny by regulators. We generally rely on the EU standard contractual clauses and the U.K. Addendum to the EU standard contractual clauses and the U.K. International Data Transfer Agreement as relevant in our contracts involving transfers of personal information outside the EEA and the U.K., including to the United States. As the enforcement landscape further develops, and supervisory authorities issue further guidance on international data transfers, we could incur additional costs, complaints and/or regulatory investigations or fines; we may have to stop using certain tools and vendors and make other operational changes; and/or it could otherwise affect the manner in which we provide our services, and could adversely affect our business, operations and financial condition.

In addition, the GDPR and other EU and U.K. data protection and electronic privacy laws restrict the ability of companies to market electronically, including through the use of cookies, tracking technologies, e-marketing, and similar technologies on which we rely for our marketing. In addition, recent European court and regulator decisions are driving increased attention to cookies and tracking technologies. If the trend of increasing enforcement by regulators of the strict approach to opt-in consent for all but essential use cases continues, and further requirements advocated by privacy advocates is enforced (e.g. restricting visual differences in opt-in and opt-out options offered in cookie-consent banners, requiring individual cookie opt outs, and requiring reject all buttons), this could lead to substantial costs, require significant systems changes, limit the effectiveness of our marketing activities, divert the attention of our technology personnel, adversely affect our margins, and subject us to additional liabilities. In light of the complex and evolving nature of EU, EU Member State and U.K. privacy laws on cookies and tracking technologies, there can be no assurances that we will be successful in our efforts to comply with such laws; violations of such laws could result in regulatory investigations, fines, orders to cease/ change our use of such technologies, as well as civil claims including class actions, and reputational damage.

Further, because we accept debit and credit cards for payment, we are subject to the Payment Card Industry Data Security Standard ("PCI-DSS") issued by the Payment Card Industry Security Standards Council. PCI-DSS contains compliance guidelines with regard to our security surrounding the physical and electronic storage, processing, and transmission of cardholder data. Compliance with PCI-DSS and implementing related procedures, technology, and information security measures requires significant resources and ongoing attention. Costs and potential problems and interruptions associated with the implementation of new or upgraded systems and technology such as those necessary to achieve compliance with PCI-DSS or with maintenance or adequate support of existing systems could also disrupt or reduce the efficiency of our operations. Any material interruptions or failures in our payment-related systems could have a material adverse effect on our business, financial condition, and results of operations. We also rely on vendors to handle certain PCI-DSS matters and to ensure PCI-DSS compliance. Despite our compliance efforts, we may become subject to claims that we have violated PCI-DSS, based on past, present, and future business practices, which could have an adverse impact on our business and reputation.

In addition, privacy advocates and industry groups have regularly proposed, and may propose in the future, self-regulatory standards by which we are legally or contractually bound. If we fail to comply with these contractual

obligations or standards, we may face substantial liability or fines. Consumer resistance to the collection and sharing of the data used to deliver targeted advertising, increased visibility of consent or “do not track” mechanisms or

opt-out preference signals as a result of industry regulatory or legal developments, the adoption by consumers of browser settings or “ad-blocking” software, and the development and deployment of new technologies could materially impact our ability to collect data or reduce our ability to deliver relevant promotions or media, which could materially impair the results of our operations.

Despite our efforts to comply with all applicable data protection laws and regulations, our interpretations of such laws and regulations and such measures to comply therewith may have been or may prove to be insufficient or incorrect, and we may not be successful in achieving compliance with the rapidly evolving privacy, data security, and data protection requirements discussed above. Any actual or perceived non-compliance could result in litigation and proceedings against us by governmental entities, customers, or others, fines and civil or criminal penalties, limited ability or inability to operate our business, offer services, or market our business in certain jurisdictions, negative publicity and harm to our brand and reputation, and reduced overall demand for our products and services. Such occurrences could adversely affect our business, financial condition, and results of operations. Our general liability insurance may not cover all potential claims to which we are exposed and may not be adequate to indemnify us for the full extent of our potential liabilities.

Regulatory and legislative developments on the use of artificial intelligence and machine learning could adversely affect our use of such technologies in our business.

The regulatory framework around the development and use of machine learning, artificial intelligence and automated decision making is evolving. Many federal, state and foreign government bodies and agencies have introduced, and are currently considering, additional laws and regulations related to the development and integration of artificial intelligence (“AI”), machine learning, and additional emerging data technologies while mitigating or controlling for bias and discrimination in the context of AI and machine learning. For example, in the United States, an executive order was issued in October 2023 on the Safe, Secure and Trustworthy Development and Use of AI, emphasizing the need for transparency, accountability and fairness in the development and use of AI. The order seeks to balance innovation with addressing risks associated with AI by providing eight guiding principles and priorities, such as ensuring that consumers are protected from fraud, discrimination and privacy risks related to AI. Legislation has also been promulgated on the state level. For example, the California Privacy Protection Agency is currently in the process of finalizing regulations under the CCPA regarding the use of automated decision making. In addition, in Europe the European Commission proposed a regulation seeking to establish a comprehensive, risk-based governance framework for AI in the EU market, the EU AI Act, which was politically agreed to in December 2023. The EU AI Act is expected to enter into force in 2024, and the majority of the substantive requirements will apply two years later. It is intended to apply to companies that develop, use and/or provide AI in the EU and includes requirements around transparency, conformity assessments and monitoring, risk assessments, human oversight, security and accuracy and introduces significant fines for noncompliance. There are also specific rules on the use of automated decision making under the GDPR that provide the data subject the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her. Additionally, the existence of automated decision making must be disclosed to the data subject with a meaningful explanation of the logic used in such decision making in certain circumstances and safeguards must be implemented to safeguard individual rights, including the right to obtain human intervention and to contest any decision. If passed, we may incur additional expenses and costs associated with complying with such laws, as well as face heightened potential liability if we are unable to comply with these laws.

In addition, on September 28, 2022, the European Commission proposed two Directives seeking to establish a harmonized civil liability regime for artificial intelligence in the EU, in order to facilitate civil claims in respect of harm caused by artificial intelligence and to include artificial intelligence-enabled products within the scope of the EU’s existing strict liability regime. Once fully applicable, the EU AI Act will have a material impact on the way artificial intelligence is regulated in the EU, and together with developing guidance and/ or decisions in this area, may affect our use of artificial intelligence and our ability to provide and to improve our services, require additional compliance measures and changes to our operations and processes, result in increased compliance costs and potential increases in civil claims against us, and could adversely affect our business, operations and financial condition.

Our business could be adversely impacted by changes in the internet and mobile device accessibility of users. Companies and governmental agencies may restrict access to our products and services, our mobile apps, website, app stores, or the internet generally, which could negatively impact our operations.

Our business depends on customers accessing our products and services via a mobile device or a personal computer, and the internet. We may operate in jurisdictions that provide limited internet connectivity, particularly as we expand internationally. Internet access and access to a mobile device or personal computer are frequently provided by companies with significant market power that could take actions that degrade, disrupt, or increase the cost of consumers' ability to access our products and services. In addition, the internet infrastructure that we and our customers rely on in any particular geographic area may be unable to support the demands placed upon it and could interfere with the speed and availability of our products and services. Any such failure in internet or mobile device or computer accessibility, even for a short period of time, could adversely affect our results of operations.

Governmental agencies in any of the countries in which we or our customers are located could block access to or require a license for our mobile apps, website, or the internet generally for a number of reasons, including security, confidentiality, or regulatory concerns. In addition, companies may adopt policies that prohibit their employees from using our products and services. If companies or governmental entities block, limit, or otherwise restrict customers from accessing our products and services, our business could be negatively impacted, the number of customers could decline or grow more slowly, and our results of operations could be adversely affected.

We are subject to anti-corruption, anti-bribery, anti-money laundering, and similar laws, and non-compliance with such laws can subject us to criminal or civil liability and harm our business, financial condition, and results of operations.

We are subject to the FCPA, U.S. domestic bribery laws, and other anti-corruption and anti-money laundering laws in the countries in which we conduct activities. Anti-corruption and anti-bribery laws have been enforced aggressively in recent years and are interpreted broadly to generally prohibit companies, their employees, and their third-party intermediaries from authorizing, offering, or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector. As we increase our international sales and business, we may engage with business partners and third-party intermediaries to market our offerings and to obtain necessary permits, licenses, and other regulatory approvals. In addition, we or our third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners, and agents, even if we do not explicitly authorize such activities.

We cannot be certain that all of our employees and agents will not take actions in violation of any of the above laws, for which we may be ultimately held responsible. As we increase our international sales and business, our risks under these laws may increase.

Detecting, investigating, and resolving actual or alleged violations of any of the above laws can require a significant diversion of time, resources, and attention from senior management. In addition, noncompliance with anti-corruption, anti-bribery, or anti-money laundering laws could subject us to whistleblower complaints, investigations, sanctions, settlements, prosecution, enforcement actions, fines, damages, other civil or criminal penalties or injunctions, suspension or debarment from contracting with certain persons, reputational harm, adverse media coverage, and other collateral consequences. If any subpoenas or investigations are launched, or governmental or other sanctions are imposed, or if we do not prevail in any possible civil or criminal proceeding, our business, financial condition, and results of operations could be harmed. In addition, responding to any action will likely result in a materially significant diversion of management's attention and resources and significant defense costs and other professional fees.

From time to time, we may be subject to legal proceedings, regulatory disputes, and governmental inquiries that could cause us to incur significant expenses, divert our management's attention, and materially harm our business, financial condition, and operating results.

From time to time, we may be subject to claims, lawsuits, government investigations, and other proceedings involving products liability, competition and antitrust, intellectual property, data privacy and protection, consumer protection, securities, tax, labor and employment, commercial disputes, and other matters that could adversely affect

our business operations and financial condition. As we have grown, we have seen a rise in the number and significance of these disputes and inquiries. Litigation and regulatory proceedings may be protracted and expensive, and the results are difficult to predict. Certain of these matters include speculative claims for substantial or indeterminate amounts of damages and include claims for injunctive relief. Additionally, our litigation costs could be significant. Adverse outcomes with respect to litigation or any of these legal proceedings may result in significant settlement costs or judgments, penalties and fines, or require us to modify our products or services, all of which could negatively affect our revenue growth. The results of litigation, investigations, claims, and regulatory proceedings cannot be predicted with certainty, and determining reserves for pending litigation and other legal and regulatory matters requires significant judgment. There can be no assurance that our expectations will prove correct, and even if these matters are resolved in our favor or without significant cash settlements, these matters, and the time and resources necessary to litigate or resolve them, could harm our business, financial condition, and operating results.

Risks Related to Our Dependence on Third Parties

We face risks associated with suppliers from whom our products are sourced and are dependent on a limited number of suppliers.

We purchase substantially all of the resources for our products including diamonds, gemstones, precious metals, parts, packaging, and raw materials from domestic and international suppliers. Two suppliers of jewelry accounted for 21% of inventory purchases during the year ended December 31, 2023. For our business to be successful, our suppliers must be willing and able to provide us with resources in substantial quantities, in compliance with regulatory requirements, and further in compliance with our ethical, quality and sourcing, and environmentally responsible standards, at acceptable costs and on a timely basis. Our ability to obtain a sufficient selection or volume of resources on a timely basis at competitive prices could suffer as a result of any deterioration or change in our supplier relationships or events that adversely affect our suppliers.

We typically do not enter into long-term contracts with our suppliers, and in some cases do not have formal written contracts, and, as such, we operate without significant contractual assurances of continued supply, pricing or access to resources. Pricing with suppliers is typically established and renegotiated based on product specifications, market conditions, and other variables. Any of our suppliers could discontinue supplying us with desired inputs in sufficient quantities or offer us less favorable terms on future transactions for a variety of reasons. The benefits we currently experience from our supplier relationships could be adversely affected if our suppliers:

- discontinue selling resources to us;
- enter into arrangements with competitors that could impair our ability to source their products, including by giving our competitors exclusivity arrangements or limiting our access to certain resources;
- raise the prices they charge us;
- change pricing terms to require us to pay on delivery or upfront, including as a result of changes in the credit relationships some of our suppliers have with their various lending institutions; or
- lengthen their lead times.

Events that adversely impact our suppliers could impair our ability to obtain adequate and timely supplies. Such events include, among others, difficulties or problems associated with our suppliers' businesses, their financial instability and labor problems, resource quality and safety issues, natural or man-made disasters, inclement weather conditions, war, acts of terrorism and other political instability, economic conditions, shipment issues, the availability of their raw materials, and increased production costs. Our suppliers may be forced to reduce their production, shut down their operations, or file for bankruptcy. The occurrence of one or more of these events could impact our ability to get products to our customers, result in disruptions to our operations, increase our costs, and decrease our profitability.

Our natural diamonds are sourced from approved mines in countries ranked according to risk based on the Gemstones and Jewellery Community Platform Index for Conflict-Affected and High Risk Areas. A majority of the world's supply of rough diamonds is controlled by a small number of diamond mining firms. Furthermore, Our Beyond Conflict Free™ Diamonds are sourced from a select group of diamond suppliers with a robust chain of

custody protocol for their diamonds and are required to source diamonds that originate from specific mine operations or specific countries that have demonstrated their commitment to follow internationally recognized labor, trade, and environmental standards. As a result, any decisions made to restrict the supply of rough diamonds by these firms to our suppliers of Beyond Conflict Free™ Diamonds could substantially impair our ability to acquire such diamonds at commercially reasonable prices, if at all. Generally, diamond prices depend on the attributes of the diamond. Similarly, we craft our gold and silver fine jewelry from primarily recycled precious metals, and we work with our suppliers to source recycled platinum when available and from refiners that are known to use recycled materials in their platinum products. Global sourcing and foreign trade involve numerous factors and uncertainties beyond our control, including increased shipping costs, the imposition of additional import or trade restrictions, including legal or economic restrictions on overseas suppliers' ability to produce and deliver resources, increased custom duties and tariffs, unforeseen delays in customs clearance of goods, more restrictive quotas, loss of a most favored nation trading status, currency exchange rates, transportation delays, port of entry issues and foreign government regulations, political instability, and economic uncertainties in the countries from which we or our suppliers source our products. Our sourcing operations may also be hurt by health concerns regarding infectious diseases in countries in which our resources are produced. Moreover, negative press or reports about internationally sourced resources may sway public opinion, and thus customer confidence, away from the products sold in our stores. These and other issues affecting our international suppliers or internationally sourced resources could have a material adverse effect on our business, financial condition, and results of operations.

Material changes in the pricing practices of our suppliers could negatively impact our profitability. Our suppliers may also increase their pricing if their raw materials become more expensive. The resources used to manufacture our products are subject to availability constraints and price volatility. Our suppliers may pass the increase in sourcing costs to us through price increases, thereby impacting our margins. Moreover, many suppliers and manufacturers of diamonds, as well as retailers of diamonds and diamond jewelry, are vertically integrated, and we expect they will continue to vertically integrate their operations either by developing retail channels for the products they manufacture or acquiring sources of supply, including, without limitation, diamond mining operations. To the extent such vertical integration efforts are successful, some of the fragmentation in the existing diamond supply chain could be eliminated, our ability to obtain an adequate supply of diamonds and fine jewelry from multiple sources could be limited, and our competitors may be able to obtain diamonds at lower prices.

In addition, some of our suppliers may not have the capacity to supply us with sufficient resources to keep pace with our growth plans, especially if we plan to manufacture significantly greater amounts of inventory. In such cases, our ability to pursue our growth strategy will depend in part upon our ability to develop new supplier relationships. Some of our suppliers are owned by vertically-integrated companies with retail divisions that compete with us and, as such, we are exposed to the risk that these suppliers may not be willing, or may become unwilling, to sell their products to us on acceptable terms, or at all.

We rely on a limited number of suppliers to supply the majority of the resources for our products and are thus exposed to concentration of supplier risk. If we were to lose any significant supplier, we may be unable to establish additional or replacement sources for our products that meet our quality controls and standards in a timely manner or on commercially reasonable terms, if at all.

Our business relies on third party providers of cloud services, and any disruption of, or interference with, our use of cloud services could adversely affect our business, financial condition, or results of operations.

We outsource substantially all of our core cloud infrastructure services to third-party providers, including Amazon Web Services, Microsoft, Salesforce and Oracle. The third-party providers provide the cloud computing infrastructure we use to host our website and mobile apps, serve our customers, and support our operations and many of the internal tools we use to operate our business. Our website, mobile apps, and internal tools use computing, storage, data transfer, and other functions and services provided by third parties. We do not have control over the operations of the facilities of the third-party providers that we use. The third-party providers' facilities may be vulnerable to damage or interruption from earthquakes, hurricanes, floods, fires, cybersecurity attacks, terrorist attacks, power losses, telecommunications failures, and other events beyond our control. In the event that any third-party provider's systems or service abilities are hindered by any of the events discussed above, particularly in a region where our website is mainly hosted, our ability to operate our business may be impaired. A decision to close the facilities without adequate notice or other unanticipated problems or disruptions could result in lengthy

interruptions to our business. All of the aforementioned risks may be exacerbated if our business continuity and disaster recovery plans prove to be inadequate.

Additionally, data stored with any third-party provider is vulnerable to experiencing cyberattacks from computer malware, ransomware, viruses, social engineering (including phishing attacks), denial-of-service or other attacks, employee theft or misuse and general hacking. Any of these security incidents could result in unauthorized access to, damage to, disablement or encryption of, use or misuse of, disclosure of, modification of, destruction of, or loss of our data or our customers' data, or disrupt our ability to provide our products and services, including due to any failure by us to properly configure our third-party provider environment. Our business' continuing and uninterrupted performance is critical to our success. Customers may become dissatisfied by any system failure that interrupts our ability to provide our products and services to them. We may not be able to easily switch our current operations to another cloud or other data center provider if there are disruptions or interference with our use of a third-party provider, and, even if we do switch our operations, other cloud and data center providers are subject to the same risks. Sustained or repeated system failures would reduce the attractiveness of our products and services, harm our reputation, and potentially reduce net sales. Moreover, negative publicity arising from these types of disruptions could damage our reputation and may adversely impact our business. For more information, see “—We rely heavily on our information technology systems, as well as those of our third-party vendors and service providers, for our business to effectively operate and to safeguard confidential information and any significant failure, inadequacy or interruption of these systems, security breaches or loss of data could materially adversely affect our business, financial condition and operations.”

The third-party providers do not have an obligation to renew their agreements with us on terms acceptable to us or at all. Although alternative data center providers could host our business on a substantially similar basis to our current third-party providers, transitioning our current cloud infrastructure to alternative providers could potentially be disruptive, and we could incur significant one-time costs. If we are unable to renew our agreement with our third-party providers on commercially acceptable terms, if our agreements with our third-party providers are prematurely terminated, or if we add additional infrastructure providers, we may experience costs or downtime in connection with the transfer to, or the addition of, new data center providers. If any of our infrastructure providers increase the costs of their services, our business, financial condition, or results of operations could be materially and adversely affected.

We rely on our suppliers, third-party carriers, and third-party jewelers as part of our fulfillment process, and these third parties may fail to adequately serve our customers.

We significantly rely on our suppliers to promptly ship us diamonds and other fine jewelry ordered by our customers. Any failure by our suppliers to sell and ship such products to us in a timely manner will have an adverse effect on our ability to fulfill customer orders and harm our business and results of operations. Our suppliers, in turn, rely on third-party carriers to ship products to us, and in some cases, directly to our customers. We also rely on a limited number of third-party carriers to deliver inventory to us and product shipments to our customers. We and our suppliers are therefore subject to the risks, including employee strikes, inclement weather, power outages, national disasters, rising fuel costs, and financial constraints associated with such carriers' abilities to provide delivery services to meet our and our suppliers' shipping needs. In addition, for some customer orders we rely on third-party jewelers to assemble and ship the product. Our suppliers', third-party carriers', or third-party jewelers' failure to deliver high-quality products to us or our customers in a timely manner or to otherwise adequately serve our customers would damage our reputation and brand, and substantially harm our business and results of operations.

We rely on a limited number of contract manufacturers and logistics partners for our products. A loss of any of these partners could negatively affect our business.

We rely on a limited number of contract manufacturers and logistics partners to manufacture and transport our products. In the event of interruption from any of our contract manufacturers, we may not be able to increase capacity from other sources or develop alternate or secondary sources without incurring material additional costs and substantial delays. Our contract manufacturers' primary facilities are principally located in the U.S., India, Mexico, and Thailand, and furthermore are geographically concentrated in limited regions of each. Thus, our business could be adversely affected if one or more of our manufacturers is impacted by a natural disaster, a pandemic, or other interruption at a particular location. Such interruptions may be due to, among other things,

temporary closures of our facilities or those of our contract manufacturers, and other vendors in our supply chain; restrictions on travel or the import/export of goods and services from certain ports that we use; and local quarantines.

If we experience a significant increase in demand for our products that cannot be satisfied adequately through our existing manufacturing channels, or if we need to replace an existing manufacturer, we may be unable to supplement or replace them on terms that are acceptable to us, which may undermine our ability to deliver our products in a timely manner. For example, if we require additional manufacturing support, it may take a significant amount of time to identify a manufacturer that has the capability and resources to build our products to our specifications in sufficient volume. Identifying suitable manufacturers and logistics partners is an extensive process that requires us to become satisfied with their quality control, technical capabilities, responsiveness and service, financial stability, regulatory compliance, and labor and other ethical practices. Accordingly, a loss of any of our contract manufacturers or logistics partners could have an adverse effect on our business, financial condition, and operating results.

We rely on third parties for elements of the payment processing infrastructure underlying our business and are subject to risks related to online payment methods.

The convenient payment mechanisms provided by our business are key factors contributing to the development of our business. We rely on third parties for elements of our payment processing infrastructure to accept payments from customers and remit payments to suppliers. These third parties may refuse to renew our agreements with them on commercially reasonable terms or at all. If these companies become unwilling or unable to provide these services to us on acceptable terms or at all, our business may be disrupted. For certain payment methods, including credit and debit cards, and third-party financing sources, we generally pay interchange fees and other processing and gateway fees, and such fees result in significant costs. In addition, online payment providers are under continued pressure to pay increased fees to banks to process funds, and there is no assurance that such online payment providers will not pass any increased costs on to us. If these fees increase over time, our operating costs will increase, which could adversely affect our business, financial condition, and results of operations.

Future failures of the payment processing infrastructure underlying our business could cause customers to lose trust in our payment operations and could cause them to instead turn to our competitors' products and services. If the quality or convenience of our payment processing infrastructure declines as a result of these limitations or for any other reason, the attractiveness of our business to customers could be adversely affected. If we are forced to migrate to other third-party payment service providers for any reason, the transition would require significant time and management resources, and may not be as effective, efficient, or well-received by our customers.

As our business changes, we also may be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. If we fail to comply with the rules or requirements of any provider of a payment method we accept, if the volume of fraud in our transactions limits or terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, we may, among other things, be subject to fines or higher transaction fees and may lose, or face restrictions placed upon, our ability to accept credit card and debit card payments from customers or facilitate other types of online payments. If any of these events were to occur, our business, financial condition, and results of operations could be materially adversely affected.

We occasionally receive orders placed with fraudulent credit card or other payment data, including stolen credit card numbers, or from clients who have closed bank accounts or have insufficient funds in open bank accounts to satisfy payment obligations. We may suffer losses as a result of orders placed with fraudulent credit card data or other fraudulent payment data even if the associated financial institution approved payment of the orders. Under current credit card practices and the practices of our other payment processing partners, we may be liable for fraudulent credit card or other payment transactions. If we are unable to detect or control credit card or other fraud, our liability for these transactions could harm our business, financial condition, and results of operations.

We rely primarily on third-party insurance policies to insure our operations-related risks. If our insurance coverage is insufficient for the needs of our business or our insurance providers are unable to meet their obligations, we may not be able to mitigate the risks facing our business, which could adversely affect our business, financial condition, and results of operations.

We procure third-party insurance policies to cover various operations-related risks, including employment practices liability, workers' compensation, property and casualty, cybersecurity, directors' and officers' liability, and general business liabilities. We rely on a limited number of insurance providers, and should such providers discontinue or increase the cost of coverage, we cannot guarantee that we would be able to secure replacement coverage on reasonable terms or at all. If our insurance carriers change the terms of our policies in a manner not favorable to us, our insurance costs could increase, and our ability to adequately ensure the risks to our business could be impaired. A portion of our inventory is in the custody of third parties such as our manufacturing partners, at any given time, and we are reliant on the adequacy of their insurance policies to cover potential loss or damage of our inventory in the custody of third parties. Any failure of such insurance policies to cover an event of loss or damage to inventory in the custody of third parties may result in a material loss to us. Further, if the insurance coverage we maintain is not adequate to cover losses that occur, or if we are required to purchase additional insurance for other aspects of our business, we could be liable for significant additional costs. Additionally, if any of our insurance providers becomes insolvent, it would be unable to pay any operations-related claims that we make.

If the amount of one or more operations-related claims were to exceed our applicable aggregate coverage limits, we would bear the excess, in addition to amounts already incurred in connection with deductibles, self-insured retentions, co-insurance, or otherwise paid by our insurance policy. Insurance providers have raised premiums and deductibles for many businesses and may do so in the future. As a result, our insurance and claims expense could increase, or we may decide to raise our deductibles or self-insured retentions when our policies are renewed or replaced. Our business, financial condition, and results of operations could be adversely affected if the cost per claim, premiums, the severity of claims, or the number of claims significantly exceeds our historical experience and coverage limits; we experience a claim in excess of our coverage limits; our insurance providers fail to pay on our insurance claims; we experience a claim for which coverage is not provided; or the number of claims under our deductibles or self-insured retentions differs from historical averages.

Risks Related to Our Organizational Structure

Our principal asset is our interest in Brilliant Earth, LLC, and, as a result, we depend on distributions from Brilliant Earth, LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement (as defined herein). Brilliant Earth, LLC's ability to make such distributions may be subject to various limitations and restrictions.

We are a holding company and have no material assets other than our ownership of LLC Interests (as defined herein). As such, we have no independent means of generating revenue or cash flow, and our ability to pay our taxes and operating expenses or declare and pay dividends in the future, if any, will be dependent upon the financial results and cash flows of Brilliant Earth, LLC and distributions we receive from Brilliant Earth, LLC. There can be no assurance that Brilliant Earth, LLC will generate sufficient cash flow to distribute funds to us or that applicable state law and contractual restrictions, including negative covenants in any applicable debt instruments, will permit such distributions. Brilliant Earth, LLC is currently subject to debt instruments or other agreements that restrict its ability to make distributions to us, which may in turn affect Brilliant Earth, LLC's ability to pay distributions to us and thereby adversely affect our cash flows.

Brilliant Earth, LLC is treated as a partnership for U.S. federal income tax purposes and, as such, generally is not subject to any entity-level U.S. federal income tax. Instead, any taxable income of Brilliant Earth, LLC is allocated to holders of LLC Interests, including us. Accordingly, we incur income taxes on our allocable share of any net taxable income of Brilliant Earth, LLC. Under the terms of the LLC Agreement, Brilliant Earth, LLC is obligated, subject to various limitations and restrictions, including with respect to our debt agreements, to make tax distributions to holders of LLC Interests, including us. In addition to tax expenses, we will also incur expenses related to our operations, including payments under the Tax Receivable Agreement, which we expect will be significant. We intend, as its managing member, to cause Brilliant Earth, LLC to make cash distributions to the holders of LLC Interests in an amount sufficient to (1) fund all or part of their tax obligations in respect of taxable

income allocated to them and (2) cover our operating expenses, including payments under the Tax Receivable Agreement. However, Brilliant Earth, LLC's ability to make such distributions may be subject to various limitations and restrictions, such as restrictions on distributions that would either violate any contract or agreement to which Brilliant Earth, LLC is then a party, including debt agreements, or any applicable law, or that would have the effect of rendering Brilliant Earth, LLC insolvent. If we do not have sufficient funds to pay tax or other liabilities, or to fund our operations (including, if applicable, as a result of an acceleration of our obligations under the Tax Receivable Agreement), we may have to borrow funds, which could materially and adversely affect our liquidity and financial condition, and subject us to various restrictions imposed by any lenders of such funds. To the extent we are unable to make timely payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement resulting in the acceleration of payments due under the Tax Receivable Agreement. In addition, if Brilliant Earth, LLC does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired, although we do not anticipate declaring or paying any cash dividends on our Class A common stock and Class D common stock in the foreseeable future.

Under the LLC Agreement, we intend to cause Brilliant Earth, LLC, from time to time, to make distributions in cash to its equityholders (including us) in amounts sufficient to cover the taxes imposed on their allocable share of taxable income of Brilliant Earth, LLC. As a result of (1) potential differences in the amount of net taxable income allocable to us and to Brilliant Earth, LLC's other equityholders, (2) the lower tax rate applicable to corporations as opposed to individuals, and (3) certain tax benefits that we anticipate from (a) future purchases or redemptions of LLC Interests from the Continuing Equity Owners, (b) payments under the Tax Receivable Agreement and (c) any acquisition of interests in Brilliant Earth, LLC from other equityholders, these tax distributions may be in amounts that exceed our tax liabilities. The Board will determine the appropriate uses for any excess cash so accumulated, which may include, among other uses, the payment of a cash dividend on our Class A common stock and Class D common stock, the payment of obligations under the Tax Receivable Agreement, the declaration of a stock dividend on our Class A common stock and Class D common stock, along with the purchase of a corresponding number of common units in Brilliant Earth, LLC, or the purchase of additional common units in Brilliant Earth, LLC, along with a recapitalization of all of the outstanding common units in Brilliant Earth, LLC and the payment of other expenses. We have no obligation to distribute such cash (or other available cash) to our stockholders. No adjustments to the exchange ratio for LLC Interests and corresponding shares of Class A common stock or Class D common stock, as applicable, will be made as a result of any cash distribution by us or any retention of cash by us. To the extent we do not distribute such excess cash as dividends on our Class A common stock or Class D common stock, or otherwise use the cash as described above, we may take other actions with respect to such excess cash, for example, holding such excess cash, or lending it (or a portion thereof) to Brilliant Earth, LLC, which may result in shares of our Class A common stock and Class D common stock increasing in value relative to the value of LLC Interests. The holders of LLC Interests may benefit from any value attributable to such cash balances if they acquire shares of Class A common stock or Class D common stock, as applicable, in exchange for their LLC Interests, notwithstanding that such holders may have participated previously as holders of LLC Interests in distributions that resulted in such excess cash balances.

The Tax Receivable Agreement with the Continuing Equity Owners requires us to make cash payments to them in respect of certain tax benefits to which we may become entitled, and we expect that such payments will be substantial.

We are party to a Tax Receivable Agreement with Brilliant Earth, LLC and each of the Continuing Equity Owners. Under the Tax Receivable Agreement, we are required to make cash payments to the Continuing Equity Owners equal to 85% of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (1) increases in Brilliant Earth Group, Inc.'s allocable share of the tax basis of Brilliant Earth, LLC's assets resulting from (a) Brilliant Earth Group, Inc.'s purchase (or deemed purchase) of LLC Interests from each Continuing Equity Owner, (b) any future redemptions or exchanges of LLC Interests for Class A common stock or Class D common stock (or cash), and (c) certain distributions (or deemed distributions) by Brilliant Earth, LLC; and (2) certain tax benefits arising from payments under the Tax Receivable Agreement. We expect that the amount of the cash payments we will be required to make under the Tax Receivable Agreement will be substantial. Any payments made by us to the Continuing Equity Owners under the Tax Receivable Agreement will not be available for reinvestment in our business and will generally reduce the amount of overall cash flow that might have otherwise been available to us. To the extent that we are unable to make timely payments under the Tax Receivable Agreement

for any reason, the unpaid amounts will be deferred and will accrue interest until paid by us; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement resulting in the acceleration of payments due under the Tax Receivable Agreement. Payments under the Tax Receivable Agreement are not conditioned upon continued ownership of Brilliant Earth, LLC by the exchanging Continuing Equity Owners. Furthermore, our future obligation to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are the subject of the Tax Receivable Agreement. The actual increase in tax basis, and the actual utilization of any resulting tax benefits, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors: including the timing of redemptions by the Continuing Equity Owners; the price of shares of our Class A common stock at the time of the exchange; the extent to which such exchanges are taxable; the amount of gain recognized by such Continuing Equity Owners; the amount and timing of the taxable income allocated to us or otherwise generated by us in the future; the portion of our payments under the Tax Receivable Agreement constituting imputed interest; and the federal and state tax rates then applicable.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Continuing Equity Owners that will not benefit holders of our Class A common stock to the same extent that they will benefit the Continuing Equity Owners.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Continuing Equity Owners but will not benefit the holders of our Class A common stock to the same extent that it will benefit the Continuing Equity Owners. We entered into the Tax Receivable Agreement with Brilliant Earth, LLC and the Continuing Equity Owners in connection with the completion of our initial public offering. The Tax Receivable Agreement provides for the payment by us to the Continuing Equity Owners of 85% of the amount of tax benefits, if any, that we actually realize, or in some circumstances are deemed to realize, as a result of (1) increases in Brilliant Earth Group, Inc.'s allocable share of the tax basis of Brilliant Earth, LLC's assets resulting from (a) Brilliant Earth Group, Inc.'s purchase (or deemed purchase) of LLC Interests from each Continuing Equity Owner, (b) any future redemptions or exchanges of LLC Interests for Class A common stock or Class D common stock (or cash), and (c) certain distributions (or deemed distributions) by Brilliant Earth, LLC; and (2) certain tax benefits arising from payments under the Tax Receivable Agreement. Although we will retain 15% of the amount of such tax benefits, this and other aspects of our organizational structure may adversely impact the future trading market for our Class A common stock.

In certain cases, payments under the Tax Receivable Agreement to the Continuing Equity Owners may be accelerated or significantly exceed any actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement.

The Tax Receivable Agreement provides that if (1) we materially breach any of our material obligations under the Tax Receivable Agreement, (2) certain mergers, asset sales, other forms of business combinations or other changes of control occur after the consummation of our initial public offering, or (3) we elect an early termination of the Tax Receivable Agreement, then our obligations, or our successor's obligations, under the Tax Receivable Agreement to make payments will be determined based on certain assumptions, including an assumption that we will have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the Tax Receivable Agreement.

As a result of the foregoing, we would be required to make an immediate cash payment equal to the present value of the anticipated future tax benefits that are the subject of the Tax Receivable Agreement, based on certain assumptions (including that we earn sufficient taxable income to realize all potential tax benefits that are subject to the Tax Receivable Agreement), which payment may be made significantly in advance of the actual realization, if any, of such future tax benefits. Such cash payment to the Continuing Equity Owners could be greater than the specified percentage of any actual benefits we ultimately realize in respect of the tax benefits that are subject to the Tax Receivable Agreement. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that we will be able to fund or finance our obligations under the Tax Receivable Agreement. We may need to incur

debt to finance payments under the Tax Receivable Agreement to the extent our cash resources are insufficient to meet our obligations under the Tax Receivable Agreement as a result of timing discrepancies or otherwise.

We will not be reimbursed for any payments made to the Continuing Equity Owners under the Tax Receivable Agreement in the event that any tax benefits are disallowed.

Payments under the Tax Receivable Agreement are based on the tax reporting positions that we determine, and the U.S. Internal Revenue Service (the "IRS"), or another tax authority, may challenge all or part of the tax basis increases or other tax benefits we claim, as well as other related tax positions we take, and a court could sustain such challenge. If the outcome of any such challenge would reasonably be expected to adversely affect the rights and obligations of Mainsail (as defined herein) or Just Rocks (as defined herein) in any material respect under the Tax Receivable Agreement, then we will not be permitted to settle such challenge without the consent (not to be unreasonably withheld or delayed) of Mainsail or Just Rocks, as applicable. The interests of Mainsail and Just Rocks in any such challenge may differ from or conflict with our interests and your interests, and Mainsail and Just Rocks may exercise their consent rights relating to any such challenge in a manner adverse to our interests and your interests. We will not be reimbursed for any cash payments previously made to the Continuing Equity Owners under the Tax Receivable Agreement in the event that any tax benefits initially claimed by us and for which payment has been made to a Continuing Equity Owner are subsequently challenged by a taxing authority and are ultimately disallowed. Instead, any excess cash payments made by us to a Continuing Equity Owner will be netted against future cash payments, if any, that we might otherwise be required to make to such Continuing Equity Owner, under the terms of the Tax Receivable Agreement. However, we might not determine that we have effectively made an excess cash payment to a Continuing Equity Owner for a number of years following the initial time of such payment and, if any of our tax reporting positions are challenged by a taxing authority, we will not be permitted to reduce any future cash payments under the Tax Receivable Agreement until any such challenge is finally settled or determined. Moreover, the excess cash payments we made previously under the Tax Receivable Agreement could be greater than the amount of future cash payments against which we would otherwise be permitted to net such excess. The applicable U.S. federal income tax rules for determining applicable tax benefits we may claim are complex and factual in nature, and there can be no assurance that the IRS or a court will not disagree with our tax reporting positions. As a result, payments could be made under the Tax Receivable Agreement significantly in excess of any actual cash tax savings that we realize in respect of the tax attributes with respect to a Continuing Equity Owner that are the subject of the Tax Receivable Agreement.

Changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition.

We are subject to taxation by U.S. federal, state, local, and foreign tax authorities. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- allocation of expenses to and among different jurisdictions;
- changes to our assessment about our ability to realize, or in the valuation of, our deferred tax assets that are based on estimates of our future results, the prudence and feasibility of possible tax planning strategies, and the economic and political environments in which we do business;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of stock-based compensation;
- costs related to intercompany reorganization;
- changes in tax laws, tax treaties, regulations or interpretations thereof;
- the outcome of current and future tax audits, examinations, or administrative appeals;
- lower than anticipated future earnings in jurisdictions where we have lower statutory tax rates and higher than anticipated future earnings in jurisdictions where we have higher statutory tax rates; and
- limitations or adverse findings regarding our ability to do business in some jurisdictions.

Any changes in U.S. or foreign taxation may increase our worldwide effective tax rate and harm our business, financial condition, and results of operations. In particular, new income or other tax laws or regulations could be

enacted at any time, which could adversely affect our business operations and financial performance. Further, existing tax laws and regulations could be interpreted, modified, or applied adversely to us.

If we were deemed to be an investment company under the Investment Company Act of 1940, as amended (the “1940 Act”), including as a result of our ownership of Brilliant Earth, LLC, applicable restrictions could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

Under Sections 3(a)(1)(A) and (C) of the 1940 Act, a company generally will be deemed to be an “investment company” for purposes of the 1940 Act if (1) it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities, or (2) it engages, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities and it owns or proposes to acquire investment securities having a value exceeding 40% of the value of its total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis. We do not believe that we are an “investment company,” as such term is defined in either of those sections of the 1940 Act.

We and Brilliant Earth, LLC intend to conduct our operations so that we will not be deemed an investment company. As the sole managing member of Brilliant Earth, LLC, we control and operate Brilliant Earth, LLC. On that basis, we believe that our interest in Brilliant Earth, LLC is not an “investment security” as that term is used in the 1940 Act. However, if we were to cease participation in the management of Brilliant Earth, LLC, or if Brilliant Earth, LLC itself becomes an investment company, our interest in Brilliant Earth, LLC could be deemed an “investment security” for purposes of the 1940 Act.

We and Brilliant Earth, LLC intend to conduct our operations so that we will not be deemed an investment company. If it were established that we were an unregistered investment company, there would be a risk that we would be subject to monetary penalties and injunctive relief in an action brought by the SEC, that we would be unable to enforce contracts with third parties and that third parties could seek to obtain rescission of transactions undertaken during the period it was established that we were an unregistered investment company. If we were required to register as an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

Risks related to the Ownership of Our Class A Common Stock

The Continuing Equity Owners have significant influence over us, including control over decisions that require the approval of stockholders.

The Continuing Equity Owners control, in aggregate, approximately 97.7% of the voting power represented by all our outstanding classes of stock. As a result, the Continuing Equity Owners exercise significant influence over all matters requiring stockholder approval, including the election and removal of directors and the size of our Board, any amendment of our amended and restated certificate of incorporation or bylaws, and any approval of significant corporate transactions (including a sale of all or substantially all of our assets), and will continue to have significant control over our business, affairs, and policies, including the appointment of our management. The directors that the Continuing Equity Owners have the ability to elect through their voting power have the authority to incur additional debt, issue or repurchase stock, declare dividends, and make other decisions that could be detrimental to stockholders.

Certain members of our Board are appointed by and/or affiliated with the Continuing Equity Owners. The Continuing Equity Owners can take actions that have the effect of delaying or preventing a change of control of us or discouraging others from making tender offers for our shares, which could prevent stockholders from receiving a premium for their shares. These actions may be taken even if other stockholders oppose them. The concentration of voting power with the Continuing Equity Owners may have an adverse effect on the price of our Class A common stock. The Continuing Equity Owners may have interests that are different from yours and may vote in a way with which other stockholders disagree and that may be adverse to interests of our other stockholders.

Our stock price may change significantly and you could lose all or part of your investment as a result.

The price of shares of our Class A common stock has fluctuated in the past and may continue to fluctuate in response to a variety of factors, including the following:

- technological developments and changes in consumer behavior in our industry;
- security breaches related to our systems or those of our affiliates or strategic partners;
- changes in general economic or market conditions or trends in our industry or the economy as a whole and, in particular, in the jewelry and consumer retail environment;
- changes in market valuations of, or earnings and other announcements by, companies in our industry;
- declines in the market prices of stocks generally, particularly those of jewelry and consumer retail;
- strategic actions by us or our competitors;
- announcements by us, our competitors or our strategic partners of significant contracts, new products, acquisitions, joint marketing relationships, joint ventures, other strategic relationships, or capital commitments;
- changes in business or regulatory conditions;
- future sales of our Class A common stock or other securities;
- investor perceptions of the investment opportunity associated with our Class A common stock relative to other investment alternatives;
- the public's response to press releases or other public announcements by us or third parties, including our filings with the SEC;
- announcements relating to litigation or increases in compliance or enforcement inquiries and investigations by regulatory authorities;
- guidance, if any, that we provide to the public, any changes in this guidance, or our failure to meet this guidance;
- changes in accounting principles;
- short sales, hedging and other derivative transactions involving our common stock; and effects of recession or economic growth in the United States and abroad, rising high inflation and interest rates, bank failures, fuel prices, international currency fluctuations, corruption, political instability, acts of war, including the conflicts in Europe and the Middle East, acts of terrorism, an outbreak of highly infectious or contagious diseases, or responses to these events; and
- the other factors described in this "Risk Factors" section of this Annual Report on Form 10-K.

Furthermore, the stock market may experience extreme volatility that, in some cases, may be unrelated or disproportionate to the operating performance of particular companies. These broad market and industry fluctuations may adversely affect the market price of our Class A common stock, regardless of our actual operating performance. In addition, price volatility may be greater if the public float and trading volume of our Class A common stock is low.

In the past, following periods of market volatility, stockholders have instituted securities class action litigation. If we become involved in securities litigation, it could have a substantial cost and divert resources and the attention of management from our business regardless of the outcome of such litigation.

Our multi-class structure may have a negative impact on the market price of our Class A common stock.

We cannot predict whether our multi-class structure will result in a lower or more volatile market price of our Class A common stock, in adverse publicity, or other adverse consequences. Certain investors, including large institutional investors, may prefer companies that do not have multiple share classes or may have investment guidelines that preclude them from investing in companies that have multiple share classes. In addition, certain index providers have previously implemented, and may in the future determine to implement, restrictions on including companies with multiple class share structures in certain of their indices. For example, from July 2017 to April 2023, S&P Dow

Jones excluded companies with multiple share classes from the S&P Composite 1500 (composed of the S&P 500, S&P MidCap 400, and S&P SmallCap 600). Indices have discretion to reassess and implement such policies with respect to multi-class differing voting right structures. Under any such policies, our multi-class capital structure would make us ineligible for inclusion in any of these indices. As a result, the market price of our Class A common stock could be materially adversely affected.

We are a “controlled company” within the meaning of the rules of the Nasdaq Stock Market LLC (“Nasdaq”) and, as a result, qualify for exemptions from certain corporate governance requirements and holders of our Class A common stock may not have the same protections afforded to stockholders of companies that are subject to such corporate governance requirements.

Mainsail and our Founders (as defined herein) have more than 50% of the voting power for the election of directors, and, as a result, we are considered a “controlled company” for the purposes of the corporate governance rules of Nasdaq. As such, we qualify for exemptions from certain corporate governance requirements, including the requirements to have a majority of independent directors on our Board, an entirely independent nominating and corporate governance committee, an entirely independent compensation committee or to perform annual performance evaluations of the nominating and corporate governance and compensation committees.

The corporate governance requirements and specifically the independence standards are intended to ensure that directors who are considered independent are free of any conflicting interest that could influence their actions as directors. As a result, we are not subject to certain corporate governance requirements, including that a majority of the Board consists of “independent directors,” as defined under the Nasdaq Rules. In addition, we are not required to have a nominating and corporate governance committee or compensation committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities or to conduct annual performance evaluations of the nominating and corporate governance and compensation committees. While currently, five of the seven directors on our Board are independent under the Nasdaq Rules, and our Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee each consists entirely of independent directors under the Nasdaq Rules, we may utilize certain exemptions afforded to a “controlled company” in the future.

Accordingly, holders of our Class A common stock may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq. Our status as a controlled company could make our Class A common stock less attractive to some investors or otherwise harm our stock price.

Certain provisions of Delaware law and antitakeover provisions in our organizational documents could delay or prevent a change of control.

Certain provisions of Delaware law and our amended and restated certificate of incorporation and amended and restated bylaws may have an antitakeover effect and may delay, defer, or prevent a merger, acquisition, tender offer, takeover attempt or other change of control transaction that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. These provisions provide for, among other things:

- a classified board of directors with staggered three-year terms;
- the ability of our Board to issue one or more series of preferred stock;
- at any time when Mainsail and our Founders beneficially own, in the aggregate, at least a majority of the voting power of our outstanding capital stock, our stockholders may take action by consent without a meeting, and at any time when Mainsail and our Founders beneficially own, in the aggregate, less than the majority of the voting power of our outstanding capital stock, our stockholders may not take action by consent, but may only take action at a meeting of stockholders;
- vacancies on our Board will be able to be filled only by our Board and not by stockholders, subject to the rights granted pursuant to the stockholders agreement;

- advance notice procedures apply for stockholders (other than the parties to our stockholders agreement for nominations made pursuant to the terms of the stockholders agreement) to nominate candidates for election as directors or to bring matters before an annual meeting of stockholders;
- the inability of our stockholders to call a special meeting of stockholders;
- prohibit cumulative voting in the election of directors;
- at any time when Mainsail and our Founders beneficially own, in the aggregate, at least a majority of the voting power of our outstanding capital stock, directors may be removed at any time with or without cause upon the affirmative vote of the holders of capital stock representing a majority of the voting power of our outstanding shares of capital stock entitled to vote thereon, and at any time when Mainsail and our Founders beneficially own, in the aggregate, less than the majority of the voting power of our outstanding shares of capital stock entitled to vote generally in the election of directors, in the aggregate, directors may only be removed for cause and only upon the affirmative vote of at least 66 2/3% of the holders of capital stock representing the voting power of our outstanding shares of capital stock entitled to vote thereon; and
- that certain provisions of amended and restated certificate of incorporation may be amended only by the affirmative vote of at least 66 2/3% of the voting power represented by our then-outstanding common stock.

These antitakeover provisions could make it more difficult for a third party to acquire us, even if the third party's offer may be considered beneficial by many of our stockholders. As a result, our stockholders may be limited in their ability to obtain a premium for their shares.

In addition, we have opted out of Section 203 of the General Corporation Law of the State of Delaware (the "DGCL"), but our amended and restated certificate of incorporation provides that engaging in any of a broad range of business combinations with any "interested" stockholder (generally defined as any stockholder with 15% or more of our voting stock) for a period of three years following the date on which the stockholder became an "interested" stockholder is prohibited, subject to certain exceptions.

The JOBS Act allows us to postpone the date by which we must comply with certain laws and regulations intended to protect investors and to reduce the amount of information we provide in our reports filed with the SEC. This reduced disclosure may make our Class A common stock less attractive to investors.

The JOBS Act is intended to reduce the regulatory burden on "emerging growth companies." As defined in the JOBS Act, a public company whose initial public offering of common equity securities occurs after December 8, 2011, and whose annual net sales are less than \$1.235 billion will, in general, qualify as an "emerging growth company" until the earliest of:

- the last day of its fiscal year following the fifth anniversary of the date of its initial public offering of common equity securities;
- the last day of its fiscal year in which it has annual gross revenue of \$1.235 billion or more;
- the date on which it has, during the previous three-year period, issued more than \$1.0 billion in nonconvertible debt; and
- the date on which it is deemed to be a "large accelerated filer," which will occur at such time as the company (1) has an aggregate worldwide market value of common equity securities held by non-affiliates of \$700 million or more as of the last business day of its most recently completed second fiscal quarter, (2) has been required to file annual and quarterly reports under the Exchange, for a period of at least 12 months, and (3) has filed at least one annual report pursuant to the Exchange Act.

Under this definition, we are an "emerging growth company" and could remain an "emerging growth company" until as late as December 31, 2026. For so long as we are an "emerging growth company," we will, among other things:

- not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act;
- not be required to hold a nonbinding advisory stockholder vote on executive compensation pursuant to Section 14A(a) of the Exchange Act;
- not be required to seek stockholder approval of any golden parachute payments not previously approved pursuant to Section 14A(b) of the Exchange Act;
- be exempt from the requirement of the Public Company Accounting Oversight Board, regarding the communication of critical audit matters in the auditor’s report on the financial statements; and
- be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can use the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. This permits an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to use this extended transition period and, as a result, our audited consolidated financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies.

Investors may find our Class A common stock less attractive as a result of our decision to take advantage of some or all of the reduced disclosure requirements above. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and our stock price may be more volatile.

Pursuant to the Dodd-Frank Act and SEC rules, we must file public disclosures regarding the country of origin of certain supplies, which could damage our reputation or impact our ability to obtain merchandise if customers or other stakeholders react negatively to our disclosures.

In August 2012, the SEC, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), issued final rules, which require annual disclosure and reporting on the source and use of certain minerals, including gold, from the Democratic Republic of Congo and adjoining countries. The gold supply chain is complex and, while management believes that the rules currently cover less than 1% of annual worldwide gold production (based upon recent estimates), the final rules require us and other affected companies that file with the SEC to make specified country of origin inquiries of our suppliers, and otherwise to exercise reasonable due diligence in determining the country of origin and certain other information relating to any of the statutorily designated minerals (gold, tin, tantalum, and tungsten), that are used in products sold by us in the U.S. and elsewhere.

There may be reputational risks associated with any potential negative response of our customers and other stakeholders to future disclosures by us in the event that, due to the complexity of the global supply chain, we are unable to sufficiently verify the origin of the relevant metals. Also, if future responses to verification requests by suppliers of any of the covered minerals used in our products are inadequate or adverse, our ability to obtain merchandise may be impaired, and its compliance costs may increase. The final rules also cover tungsten and tin, which are contained in a small proportion of items that are sold by us. It is possible that other minerals, such as diamonds, could be subject to similar rules.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters and the federal district courts of the U.S. shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders.

Our amended and restated certificate of incorporation provides (A) (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our amended and restated bylaws (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the U.S. shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Notwithstanding the foregoing, the exclusive forum provision shall not apply to claims seeking to enforce any liability or duty created by the Exchange Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and other employees. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations, and financial condition. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated certificate of incorporation.

If securities analysts do not publish research or reports about our business or if they downgrade our stock or our sector, or if there is any fluctuation in our credit rating, our stock price and trading volume could decline.

The trading market for our Class A common stock relies in part on the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts. If one or more of the analysts who cover us downgrade our stock or our industry, or the stock of any of our competitors, or publish inaccurate or unfavorable research about our business, the price of our stock could decline. If one or more of these analysts stops covering us or fails to publish reports on us regularly, we could lose visibility in the market, which, in turn, could cause our stock price or trading volume to decline.

Additionally, any fluctuation in the credit rating of us or our subsidiaries may impact our ability to access debt markets in the future or increase our cost of future debt, which could have a material adverse effect on our operations and financial condition, which in return may adversely affect the trading price of shares of our Class A common stock.

If our estimates or judgments relating to our critical accounting policies and estimates prove to be incorrect, our results of operations could be adversely affected.

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires management to make estimates and assumptions that affect the amounts reported in our audited consolidated financial statements and accompanying notes appearing elsewhere in this Annual Report on Form 10-K. Actual results could differ materially from these estimates. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in the section of this Annual Report on Form 10-K titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates." The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities, and equity, and the amount of revenue and expenses. Significant estimates and judgments involve: revenue recognition, including revenue-related reserves; equity-based compensation; and income tax related items. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of

operations to fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our Class A common stock.

Future sales, or the perception of future sales, by us or our existing stockholders in the public market could cause the market price for our Class A common stock to decline.

The sale of shares of our Class A common stock in the public market, or the perception that such sales could occur, could harm the prevailing market price of shares of our Class A common stock. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

As of December 31, 2023, we have outstanding a total of 12,522,146 shares of Class A common stock. Any shares of Class A common stock held by our affiliates are eligible for resale pursuant to Rule 144 under the Securities Act, subject to the volume, manner of sale, holding period and other limitations of Rule 144.

In addition, as of December 31, 2023, we have reserved 11,966,972 shares of Class A common stock for issuance under our 2021 Incentive Award Plan and 1,847,197 shares of Class A common stock for issuance under our Employee Stock Purchase Plan. Any Class A common stock that we issue under the 2021 Incentive Award Plan, the Employee Stock Purchase Plan, or other equity incentive plans that we may adopt in the future would dilute your percentage ownership in our Class A common stock.

As restrictions on resale end or if these stockholders exercise their registration rights, the market price of our shares of Class A common stock could drop significantly if the holders of these shares sell them or are perceived by the market as intending to sell them. These factors could also make it more difficult for us to raise additional funds through future offerings of our shares of Class A common stock or other securities.

In the future, we may also issue securities in connection with investments, acquisitions or capital raising activities. In particular, the number of shares of our Class A common stock issued in connection with an investment or acquisition, or to raise additional equity capital, could constitute a material portion of our then-outstanding shares of our Class A common stock. Any such issuance of additional securities in the future may result in additional dilution to you, or may adversely impact the price of our Class A common stock.

Purchases of shares of our Class A common stock pursuant to our stock repurchase plan may affect the value of our Class A common stock, and there can be no assurance that our stock repurchase plan will enhance stockholder value.

Pursuant to our publicly announced stock repurchase plan, we are authorized to repurchase up to \$20 million in the aggregate of our Class A common stock, including through the repurchase of outstanding shares of our Class A common stock and through open market purchases, in privately negotiated transactions, or by other means, including through the use of trading plans, each in accordance with applicable securities laws and other restrictions. The timing, amount, and manner of any purchase will be determined at the Company's discretion, subject to business, economic and market conditions, corporate needs and regulatory requirements, prevailing stock prices, and other considerations. This activity could increase (or reduce the size of any decrease in) the market price of our Class A common stock at that time. Additionally, repurchases under our share repurchase program will continue to diminish our cash reserves, which could impact our ability to pursue possible strategic opportunities and acquisitions and could result in lower overall returns on our cash balances. There can be no assurance that any share repurchases will enhance stockholder value because the market price of our Class A shares could decline. Although our share repurchase program is intended to enhance long-term stockholder value, short-term share price fluctuations could reduce the program's effectiveness.

General Risk Factors

As a public reporting company, we are subject to rules and regulations established from time to time by the SEC and Nasdaq regarding our internal control over financial reporting. If we fail to establish and maintain effective internal control over financial reporting and disclosure controls and procedures, we may not be able to accurately report our financial results, or report them in a timely manner.

We are subject to the rules and regulations established from time to time by the SEC and Nasdaq. These rules and regulations require, among other things, that we establish and periodically evaluate procedures with respect to our internal control over financial reporting. Reporting obligations as a public company are likely to place a considerable strain on our financial and management systems, processes and controls, as well as on our personnel.

We are required to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting pursuant to Section 404(a) of the Sarbanes-Oxley Act in our annual reports. This assessment must include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. The rules governing the standards that must be met for our management to assess our internal control over financial reporting are complex and require significant documentation, testing and possible remediation. Likewise, our independent registered public accounting firm will be required to provide an attestation report on the effectiveness of our internal control over financial reporting at such time as we cease to be an “emerging growth company,” as defined in the JOBS Act, and we become an accelerated or large accelerated filer. As described above, we could potentially qualify as an “emerging growth company” until as late as December 31, 2026. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed or operating.

As disclosed in Part II, Item 9A, “Controls and Procedures,” of this Annual Report on Form 10-K, our management identified a material weakness in our internal control over financial reporting related to ineffective information technology general controls. As a result, we concluded that our internal control over financial reporting was not effective as of December 31, 2023. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement in a company’s annual or interim financial statements will not be prevented or detected on a timely basis. We are in the process of remediating the material weakness.

We can give no assurance that our efforts will remediate the material weakness in our internal control over financial reporting, or that additional material weaknesses will not be identified in the future. We may also conclude that additional measures may be required to remediate the material weakness in our internal control over financial reporting, which may necessitate additional implementation and evaluation time.

We have incurred and expect to continue to incur costs related to implementing an internal audit and compliance function in the upcoming years to further improve our internal control environment. If we are unable to comply with the demands that are placed upon us as a public company, including the requirements of Section 404 of the Sarbanes-Oxley Act, in a timely manner, there could be errors in our annual or interim consolidated financial statements that could result in a restatement of our financial statements, or we may be unable to report our financial results within the timeframes required by the SEC. Additionally, ineffective internal control over financial reporting could expose us to an increased risk of financial reporting fraud and the misappropriation of assets and subject us to potential delisting from Nasdaq or to other regulatory investigations and civil or criminal sanctions or investigations by the SEC or other regulatory authorities. In addition, if we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting, when required, investors may lose confidence in the accuracy and completeness of our financial reports, we may face restricted access to the capital markets and our stock price may be adversely affected.

We will continue to incur significant costs as a result of operating as a public company.

We are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the listing requirements of the Nasdaq Global Market and other applicable securities laws and regulations. The expenses incurred by public companies generally for reporting and corporate governance purposes have been increasing. We

expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more difficult, time consuming and costly, although we are currently unable to estimate these costs with any degree of certainty. As a newly public company and being subject to new rules and regulations, it has become more expensive for us to obtain director and officer liability and other types of insurance and we may in the future be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our Board, our Board committees or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our Class A common stock, fines, sanctions, and other regulatory action, and potentially civil litigation. These factors may, therefore, strain our resources, divert management's attention, and affect our ability to attract and retain qualified board members.

Item 1B. Unresolved Staff Comments

None.

Item 1C. Cybersecurity

Cybersecurity Risk Management and Strategy

We have implemented a cybersecurity risk management program intended to protect the confidentiality, integrity, and availability of our critical systems and information. Our cybersecurity risk management program includes a cybersecurity incident response plan.

We design and assess our program based on the Center for Internet Security CIS Controls ("CIS Controls"). This does not imply that we meet any particular technical standards, specifications, or requirements, only that we use the CIS Controls as a guide to help us identify, assess, and manage cybersecurity risks relevant to our business.

Our cybersecurity risk management program is part of our overall risk management program.

Our cybersecurity risk management program includes:

- risk assessments designed to help identify material cybersecurity risks to our critical systems, information, products, services, and our broader enterprise IT environment;
- a security team principally responsible for managing (1) our cybersecurity risk assessment processes, (2) our security controls, and (3) our response to cybersecurity incidents;
- the use of external service providers, if appropriate, to assess, test or otherwise assist with aspects of our security controls;
- cybersecurity awareness training of our employees, incident response personnel, and senior management;
- a third-party risk management process for service providers, suppliers, and vendors; and
- a cybersecurity incident response plan that includes procedures for responding to cybersecurity incidents.

To date, we have not identified risks from known cybersecurity threats, including as a result of any prior cybersecurity incidents, that have materially affected or are reasonably likely to materially affect us, including our operations, business strategy, results of operations, or financial condition.

Cybersecurity Governance

Our Board considers cybersecurity risk as part of its risk oversight function and has delegated to the Audit Committee oversight of cybersecurity and other information technology risks. The Committee oversees management's implementation of our cybersecurity risk management program.

The Committee receives periodic reports on our cybersecurity risks and processes from management. In addition, management updates the Committee, as necessary, regarding any material cybersecurity incidents, as well as any incidents with lesser impact potential.

The Committee reports to the full Board regarding its activities, including those related to cybersecurity. The full Board also receives briefings from management on our risk management program, which includes our cybersecurity risk management. Presentations on cybersecurity topics are made by our SVP, Technology and internal cybersecurity staff.

Our management team, including our Chief Executive Officer, Chief Financial Officer, General Counsel, SVP of Technology, and Director of Security, among others in support roles as needed, are responsible for assessing and managing our material risks from cybersecurity threats. This team has primary responsibility for our overall cybersecurity risk management program and supervises our internal cybersecurity personnel. Our management team members have relevant experience in risk assessment and management, and our Director of Security's experience includes over 10 years of cybersecurity experience, Certified Information Systems Security Professional (CISSP) certification, and prior experience at other publicly traded companies with security frameworks, application security, IT security, Cloud security, SOX IT General Controls audits, and PCI-DSS compliance.

Our management team supervises efforts to prevent, detect, mitigate, and remediate cybersecurity risks and incidents through various means, which may include briefings from internal security personnel; threat intelligence and other information obtained from governmental, public or private sources, including external consultants engaged by us; and alerts and reports produced by security tools deployed in the IT environment.

Item 2. Properties

Our principal executive offices are located in San Francisco, CA and Denver, CO. We lease retail showroom, office and operational locations. As of December 31, 2023, we had 37 showrooms and one operations center in the United States.

The table below sets forth certain information regarding these properties, all of which are leased.

Geographic Location	Number of Locations	Square Footage
Retail Showrooms		
Arizona	1	3,307
California	8	28,128
Colorado	1	11,153
Florida	2	3,680
Georgia	1	2,950
Illinois	2	4,339
Maryland	2	6,706
Massachusetts	1	3,761
Michigan	1	3,111
Minnesota	1	3,112
Missouri	1	2,365
New York	3	11,511
North Carolina	1	1,663
Ohio	2	4,883
Oregon	1	2,660
Pennsylvania	2	5,150
Tennessee	1	1,800
Texas	3	9,088
Virginia	1	2,500
Washington	1	2,597
Washington, D.C.	1	4,795
Total Retail Showrooms	37	119,259
Operations center		
Secaucus, New Jersey	1	23,817

All of our executive offices and retail showrooms are leased from third parties, and our leases generally have a term of 5 to 10 years and typically include five-year renewal options. Most of our showroom leases provide for a minimum rent, with escalating rent increases, and generally require us to pay insurance, utilities, real estate taxes and repair and maintenance expenses.

We may negotiate new lease agreements, renew existing lease agreements or use alternate facilities prior to lease termination. We believe that our facilities are adequate for our needs and believe that we should be able to renew any of our leases or secure similar property without an adverse impact on our operations.

Item 3. Legal Proceedings

We are, from time to time, party to various claims and legal proceedings arising out of our ordinary course of business, but we do not believe that any of these claims or proceedings will have a material effect on our business, consolidated financial condition or results of operations.

On December 5, 2022, plaintiff Veronica Cusimano, a former employee of the Company, filed a representative action against the Company pursuant to the Private Attorneys General Act of 2004 in California Superior Court, Los Angeles County. The complaint alleges, on behalf of the plaintiff and similarly situated employees and former employees in California, various claims under the California Labor Code related to wages, overtime, meal and rest breaks, reimbursement of business expenses, wage statements and records, and other similar allegations. The plaintiff seeks civil penalties, attorneys' fees and costs in unspecified amounts, and other unspecified damages. On February 10, 2023, the Company filed a petition to compel arbitration on the basis of an agreement between the plaintiff and the Company to arbitrate any claims between them. On April 28, 2023, the petition was denied. The Company intends to vigorously defend the alleged individual and representative claims, and, on May 9, 2023, the Company appealed the Superior Court's denial of its petition to compel arbitration to the California Court of Appeal, Second Appellate District and the appeal is currently pending. At this time, any liability related to the alleged claims is not currently probable or reasonably estimable.

Item 4. Mine Safety Disclosures

Not applicable.

Part II - Other Information

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information for Common Stock

Our Class A common stock trades on the Nasdaq Global Market under the trading symbol "BRLT." There is no established public trading market for our Class B common stock, Class C common stock or Class D common stock.

Stockholders

As of March 25, 2024, there were approximately 21 holders of record of our Class A common stock, 25 holders of record of our Class B common stock and 1 holder of record of our Class C common stock. No shares of our Class D common stock are outstanding. Because some of our shares of Class A common stock are held by brokers and institutions on behalf of stockholders, we are unable to estimate the total number of beneficial owners of our Class A common stock represented by these record holders.

Dividend Policy

We have not declared or paid any cash dividends on our common stock and we do not anticipate declaring or paying any cash dividends on our Class A common stock and Class D common stock in the foreseeable future. Holders of our Class B common stock and Class C common stock are not entitled to participate in any dividends declared by our Board. Furthermore, because we are a holding company, our ability to pay cash dividends on our Class A common stock and Class D common stock depends on our receipt of cash distributions from Brilliant Earth, LLC. Our ability to pay dividends is restricted by the terms of the SVB Credit Agreement and may be restricted by the terms of any future credit agreement, debt or preferred equity securities issued by us. Any future determination as to the declaration and payment of dividends, if any, will be at the discretion of our Board, subject to the requirements of applicable law, compliance with contractual restrictions and covenants in the agreements governing our current and future indebtedness. Any such determination will also depend upon our business prospects, results of operations, financial condition, cash requirements and availability, industry trends, and other factors that our Board may deem relevant.

Recent Sales of Unregistered Securities

There were no unregistered sales of our equity securities during the period covered by this Annual Report on Form 10-K.

Purchase of Equity Securities by the Issuer and Affiliated Purchasers

We did not repurchase any of our equity securities during the quarter ended December 31, 2023.

Item 6. [Reserved]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the information presented in our audited consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. The following discussion and analysis reflects the historical results of operations and financial position of Brilliant Earth Group, Inc. and its consolidated subsidiary, Brilliant Earth, LLC. In addition to historical information, the following discussion contains forward-looking statements, such as statements regarding our expectation for future performance, liquidity and capital resources, that involve risks, uncertainties and assumptions that could cause actual results to differ materially from our expectations. Our actual results may differ materially from those contained in or implied by any forward-looking statements. Factors that could cause such differences include those identified below and those described in "Cautionary Note Regarding Forward-Looking Statements," and "Risk Factors" in this Annual Report on Form 10-K. We assume no obligation to update any of these forward-looking statements.

Company Overview

Brilliant Earth is an innovative, digitally native omnichannel jewelry company, and a global leader in ethically sourced fine jewelry. We offer exclusive designs with superior craftsmanship and supply chain transparency, delivered to customers through a highly personalized omnichannel experience.

Our extensive collection of premium-quality diamond engagement and wedding rings, gemstone rings, and fine jewelry is conceptualized by our leading in-house design studio and then brought to life by expert jewelers. From our award-winning jewelry designs to our responsibly sourced materials, at Brilliant Earth we aspire to exceptional standards in everything we do.

Our mission is to create a more transparent, sustainable, compassionate, and inclusive jewelry industry, and we are proud to offer customers distinctive and thoughtfully designed products that they can truly feel good about wearing.

We were founded in 2005 as an e-commerce company with an ambitious mission and a single showroom in San Francisco. We have rapidly scaled our business while remaining focused on our mission and elevating the omnichannel customer experience. Through our intuitive digital commerce platform and personalized individual appointments in our showrooms, we cater to the shopping preferences of tech-savvy next-generation consumers. We create an educational, joyful, and approachable experience that is unique in the jewelry industry. As of December 31, 2023, Brilliant Earth has sold to consumers in over 50 countries.

Throughout our history, we have invested in technology to create a seamless customer experience, inform our data-driven decision-making, improve efficiencies, and advance our mission. Our technology enables dynamic product visualization, augmented reality try-on, blockchain-verified transparency, and rapid fulfillment of our flagship Design Your Own product, a custom design process. We leverage powerful data capabilities to improve our marketing and operational efficiencies, personalize the customer experience, curate showroom inventory and merchandising, inform real estate decisions, and develop new product designs that reflect consumer preferences. We believe the Brilliant Earth digital experience drives higher satisfaction, engagement, and conversion both online and in-showroom.

We have achieved strong financial performance and rapid growth since our founding, and believe we are in the early stages of realizing our potential in a significant market opportunity.

Below is a summary of our performance for the year ended December 31, 2023:

- Net sales of \$446.4 million compared to \$439.9 million for the year ended December 31, 2022;
- Net income of \$4.7 million compared to \$19.0 million for the year ended December 31, 2022;
- Net income margin of 1.1% compared to 4.3% for the year ended December 31, 2022;
- Adjusted EBITDA of \$26.2 million compared to \$39.0 million for the year ended December 31, 2022; and
- Adjusted EBITDA margin of 5.9% compared to 8.9% for the year ended December 31, 2022.

See the section below titled “Non-GAAP Financial Measures” for information regarding Adjusted EBITDA and Adjusted EBITDA margin, including reconciliations to the most directly comparable financial measures prepared in accordance with GAAP.

We operate in one operating and reporting segment, the retail sale of diamonds, gemstones and jewelry.

Key Factors Affecting Our Performance

Our Ability to Increase Brand Awareness

Increasing brand awareness and growing favorable brand equity have been and remain key to our growth. We have a significant opportunity to continue to grow our brand awareness, broaden our customer reach, and maximize lifetime value through brand and performance marketing. We have made and expect to continue to make significant investments to strengthen the Brilliant Earth brand through our dynamic marketing strategy, which includes brand marketing campaigns across email, digital, social media, earned media, and media placements with key influencers. In order to compete effectively and increase our share of the jewelry market, we must maintain our strong customer experience, produce compelling products, and continue our mission of creating a more transparent, sustainable, compassionate and inclusive jewelry industry. Our performance will also depend on our ability to increase the number of consumers aware of Brilliant Earth and our product assortment. We believe our brand strength will enable us to continue to expand across categories and channels, to deepen relationships with consumers, and to expand our presence in U.S. and international markets.

Cost-Effective Acquisition of New Customers and Retention of Existing Customers.

We have historically had attractive customer acquisition economics, including substantial first order profitability. To continue to grow our business, we must continue to acquire new customers and retain existing customers in a cost-effective manner. The success of our customer acquisition strategy depends on a number of factors, including the level and pattern of consumer spending in the product categories in which we operate, and our ability to cost-effectively drive traffic to our website and showrooms and to convert these visitors to customers. With our strong brand resonance and passionate customer base, we generate significant earned and organic traffic, impressions, and media placements. We continually evolve our dynamic marketing strategies, optimizing our messaging, creative assets, and spending across channels. We also believe our expanded fine jewelry assortment and strategic customer acquisition will continue to drive fine jewelry orders from new customers and repeat orders from existing customers.

Our Ability to Continue Successfully Growing and Managing our Omnichannel Presence

Our ability to successfully grow and manage our omnichannel presence in new markets and locations is an important factor in our success. Historically, we have been successful in new geographic markets we have entered, and we have continued to expand our premium showroom footprint nationwide. We intend to continue leveraging our marketing strategy and growing brand awareness to drive increased qualified consumer traffic to and sales from our website and premium showrooms.

We believe growing and managing our showrooms will drive accelerated growth by increasing our AOV compared to e-commerce orders, improving conversion in the showrooms’ metro regions compared to pre-opening conversion, and raising our brand awareness. We intend to strategically open showrooms in the future, and we believe we can achieve broad national showroom coverage with far fewer locations than many traditional retailers. We rely on this highly efficient showroom model to complement our digital strategy and to continue to drive growth and profitability.

Our Ability to Successfully Introduce New Products

Product expansion allows us significant opportunity to drive new and repeat purchases by expanding purchase occasions beyond engagement and bridal. We intend to leverage our in-house design capabilities and nimble data-driven product development to expand product assortment for special occasions and self-purchase. In addition, we

will have more opportunity to enhance and leverage our CRM and data-segmentation capabilities to increase repeat purchases and lifetime value. We have consistently invested in technology to create a seamless customer experience, including dynamic visualization, augmented reality try-on, and automated, rapid fulfillment, and we intend to continue investing in technology to enhance the digital and showroom experience and help drive conversion. Expanding affiliations and brand collaborations will also broaden our existing assortment, reinforce our brand ethos, and feature like-minded designers, which will help to drive both new and repeat purchases.

International Expansion

We are in the early stages of expanding globally, and a larger geographic footprint will help drive future growth. Our early proof-points from localizing our website for Canada, Australia, and the United Kingdom, and our sales to customers from over 50 countries, provide encouraging signs for future global expansion. We see strong potential in launching e-commerce in new overseas markets and new showrooms in countries where we have already established a localized digital presence. We plan to drive brand awareness through localized marketing channels and expect our data-driven technology platform to continue providing insights for product recommendations and inventory management.

Operational and Marketing Efficiency

We have a unique, asset-light operating model with attractive working capital dynamics, capital-efficient showrooms, and a vast virtual inventory of premium natural and lab-grown diamonds that allows us to offer a broad selection of diamonds while keeping our balance sheet inventory low. This has driven attractive inventory turns and allows us to operate with negative working capital, which we define as our current assets less cash minus our current liabilities. Our showroom strategy minimizes the inefficiencies of traditional, retail-first jewelers. Our showrooms are primarily appointment-driven with large catchment regions, so we are less reliant on expensive high foot traffic retail locations. Our showroom locations and formats vary from interior, upper floor locations to more recently higher traffic pedestrian and retail mall locations. In all locations, we also curate showroom inventory for scheduled visits and require limited inventory in each location. Our tech-enabled jewelry specialist team can support online customers when not in appointment, increasing workforce utilization. As we continue to scale our business, our future success is dependent on maintaining this capital efficient operating model and driving continued operational improvement as we expand to new locations both in the U.S. and internationally.

Costs of Operating as a Public Company

The costs of operating as a public company are significant as we are subject to the reporting, listing, and compliance requirements of various governing bodies and applicable securities laws and regulations. Since becoming a public company, compliance with rules and regulations has increased and may continue to increase our legal, financial, and technology compliance costs, and to make some activities more difficult, time-consuming, and costly. Remaining compliant and satisfying our obligations as a public company, while maintaining forecasted gross margins and operating results, and attracting and retaining qualified persons to serve on our Board, our Board committees, or as our executive officers is critical to our future success.

Macroeconomic Trends

We believe we are well-positioned at the intersection of key macro-level trends impacting our industry. Consumers are increasingly becoming more conscious of the products they purchase, seeking brands that stand for sustainability, supply chain transparency, and social and environmental responsibility. This has contributed to our strong brand affinity and loyalty, and further differentiates us from our competitors. Consumers are increasingly favoring seamless omnichannel shopping experiences, and we believe our model is well-suited to satisfy these consumer preferences. The current inflationary environment and changes in macro-level consumer spending trends, due to volatile macro-economic conditions could negatively impact our operating results.

Seasonality

A larger share of our annual revenues and profits traditionally occur in the fourth quarter because it includes the November and December holiday sales period.

Components of Results of Operations

Net Sales

Our sales are recorded net of estimated sales returns and allowances and sales tax collected from customers. Our net sales primarily consist of revenue from diamond, jewelry, and gemstone retail sales through our website and dedicated jewelry specialists via chat, phone, email, virtual appointment, or in our showrooms. Our net sales are derived primarily in the U.S., but we also sell products to customers outside the U.S. Our website platform allows us to sell to a worldwide customer base, even in markets where we do not have a physical presence. Payment for all of our sales occurs prior to fulfillment. Customers pick up the items in our showrooms, or we deliver purchases to customers, with delivery typically within one to two business days after shipment. We recognize revenue upon pick-up or delivery if an order is shipped. We also offer third-party financing options.

We allow for certain returns within 30 days of when an order is available for shipment or pickup. We also provide one complimentary resizing for standard ring styles within 60 days of when an order is available for shipment or pickup, a lifetime manufacturing warranty (except on estate and vintage jewelry and center diamonds/gemstones), and a lifetime diamond upgrade program on all diamonds that meet certain criteria. We offer an extended protection plan through a third-party that has terms ranging from two years to lifetime that vary based on the item purchased.

Revenue is deferred on transactions where payment has been received from the customer, but control has not yet transferred. Revenue related to customer purchases of our in-house extended service plan was deferred and recognized ratably over the service plan term. However, in 2022, the Company stopped offering this plan.

Cost of Sales

Cost of sales consists primarily of merchandise costs for the purchase of diamonds and gemstones from our global base of diamond and gemstone suppliers, and the cost of jewelry production from our third-party jewelry manufacturing suppliers. Cost of sales includes merchandise costs, inbound freight charges, costs of shipping orders to customers and certain fulfillment and inventory-related compensation costs. Our cost of sales includes reserves for disposal of obsolete, slow-moving or defective items, and shrinkage, which we estimate and record on a periodic basis.

Selling, General and Administrative Expenses

Selling, general and administrative ("SG&A") expenses consist primarily of marketing, advertising, and promotional expenses; payroll and related benefit costs for our employees, including equity-based compensation expense; merchant processing fees; certain facility-related costs; customer service; technology; and depreciation and amortization expenses, as well as professional fees, other general corporate expenses and charitable donations in connection with funding the Brilliant Earth Foundation, a donor advised fund, to support our charitable giving efforts.

Interest Expense

Interest expense primarily consists of interest incurred under our SVB Credit Agreement (defined below) and the prior Loan and Security Agreement with Runway Growth Finance Corp. (as amended, the "Runway Term Loan").

Other Income, Net

Other income, net consists primarily of interest income earned on certain cash balances and other miscellaneous income, partially offset by expenses such as losses on exchange rates on consumer payments.

Income Tax Benefit

Income tax benefit represents the federal and state income or franchise taxes assessed on Brilliant Earth Group, Inc's share of taxable income for the period.

Results of Operations

The results of operations data in the following tables for the periods presented have been derived from the audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Comparison of Years Ended December 31, 2023 and 2022

The following table sets forth our statements of operations for the years ended December 31, 2023 and 2022, including amounts and percentages of net sales for each year and the year-to-year change in dollars and percent (amounts in thousands):

	Year ended December 31,					
	2023		2022		Year over year change	
	Amount	Percent	Amount	Percent	Amount	Percent
Consolidated statements of operations data*:						
Net sales	\$ 446,382	100.0 %	\$ 439,882	100.0 %	\$ 6,500	1.5 %
Cost of sales	189,382	42.4 %	205,591	46.7 %	(16,209)	(7.9)%
Gross profit	257,000	57.6 %	234,291	53.3 %	22,709	9.7 %
Operating expenses:						
Selling, general and administrative	252,518	56.6 %	210,964	48.0 %	41,554	19.7 %
Income from operations	4,482	1.0 %	23,327	5.3 %	(18,845)	(80.8)%
Interest expense	(5,128)	(1.1)%	(4,658)	(1.1)%	(470)	10.1 %
Other income, net	4,949	1.1 %	805	0.2 %	4,144	514.8 %
Loss on extinguishment of debt	—	— %	(617)	(0.1)%	617	nm
Income before tax	4,303	1.0 %	18,857	4.3 %	(14,554)	(77.2)%
Income tax benefit	431	0.1 %	168	— %	263	156.5 %
Net income	\$ 4,734	1.1 %	\$ 19,025	4.3 %	\$ (14,291)	(75.1)%
Net income allocable to non-controlling interest	4,150	0.9 %	16,890	3.8 %	(12,740)	(75.4)%
Net income allocable to Brilliant Earth Group, Inc.	\$ 584	0.1 %	\$ 2,135	0.5 %	\$ (1,551)	(72.6)%

* Amounts may not sum due to rounding

nm - Not meaningful

Net Sales

Net sales for the year ended December 31, 2023 increased by \$6.5 million, or 1.5%, compared to the year ended December 31, 2022. The increase in net sales was primarily driven by a 16.7% increase in order volumes due to:

- continued effectiveness of our customer acquisition activities;
- strong omnichannel performance across the Company's products and new product collection releases; and
- the opening of new showrooms.

The increase in order volumes was partially offset by a decline of 13.0% in AOV driven by an increase in sales of lower price point products, including fine jewelry and moderation in sales growth of products above the \$10,000 price point.

Gross Profit

Gross profit for the year ended December 31, 2023 increased by \$22.7 million, or 9.7%, compared to the year ended December 31, 2022. Gross margin, expressed as a percentage and calculated as gross profit divided by net sales, increased by 430 basis points for the year ended December 31, 2023 compared to the year ended December 31, 2022. This was primarily driven by our premium brand and differentiated product offerings, performance of our pricing engine, procurement efficiencies, and benefits from our extended warranty program. Gross margin improvements were slightly offset by an increase in average gold spot prices of 8% and an increase in the average platinum spot prices of 1% for the year ended December 31, 2023 as compared to the year ended December 31, 2022.

Selling, General and Administrative Expenses

SG&A expenses for the year ended December 31, 2023 increased by \$41.6 million, or 19.7%, compared to the year ended December 31, 2022. SG&A expenses as a percentage of net sales increased by 861 basis points for the year ended December 31, 2023 compared to the year ended December 31, 2022. The increase in SG&A expenses was driven by an increase in marketing expenses, other general and administrative expenses, and employment expenses, which increased by \$22.0 million, \$11.8 million, and \$7.8 million, respectively, from the year ended December 31, 2022 to the year ended December 31, 2023. The increase in marketing expenses was driven by increased investments in marketing and advertising to increase brand awareness and support strategic growth initiatives. The increase in other general and administrative expenses was a result of overall Company growth that was principally driven by a \$3.6 million increase in information technology and other software-related costs, a \$3.1 million increase in rent and lease related expenses, a \$2.3 million increase in depreciation expense, and a \$1.0 million increase in donations. The increase in employment expenses was primarily driven by an increase in salaries and wages, equity-based compensation, and other benefits expense due to the addition of staff to support our growth.

Interest Expense

Interest expense for the year ended December 31, 2023 increased by \$0.5 million, or 10.1%, compared to the year ended December 31, 2022, primarily due to an increase in the variable interest rate pursuant to the SVB Credit Agreement entered into on May 24, 2022.

Other Income, Net

Other income, net for the year ended December 31, 2023 increased by \$4.1 million, compared to the year ended December 31, 2022, primarily due to increased interest income earned on our cash balances. Additionally, this amount includes immaterial losses on exchange rates on consumer payments and other miscellaneous income.

Income Tax Benefit

Brilliant Earth Group, Inc.'s income tax benefit was \$0.4 million for the year ended December 31, 2023 compared to an income tax benefit of \$0.2 million for the year ended December 31, 2022. The increase in income tax benefit was primarily due to additional benefit related to additional taxable losses and a reduction in income from Brilliant Earth, LLC as compared to the year ended December 31, 2022.

Net Income Allocable to Non-Controlling Interests

The net income allocable to the non-controlling interests (“NCI”) of Brilliant Earth, LLC was \$4.2 million, and 87.7% of net income of the Company for the year ended December 31, 2023, compared to \$16.9 million and 88.8% of net income of the Company for the year ended December 31, 2022. The decrease in net income allocable to the NCI was primarily due to a decrease in net income from the prior year.

Comparison of Years Ended December 31, 2022 and 2021

For a comparison of our results of operations for the fiscal years ended December 31, 2022 and 2021, see Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations, of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 21, 2023.

Key Metrics

We monitor the key business metrics set forth below to help us evaluate our business and growth trends, establish budgets, measure the effectiveness of our sales and marketing efforts, and assess operational efficiencies. The calculation of the key metrics discussed below may differ from other similarly titled metrics used by other companies, securities analysts or investors.

The following table sets forth our key performance metrics for the periods presented (amounts in thousands, except for total orders and AOV):

	For the years ended December 31,			
	2023	2022	Change	% Change
Net Sales	\$ 446,382	\$ 439,882	\$ 6,500	1.5 %
Total Orders	174,576	149,613	24,963	16.7 %
AOV	\$ 2,557	\$ 2,940	\$ (383)	(13.0)%

Net Sales

Net sales is defined above in “Components of Results of Operations.”

Total Orders

We define total orders as the total number of customer orders delivered less total orders returned in a given period (excluding those repair, resize, and other orders which have no revenue). We view total orders as a key indicator of the velocity of our business and an indication of the desirability of our products to our customers. Total orders, together with AOV, is an indicator of the net sales we expect to recognize in a given period. Total orders may fluctuate based on the number of visitors to our website and showrooms, and our ability to convert these visitors to customers. We believe that total orders is a measure that is useful to investors and management in understanding our ongoing operations and in an analysis of ongoing operating trends.

Average Order Value

We define average order value, or AOV, as net sales in a given period divided by total orders in that period. We believe that AOV is a measure that is useful to investors and management in understanding our ongoing operations and in an analysis of ongoing operating trends. AOV varies depending on the product type and number of items per order. AOV may also fluctuate as we expand into and increase our presence in additional product lines and price points, and open additional showrooms.

Non-GAAP Financial Measures

We report our financial results in accordance with GAAP. However, management believes that certain non-GAAP financial measures provide users of our financial information with additional useful information in evaluating our performance and liquidity, as applicable, and to more readily compare these financial measures between past and future periods. There are limitations to the use of the non-GAAP financial measures presented in this Annual Report on Form 10-K. For example, our non-GAAP financial measures may not be comparable to similarly titled measures of other companies. Other companies, including companies in our industry, may calculate non-GAAP financial measures differently than we do, limiting the usefulness of those measures for comparative purposes.

Adjusted EBITDA and Adjusted EBITDA Margin

Adjusted EBITDA and Adjusted EBITDA margin, which are non-GAAP financial measures, are included in this Annual Report on Form 10-K because they are used by management and our Board to assess our financial performance. We define Adjusted EBITDA as net income excluding interest expense, income taxes, depreciation expense, amortization of cloud-based software implementation costs, showroom pre-opening expense, equity-based compensation expense, loss on extinguishment of debt, certain non-operating expenses and income, and other unusual and/or infrequent costs, which we do not consider in our evaluation of ongoing operating performance. We define Adjusted EBITDA margin as Adjusted EBITDA calculated as a percentage of net sales. These non-GAAP financial measures provide users of our financial information with useful information in evaluating our operating performance and exclude certain items from net income that may vary substantially in frequency and magnitude from period to period. These non-GAAP financial measures are not meant to be considered as indicators of performance in isolation from or as a substitute for net income prepared in accordance with GAAP and should be read only in conjunction with financial information presented on a GAAP basis. Reconciliations of each of Adjusted EBITDA and Adjusted EBITDA margin to its most directly comparable GAAP financial measure, net income and net income margin, are presented below. We encourage you to review the reconciliations in conjunction with the presentation of the non-GAAP financial measures for each of the years presented. In future periods, we may exclude similar items, may incur income and expenses similar to these excluded items, and may include other expenses, costs and non-recurring items.

The following table presents a reconciliation of net income and net income margin, the most comparable GAAP financial measures, to Adjusted EBITDA and Adjusted EBITDA margin, respectively, for the years presented (in thousands):

	For the years ended December 31,	
	2023	2022
Net income	\$ 4,734	\$ 19,025
Interest expense	5,128	4,658
Income tax benefit	(431)	(168)
Depreciation expense	4,200	1,922
Amortization of cloud-based software implementation costs	583	263
Showroom pre-opening expense	4,953	4,450
Equity-based compensation expense	9,952	8,840
Loss on extinguishment of debt	—	617
Other income, net ⁽¹⁾	(4,949)	(805)
Transaction costs and other expenses ⁽²⁾	2,012	180
Adjusted EBITDA	<u>\$ 26,182</u>	<u>\$ 38,982</u>
Net income margin	1.1 %	4.3 %
Adjusted EBITDA margin	5.9 %	8.9 %

(1) Other income, net consists primarily of interest and other miscellaneous income, partially offset by expenses such as losses on exchange rates on consumer payments.

(2) These expenses are those that we did not incur in the normal course of business. For the year ended December 31, 2023, these costs include a \$1 million charitable contribution. For the year ended December 31, 2022, these costs include professional fees in connection with the evaluation and preparation for operations as a public company.

Liquidity and Capital Resources

Overview

Our primary requirements for liquidity and capital are for purchases of inventory, payment of operating expenses, tax distributions to LLC members, debt service, and capital expenditures. Historically, these cash requirements have been met through cash provided by operating activities, cash and cash equivalents, proceeds from capital-raising activities and borrowings under our loan facilities. We have historically had negative working capital driven by our high inventory turns and typical collection of payment from customers prior to payment of suppliers. As of December 31, 2023, we had a cash balance, excluding restricted cash, of \$155.8 million, and negative working capital, excluding non-restricted cash, of \$(27.9) million.

For the twelve months ended December 31, 2023, the Company declared and paid \$9.9 million of distributions to, or on behalf of, members associated with their estimated income tax obligations. We are committed to continue to make quarterly distributions in connection with member estimated income tax obligations which we expect to fund with cash flow from operations.

As of December 31, 2023, the SVB Credit Agreement had an outstanding principal balance of \$60.1 million, excluding unamortized debt issuance costs of \$0.5 million, of which \$56.1 million is classified as long-term.

We also have scheduled principal payments on our SVB Credit Agreement as presented below (in thousands):

Years ending December 31,	Principal	
2024	\$	4,063
2025		5,688
2026		6,500
2027		43,875
Total aggregate future principal payments	\$	60,126

We believe based on our current projections, that we have sufficient sources of liquidity to meet our projected operating, debt service, and tax distribution requirements for at least the next 12 months following the filing of this Annual Report on Form 10-K.

Additional future liquidity needs may include payments under the TRA, and state and federal taxes to the extent not offset by our deferred income tax assets, including those arising as a result of purchases or exchanges of common units for Class A and Class D common stock. Although the actual timing and amount of any payments that may be made under the TRA will vary, we expect that the payments that we will be required to make to the Continuing Equity Owners will be significant. Any payments made by us to the Continuing Equity Owners under the TRA will generally reduce the amount of overall cash flow that might have otherwise been available to us or to Brilliant Earth, LLC, and, to the extent that we are unable to make payments under the TRA for any reason, the unpaid amounts generally will be deferred and will accrue interest until paid by us; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the TRA and therefore may accelerate payments due under the TRA.

To the extent that our current liquidity is insufficient to fund future activities, we may need to raise additional funds, such as attempts to raise additional capital through the sale of equity securities or through debt financing arrangements. If we raise additional funds by issuing equity securities, the ownership of our existing stockholders will be diluted. Any additional debt financing would result in debt service obligations, and any future instruments governing such debt could provide for operating and financing covenants that could restrict our operations. We cannot ensure that we could obtain refinancing or additional financing on favorable terms or at all.

Cash Flows from Operating, Investing, and Financing Activities — Comparison of Years Ended December 31, 2023 and 2022

The following table summarizes our cash flows for the years ended December 31, 2023 and 2022 (in thousands):

	Years ended December 31,	
	2023	2022
Net cash provided by operating activities	\$ 26,214	\$ 14,506
Net cash used in investing activities	(11,944)	(9,124)
Net cash used in financing activities	(13,104)	(23,598)
Net increase (decrease) in cash, cash equivalents, and restricted cash	1,166	(18,216)
Cash, cash equivalents and restricted cash at beginning of year	154,854	173,070
Cash, cash equivalents and restricted cash at end of year	\$ 156,020	\$ 154,854

Operating Activities

Net cash provided by operating activities was \$26.2 million for the year ended December 31, 2023, consisting of \$4.7 million in net income adjusted for \$18.7 million in non-cash expense addbacks, primarily composed of equity based compensation, operating lease costs, depreciation expense and amortization of debt issuance costs and \$2.8 million from changes in assets and liabilities related to operating activities. The change in assets and liabilities related to operating activities, which are a result of working capital management, primarily reflects a \$4.3 million increase in operating lease liabilities, offset by a \$4.1 million decrease in prepaid expenses and other current assets, inventories, and other current assets along with a \$2.0 million increase in accounts payable, accrued expenses and other current liabilities and a \$1.0 million increase in deferred revenue.

Net cash provided by operating activities was \$14.5 million for the year ended December 31, 2022, consisting of \$19.0 million in net income adjusted for \$15.2 million in non-cash expense addbacks, primarily composed of equity based compensation, operating lease costs, depreciation expense, loss on extinguishment of debt and amortization of debt issuance costs, offset by a \$19.7 million decrease from changes in assets and liabilities related to operating activities. The change in assets and liabilities related to operating activities, which is the result of the growth of our business, primarily reflects a \$22.2 million increase in inventories, prepaid expenses and other current assets, other assets, and a decrease in operating lease liability and deferred revenue, partially offset by a \$2.5 million increase in accounts payable, accrued expenses and other current liabilities.

Investing Activities

Net cash used in investing activities was \$11.9 million for the year ended December 31, 2023, and \$9.1 million for the year ended December 31, 2022, which primarily consisted of purchases of property and equipment related to new facilities leased during the years ended December 31, 2023 and 2022.

Financing Activities

Net cash used in financing activities was \$13.1 million for the year ended December 31, 2023, which consisted of tax distributions to members pursuant to the LLC Agreement of \$9.9 million and repayments on the SVB Credit Agreement (defined below).

Net cash used in financing activities was \$23.6 million for the year ended December 31, 2022, which related to the payoff of the Runway Term Loan, tax distributions to members pursuant to the LLC Agreement of \$18.3 million and the quarterly repayments on SVB Term Loan (defined below), partially offset by proceeds received from the SVB Credit Agreement.

Cash Flows from Operating, Investing, and Financing Activities — Comparison of Years Ended December 31, 2022 and 2021

For a comparison of our cash flow activities for the fiscal years ended December 31, 2022 and 2021, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on March 21, 2023.

Silicon Valley Bank Credit Facilities

On May 24, 2022 (the "Closing Date"), Brilliant Earth, LLC, as borrower, and SVB, as administrative agent and collateral agent for the lenders, entered into a credit agreement (the "SVB Credit Agreement") which provides for a secured term loan credit facility of \$65.0 million (the "SVB Term Loan") and a secured revolving credit facility in an amount of up to \$40.0 million (the "SVB Revolving Facility", and together with the SVB Term Loan, the "SVB Credit Facilities"). The SVB Credit Facilities mature on May 24, 2027 (the "Maturity Date").

As of December 31, 2023, there were no amounts outstanding under the SVB Revolving Facility and there was \$60.1 million of total debt outstanding under the SVB Term Loan, of which \$56.1 million is classified as long-term debt.

The SVB Credit Facilities are secured by substantially all assets of Brilliant Earth, LLC and any of its future material subsidiaries, subject to customary exceptions. Brilliant Earth, LLC's future material subsidiaries (subject to certain customary exceptions) will guarantee repayment of the SVB Credit Facilities.

Borrowings under the SVB Credit Facilities bear interest at either (a) a secured overnight financing rate plus an annual adjustment of 0.125%, plus an applicable margin of 2.25% to 2.75%, depending on the Consolidated Total Leverage Ratio (defined below), or an alternate base rate plus an applicable margin of 1.25% to 1.75%, depending on the Consolidated Total Leverage Ratio, each subject to a 0.00% floor. In addition, Brilliant Earth, LLC has agreed to pay a commitment fee on the first day of each quarter on the unused amount of the SVB Revolving Facility, equal to 0.25% to 0.35% per annum depending on the Consolidated Total Leverage Ratio. The Consolidated Total Leverage Ratio is defined as the ratio, as of the last day of any four fiscal quarter period, of (a) Consolidated Total Indebtedness of the Company and its subsidiaries to (b) the Consolidated EBITDA for such period (each term as further defined in the SVB Credit Agreement).

The SVB Term Loan is required to be repaid on the last day of each calendar quarter in an amount equal to 1.25% per quarter through June 30, 2024, 1.875% per quarter from September 30, 2024 through June 30, 2025, and 2.50% per quarter thereafter, with the balance payable on the Maturity Date. The SVB Term Loan is also subject to certain mandatory prepayment requirements in connection with asset sales, casualty events and debt incurrence, subject to customary exceptions.

The SVB Credit Facilities are subject to customary affirmative covenants and negative covenants as well as financial maintenance covenants. The financial covenants are tested at the end of each fiscal quarter, beginning with the quarter ended June 30, 2022, and requires that (a) the Company and its subsidiaries not have a Consolidated Fixed Charge Coverage Ratio (defined as the ratio of (i) Consolidated EBITDA, less cash taxes (including tax distributions), less certain capital expenditures, less cash dividends and other cash restricted payments, to (ii) the sum of cash interest expense and scheduled principal payments on outstanding debt (in each case, as further defined in the SVB Credit Agreement)) of less than 1.25 to 1.00, (b) the Company and its subsidiaries not have a Consolidated Total Leverage Ratio of more than 4.00 to 1.00, and (c) Brilliant Earth, LLC and its subsidiaries not have a Consolidated Borrower Leverage Ratio (defined substantially similar as Consolidated Total Leverage Ratio, but limited to Brilliant Earth, LLC and its subsidiaries) in excess of 3.00 to 1.00 (which level is subject to temporary increases to 4.00 to 1.00 in connection with certain acquisitions). As of December 31, 2023 the Company was in compliance with such covenants. For additional information regarding our long-term debt activity, see Note 8, *Debt* to the audited consolidated financial statements included elsewhere in the Annual Report on Form 10-K.

On February 21, 2024, we entered into the First Amendment to the SVB Credit Agreement (the "First Amendment"), pursuant to which the lenders agreed to suspend the requirement to comply with the Consolidated Fixed Charge Coverage Ratio covenant on the last day of the fiscal quarters ending December 31, 2023, March 31, 2024, and June 30, 2024. The First Amendment also requires us to maintain Balance Sheet Cash (defined as unrestricted cash and cash equivalents held in accounts with the lenders and their affiliates) in an amount greater than the sum of the aggregate principal amount outstanding under the SVB Revolving Facility (including issued letters of credit) and the aggregate principal amount of the SVB Term Loan outstanding at such time, which requirement applies at all times commencing on February 21, 2024 until the last day of the fiscal quarter ending June 30, 2024. After such time, the minimum Balance Sheet Cash covenant no longer applies.

On March 10, 2023, SVB was closed by the California Department of Financial Protection and Innovation, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as receiver. On March 14, 2023, the FDIC announced the establishment of Silicon Valley Bridge Bank, N.A. (the "Bridge Bank") which assumed the deposits

and obligations of SVB. On March 26, 2023, the FDIC announced that it had entered into a purchase and assumption agreement with First-Citizens Bank & Trust Company, Raleigh, North Carolina (“First Citizens”) under which all deposits and loans of the Bridge Bank were assumed by First Citizens.

Additional Liquidity Requirements

We are a holding company and have no material assets other than our ownership of LLC Interests. We have no independent means of generating revenue. The LLC Agreement provides for the payment of certain distributions to the Continuing Equity Owners and to us in amounts sufficient to cover the income taxes imposed on such members with respect to the allocation of taxable income from Brilliant Earth, LLC as well as to cover our obligations under the TRA and other administrative expenses.

Regarding the ability of Brilliant Earth, LLC to make distributions to us, the terms of their financing arrangements, including the SVB Credit Facilities, contain covenants that may restrict Brilliant Earth, LLC from paying such distributions, subject to certain exceptions. Further, Brilliant Earth, LLC is generally prohibited under Delaware law from making a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, liabilities of Brilliant Earth, LLC (with certain exceptions), as applicable, exceed the fair value of its assets.

In addition, under the TRA, we are required to make cash payments to the Continuing Equity Owners equal to 85% of the tax benefits, if any, that we actually realize (or in certain circumstances are deemed to realize), as a result of (1) increases in our allocable share of the tax basis of Brilliant Earth, LLC’s assets resulting from (a) our purchase of LLC Interests from each Continuing Equity Owner; (b) future redemptions or exchanges of LLC Interests for Class A common stock or cash; and (c) certain distributions (or deemed distributions) by Brilliant Earth, LLC; and (2) certain tax benefits arising from payments made under the TRA. We expect the amount of cash payments that we will be required to make under the TRA will be significant. The actual amount and timing of any payments under the TRA will vary depending upon a number of factors, including the timing of redemptions or exchanges by the Continuing Equity Owners, the amount of gain recognized by the Continuing Equity Owners, the amount and timing of the taxable income we generate in the future, and the federal tax rates then applicable. Any payments made by us to the Continuing Equity Owners under the TRA will generally reduce the amount of overall cash flow that might have otherwise been available to us.

Additionally, in the event we declare any cash dividends, we intend to cause Brilliant Earth, LLC to make distributions to us in amounts sufficient to fund such cash dividends declared by us to our shareholders. Deterioration in the financial condition, earnings, or cash flow of Brilliant Earth, LLC for any reason could limit or impair their ability to pay such distributions.

If we do not have sufficient funds to pay taxes or other liabilities or to fund our operations, we may have to borrow funds, which could materially adversely affect our liquidity and financial condition and subject us to various restrictions imposed by any such lenders. To the extent that we are unable to make payments under the TRA for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the TRA and therefore accelerate payments due under the TRA. In addition, if Brilliant Earth, LLC does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired.

See “Risk Factors—Risks Related to Our Organizational Structure.”

Contractual Obligations and Commitments

We lease our showrooms and headquarters office space under non-cancelable lease agreements whereby \$7.1 million is due in the year ended December 31, 2024. Total future lease payments as of December 31, 2023 are \$49.8 million.

We have capital commitments of \$0.8 million related to new showroom construction and improvements to existing locations as of December 31, 2023.

From time to time in the normal course of business, we will enter into agreements with suppliers or service providers. As of December 31, 2023, contractual obligations with a remaining term in excess of 12 months primarily related to marketing and advertising spending as well as software maintenance totaled \$8.1 million. For additional information on our contractual obligations and commitments, see Note 7, *Leases*, Note 9, *Stockholders' Equity and Members Units* and Note 12, *Commitments and Contingencies*, to our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Critical Accounting Policies and Estimates

In preparing our audited consolidated financial statements and the related notes thereto included elsewhere in this Annual Report on Form 10-K in conformity with GAAP, we must make decisions that impact the reported amounts of assets, liabilities, revenues, expenses, and related disclosures. Such decisions include the selection of the appropriate accounting principles to be applied and the assumptions on which to base accounting estimates. In reaching such decisions, we apply judgments based on our understanding and analysis of the relevant circumstances, historical experience, and current trends. Actual amounts could differ from those estimated at the time the audited consolidated financial statements are prepared.

Our significant accounting policies are described in Note 2, *Summary of significant accounting policies*, to our accompanying financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K. Some of those significant accounting policies require us to make difficult, subjective, or complex judgments or estimates. An accounting estimate is considered to be critical if it meets both of the following criteria: (i) the estimate requires assumptions about matters that are highly uncertain at the time the accounting estimate is made, and (ii) different estimates reasonably could have been used, or changes in the estimate that are reasonably likely to occur from period to period may have a material impact on the presentation of our financial condition, changes in financial condition, or results of operations. See Part I, Item 1A. Risk Factors – Risks related to the Ownership of Our Class A Common Stock – *If our estimates or judgments relating to our critical accounting policies and estimates prove to be incorrect, our results of operations could be adversely affected.*

Our critical accounting policies and estimates include the following:

Revenue Recognition

Net sales primarily consists of revenue from the sale of inventory, and we recognize revenue as control of promised goods is transferred to customers, which generally occurs upon delivery if the order is shipped, or at the time the customer picks up the completed product at a showroom. Revenue arrangements generally have one performance obligation and are reported net of estimated sales returns and allowances, which are determined based on historical product return rates and current economic conditions. We offer an extended protection plan in the capacity of an agent on behalf of a third-party that has different terms ranging from two years to lifetime that vary based on the item purchased. The commission that the Company receives from the third-party is recognized at the time of sale less an estimate of cancellations based on historical experience. There are no additional performance obligations in relation to the third-party plan.

We maintain a returns asset account, less any expected costs to recover, and a refund liabilities account to record the effects of estimated product returns and sales returns and allowances, which are updated at the end of each financial reporting period with the effect of such changes accounted for in the period in which such changes occur. Our sales returns and allowance accounts are based on historical return experience and current period sales levels.

Equity-Based Compensation

Equity-based compensation is accounted for as an expense in accordance with the fair value recognition and measurement provisions of GAAP which requires compensation cost for the grant-date fair value of equity-based awards to be recognized over the requisite service period. We account for forfeitures as they occur, and any compensation expense previously recognized on unvested equity-based awards is reversed when forfeited.

The fair value of option-based awards is estimated using the Black-Scholes valuation model. The Black-Scholes model requires the use of highly subjective and complex assumptions, including the option's expected term and the price volatility of the underlying stock. For inputs into the Black-Scholes model, the expected stock price volatility for the common stock is estimated by taking the average historic price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in our industry which are of similar size, complexity and stage of development. The risk-free interest rate for the expected term of the option is based on the U.S. Treasury implied yield at the date of grant.

We have elected to use the "simplified method" to determine the expected term which is the midpoint between the vesting date and the end of the contractual term because it has insufficient history upon which to base an assumption about the term; we believe the simplified method approximates a term if it were to be based on expected life. The expected dividend yield is nil as we have not paid and do not anticipate paying dividends on our common stock.

Deferred Tax Asset and Tax Receivable Agreement

We may receive a deferred tax benefit resulting from the step-up in basis which occurs in the event that we redeem LLC interests from the Continuing Equity Owners. Pursuant to a TRA entered into by Brilliant Earth, LLC and the Continuing Equity Owners, we will make payments to the Continuing Equity Owners of 85% of the amount of tax benefits, if any, that Brilliant Earth Group, Inc. actually realizes (or in some circumstances is deemed to realize) as a result of (1) increases in Brilliant Earth Group, Inc.'s allocable share of the tax basis of Brilliant Earth, LLC's assets resulting from (a) Brilliant Earth Group, Inc.'s purchase of LLC Interests from each Continuing Equity Owner, (b) future redemptions or exchanges of LLC Interests for Class A common stock or cash, and (c) certain distributions (or deemed distributions) by Brilliant Earth, LLC; and (2) certain tax benefits arising from payments made under the TRA.

We expect that payments under the TRA will be significant. We will account for the income tax effects and corresponding TRA's effects resulting from future taxable purchases or redemptions of LLC Interests of the Continuing LLC Owners by us or Brilliant Earth, LLC by recognizing an increase in our deferred tax assets, based on enacted tax rates at the date of the purchase or redemption, and assessment of the book basis of the redeemed LLC interests at the time of redemption. Further, we will evaluate the likelihood that we will realize the benefit represented by the deferred tax asset and, to the extent that we estimate that it is more likely than not that we will not realize the benefit, we will reduce the carrying amount of the deferred tax asset with a valuation allowance.

The amounts to be recorded for both the deferred tax asset and the liability for our obligations under the TRA will be estimated at the time of any purchase or redemption as a reduction to shareholders' equity. The effect of subsequent changes in the enacted tax rates will be included in net income. We currently believe that all deferred tax assets will be recovered based upon the projected profitability of our operations. Judgment is required in assessing the future tax consequences of events that have been recognized in Brilliant Earth Group, Inc.'s financial statements. A change in the assessment of such consequences, such as realization of deferred tax assets, changes in tax laws or interpretations thereof could materially impact our results.

Recent Accounting Pronouncements

See Note 2 – *Summary of Significant Accounting Policies* to our accompanying financial statements and related notes thereto included elsewhere in this Annual Report on Form 10-K for additional information regarding recent accounting developments and their impact on our results.

JOBS Act

We qualify as an “emerging growth company” pursuant to the provisions of the JOBS Act, enacted on April 5, 2012. Section 102 of the JOBS Act provides that, among other reporting exemptions, an “emerging growth company” can take advantage of the extended transition period provided in Section 7(a)(2) (B) of the Securities Act for complying with new or revised accounting standards. We are electing to delay the adoption of new or revised accounting standards, and as a result, we may not comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. As a result, our audited consolidated financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

The exemptions afforded to emerging growth companies will apply until we no longer meet the requirements of being an emerging growth company. We will remain an emerging growth company until the earlier of (a) the last day of the fiscal year (i) following the fifth anniversary of the completion of our IPO (December 31, 2026), (ii) in which we have total annual gross revenue of at least \$1.235 billion or (iii) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds \$700.0 million as of the last business day of our prior second fiscal quarter, and (b) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934 and are not required to provide the information under this item.

Item 8. Financial Statements and Supplementary Data

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Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors
Brilliant Earth Group, Inc.
San Francisco, California

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Brilliant Earth Group, Inc. (the “Company”) as of December 31, 2023 and 2022, the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the years then ended, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, P.C.
We have served as the Company's auditor since 2021.
Denver, Colorado
March 28, 2024

Brilliant Earth Group, Inc.
CONSOLIDATED BALANCE SHEETS
(in thousands except share and per share amounts)

	December 31,	
	2023	2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 155,809	\$ 154,649
Restricted cash	211	205
Inventories, net	37,788	39,331
Prepaid expenses and other current assets	11,048	11,764
Total current assets	204,856	205,949
Property and equipment, net	22,047	16,554
Deferred tax assets	9,745	8,948
Operating lease right of use assets	34,248	27,812
Other assets	2,687	3,311
Total assets	\$ 273,583	\$ 262,574
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 4,511	\$ 11,032
Accrued expenses and other current liabilities	43,824	37,833
Deferred revenue	19,556	18,553
Current portion of operating lease liabilities	4,993	3,873
Current portion of long-term debt	4,063	3,250
Total current liabilities	76,947	74,541
Long-term debt, net of debt issuance costs	55,573	59,462
Operating lease liabilities	35,572	28,537
Payable pursuant to the Tax Receivable Agreement	8,035	6,893
Total liabilities	176,127	169,433
Commitments and contingencies (Note 12)		
Stockholders' equity		
Preferred stock, \$0.0001 par value per share, 10,000,000 shares authorized, none issued and outstanding at December 31, 2023 and 2022, respectively	—	—
Class A common stock, \$0.0001 par value - 1,200,000,000 shares authorized; 12,522,146 and 11,246,694 shares issued and outstanding at December 31, 2023 and 2022, respectively	1	1
Class B common stock, \$0.0001 par value - 150,000,000 shares authorized; 35,688,349 and 35,482,534 shares issued and outstanding at December 31, 2023 and 2022, respectively	4	4
Class C common stock, \$0.0001 par value - 150,000,000 shares authorized; 49,119,976 shares issued and outstanding at December 31, 2023 and 2022, respectively	5	5
Class D common stock, \$0.0001 par value - 150,000,000 shares authorized; none issued and outstanding at December 31, 2023 and 2022, respectively	—	—
Additional paid-in capital	8,275	7,256
Retained earnings	4,247	3,663
Stockholders' equity attributable to Brilliant Earth Group, Inc.	12,532	10,929
Non-controlling interests attributable to Brilliant Earth, LLC	84,924	82,212
Total stockholders' equity	97,456	93,141
Total liabilities and stockholders' equity	\$ 273,583	\$ 262,574

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

Brilliant Earth Group, Inc.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands except share and per share amounts)

	Years ended December 31,	
	2023	2022
Net sales	\$ 446,382	\$ 439,882
Cost of sales	189,382	205,591
Gross profit	257,000	234,291
Operating expenses:		
Selling, general and administrative	252,518	210,964
Income from operations	4,482	23,327
Interest expense	(5,128)	(4,658)
Other income, net	4,949	805
Loss on extinguishment of debt	—	(617)
Income before tax	4,303	18,857
Income tax benefit	431	168
Net income	4,734	19,025
Net income allocable to non-controlling interest	4,150	16,890
Net income allocable to Brilliant Earth Group, Inc.	\$ 584	\$ 2,135
Earnings per share:		
Basic	\$ 0.05	\$ 0.20
Diluted	\$ 0.04	\$ 0.15
Weighted average shares of common stock outstanding:		
Basic	11,928,308	10,687,732
Diluted	97,055,216	96,505,325

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

Brilliant Earth Group, Inc.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands except share amounts)

Brilliant Earth Group, Inc. Stockholders' Equity

	Class A Common Stock		Class B Common Stock		Class C Common Stock		Additional Paid-In Capital	Retained Earnings	Stockholders' Equity	Non-Controlling Interest	Total Stockholders' Equity
	Shares	Amounts	Shares	Amounts	Shares	Amounts				Amounts	Amounts
Balance, January 1, 2022	9,614,523	\$ 1	35,658,013	\$ 4	49,505,250	\$ 5	\$ 6,865	\$ 1,528	\$ 8,403	\$ 74,435	\$ 82,838
Tax distributions to members	—	—	—	—	—	—	—	—	—	(18,316)	(18,316)
Conversion of Class B and Class C to Class A common stock	1,281,052	—	(895,778)	—	(385,274)	—	—	—	—	—	—
RSU vesting during period	351,119	—	—	—	—	—	—	—	—	—	—
Class B shares issued upon vesting of LLC Units	—	—	720,299	—	—	—	—	—	—	—	—
Change in deferred tax asset and TRA liability related to redemption of LLC Units	—	—	—	—	—	—	754	—	754	—	754
Equity-based compensation	—	—	—	—	—	—	8,568	—	8,568	272	8,840
Net income	—	—	—	—	—	—	—	2,135	2,135	16,890	19,025
Rebalancing of controlling and non-controlling interest	—	—	—	—	—	—	(8,931)	—	(8,931)	8,931	—
Balance, December 31, 2022	11,246,694	\$ 1	35,482,534	\$ 4	49,119,976	\$ 5	\$ 7,256	\$ 3,663	\$ 10,929	\$ 82,212	\$ 93,141
Tax distributions to members	—	—	—	—	—	—	—	—	—	(9,854)	(9,854)
Conversion of Class B to Class A common stock	211,351	—	(211,351)	—	—	—	—	—	—	—	—
RSU vesting during period	1,064,101	—	—	—	—	—	—	—	—	—	—
Class B shares issued upon vesting of LLC Units	—	—	417,166	—	—	—	—	—	—	—	—
Change in deferred tax asset and TRA liability related to redemption of LLC Units	—	—	—	—	—	—	(517)	—	(517)	—	(517)
Equity-based compensation	—	—	—	—	—	—	9,748	—	9,748	204	9,952
Net income	—	—	—	—	—	—	—	584	584	4,150	4,734
Rebalancing of controlling and non-controlling interest	—	—	—	—	—	—	(8,212)	—	(8,212)	8,212	—
Balance, December 31, 2023	12,522,146	\$ 1	35,688,349	\$ 4	49,119,976	\$ 5	\$ 8,275	\$ 4,247	\$ 12,532	\$ 84,924	\$ 97,456

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

Brilliant Earth Group, Inc.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years ended December 31,	
	2023	2022
Operating activities		
Net income	\$ 4,734	\$ 19,025
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	4,200	1,922
Equity-based compensation	9,952	8,840
Non-cash operating lease cost	4,692	3,229
Amortization of debt issuance costs	269	592
Loss on extinguishment of debt	—	617
Deferred tax benefit	(488)	(168)
Other	60	180
Changes in assets and liabilities:		
Inventories	1,495	(14,751)
Prepaid expenses and other current assets	2,036	(1,848)
Other assets	529	(2,292)
Accounts payable, accrued expenses and other current liabilities	2,024	2,491
Deferred revenue	1,003	(455)
Operating lease liabilities	(4,292)	(2,876)
Net cash provided by operating activities	26,214	14,506
Investing activities		
Purchases of property and equipment	(11,944)	(9,124)
Net cash used in investing activities	(11,944)	(9,124)
Financing activities		
Proceeds received from Silicon Valley Bank ("SVB") term loan facility	—	65,000
Repayment of Runway term loan	—	(58,158)
Tax distributions to members	(9,854)	(18,316)
Principal payments on Runway term loan	—	(6,842)
Final payment and prepayment penalty on Runway term loan	—	(2,408)
Payments of debt issuance costs	—	(1,249)
Payments on SVB term loan	(3,250)	(1,625)
Net cash used in financing activities	(13,104)	(23,598)
Net increase (decrease) in cash, cash equivalents and restricted cash	1,166	(18,216)
Cash, cash equivalents and restricted cash at beginning of year	154,854	173,070
Cash, cash equivalents and restricted cash at end of year	\$ 156,020	\$ 154,854
Non-cash investing and financing activities		
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 12,447	\$ 13,970
Deferred tax assets associated with redemption of LLC Units	\$ 309	\$ 4,374
TRA Obligation associated with redemption of LLC Units	\$ 826	\$ 3,620
Purchases of property and equipment included in accounts payable and accrued liabilities	\$ 414	\$ 2,636
Change to APIC related to redemption of LLC Units	\$ (517)	\$ 754
Supplemental information		
Cash paid for interest	\$ 5,152	\$ 3,827
Cash paid for taxes	\$ 68	\$ 175

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

Brilliant Earth Group, Inc.
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. BUSINESS AND ORGANIZATION

Brilliant Earth Group, Inc. was formed as a Delaware corporation on June 2, 2021 for the purpose of facilitating an initial public offering (“IPO”) and executing other related organizational transactions to acquire and carry on the business of Brilliant Earth, LLC. Brilliant Earth, LLC was originally incorporated in Delaware on August 25, 2005, and subsequently converted to a limited liability company on November 29, 2012. Brilliant Earth Group, Inc., the sole managing member of Brilliant Earth, LLC, consolidates Brilliant Earth, LLC and both are collectively referred to herein as “the Company.”

The Company designs, procures and sells ethically sourced diamonds, gemstones and jewelry online and through 37 showrooms operating within the United States (“U.S.”) as of December 31, 2023. Co-headquarters are located in San Francisco, California and Denver, Colorado.

The Company operates in one operating and reporting segment which is the retail sale of diamonds, gemstones and jewelry. Over 90% of sales are to customers in the U.S.; sales to non-U.S. customers immediately settle in U.S. dollars and no cash balances are carried in foreign currencies. The Company’s chief operating decision maker (“CODM”), the Chief Executive Officer (“CEO”), reviews financial information presented on a consolidated basis for purposes of making operating decisions and assessing financial performance.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and the applicable rules and regulations of the Securities and Exchange Commission (the “SEC”) and reflect the financial position, results of operations and cash flows of the Company. As an emerging growth company (“EGC”), the Company has elected to use extended transition periods available to EGC companies for complying with new or revised accounting standards. These accounting policies have been consistently applied in the preparation of the consolidated financial statements.

Certain reclassifications have been made to prior period amounts to conform to the current presentation. These reclassifications had no impact on net income, cash flows or stockholders’ equity previously reported.

Principles of Consolidation and Non-Controlling Interest

The consolidated financial statements include the accounts of the Company and its controlled subsidiary, Brilliant Earth, LLC. All intercompany balances and transactions have been eliminated in consolidation.

The assets and liabilities of Brilliant Earth, LLC represent substantially all of the consolidated assets and liabilities of Brilliant Earth Group, Inc. Brilliant Earth Group, Inc. has not had any material operations on a standalone basis since its inception, and all of the operations of the Company are carried out by Brilliant Earth, LLC.

The non-controlling interest on the consolidated statement of operations represents the portion of earnings or loss attributable to the economic interest in Brilliant Earth, LLC. The non-controlling interest on the consolidated balance sheets represent the portion of net assets of the Company attributable to the owners of the common units of Brilliant Earth, LLC (“LLC Interests” or “LLC Units”). The non-controlling interest was 87.1% and 88.3% as of December 31, 2023 and 2022, respectively. At the end of each reporting period, equity related to Brilliant Earth, LLC that is attributable to Brilliant Earth Group, Inc. and the owners of the LLC Interests (the “Continuing Equity Owners”) is rebalanced to reflect Brilliant Earth Group, Inc.’s and the Continuing Equity Owners’ ownership in Brilliant Earth, LLC.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates are based on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Some of the more significant estimates include inventory valuation, allowance for sales returns, estimates of current and deferred income taxes payable pursuant to the tax receivable agreement, useful lives and depreciation of long-lived assets, and fair value of equity-based compensation. Actual results could differ materially from those estimates. On an ongoing basis, the Company reviews its estimates to ensure that they appropriately reflect changes in its business or new information available.

Fair Value Measurements

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. GAAP establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. GAAP prescribes three levels of inputs that may be used to measure fair value:

- Level 1 Valuation based on quoted prices (unadjusted) observed in active markets for identical assets or liabilities.
- Level 2 Valuation techniques based on inputs that are quoted prices of similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not in active markets; inputs other than quoted prices used in a valuation model that are observable for that instrument; and inputs that are derived from, or corroborated by, observable market data by correlation or other means.
- Level 3 Valuation techniques with significant unobservable market inputs.

The Company is required to disclose its estimate of the fair value of material financial instruments, including those recorded as assets or liabilities in its financial statements, in accordance with GAAP.

At December 31, 2023 and 2022, there were no financial instruments (assets or liabilities) measured at fair value on a recurring basis.

The carrying amounts of cash and cash equivalents, restricted cash, accounts payable and accrued expenses and other current liabilities approximate fair value due to their short-term maturities and were classified as Level 1. The carrying value of long-term debt, net of debt issuance costs, also approximates its fair value, which has been estimated by management based on the consideration of applicable interest rates (including certain instruments at variable or floating rates) for similar types of borrowing arrangements and were classified as Level 2.

Concentration of Risk

The Company maintains the majority of its cash and cash equivalents in accounts with major financial institutions within the U.S. in the form of demand deposits, money market accounts, and time deposits. Deposits in these institutions may exceed the amounts of insurance provided, or deposits may not be covered by insurance. The Company has not experienced losses on its deposits of cash and cash equivalents.

The Company's ability to procure diamonds, gemstones and to produce jewelry is dependent on its relationships with various suppliers. Two suppliers of jewelry accounted for a total of 21% of inventory purchases during the year ended December 31, 2023. There were no significant concentrations of inventory purchases from suppliers during the year ended December 31, 2022.

Cash and Cash Equivalents, and Restricted Cash

All highly liquid investments with an original maturity of three months or less and deposits in transit from banks for payments related to third-party credit and debit card transactions are considered to be cash equivalents. Credit and debit card transactions are short-term and highly liquid in nature. Interest income is recorded for interest-bearing cash accounts and is included within other income, net in the consolidated statements of operations. During the years ended December 31, 2023 and 2022, the Company recorded interest income of \$5.2 million and \$1.2 million, respectively.

Restricted cash as of December 31, 2023 and 2022 pertains to funds of \$0.2 million securing a letter of credit in lieu of a security deposit related to a lease at one of the Company's showroom locations.

The following table provides a reconciliation of cash and cash equivalents, and restricted cash from the consolidated balance sheets to the statements of cash flows for the years ended December 31, 2023 and 2022 (in thousands):

	December 31,	
	2023	2022
Cash and cash equivalents	\$ 155,809	\$ 154,649
Restricted cash	211	205
Total	\$ 156,020	\$ 154,854

Inventories, Net

The Company's diamond, gemstone and jewelry inventories are primarily held for resale and valued at the lower of cost or net realizable value. Cost is primarily determined using the weighted average cost on a first-in, first-out ("FIFO") basis for all inventories, except for unique inventory SKUs (principally independently graded diamonds), where cost is determined using specific identification. Net realizable value is defined as estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation.

Inventory reserves are recorded for obsolete, slow-moving or defective items and shrinkage. Inventory reserves are calculated as the difference between the cost of inventory and its estimated market value based on factors such as current and anticipated demand, customer preferences and fashion trends, management strategy and market conditions. Due to the Company's inventory principally consisting of diamonds, gemstones and fine jewelry, the age of the inventories has limited impact on the estimated market value. The Company's diamonds and gemstones do not degrade in quality over time and diamond and gemstone inventory generally consists of the diamond and gemstone shapes and sizes commonly used in the jewelry industry. Product obsolescence is closely monitored and reviewed by management on an ongoing basis.

Property and Equipment, Capitalized Software and Website Development

Property and equipment are stated at cost less accumulated depreciation. Construction in progress primarily includes costs related to new showroom construction and is stated at original cost. Depreciation is recorded when the relevant assets are placed into service. Repairs and maintenance costs are expensed as incurred. Depreciation expense is calculated on a straight-line basis over the estimated useful lives of the related assets. The cost and related accumulated depreciation of assets sold or otherwise disposed of are removed from the accounts and the related gain or loss is reported in the consolidated statements of operations. Estimated useful lives by major asset category are as follows:

<u>Asset</u>	<u>Life (in years)</u>
Computer equipment	3
Equipment	5 - 7
Furniture and fixtures	7
Software and website	3
Leasehold improvements	Shorter of lease term or 10 years

The Company capitalizes costs of initial development of internal-use software and its website, and amortizes such costs on a straight-line basis over the estimated useful life of the software, which is generally three years, once it is available for use. Costs related to the ongoing maintenance of internal-use software and the website are expensed as incurred.

Cloud Computing Implementation Costs

Cloud computing implementation costs incurred for implementation, setup, and other upfront activities in a hosting arrangement that is a service contract are capitalized during the application development stage until the software is ready for its intended use and are included in other assets in the consolidated balance sheets. Upgrades and enhancements are capitalized if they will result in additional functionality. Amortization of capitalized costs is recorded on a straight-line basis over the term of the associated hosting arrangement, inclusive of certain renewal periods.

The Company's capitalized implementation costs for cloud computing arrangements, net consisted of the following (in thousands):

	December 31,	
	2023	2022
Capitalized implementation costs	\$ 2,311	\$ 2,290
Less: accumulated amortization	(846)	(263)
Cloud computing arrangements, net	<u>\$ 1,465</u>	<u>\$ 2,027</u>

These cloud computing arrangements were primarily related to implementation of the Company's customer relationship management system and a cloud-based data management platform, among other software implementations. During the years ended December 31, 2023 and 2022, the Company recorded amortization expense related to these implementation costs of \$0.6 million and \$0.3 million, respectively. During the year ended December 31, 2023, the Company wrote off \$0.5 million of capitalized costs that were determined to not be usable.

Impairment Tests for Long-Lived Assets

The Company reviews the carrying value of its long-lived assets, including property and equipment and right of use ("ROU") assets, whenever events or changes in circumstances indicate that the carrying value may not be recoverable. To the extent the estimated future cash inflows attributable to the assets, less estimated future cash outflows, are less than the carrying amount, an impairment loss would be recognized. No impairment losses have been recognized during the years ended December 31, 2023 and 2022, as no events or changes in circumstance have been identified that would indicate the carrying value of long-lived assets is not recoverable.

Leases

The Company leases its executive offices, retail showrooms, office and operational locations under operating leases. The fixed, non-cancelable terms of our real estate leases are generally 5-10 years. Certain lease agreements include

options to renew or terminate the lease, which are not reasonably certain to be exercised and therefore are not factored into the determination of lease payments. Most of the real estate leases require payment of real estate taxes, insurance and certain common area maintenance costs in addition to future minimum lease payments.

The Company determines if an arrangement contains a lease at inception of a contract, and leases are classified at commencement as either operating or finance leases. For operating leases, the Company recognizes a ROU asset and a lease liability on the balance sheet. ROU assets represent the Company's right to use an underlying asset for the lease term and the lease liabilities represent the Company's obligation to make lease payments arising from the lease. The Company does not have any finance leases.

The lease liability is determined as the present value of future lease payments over the lease term. As the rate implicit in the Company's leases is not readily determinable, the Company uses an incremental borrowing rate that is estimated to approximate the interest rate the Company would have to pay to borrow on a collateralized basis with similar terms and payments in an economic environment similar to where the leased asset is located. The ROU asset is recorded as the initial amount of the lease liability, plus any lease payments made to the lessor before or at the lease commencement date and any initial direct costs incurred, less any tenant improvement allowance incentives received. Tenant incentives are amortized through the right-of-use asset as a reduction of lease expense over the lease term. Lease terms may include options to extend or terminate the lease. These options are included in the lease term when it is reasonably certain that the option will be exercised.

The Company utilizes certain practical expedients and policy elections available under GAAP. The Company does not recognize ROU assets or lease liabilities for any lease with a term of twelve months or less and the Company has elected to not separate lease and non-lease components for all existing classes of assets.

Operating lease expenses for fixed lease payments are recognized on a straight-line basis over the lease term. Variable lease payments to the lessor such as maintenance, utilities, insurance, and real estate taxes are expensed as incurred.

Debt Issuance Costs

Costs that are direct and incremental to debt issuance are deferred and amortized to interest expense using the effective interest method over the expected life of the debt. All other costs related to debt issuance are expensed as incurred. The Company presents debt issuance costs associated with long-term debt as a reduction of the carrying amount of the debt. Unamortized costs related to the SVB Revolving Credit Facility are included in other assets on the consolidated balance sheets, See Note 8, *Debt*, for further discussion.

If the terms of a financing obligation are amended and accounted for as a debt modification by the Company, fees incurred directly with the lending institution are capitalized and amortized over the remaining contractual term using the effective interest method. Fees incurred with other parties are expensed as incurred. If the Company determines that there has been a substantial modification of a financing obligation, previously capitalized debt issuance costs are expensed and included in loss on extinguishment of debt in the consolidated statements of operations.

Revenue Recognition

Overview

Net sales primarily consist of revenue from diamond, gemstone and jewelry retail sales and payment is required in full prior to order fulfillment. Delivery is determined to be the time of pickup for orders picked up in showrooms, and for shipped orders, typically within one to two business days after shipment. Credit is not extended to customers except through third-party credit cards or financing offerings. A return policy of 30 days from when the item is picked up or ready for shipment is typically provided; one complimentary resizing for standard ring styles is offered within 60 days of when an order is available for shipment or pickup; a lifetime manufacturing warranty is provided on all jewelry, with the exception of estate and vintage jewelry and center diamonds/gemstones; and a lifetime diamond upgrade program is included on all independently graded natural diamonds. The complimentary resizing, lifetime manufacturing warranty claims and lifetime diamond upgrades have not historically been material. An in-

house three-year extended service plan, which provides full inspection, cleaning and certain repairs due to normal wear, was offered for an additional charge until 2022. An extended protection plan is also offered through a third party that has different terms ranging from 2 years to lifetime that vary based on the item purchased.

The following table discloses total net sales by geography for the years ended December 31, 2023 and 2022 (in thousands):

	December 31,	
	2023	2022
United States	\$ 425,063	\$ 413,678
International	21,319	26,204
Total net sales	\$ 446,382	\$ 439,882

Revenue from customers is recognized as control of the promised goods is transferred to customers, which occurs upon delivery if the order is shipped, or at the time the customer picks up the completed product at a showroom. Customer payment is completed prior to order fulfillment, therefore a significant financing component does not exist.

Revenue arrangements generally have one performance obligation and are reported net of estimated sales returns and allowances, which are determined based on historical product return rates and current economic conditions. The Company had offered an in-house three-year extended service plan that gave rise to an additional performance obligation when purchased by a customer, which is recognized over the course of the plan. However, beginning in 2022, the Company no longer offered this plan. The Company now offers an extended protection plan in the capacity of an agent on behalf of a third-party that has different terms ranging from two years to lifetime that vary based on the item purchased. The commission that the Company receives from the third-party is recognized at the time of sale less an estimate of cancellations based on historical experience. There are no additional performance obligations in relation to the third-party plan.

Sales taxes are collected and remitted to taxing authorities, and the Company has elected to exclude sales taxes from recognized revenues.

Contract Balances

Transactions where payment has been received from customers, but control has not transferred, are recorded as customer deposits in deferred revenue and revenue recognition is deferred until delivery has occurred. Deferred revenue also includes payments on the Company's three-year extended service plan that customers have elected to purchase. As of December 31, 2023, 2022, and 2021, total deferred revenue that includes our contract balances was \$19.6 million, \$18.6 million, and \$19.0 million, respectively. During the years ended December 31, 2023 and 2022, the Company recognized \$18.1 million and \$18.4 million, respectively, of revenue that was deferred as of the last day of the respective prior year.

Sales Returns and Allowances

A returns asset account and a refund liabilities account are maintained to record the effects of estimated product returns and sales returns allowance. Returns asset and refund liabilities are updated at the end of each financial reporting period and the effect of such changes are accounted for in the period in which such changes occur.

The Company estimates anticipated product returns in the form of a refund liability based on historical return percentages and current period sales levels, and accrues a related returns asset for goods expected to be returned in salable condition less any expected costs to recover such goods, including return shipping costs that the Company may incur.

As of December 31, 2023 and 2022, refund liabilities balances were \$2.4 million and \$2.3 million, respectively, and are included as a provision for sales returns and allowances within accrued expenses and other current liabilities in the consolidated balance sheets. See Note 6, *Accrued Expenses and Other Current Liabilities*, for further discussion. As of December 31, 2023 and 2022, returns asset balances were \$1.0 million and \$0.9 million, respectively, and are included within prepaid expenses and other current assets in the consolidated balance sheets.

Fulfillment Costs

The Company generally does not bill customers separately for shipping and handling charges. Fulfillment costs incurred by the Company when shipping to customers is reflected in cost of sales in the consolidated statements of operations.

Consignment Inventory Sales

Sales of consignment inventory are presented on a gross sales basis as control of the merchandise is maintained through the point of sale. The Company also provides independent advice, guidance and after-sales service to customers. Consigned products are selected at the discretion of the Company, and the determination of the selling price as well as responsibility of the physical security of the products is maintained by the Company. The products sold from consignment inventory are similar in nature to other products that the Company sells to customers and are sold on the same terms.

Cost of Sales

The Company purchases diamonds and gemstones from suppliers and utilizes third-party manufacturing suppliers for the production and assembly of substantially all jewelry sold by the Company. Cost of sales includes merchandise costs, inbound freight charges, costs of shipping orders to customers, costs and reserves for disposal of obsolete, slow-moving or defective items and shrinkage.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist primarily of marketing, advertising and promotional expenses, payroll and related benefit costs for the Company's employees, including equity-based compensation expense, merchant processing fees, certain facility-related costs, customer service, information technology and depreciation expenses, as well as professional fees and other general corporate expenses.

Marketing, advertising and promotional costs are generally expensed as incurred, except for certain production costs that are expensed the first time the advertising takes place. During the years ended December 31, 2023 and 2022, the Company recorded marketing, advertising and promotional costs of \$119.3 million and \$97.3 million, respectively.

Foreign Currency Transactions

Gains or losses resulting from foreign currency transactions are included within other income, net in the consolidated statements of operations. For the years ended December 31, 2023 and 2022, losses from foreign currency transactions were \$0.3 million and \$0.5 million, respectively.

Equity-Based Compensation

Equity-based compensation is accounted for as an expense under the fair value recognition and measurement provisions of GAAP which requires compensation cost for the grant-date fair value of equity-based awards to be recognized over the requisite service period. The Company uses the straight-line method to amortize all stock awards granted over the requisite service period of the award. The Company accounts for forfeitures when they occur, and any compensation expense previously recognized on unvested equity-based awards will be reversed when forfeited.

The fair value of restricted stock units (“RSUs”) is based on the fair value of the Class A common stock at the time of grant. No other equity-based compensation awards were granted during the years ended December 31, 2023 and 2022.

Distributions to Members

The Brilliant Earth LLC Agreement (the “LLC Agreement”) provides for the distribution of cash in defined amounts sufficient to fund member income tax liabilities.

Income Taxes

The Company is subject to U.S. federal, state, and local income taxes with respect to its allocable share of any taxable income of Brilliant Earth, LLC assessed at the prevailing corporate tax rates. The Company accounts for its income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that the deferred tax assets will be realized. Deferred tax assets and liabilities are calculated by applying existing tax laws and the rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the year of the enacted rate change.

Uncertainty in income taxes is accounted for using a recognition and measurement threshold for tax positions taken or expected to be taken in a tax return, which are subject to examination by federal and state taxing authorities. The tax benefit from an uncertain tax position is recognized when it is more likely than not that the position will be sustained upon examination by taxing authorities based on the technical merits of the position. The amount of the tax benefit recognized is the largest amount of the benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The effective tax rate and the tax basis of assets and liabilities reflect management’s estimates of the ultimate outcome of various tax uncertainties. The Company would recognize penalties and interest related to uncertain tax positions within the income tax line item within the consolidated statements of operations. As of December 31, 2023 and 2022, no uncertain tax positions have been recorded. The Company will continue to monitor this position each interim period.

Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In June 2016, the FASB issued Accounting Standards Update (“ASU”) 2016-13, Financial Instruments - Credit Losses: Measurement of Credit Losses on Financial Instruments (Topic 326). The guidance replaced the incurred loss impairment methodology with a new model that uses a forward-looking expected loss method, which will generally result in earlier recognition of allowances for losses. The Company adopted this guidance using the modified retrospective method during the first quarter of 2023. The adoption of this guidance did not have a material impact on the Company’s audited consolidated financial statements.

Accounting Pronouncements Issued but Not Yet Adopted

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures. The new standard requires enhanced disclosures about significant segment expenses and other segment items and requires companies to provide all annual disclosures about segments in interim periods. All disclosure requirements are also required for public entities with a single reportable segment. The ASU is effective for the Company’s Annual Report on Form 10-K for the fiscal year ending December 31, 2024, and subsequent

interim periods, with early adoption permitted. We are currently evaluating the impact of adopting this ASU on our consolidated financial statements and related disclosures.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures. The amendments in this update are intended to enhance the transparency and decision usefulness of income tax disclosures primarily through changes to the rate reconciliation and income taxes paid information. This update is effective for annual periods beginning after December 15, 2024, with early adoption permitted. We are currently evaluating the ASU to determine its impact on our consolidated financial statements and related disclosures.

NOTE 3. EARNINGS PER SHARE

Basic earnings per share is computed by dividing net income applicable to Brilliant Earth Group, Inc. by the weighted average shares of Class A common stock outstanding (and Class D common stock if outstanding) during the period. Diluted earnings per share is computed by adjusting the net income available to Brilliant Earth Group, Inc. and the weighted average shares outstanding to give effect to potentially dilutive securities. Shares of Class B and Class C common stock are not entitled to receive any distributions or dividends and are therefore excluded from this presentation since they are not participating securities.

Basic and diluted earnings per share of Class A common stock for the years ended December 31, 2023 and 2022, have been computed as follows (in thousands, except share and per share amounts):

	December 31,	
	2023	2022
Numerator:		
Net income attributable to Brilliant Earth Group, Inc., BASIC	\$ 584	\$ 2,135
Add: Net income impact from assumed redemption of all LLC Units to common stock	4,150	16,890
Less: Income tax expense on net income attributable to NCI	(1,081)	(4,369)
Net income attributable to Brilliant Earth Group, Inc., after adjustment for assumed conversion, DILUTED	<u>\$ 3,653</u>	<u>\$ 14,656</u>
Denominator:		
Weighted average shares of common stock outstanding, BASIC	11,928,308	10,687,732
Dilutive effects of:		
Vested LLC Units that are exchangeable for common stock	84,699,687	84,569,954
Unvested LLC Units that are exchangeable for common stock	325,103	995,892
RSUs	102,118	251,747
Weighted average shares of common stock outstanding, DILUTED	<u>97,055,216</u>	<u>96,505,325</u>
BASIC earnings per share	\$ 0.05	\$ 0.20
DILUTED earnings per share	\$ 0.04	\$ 0.15

Net income attributable to the non-controlling interest is added back to net income in the fully dilutive computation and has been adjusted for income taxes which would have been expensed had the income been recognized by Brilliant Earth Group, Inc., a taxable entity. The weighted average common shares outstanding in the diluted computation per share assumes all outstanding LLC Units are converted and the Company will elect to issue shares of common stock upon redemption rather than cash-settle.

For the years ended December 31, 2023 and 2022, the dilutive impact of vested LLC Units convertible into common stock were included in the computation of diluted earnings per share under the if-converted method; the dilutive impact of unvested LLC Units and RSUs were included using the treasury stock method.

The following table presents the shares underlying RSUs and stock options for the years ended December 31, 2023 and 2022, that have been excluded from the computation of earnings per share because such impact would be anti-dilutive:

	December 31,	
	2023	2022
RSUs	3,032,037	2,002,014
Stock options	795,763	1,112,615

NOTE 4. INVENTORIES, NET

Inventories, net consist of the following (in thousands):

	December 31,	
	2023	2022
Loose diamonds	\$ 8,168	\$ 11,894
Fine jewelry and other	29,975	27,744
Allowance for inventory obsolescence	(355)	(307)
Total inventories, net	\$ 37,788	\$ 39,331

The allowance for inventory obsolescence consists of the following (in thousands):

	December 31,	
	2023	2022
Balance at beginning of period	\$ (307)	\$ (260)
Change in allowance for inventory obsolescence	(48)	(47)
Balance at end of period	\$ (355)	\$ (307)

As of December 31, 2023 and 2022, the Company had \$24.8 million and \$27.6 million, respectively, of consigned inventory held on behalf of suppliers which is not recorded in the consolidated balance sheets.

NOTE 5. PROPERTY AND EQUIPMENT, NET

Property and equipment, net, consist of the following (in thousands):

	December 31,	
	2023	2022
Equipment	\$ 3,428	\$ 2,148
Furniture and fixtures	2,585	2,095
Leasehold improvements	21,999	12,697
Construction in progress	992	3,626
Other	1,059	726
Gross property and equipment	30,063	21,292
Less: accumulated depreciation	(8,016)	(4,738)
Total property and equipment, net	\$ 22,047	\$ 16,554

Total depreciation expense was approximately \$4.2 million and \$1.9 million for the years ended December 31, 2023 and 2022, respectively.

NOTE 6. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following (in thousands):

	December 31,	
	2023	2022
Vendor expenses	\$ 12,400	\$ 14,769
Inventory received not billed	12,686	7,973
Payroll expenses	6,027	5,301
Sales and other tax payable	4,040	4,137
Provision for sales returns and allowances	2,449	2,332
Current portion of TRA	186	502
Other	6,036	2,819
Total accrued expenses and other current liabilities	\$ 43,824	\$ 37,833

Included in accrued expenses and other current liabilities is a provision for sales returns and allowances. Returns are estimated based on past experience and current expectations and are recorded as an adjustment to revenue. Activity for the years ended December 31, 2023 and 2022 was as follows (in thousands):

	December 31,	
	2023	2022
Balance at beginning of period	\$ 2,332	\$ 2,338
Provision	23,713	21,455
Returns and allowances	\$ (23,596)	(21,461)
Balance at end of period	\$ 2,449	\$ 2,332

NOTE 7. LEASES

Total operating lease ROU assets and lease liabilities were as follows (in thousands):

Assets	Classification	December 31,	
		2023	2022
Operating ROU assets at cost	Operating lease right of use assets	\$ 42,169	\$ 31,041
Accumulated amortization	Operating lease right of use assets	(7,921)	(3,229)
Net book value		\$ 34,248	\$ 27,812
Liabilities			
Current:			
Operating leases	Current portion of operating lease liabilities	\$ 4,993	\$ 3,873
Noncurrent:			
Operating leases	Operating lease liabilities	35,572	28,537
Total lease liabilities		\$ 40,565	\$ 32,410

Total operating lease costs were as follows (in thousands):

	Classification	December 31,	
		2023	2022
Operating lease costs	Selling, general and administrative expense	\$ 6,912	\$ 4,372
Variable lease costs	Selling, general and administrative expense	1,345	913
Total lease costs		\$ 8,257	\$ 5,285

The maturity analysis of the operating lease liabilities as of December 31, 2023 was as follows (in thousands):

Years ending December 31,	Amount
2024	\$ 7,078
2025	7,769
2026	7,524
2027	6,150
2028	5,127
Thereafter	16,192
Total minimum lease payments⁽¹⁾	49,840
Less: imputed interest	(9,275)
Net present value of operating lease liabilities	40,565
Less: current portion	(4,993)
Long-term portion	\$ 35,572

(1) Future minimum lease payments exclude \$2.4 million of future payments required under a signed lease agreement that has not yet commenced. This operating lease will commence during fiscal year 2024 with a lease term of seven years.

The following table summarizes the weighted-average remaining lease term and weighted-average discount rate on long-term leases as of December 31, 2023 and 2022 (in thousands):

	December 31,	
	2023	2022
Weighted-average remaining lease term - operating leases	7.0 years	7.3 years
Weighted-average discount rate - operating leases	5.5 %	4.5 %

Supplemental cash flow information related to operating leases is as follows:

Operating cash flows from operating leases	\$ 6,443	\$ 4,020
ROU assets obtained in exchange for operating lease liabilities	\$ 12,447	\$ 13,970

NOTE 8. DEBT

The following table summarizes the net carrying amount of the Company's outstanding debt as of December 31, 2023 and 2022, net of debt issuance costs (in thousands):

	December 31, 2023			December 31, 2022		
	Outstanding principal	Debt issuance costs	Net carrying amount	Outstanding principal	Debt issuance costs	Net carrying amount
Current portion	\$ 4,063	\$ —	\$ 4,063	\$ 3,250	\$ —	\$ 3,250
Long-term	56,063	(490)	55,573	60,125	(663)	59,462
Total debt	\$ 60,126	\$ (490)	\$ 59,636	\$ 63,375	\$ (663)	\$ 62,712

Term Loan Agreement - Runway Growth Credit Finance Corp.

On September 30, 2019, the Company entered into a Loan and Security Agreement with Runway Growth Finance Corp. (f/k/a Runway Growth Credit Fund Inc.) (“Runway”) which, as subsequently amended, provided for up to \$65.0 million of borrowings (as subsequently amended, the “Runway Term Loan”). The Runway Term Loan bore interest at a variable rate equal to LIBOR (at a floor of 0.50%) plus 7.75%. The Runway Term Loan was secured by substantially all of the assets of the Company and required us to comply with various affirmative and negative debt covenants.

The Company was required to make interest-only payments on the Runway Term Loan through April 15, 2022, at which time the Runway Term Loan began amortizing, with equal monthly payments of principal, which would fully amortize the principal amount of the Runway Term Loan by October 15, 2023, plus interest being paid by the Company to Runway in consecutive monthly installments until October 15, 2023. The Runway Term Loan was scheduled to mature on October 15, 2023. The Runway Term Loan carried a prepayment fee of 3.00% declining to 0.00% based on the anniversary date of payment, and a final payment fee equal to 4.50% of the principal amount repaid upon prepayment, plus \$0.2 million.

On May 24, 2022, concurrently with entry into the SVB Credit Agreement (as defined below), the Company repaid all outstanding amounts under the Runway Term Loan, totaling \$58.2 million with proceeds from the SVB Credit Agreement. In connection with the repayment and termination of the Runway Term Loan, the Company was required to pay a 1.00% prepayment fee, plus a final payment fee. As a result of the extinguishment of the Runway Term Loan, the Company recognized a loss on debt extinguishment of \$0.6 million associated with the prepayment fee and the write-off of unamortized debt issuance costs.

SVB Credit Agreement

On May 24, 2022 (the “Closing Date”), Brilliant Earth, LLC, as borrower, and SVB, as administrative agent and collateral agent for the lenders, entered into a credit agreement (the “SVB Credit Agreement”) which provides for a secured term loan credit facility of \$65.0 million (the “SVB Term Loan”) and a secured revolving credit facility in an amount of up to \$40.0 million (the “SVB Revolving Facility”, and together with the SVB Term Loan, the “SVB Credit Facilities”).

The SVB Credit Facilities were used to refinance existing indebtedness, pay related fees and expenses, and will be used from and after the Closing Date for working capital and general corporate purposes. The SVB Credit Facilities mature on May 24, 2027 (the “Maturity Date”). As of December 31, 2023, there are no amounts outstanding under the SVB Revolving Facility.

The SVB Credit Facilities are secured by substantially all assets of Brilliant Earth, LLC and any of its future material subsidiaries, subject to customary exceptions. Brilliant Earth, LLC’s future material subsidiaries (subject to certain customary exceptions) will guarantee repayment of the SVB Credit Facilities.

Borrowings under the SVB Credit Facilities bear interest at either (a) a secured overnight financing rate plus an annual adjustment of 0.125%, plus an applicable margin of 2.25% to 2.75%, depending on the Consolidated Total Leverage Ratio (defined below), or an alternate base rate plus an applicable margin of 1.25% to 1.75%, depending on the Consolidated Total Leverage Ratio, each subject to a 0.00% floor. In addition, Brilliant Earth, LLC has agreed to pay a commitment fee on the first day of each quarter on the unused amount of the SVB Revolving Credit Facility, equal to 0.25% to 0.35% per annum depending on the Consolidated Total Leverage Ratio. The Consolidated Total Leverage Ratio is defined as the ratio, as of the last day of any four fiscal quarter period, of (a) Consolidated Total Indebtedness of the Company and its subsidiaries to (b) the Consolidated EBITDA for such period (each term as further defined in the SVB Credit Agreement).

The SVB Term Loan is required to be repaid on the last day of each calendar quarter (commencing on September 30, 2022), in an amount equal to 1.25% per quarter through June 30, 2024, 1.875% per quarter from September 30, 2024 through June 30, 2025, and 2.50% per quarter thereafter, with the balance payable on the Maturity Date. The SVB Term Loan is also subject to certain mandatory prepayment requirements in connection with asset sales, casualty events and debt incurrence, subject to customary exceptions.

The SVB Credit Facilities are subject to customary affirmative covenants and negative covenants as well as financial maintenance covenants. The financial covenants are tested at the end of each fiscal quarter and require that (a) the Company and its subsidiaries not have a Consolidated Fixed Charge Coverage Ratio (defined as the ratio of (i) Consolidated EBITDA, less cash taxes (including tax distributions), less certain capital expenditures, less cash dividends and other cash restricted payments, to (ii) the sum of cash interest expense and scheduled principal payments on outstanding debt (in each case, as further defined in the SVB Credit Agreement)) of less than 1.25 to 1.00, (b) the Company and its subsidiaries not have a Consolidated Total Leverage Ratio of more than 4.00 to 1.00, and (c) Brilliant Earth, LLC and its subsidiaries not have a Consolidated Borrower Leverage Ratio (defined substantially similar as Consolidated Total Leverage Ratio, but limited to Brilliant Earth, LLC and its subsidiaries) in excess of 3.00 to 1.00 (which level is subject to temporary increases to 4.00 to 1.00 in connection with certain acquisitions). As of December 31, 2023 the Company was in compliance with such covenants.

On March 10, 2023, SVB was closed by the California Department of Financial Protection and Innovation, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as receiver. On March 14, 2023, the FDIC announced the establishment of Silicon Valley Bridge Bank, N.A. (the "Bridge Bank") which assumed the deposits and obligations of SVB. On March 26, 2023, the FDIC announced that it had entered into a purchase and assumption agreement with First-Citizens Bank & Trust Company, Raleigh, North Carolina ("First Citizens") under which all deposits and loans of the Bridge Bank were assumed by First Citizens.

At December 31, 2023, deferred issuance costs included in other assets totaled \$0.3 million, net of accumulated amortization of \$0.2 million. At December 31, 2023, deferred issuance costs included in long-term debt totaled \$0.5 million, net of accumulated amortization of \$0.3 million. These costs are being amortized to interest expense over the term of the loan.

The Company's debt effective interest rate was 8.25% and 7.18%, for the years ended December 31, 2023 and 2022, respectively. Interest expense was \$4.9 million and \$4.1 million; and amortization of deferred issuance costs was \$0.3 million and \$0.6 million for the years ended December 31, 2023 and 2022, respectively.

As of December 31, 2023, the aggregate future principal payments under the SVB Term Loan were as follows (in thousands):

Years ending December 31,	Principal	
2024	\$	4,063
2025		5,688
2026		6,500
2027		43,875
Total aggregate future principal payments	\$	60,126

NOTE 9. STOCKHOLDERS' EQUITY AND MEMBERS UNITS

Summary Capitalization

The following summarizes the capitalization and voting rights of the Company's classes of equity as of December 31, 2023 and 2022:

	Authorized	December 31,		Votes per share	Economic Rights
		2023	2022		
		Issued & Outstanding			
Preferred stock	10,000,000	None	None		
Common stock:					
Class A	1,200,000,000	12,522,146	11,246,694	1	Yes
Class B	150,000,000	35,688,349	35,482,534	1	No
Class C	150,000,000	49,119,976	49,119,976	10	No
Class D	150,000,000	None	None	10	Yes
Common stock reserved for issuances:					
Conversion of LLC Units		84,808,325	84,602,510		
Unvested LLC Units		177,884	615,000		
Unvested RSUs		3,942,052	3,158,686		
Stock options		758,458	857,615		
Common LLC Units		84,808,325	84,602,510	No	Yes

Our Board of Directors (the "Board") is authorized to direct the Company to issue shares of preferred stock in one or more series and the discretion to determine the number and designation of such series and the powers, rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock. Through December 31, 2023, no series of preferred stock have been issued.

Shares of Class B and Class C common stock are not entitled to receive any distributions or dividends other than in connection with a liquidation and have no rights to convert into Class A common stock or Class D common stock, separate from an exchange or redemption of the LLC Interests corresponding to such shares of Class B common

stock or Class C common stock, as applicable, as discussed below under *Brilliant Earth, LLC*. When a common unit is redeemed for cash or Class A or D common stock by a Continuing Equity Owner who holds shares of Class B common stock or Class C common stock, such Continuing Equity Owner will be required to surrender a share of Class B common stock or Class C common stock, as applicable, which will be cancelled for no consideration.

The Company must, at all times, maintain (i) a one-to-one ratio between the number of shares of Class A common stock issued to Brilliant Earth Group, Inc. and the number of LLC Interests owned by Brilliant Earth Group, Inc., and (ii) maintain a one-to-one ratio between the number of shares of Class B and Class C common stock owned by the Continuing Equity Owners and the number of LLC Interests owned by them.

The different classes of common stock as of December 31, 2023, are held as follows:

- 12,522,146 shares of Class A common stock that includes conversion of LLC Units and vesting of RSUs;
- 35,688,349 shares of Class B common stock are held by the Continuing Equity Owners excluding the Founders; and
- 49,119,976 shares of Class C common stock are held by the Founders.

Class C and D common stock may only be held by the Founders and their respective permitted transferees. No shares of Class D common stock are outstanding, but may be issued in connection with an exchange by the Founders of their LLC Interests (along with an equal number of shares of Class C common stock and such shares shall be immediately cancelled).

Brilliant Earth, LLC

As of December 31, 2023, Brilliant Earth Group, Inc. holds a 12.9% economic interest in Brilliant Earth, LLC through its ownership of 12,522,146 LLC Units, but consolidates Brilliant Earth, LLC as sole managing member. The remaining 84,808,325 LLC units representing an 87.1% interest are held by the Continuing Equity Owners and presented in the consolidated financial statements as a non-controlling interest.

The organization agreements include a provision for the Continuing Equity Owners, subject to certain exceptions from time to time at each of their option, to require Brilliant Earth, LLC to redeem all or a portion of their LLC Units in exchange for, at the Company's election, newly-issued shares of Class A common stock or Class D common stock, as applicable, on a one-for-one basis or, at the Company's election, a cash payment equal to a volume weighted average market price of one share of Class A common stock for each LLC Interest so redeemed, in each case, in accordance with the terms of the LLC Agreement. The redemption feature is not bifurcated from the underlying LLC Unit.

Issuance of Additional LLC Units

Under the LLC Agreement, the Company is required to cause Brilliant Earth, LLC to issue additional LLC Interests to the Company when the Company issues additional shares of Class A common stock. Other than as it relates to the issuance of Class A common stock in connection with an equity incentive program, the Company must contribute to Brilliant Earth, LLC net proceeds and property, if any, received by the Company with respect to the issuance of such additional shares of Class A common stock. The Company must cause Brilliant Earth, LLC to issue a number of LLC Interests equal to the number of shares of Class A common stock issued such that, at all times, the number of LLC Interests held by the Company equals the number of outstanding shares of Class A common stock.

Distributions to Members Related to Their Income Tax Liabilities

As a limited liability company treated as a partnership for income tax purposes, Brilliant Earth, LLC does not incur significant federal, state or local income taxes, as these taxes are primarily the obligations of its members. Under the LLC Agreement, Brilliant Earth, LLC is required to distribute cash, to the extent that Brilliant Earth, LLC has cash available, on a pro rata basis to its members to the extent necessary to cover the members' tax liabilities, if any, with respect to each member's share of Brilliant Earth, LLC taxable earnings. Brilliant Earth, LLC makes such tax distributions to its members quarterly, based on an estimated tax rate and projected year-to-date taxable income, with a final accounting once actual taxable income or loss has been determined. Such distributions totaled approximately \$9.9 million and \$18.3 million for the years ended December 31, 2023 and 2022, respectively.

Repurchase Program

In December 2023, the Board approved a share repurchase program authorizing the Company to purchase up to an aggregate of \$20.0 million of the Company's Class A common stock through the expiration of the program in December 2026.

The Company may repurchase shares, under the program, from time to time through open market purchases, in privately negotiated transactions or by other means. Open market repurchases will be structured to occur in accordance with applicable federal securities law, including within the pricing and volume requirements of Rule 10b-18 under the Securities Exchange Act of 1934, as amended. The Company may also, from time to time, enter into Rule 10b5-1 plans to facilitate repurchases of its shares under this authorization. The timing, amount, and manner of stock repurchases will be determined at the Company's discretion, subject to business, economic and market conditions, corporate needs and regulatory requirements, prevailing stock prices and other considerations. The share repurchase program does not obligate the Company to acquire a specific number of shares of Class A common stock and may be suspended, terminated, or modified at any time without notice, at the discretion of the Board.

The Company did not repurchase any Class A common stock during the year ended December 31, 2023. Any repurchases of equity will be accounted for as treasury stock and be reported at the purchase price as a reduction of equity within the consolidated balance sheet.

NOTE 10. EQUITY-BASED COMPENSATION

Overview

The 2021 Incentive Award Plan and the 2021 Employee Stock Purchase Plan (the "2021 Plans") were adopted to attract, retain, and motivate selected employees, consultants, and directors through the granting of equity-based compensation awards and cash-based performance bonus awards. The compensation committee or its approved designees administer the 2021 Plans. Subject to the terms and conditions of the 2021 Plans, the administrator has the authority to select the persons to whom awards are to be made, to determine the number of shares to be subject to awards and the terms and conditions of awards, and to make all other determinations and to take all other actions necessary or advisable for the administration of the 2021 Plans.

As of December 31, 2023 we have reserved 11,966,972 shares of common stock for issuance pursuant to a variety of equity-based compensation awards, including stock options, stock appreciation rights, or SARs, restricted stock awards, restricted stock unit awards, and other equity-based awards under the 2021 Incentive Award Plan. In addition, 1,847,197 shares of Class A common stock are reserved for issuance under our Employee Stock Purchase Plan. The number of shares initially reserved for issuance or transfer pursuant to awards under the 2021 Incentive Award Plan is increased by an annual increase on the first day of each fiscal year beginning in 2022 and ending in 2031, equal to the lesser of (A) 5% of the shares of common stock outstanding (on an as converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of shares of stock as determined by the Board; provided, however, that no more than 81,929,342 shares of stock may be issued upon the exercise of

incentive stock options. As of December 31, 2023, 5,846,491 shares of common stock are available for future grant under the 2021 Incentive Award Plan. Vesting is subject to certain change in control provisions as provided in the award agreements.

Grants of Restricted Stock Units

The fair value of RSUs are based on the fair value of a Class A share of common stock at the time of grant. RSUs have a time-based vesting requirement (based on continuous employment). Upon vesting, the RSUs convert into Class A common stock; unvested RSUs are not considered outstanding shares of Class A common stock. The agreements generally provide for 25% vesting at the first anniversary of the date of the grant (or a shorter period at the administrator's discretion), with the remainder vesting quarterly over the following three years.

The following table summarizes the activity related to the Company's RSUs for the year ended December 31, 2023:

	Number of Restricted Stock Units	Weighted average grant date fair value per unit
Balance as of December 31, 2021, unvested	1,377,728	\$ 13.15
Granted	2,891,551	\$ 7.68
Vested	(351,119)	\$ 12.72
Forfeited	(759,474)	\$ 9.74
Balance as of December 31, 2022, unvested	3,158,686	\$ 9.01
Granted	2,640,038	\$ 4.28
Vested	(1,064,101)	\$ 9.07
Forfeited	(792,571)	\$ 7.65
Balance as of December 31, 2023, unvested	3,942,052	\$ 6.10

The total fair value of RSUs vested for the years ended December 31, 2023 and 2022, was \$9.7 million and \$4.5 million, respectively.

Total compensation expense for RSUs was approximately \$8.9 million and \$7.2 million for the years ended December 31, 2023 and 2022, respectively, and is included in selling, general and administrative expenses in the consolidated statements of operations. The Company recognized \$0.1 million of tax benefit associated with the equity-based compensation expense for RSUs for the year ended December 31, 2023, and \$0.1 million of tax benefit for the year ended December 31, 2022, respectively.

As of December 31, 2023, total compensation expense related to unvested RSUs not yet recognized was \$21.0 million and the weighted-average period over which the compensation is expected to be recognized was 2.5 years.

Stock Options

Stock option awards have a time-based vesting requirement that is based on continuous employment. Upon vesting, the stock options are exercisable into Class A common stock. Vesting is generally over four years from the date of grant and options may be exercised up to 10 years from the date of issuance.

The following table summarizes the activity related to the outstanding and exercisable stock options:

	Number of options	Weighted average exercise price	Weighted average grant date fair value per option	Weighted average remaining contractual term (years)
Outstanding as of December 31, 2022	857,615	\$ 12.00	\$ 4.27	8.7
Forfeited	(99,157)	\$ 12.00	\$ 4.29	
Outstanding as of December 31, 2023	758,458	\$ 12.00	\$ 4.27	7.7
Exercisable as of December 31, 2023	580,216	\$ 12.00	\$ 4.26	7.7
Unvested as of December 31, 2023	178,242	\$ 12.00	\$ 4.29	7.7
Vested and expected to vest as of December 31, 2023	758,458	\$ 12.00	\$ 4.27	7.7

As of December 31, 2023, the vested stock options did not have an aggregated intrinsic value as the exercise price exceeded the estimated fair market value of the stock options.

Total compensation expense for stock options was approximately \$0.8 million and \$1.4 million for the years ended December 31, 2023 and 2022, respectively, and is included in selling, general and administrative expenses in the consolidated statements of operations. No tax benefit was associated with the equity-based compensation expense for stock options.

As of December 31, 2023, total compensation expense related to unvested option awards not yet recognized was \$0.8 million and the weighted-average period over which the compensation is expected to be recognized was 1.2 years.

LLC Units

The fair value of restricted LLC Units was based on the fair value of an unrestricted LLC Unit at the date of grant. The following table summarizes the activity related to the unvested LLC Units:

	Number of LLC Units		Weighted average grant date fair value per unit
Balance, December 31, 2022, unvested	615,000	\$	0.61
Forfeited	(19,950)	\$	0.32
Vested	(417,166)	\$	0.49
Balance, December 31, 2023, unvested	177,884	\$	0.93

The total fair value of LLC Units vested for the years ended December 31, 2023 and 2022, was \$0.2 million and \$0.4 million, respectively.

Total compensation expense for LLC Units was approximately \$0.2 million and \$0.3 million for the years ended December 31, 2023 and 2022, respectively, and is included in selling, general and administrative expenses in the consolidated statements of operations.

As of December 31, 2023, total expense related to unvested LLC Units not yet recognized was \$0.2 million and the weighted-average period over which the compensation is expected to be recognized was 1.2 years.

NOTE 11. INCOME TAXES AND TAX RECEIVABLE AGREEMENT

Overview of Income Taxes

Brilliant Earth Group, Inc. is taxed as a subchapter C corporation and is subject to federal and state income taxes. Brilliant Earth Group, Inc.'s sole material asset is its ownership interest in Brilliant Earth, LLC, which is a limited liability company that is taxed as a partnership for U.S. federal and certain state and local income tax purposes. Brilliant Earth, LLC's net taxable income or loss and related tax credits, if any, are passed through to its members on a pro-rata basis and included in the member's tax returns. The income tax burden on the earnings taxed to the non-controlling interest holders is not reported by the Company in its consolidated financial statements under GAAP.

The Company files U.S. federal and certain state income tax returns. The income tax returns of the Company are subject to examination by U.S. federal and state taxing authorities for various time periods, depending on those jurisdictions' rules, generally after the income tax returns are filed.

Income Tax Benefit and Deferred Tax Asset

The Company has recorded a deferred tax asset primarily related to the outside basis difference between GAAP and reporting for income tax purposes of the Brilliant Earth Group, Inc.'s investment in Brilliant Earth, LLC. The basis difference resulted from the step-up in basis allowed under Section 743(b) and 197 of the Internal Revenue Code related to the purchase of LLC Units from the Continuing Equity Owners. The deferred tax asset is expected to be amortized over the useful lives of the underlying assets. In assessing the realizability of deferred tax assets, management determined that it was more likely than not that the deferred tax assets will be realized.

Provision for Income Taxes

Brilliant Earth Group, Inc.'s income tax benefits were \$0.4 million and \$0.2 million for the years ended December 31, 2023 and 2022, respectively. Brilliant Earth Group, Inc. had no business transactions or activities, and accordingly, no amounts related to income taxes were incurred by the Company.

Total Company earnings used to compute income taxes is as follows (in thousands):

	December 31,	
	2023	2022
Pre-tax earnings of the Company	\$ 4,303	\$ 18,857
Earnings allocable to NCI (not allocable to the Company)	(4,150)	(16,890)
Pre-tax earnings of Brilliant Earth, Inc.	153	1,967
Income tax benefit of Brilliant Earth, Inc.	431	168
After tax earnings of Brilliant Earth Group, Inc.	\$ 584	\$ 2,135

The components of the benefit from income taxes are as follows (in thousands):

	December 31,	
	2023	2022
Current tax expense		
Federal	\$ —	\$ —
State	57	—
Total current income tax expense	57	—
Deferred tax benefit		
Federal	(389)	(136)
State	(99)	(32)
Total deferred income tax benefit	(488)	(168)
Benefit from income taxes	\$ (431)	\$ (168)

A reconciliation of the expected federal statutory rate of 21.0% to the effective rate is as follows (in thousands):

	December 31,			
	2023		2022	
	Tax effect	Rate	Tax effect	Rate
Brilliant Earth Group, Inc. expected tax expense at statutory rate	\$ 32	21.0%	\$ 413	21.0%
Less: equity interest in earnings of subsidiary not taxable (permanent difference)	(309)	(202.1)%	(645)	(32.8)%
Brilliant Earth Group, Inc. level pre-tax loss as adjusted for tax	(277)	(181.1)%	(232)	(11.8)%
Income from investee per K-1 (inside basis difference)	338	221.0%	602	30.6%
Loss from step up in outside basis	(492)	(322.0)%	(538)	(27.4)%
Income tax benefit at effective rate	\$ (431)	(282.1)%	\$ (168)	(8.6)%

The components of deferred tax assets are as follows (in thousands):

	December 31,	
	2023	2022
Deferred tax assets		
Outside basis difference in investment	\$ 8,773	\$ 8,464
Net operating loss carryforwards	972	484
Net deferred tax asset	\$ 9,745	\$ 8,948

The Company recognizes deferred tax assets to the extent it believes, based on available evidence, that it is more likely than not that they will be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies, and recent results of operations. For the years ended December 31, 2023 and 2022, the Company evaluated the likelihood it would realize its deferred tax assets and determined the probability to be more likely than not, and accordingly, no valuation allowance was recognized.

As of December 31, 2023, the Company has total federal net operating loss carryforwards (“NOLs”) of \$3.7 million that have no expiration date. The Company also has total state NOLs of \$2.2 million that begin to expire in 2036. Management believes on a more likely than not basis that the Company will be able to realize the tax benefit of its NOLs carryforwards.

Utilization of net operating losses, credit carryforwards, and certain deductions may be subject to a substantial annual limitation due to ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. The tax benefits related to future utilization of federal and state net operating losses, tax credit carryforwards, and other deferred tax assets may be limited or lost if cumulative changes in ownership exceeds 50% within any three-year period. Additional limitations on the use of these tax attributes could occur in the event of possible disputes arising in examinations from various taxing authorities.

Uncertain Tax Positions

The Company follows the provisions of GAAP relating to uncertainty in income taxes as it prescribes a comprehensive model for the recognition, measurement, presentation and disclosure in financial statements of uncertain tax positions that have been taken or expected to be taken on a tax return. No liability related to uncertain tax positions is recorded in the consolidated financial statements.

As of December 31, 2023, the Company had not incurred or recorded any penalties or interest related to income taxes in the consolidated statements of operations. Additionally, the Company did not record any uncertain tax positions on the consolidated balance sheets as management concluded that no such positions existed as of December 31, 2023.

The Company is subject to examination for the years ended December 31, 2023 and 2022, and the period from September 22, 2021 to December 31, 2021. The Company is not currently subject to income tax audits in any U.S. or state jurisdictions for any tax year.

Tax Receivable Agreement

As each of the Continuing Equity Owners elect to convert their LLC Interests into Class A common stock or Class D common stock, as applicable, Brilliant Earth Group, Inc. will succeed to their aggregate historical tax basis which will create a net tax benefit to the Company. These tax benefits are expected to be amortized over 15 years pursuant to Sections 743(b) and 197 of the Code. The Company will only recognize a deferred tax asset for financial reporting purposes when it is “more-likely-than-not” that the tax benefit will be realized.

In addition, as part of the IPO, the Company entered into a TRA with the Continuing Equity Owners to pay 85% of the tax savings from the tax basis adjustment to them as such savings are realized. Amounts payable under the TRA are contingent upon, among other things, generation of sufficient future taxable income during the term of the TRA. The amounts to be recorded for both the deferred tax assets and the liability for our obligations under the TRA will be estimated at the time of any purchase or redemption as a reduction to shareholders’ equity. The effect of subsequent changes in enacted tax rates will be included in net income.

As of December 31, 2023, related to the TRA, the Company has recorded (i) a deferred tax asset in the amount of \$8.8 million, (ii) a corresponding estimated liability with a balance of \$8.2 million representing 85% of the projected tax benefits to the TRA Owners; and (iii) \$0.6 million of additional paid-in capital.

NOTE 12. COMMITMENTS AND CONTINGENCIES

Legal Proceedings

In the ordinary course of business, the Company may be subject from time to time to various proceedings, lawsuits, disputes or claims. In addition, the Company is subject to examination by various tax authorities. Although the Company cannot predict with assurance the outcome of any litigation or audit, it does not believe there are currently any such actions that, if resolved unfavorably, would have a material impact on the Company's financial condition, results of operations or cash flows. The Company accrues for loss contingencies when losses become probable and are reasonably estimable. If the reasonable estimate of the loss is a range and no amount within the range is a better estimate, the minimum amount of the range is recorded as a liability. The Company does not accrue for contingent losses that, in its judgment, are considered to be reasonably possible, but not probable; however, to the extent possible, the Company discloses the range of such reasonably possible losses.

On December 5, 2022, plaintiff Veronica Cusimano, a former employee of the Company, filed a representative action against the Company pursuant to the Private Attorneys General Act of 2004 in California Superior Court, Los Angeles County. The complaint alleges, on behalf of the plaintiff and similarly situated employees and former employees in California, various claims under the California Labor Code related to wages, overtime, meal and rest breaks, reimbursement of business expenses, wage statements and records, and other similar allegations. The plaintiff seeks civil penalties, attorneys' fees and costs in unspecified amounts, and other unspecified damages. On February 10, 2023, the Company filed a petition to compel arbitration on the basis of an agreement between the plaintiff and the Company to arbitrate any claims between them. On April 28, 2023, the petition was denied. The Company intends to vigorously defend the alleged individual and representative claims, and, on May 9, 2023, the Company appealed the Superior Court's denial of its petition to compel arbitration to the California Court of Appeal, Second Appellate District and the appeal is currently pending. At this time, any liability related to the alleged claims is not currently probable or reasonably estimable.

Non-Income Related Taxes

The Company collects and remits sales and use taxes in a variety of jurisdictions across the U.S. The amounts payable to relevant sales and use tax authorities are accrued in the period incurred and presented on the balance sheet as a component of accrued expenses and other current liabilities.

Purchase Obligations

From time to time in the normal course of business, the Company will enter into agreements with suppliers or service providers. As of December 31, 2023, unconditional future minimum payments under agreements to purchase services primarily related to software maintenance and marketing and advertising spending. As of December 31, 2023, these commitments with a remaining term in excess of 12 months totaled \$8.1 million.

Capital Commitments

The Company may enter into commitments to expand various locations, which generally include design, store construction and improvements. As of December 31, 2023, these commitments totaled \$0.8 million, related to new showroom construction and improvements to existing locations.

401(K) Plan

The Company maintains a qualified defined contribution plan under Section 401(k) of the Internal Revenue Code, which provides for voluntary contributions from the Company and its employees and certain other service providers. Contributions from the Company were \$1.4 million and \$0.9 million, for the years ended December 31, 2023 and 2022, respectively.

NOTE 13. SUBSEQUENT EVENTS

On February 21, 2024, we entered into the First Amendment to the SVB Credit Agreement (the "First Amendment"), pursuant to which the lenders agreed to suspend the requirement to comply with the Consolidated Fixed Charge Coverage Ratio covenant on the last day of the fiscal quarters ending December 31, 2023, March 31, 2024, and June 30, 2024. The First Amendment also requires us to maintain Balance Sheet Cash (defined as unrestricted cash and cash equivalents held in accounts with the lenders and their affiliates) in an amount greater than the sum of the aggregate principal amount outstanding under the SVB Revolving Facility (including issued letters of credit) and the aggregate principal amount of the SVB Term Loan outstanding at such time, which requirement applies at all times commencing on February 21, 2024 until the last day of the fiscal quarter ending June 30, 2024. After such time, the minimum Balance Sheet Cash covenant no longer applies.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of disclosure controls and procedures

Our management, with the participation of our principal executive officer and principal financial officer, conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, our principal executive officer and principal financial officer concluded that, as of December 31, 2023, our disclosure controls and procedures were not effective due to the material weakness described below.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the financial statements for external purposes in accordance with GAAP. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our internal control over financial reporting as of December 31, 2023, based on the criteria described in the Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the results of its evaluation, management concluded that our internal control over financial reporting, due to the material weakness described below, was not effective as of December 31, 2023.

Material Weakness

A material weakness is a deficiency, or a combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Our management identified a material weakness in internal control related to ineffective information technology general controls (“ITGCs”) in the areas of change management, user access and segregation of duties related to certain information technology (“IT”) systems that support the Company's financial reporting processes, resulting in ineffective design and implementation of IT-dependent controls, such as journal entry controls. We believe that these control deficiencies were due to gaps in the sufficiency of IT resources and risk-assessment processes to identify and assess access in certain IT environments that could impact internal controls over financial reporting.

The material weakness did not result in any identified misstatements in our consolidated financial statements, and there were no changes to previously issued financial results. However, because the material weakness creates a reasonable possibility that a material misstatement to our consolidated financial statements would not be prevented or detected on a timely basis, the Company's management concluded the Company's internal control over financial reporting was ineffective.

Remediation

In response to this material weakness in internal control over financial reporting related to ineffective ITGCs for key IT systems, the Company has taken and is continuing to take actions to remediate change management and access related control failures. Our remediation plan also includes: (i) enhancing processes around reviewing privileged access to key financial systems and ensuring appropriate segregation of duties, (ii) strengthening change management procedures, (iii) expanding the management and governance over ITGCs, (iv) developing and implementing additional training addressing internal controls, (v) enhancing the existing access management procedures and ownership; and (vi) establishing and monitoring metrics within information technology to track adherence to access and change management controls. Our remediation plan can only be accomplished over time and will be continually reviewed to determine that it is achieving its objectives.

The material weakness will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that the controls are operating effectively. Furthermore, we cannot assure you that the measures we have taken to date, and actions we may take in the future, will be sufficient to remediate the control deficiencies that led to our material weakness in our internal control over financial reporting or that it will prevent or avoid potential future material weaknesses.

Auditor's Report on Internal Control Over Financial Reporting

This Annual Report on Form 10-K does not include an attestation report of internal controls from our independent registered public accounting firm due to our status as an emerging growth company under the JOBS Act.

Changes in Internal Control over Financial Reporting

Other than as described above, there have been no other changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

- a. Disclosure in lieu of reporting on a Current Report on Form 8-K.
None.
- b. Insider Trading Arrangements and Policies

Adoption and Termination of Trading Arrangements

(b) During the three months ended December 31, 2023, the following directors and "officers" (as defined in Rule 16a-1(f) under the Exchange Act) of the Company adopted, modified or terminated "Rule 10b5-1 trading arrangements" and/or "non-Rule 10b5-1 trading arrangements" (each as defined in Item 408 of Regulation S-K).

On November 28, 2023, Jennifer Harris, a member of the Company's Board of Directors, adopted a Rule 10b5-1 trading arrangement (the "Harris Sales Plan") that is intended to satisfy the affirmative defense of Rule 10b5-1(c) of the Exchange Act and which provides for the sale of an indeterminate number of Class A common stock related to the future vesting of up to 37,940 restricted stock units. The Harris Sales Plan will remain in effect until the earliest of (1) November 15, 2024, (2) the date on which an aggregate of 37,940 shares of the Company's Class A common stock have been sold, or (3) such time as the Harris Sales Plan is otherwise terminated or expires according to its terms.

On December 12, 2023, Just Rocks, Inc., a Delaware corporation which is jointly owned and controlled by Beth Gerstein, the Company's Chief Executive Officer and a member of the Board of Directors, and Eric Grossberg, the Company's Executive Chairman, terminated an existing Rule 10b5-1 trading arrangement (the "Original Just Rocks Sales Plan") intended to satisfy the affirmative defense of Rule 10b5-1(c) and originally adopted on November 23, 2022 and providing for the sale of up to 4,700,000 shares of the Company's Class A common stock. Prior to its termination, no shares of Class A common stock were sold under the Original Just Rocks Sales Plan. On December 12, 2023, Just Rocks adopted a new Rule 10b5-1 trading arrangement (the "Just Rocks Sales Plan") that is intended to satisfy the affirmative defense of Rule 10b5-1(c) of the Exchange Act and which provides for the sale of up to 700,000 shares of the Company's Class A common stock. The Just Rocks Sales Plan will remain in effect until the earliest of (1) November 15, 2024, (2) the date on which an aggregate of 700,000 shares of the Company's Class A common stock have been sold under the Just Rocks Sales Plan, or (3) such time as the Just Rocks Sales Plan is otherwise terminated or expires according to its terms.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

Part III

Item 10. Directors, Executive Officers and Corporate Governance

We have adopted a written code of business conduct and ethics, which applies to all of our directors, officers and employees, including our principal executive officer and our principal financial and accounting officer. Our Code of Business Conduct and Ethics is available on our website www.brilliantearth.com in the “Investor Relations” section under “Governance – Governance Overview.” In addition, we intend to post on our website all disclosures that are required by law or listing rules of the Nasdaq Global Market concerning any amendments to, or waivers from, any provision of our Code of Business Conduct and Ethics. The information contained on our website is not incorporated by reference into this Annual Report on Form 10-K.

The remaining information required by this item will be included under the captions “Election of Directors,” “Executive Officers,” and “Corporate Governance” in our Proxy Statement for our 2024 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2023 (the “2024 Proxy Statement”) and is incorporated herein by reference.

Item 11. Executive Compensation

The information required by this item will be included under the captions “Board Compensation,” “Executive Compensation” and “Other Matters—Compensation Committee Interlocks and Insider Participation” in the 2024 Proxy Statement and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item will be included under the captions “Security Ownership of Certain Beneficial Owners and Management” and “Security Authorized For Issuance Under Equity Compensation Plans” in the 2024 Proxy Statement and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item will be included under the captions “Certain Relationships and Related Person Transactions” and “Corporate Governance” in the 2024 Proxy Statement and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services

The information required by this item will be included under the caption “Independent Registered Public Accounting Firm Fees and Other Matters” in the 2024 Proxy Statement and is incorporated herein by reference.

Part IV**Item 15. Exhibit and Financial Statement Schedules****(a)(1) Financial Statements.**

The financial statements required by this item are listed in Part II, Item 8 “Financial Statements and Supplementary Data” herein.

(a)(2) Financial Statement Schedules.

All financial statement schedules have been omitted because they are not applicable, not required or the information required is shown in the financial statements or the notes thereto.

(a)(3) Exhibits.

The following is a list of exhibits filed as part of this Annual Report on Form 10-K.

Exhibit Number	Exhibit Description	Incorporated by Reference				
		Form	File No.	Exhibit	Filing Date	Filed / Furnished Herewith
3.1	Amended and Restated Certificate of Incorporation of Brilliant Earth Group, Inc.	8-K	001-40836	3.1	9/27/2021	
3.2	Amended and Restated Bylaws of Brilliant Earth Group, Inc.	8-K	001-40836	3.2	9/27/2021	
4.1	Specimen Stock Certificate evidencing shares of Class A Common Stock	S-1/A	001-40836	4.1	9/14/2021	
4.2	Description of Capital Stock	10-K	001-40836	4.2	3/22/2022	
10.1	Amended and Restated Limited Liability Company Agreement of Brilliant Earth, LLC, dated as of September 22, 2021.	8-K	001-40836	10.1	9/27/2021	
10.2	Tax Receivable Agreement, dated as of September 22, 2021, by and among Brilliant Earth Group, Inc., Brilliant Earth LLC and its Members.	8-K	001-40836	10.2	9/27/2021	
10.3	Registration Rights Agreement, dated September 22, 2021, by and among Brilliant Earth Group, Inc., Brilliant Earth LLC and its Original Equity Owners.	8-K	001-40836	10.3	9/27/2021	
10.4	Stockholders Agreement, dated September 22, 2021, by and among Brilliant Earth Group, Inc., Brilliant Earth LLC and the Original Members.	8-K	001-40836	10.4	9/27/2021	
10.5#	Employment Agreement dated as of May 10, 2023 by and between Beth Gerstein and Brilliant Earth Group, Inc.	10-Q	001-40836	10.1	5/12/2023	
10.6#	Employment Agreement dated as of May 10, 2023 by and between Eric Grossberg and Brilliant Earth Group, Inc.	10-Q	001-40836	10.2	5/12/2023	
10.7#	Employment Agreement dated as of May 10, 2023 by and between Jeffrey Kuo and Brilliant Earth Group, Inc.	10-Q	001-40836	10.3	5/12/2023	
10.8#	Brilliant Earth Group, Inc. 2021 Incentive Award Plan.	S-8	333-259736	99.1	9/23/2021	
10.9#	Brilliant Earth Group, Inc. 2021 Employee Stock Purchase Plan.	S-8	333-259736	99.2	9/23/2021	
10.10#	Form of Brilliant Earth, LLC Unit Restriction Agreement (Class M Units).	S-1/A	001-40836	10.9	9/14/2021	

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10.11#	Form of Stock Option Grant Notice and Stock Option Agreement under the 2021 Incentive Award Plan.	S-1/A	001-40836	10.11	9/14/2021	
10.12#	Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the 2021 Incentive Award Plan.	S-1/A	001-40836	10.12	9/14/2021	
10.13#	Non-Employee Director Compensation Program.	S-1/A	001-40836	10.14	9/14/2021	
10.14	Form of Indemnification Agreement.	S-1/A	001-40836	10.15	9/14/2021	
10.15†+	Senior Secured Credit Facilities Credit Agreement dated as of May 24, 2022, as amended by the First Amendment to Credit Agreement, dated February 21, 2024, among Brilliant Earth, LLC as the Borrower, the several lenders from time to time party thereto, Silicon Valley Bank as Administrative Agent, Joint Lead Arranger, Bookrunner, Issuing Lender and Swingline Lender and JPMorgan Chase Bank, N.A., as Joint Lead Arranger.					*
21.1	Subsidiaries of Brilliant Earth Group, Inc.	10-K	001-40836	21.1	3/22/2022	
23.1	Consent of Independent Registered Public Accounting Firm					*
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a).					*
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a).					*
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350.					**
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350.					**
97.1	Policy Relating to Recovery of Erroneously Awarded Compensation					*
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					*
101.SCH	Inline XBRL Taxonomy Extension Schema Document					*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					*
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					*

* Filed herewith.
 ** Furnished herewith.
 # Indicates a management or compensatory plan.

- † Schedules and exhibits to this Exhibit omitted pursuant to Regulation S-K Item 601(a)(5). Brilliant Earth agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.
- + Certain portions of this exhibit (indicated by “[****]”) have been redacted pursuant to Regulation S-K Item 601(b)(10)(iv) because such information is (i) not material and (ii) could be competitively harmful if publicly disclosed.

Item 16. Form 10-K Summary

None.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

March 28, 2024

Brilliant Earth Group, Inc.

/s/ Beth Gerstein

Name: Beth Gerstein

Title: Chief Executive Officer and Director (Principal Executive Officer)

/s/ Jeffrey Kuo

Name: Jeffrey Kuo

Title: Chief Financial Officer (Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Name	Position	Date
<u>/s/ Beth Gerstein</u> Beth Gerstein	Chief Executive Officer and Director (Principal Executive Officer)	March 28, 2024
<u>/s/ Jeffrey Kuo</u> Jeffrey Kuo	Chief Financial Officer (Principal Financial and Accounting Officer)	March 28, 2024
<u>/s/ Eric Grossberg</u> Eric Grossberg	Executive Chairman	March 28, 2024
<u>/s/ Ian M. Bickley</u> Ian M. Bickley	Director	March 28, 2024
<u>/s/ Jennifer N. Harris</u> Jennifer N. Harris	Director	March 28, 2024
<u>/s/ Attica A. Jaques</u> Attica A. Jaques	Director	March 28, 2024
<u>/s/ Beth E. Kaplan</u> Beth E. Kaplan	Director	March 28, 2024
<u>/s/ Gavin M. Turner</u> Gavin M. Turner	Director	March 28, 2024

[**] CERTAIN INFORMATION IN THIS DOCUMENT HAS BEEN EXCLUDED PURSUANT TO REGULATION S-K, ITEM 601(B)(10)(IV). SUCH EXCLUDED INFORMATION IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED.**

FIRST AMENDMENT TO CREDIT AGREEMENT

This First Amendment to Credit Agreement (this "Agreement") dated and effective as of February 21, 2024, by and among **BRILLIANT EARTH, LLC**, a Delaware limited liability company (the "Borrower"), the several banks and other financial institutions or entities party hereto (the "Lenders") and **SILICON VALLEY BANK, A DIVISION OF FIRST-CITIZENS BANK & TRUST COMPANY**, as Administrative Agent, Issuing Lender and Swingline Lender.

WITNESSETH:

WHEREAS, the parties hereto are party to that certain Credit Agreement dated as of May 24, 2022 (as amended, modified, supplemented or restated and in effect from time to time, the "Credit Agreement"); and

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders modify and amend certain terms and conditions of the Credit Agreement, and the Administrative Agent and the Lenders have agreed to do so, in each case, subject to the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Capitalized Terms. All capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Credit Agreement.

2. Amendments to Credit Agreement.

(a) The Credit Agreement and Schedule 1.1A thereto are, effective as of the Agreement Effective Date, hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double underlined text) as reflected in the modifications identified in the document annexed hereto as **Annex A** attached to this Agreement.

(b) Exhibit B to the Credit Agreement is hereby deleted in its entirety and Exhibit B to the Credit Agreement attached as **Annex B** hereto is substituted therefor.

3. [Reserved].

4. Conditions Precedent to Effectiveness. This Agreement shall not be effective until each of the following conditions precedent has been fulfilled prior to or concurrently herewith, each in form and

substance satisfactory to, and otherwise to the satisfaction of, the Administrative Agent (such date, the “Agreement Effective Date”):

(a) The Administrative Agent shall have received this Agreement, duly executed by the parties hereto.

(b) The Administrative Agent shall have received the First Amendment Fee Letter, duly executed and delivered by the Borrower.

(c) The Administrative Agent shall have received evidence that, as of the Agreement Effective Date, Balance Sheet Cash exceeds the sum of the Total Revolving Extensions of Credit and the aggregate principal amount of Term Loans outstanding on the Agreement Effective Date.

(d) After giving effect to this Agreement, no Default or Event of Default shall have occurred and be continuing.

(e) Immediately after giving effect to this Agreement, the representations and warranties herein and in the Credit Agreement and the other Loan Documents (as amended hereby) shall be true and correct in all material respects on and as of the date hereof, as though made on such date (except to the extent that (i) such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date, or (ii) such representations and warranties are qualified by materiality in the text thereof, in which case they shall be true and correct in all respects).

(f) The Lenders and the Administrative Agent shall have received all amounts required to be paid pursuant to (i) Section 6, to the extent invoiced at least two Business Days prior to the Agreement Effective Date and (ii) the First Amendment Fee Letter.

5. Representations and Warranties. The Borrower hereby represents and warrants to the Administrative Agent and the Lenders, as of the date hereof, as follows:

(a) It has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

(b) The execution, delivery, and performance of this Agreement will not violate any material applicable Requirement of Law, Operating Documents or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law, Operating Document or any such material Contractual Obligation (other than the Liens permitted by Section 7.3 of the Credit Agreement).

(c) No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement, except (i) Governmental Approvals, consents, authorizations, filings and notices described on Schedule 4.4 of the Credit Agreement, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect and (ii) the filings referred to in Section 4.19 of the Credit Agreement.

(d) This Agreement is, and each other Loan Document to which it is or will be a party, when executed and delivered by the Borrower, will constitute, a legal, valid and binding obligation of the Borrower, enforceable against each the Borrower in accordance with its terms, except as enforceability may

be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(e) After giving effect to this Agreement, no Default or Event of Default has occurred and is continuing as of the date of the effectiveness of this Agreement.

(f) After giving effect to this Agreement, the representations and warranties set forth in this Agreement, the Credit Agreement and the other Loan Documents (as amended hereby) to which it is a party are true and correct in all material respects on and as of the date hereof, as though made on such date (except to the extent that (i) such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date or (ii) such representations and warranties are qualified by materiality in the text thereof, in which case they shall be true and correct in all respects).

6. Payment of Costs and Fees. The Borrower shall pay to the Administrative Agent, for the benefit of the Lenders, all reasonable out-of-pocket expenses incurred in connection with the preparation, negotiation, execution and delivery of this Agreement and any documents relating hereto in accordance with Section 10.5(a) of the Credit Agreement.

7. Choice of Law. This Agreement and any claim, controversy, dispute, cause of action, or proceeding (whether based in contract, tort, or otherwise) based upon, arising out of, connected with, or relating to this Agreement and the transactions and waivers contemplated hereby and the rights and obligations of the parties hereto, shall be governed by, and construed and interpreted in accordance with, the internal laws (and not the conflict of law rules) of the State of New York. The provisions of Section 10.13 of the Credit Agreement are hereby incorporated *mutatis mutandis*.

8. Counterpart Execution. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

9. Effect on Loan Documents.

(a) The Credit Agreement and each of the other Loan Documents, as amended hereby, shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Agreement shall not operate, except as expressly set forth herein, as a modification or waiver of any right, power, or remedy of the Administrative Agent or any Lender under the Credit Agreement or any other Loan Document. The consents, modifications and other agreements herein are limited to the specifics hereof (including facts or occurrences on which the same are based), shall not apply with respect to any facts or occurrences other than those on which the same are based, shall not excuse any non-compliance with the Loan Documents, and shall not operate as a consent or waiver to any matter under the Loan Documents. Except for the amendments to the Loan Documents expressly set forth herein, the Credit Agreement and other Loan Documents shall remain unchanged and in full force and effect.

(b) Upon and after the Agreement Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "herein", "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to "the Credit Agreement",

“thereunder”, “therein”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified and amended hereby.

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

(d) This Agreement is a Loan Document.

(e) Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.

10. Release of Claims.

(a) The Borrower hereby absolutely and unconditionally releases and forever discharges the Administrative Agent and each Lender (in their respective capacities as such), and any and all participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents, attorneys and employees of any of the foregoing (each, a “*Releasee*” and collectively, the “*Releasees*”), from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise (each, a “*Claim*” and collectively, the “*Claims*”), which the Borrower has had, now has or has made claim to have against any such Person for or by reason of any act, omission, matter, cause or thing whatsoever arising from the beginning of time to and including the date of this Agreement which relates directly or indirectly, to the Credit Agreement or any other Loan Document, whether such claims, demands and causes of action are matured or unmatured or known or unknown, except for the duties and obligations set forth in this Agreement and, to the extent arising on or after the date hereof, the other Loan Documents. The Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense to any Claim and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. The Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered will affect in any manner the final, absolute and unconditional nature of the release set forth above.

In connection with the releases set forth above, the Borrower expressly and completely waives and relinquishes any and all rights and benefits that it has or may ever have pursuant to Section 1542 of the Civil Code of the State of California, or any other similar provision of law or principle of equity in any jurisdiction pertaining to the matters released herein. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(b) The Borrower hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding

or otherwise) any Releasee on the basis of any Claim released, remised and discharged by the Borrower pursuant to Section 10(a) above. If the Borrower violates the foregoing covenant, the Loan Parties, for themselves and their successors and assigns, and their present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives, agree to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable and documented out-of-pocket attorneys' fees and costs incurred by any Releasee as a result of such violation, in each case, in accordance with, and subject to the limitations set forth in, Section 10.5 of the Credit Agreement.

11. Entire Agreement. This Agreement, and terms and provisions hereof, the Credit Agreement and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

12. Reaffirmation of Obligations. The Borrower hereby reaffirms its obligations under each Loan Document to which it is a party. The Borrower hereby further ratifies and reaffirms the validity and enforceability of all of the Liens heretofore granted, pursuant to and in connection with the Guarantee and Collateral Agreement or any other Loan Document to the Administrative Agent on behalf and for the benefit of the Lenders and the Issuing Lender, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and acknowledges that all of such Liens, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof.

13. Relationship of Parties. Nothing in this Agreement shall be construed to alter the existing debtor-creditor relationship among the Loan Parties, the Administrative Agent and the Lenders, nor is this Agreement intended to change or affect in any way the relationship among the Administrative Agent and the Lenders, on one hand, and the Loan Parties, on the other hand, to one other than a debtor-creditor relationship. This Agreement is not intended, nor shall it be construed, to create a partnership or joint venture relationship between or among any of the parties hereto. No Person other than a party hereto is intended to be a beneficiary hereof and no Person other than a party hereto shall be authorized to rely upon or enforce the contents of this Agreement.

14. Survival of Representations, Warranties and Covenants. All representations, warranties, covenants and releases of the Borrower made in this Agreement or any other document furnished in connection with this Agreement will survive the execution and delivery of this Agreement, and no investigation by Agent or any Lender, or any closing, will affect the representations and warranties or the right of Agent and Lenders to rely upon them.

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWER:

BRILLIANT EARTH, LLC

By: /S/ Jeffrey Kuo _____
Name: Jeffrey Kuo _____
Title: CFO _____

[Signature Page to First Amendment]

**ADMINISTRATIVE AGENT, LENDER,
ISSUING LENDER AND SWINGLINE
LENDER:**

**FIRST-CITIZENS BANK & TRUST
COMPANY**

By: /S/ Robert MacNamara
Name: Robert MacNamara
Title: Vice President

[Signature Page to First Amendment]

LENDERS:

JPMORGAN CHASE BANK, N.A

By: /S/ Eleftherios Karsos

Name: Eleftherios Karsos

Title: Authorized Officer

HSBC BANK USA, N. A.

By: /S/ Sahib Phagura _____

Name: Sahib Phagura _____

Title: Vice President _____

[Signature Page to First Amendment]

ANNEX A

Amended Credit Agreement



SENIOR SECURED CREDIT FACILITIES

CREDIT AGREEMENT

dated as of May 24, 2022,

among

BRILLIANT EARTH, LLC,
as the Borrower,

THE SEVERAL LENDERS FROM TIME TO TIME PARTY HERETO,

SILICON VALLEY BANK, [A DIVISION OF FIRST-CITIZENS BANK & TRUST COMPANY](#),
as Administrative Agent, Joint Lead Arranger, Bookrunner, Issuing Lender and Swingline Lender

and

JPMORGAN CHASE BANK, N.A.,

as Joint Lead Arranger

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this “*Agreement*”), dated as of May 24, 2022, is entered into by and among BRILLIANT EARTH, LLC, a Delaware limited liability company (the “*Borrower*”), the several banks and other financial institutions or entities from time to time party to this Agreement (each a “*Lender*” and, collectively, the “*Lenders*”), SILICON VALLEY BANK, A DIVISION OF FIRST-CITIZENS BANK & TRUST COMPANY (“*SVB*”), as the Issuing Lender and the Swingline Lender, and SVB, as administrative agent and collateral agent for the Lenders (in such capacities, together with any successors and assigns in such capacities, the “*Administrative Agent*”).

RECITALS:

WHEREAS, the Borrower desires to obtain financing to refinance the Existing Indebtedness, as well as for working capital financing, letter of credit facilities and other general corporate purposes;

WHEREAS, the Lenders have agreed to extend certain credit facilities to the Borrower, upon the terms and conditions specified in this Agreement, in an aggregate principal amount not to exceed \$105,000,000, consisting of a term loan facility in the aggregate principal amount of \$65,000,000, a revolving loan facility in an aggregate principal amount of up to \$40,000,000, including a letter of credit sub-facility in the aggregate availability amount of \$10,000,000 (as a sublimit of the revolving loan facility) and a swingline sub-facility in the aggregate availability amount of \$10,000,000 (as a sublimit of the revolving loan facility);

WHEREAS, the Borrower has agreed to secure all of its Obligations by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) on the Collateral; and

WHEREAS, each of the Guarantors (if any) has agreed to guarantee the Obligations of the Borrower and to secure its respective Obligations in respect of such guarantee by granting to the Administrative Agent, for the benefit of the Secured Parties, a first priority lien (subject to Liens permitted by the Loan Documents) on the Collateral.

NOW, THEREFORE, the parties hereto hereby agree as follows:

SECTION 1 DEFINITIONS

1.1 Defined Terms. As used in this Agreement (including the recitals hereof), the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

“*ABR*”: for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50%, and (c) the Adjusted Term SOFR for a one-month tenor in effect on such day (taking into account the Floor set forth in the definition of “Adjusted Term SOFR”) plus 1.00%. Any change in the ABR due to a change in any of the Prime Rate, the Federal Funds Effective Rate or the Adjusted Term SOFR, as the case may be, shall be effective as of the opening of business on the effective day of the change in such rates.

“*ABR Loans*”: Loans, the rate of interest applicable to which is based upon the ABR.

“*ABR Term SOFR Determination Day*”: as defined in the definition of “Term SOFR”.

“Adjusted Term SOFR”: for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Administrative Agent”: SVB, as the administrative agent under this Agreement and the other Loan Documents, together with any of its successors in such capacity.

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

“Affected Lender”: as defined in Section 2.23.

“Affiliate”: with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided that, neither the Administrative Agent nor the Lenders shall be deemed Affiliates of the Loan Parties as a result of the exercise of their rights and remedies under the Loan Documents.

“Agent Parties”: as defined in Section 10.2(c)(ii).

“Aggregate Exposure”: with respect to any Lender at any time, an amount equal to the sum of (a) without duplication of clause (b), the aggregate then unpaid principal amount of such Lender’s Term Loans, (b) without duplication of clause (a), the aggregate amount of such Lender’s Term Commitments then in effect, (c) the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding, and (d) without duplication of clause (c), the L/C Commitment of such Lender then in effect (as a sublimit of the Revolving Commitment of such Lender).

“Aggregate Exposure Percentage”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“Agreement”: as defined in the preamble hereto.

“Agreement Currency”: as defined in Section 10.19.

“Applicable Margin”: initially, the rates per annum corresponding to Level III in the table below; provided that commencing on the date on which the Administrative Agent receives copies of the consolidated financial statements of Holdings and its Subsidiaries in respect of the fiscal quarter of Holdings and its Subsidiaries ending June 30, 2022 (and each fiscal quarter thereafter), together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), **“Applicable Margin”** shall mean the rate per annum set forth under the relevant column heading below:

TERM LOANS AND REVOLVING LOANS

<u>Level</u>	<u>Consolidated Total Leverage Ratio</u>	<u>SOFR Loans</u>	<u>ABR Loans/Swingline Loans</u>	<u>Commitment Fee Rate</u>
I	≥2.50: 1.00	2.75%	1.75%	0.35%
II	≥ 1.50:1.00 but < 2.50:1.00	2.50%	1.50%	0.30%
III	< 1.50:1.00	2.25%	1.25%	0.25%

Notwithstanding the foregoing, (a) if the financial statements required by Section 6.1 and the related Compliance Certificate required by Section 6.2(b) are not delivered by the respective date required thereunder after the end of any related fiscal quarter of Holdings, the Applicable Margin shall be the rates corresponding to Level I in the foregoing tables until such financial statements and Compliance Certificate are delivered, and (b) no reduction to the Applicable Margin shall become effective at any time when an Event of Default has occurred and is continuing.

If, as a result of any restatement of or other adjustment to the financial statements of the Loan Parties or for any other reason, the Administrative Agent determines prior to the Discharge of Obligations that (x) the Consolidated Total Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (y) a proper calculation of the Consolidated Total Leverage Ratio would have resulted in different pricing for any period, then (i) if the proper calculation of the Consolidated Total Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall automatically and retroactively be obligated to pay to the Administrative Agent, for the benefit of the applicable Lenders, promptly on demand by the Administrative Agent, an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; and (ii) if the proper calculation of the Consolidated Total Leverage Ratio would have resulted in lower pricing for such period, neither the Administrative Agent nor any Lender shall have any obligation to repay any interest or fees to the Borrower.

“Application”: an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to issue a Letter of Credit.

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

“Asset Sale”: any Disposition of property or series of related Dispositions of property (excluding any such Disposition of property permitted by clauses (a) through (m) of Section 7.5) that yields gross proceeds to any Group Member (valued at the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds) in excess of the greater of (i) \$[****] and (ii) [****] % of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder.

“Assignment and Assumption”: an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.6), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Available Revolving Commitment”: at any time, an amount equal to (a) the Total Revolving Commitments in effect at such time, minus (b) the aggregate undrawn amount of all outstanding Letters of Credit at such time, minus (c) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time, minus (d) the aggregate principal balance of any Revolving Loans and Swingline Loans outstanding at such time.

“Available Tenor”: as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, 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 Section 2.17(b)(iv).

“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).

“Balance Sheet Cash”: at any time, the cash and Cash Equivalents of the Borrower held in accounts maintained with the Lenders or their Affiliates that would not appear as “restricted” on a consolidated balance sheet of Holdings and its Subsidiaries.

“Bankruptcy Code”: Title 11 of the United States Code entitled “Bankruptcy.”

“Benchmark”: initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference 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 Section 2.17(b)(i).

“Benchmark Replacement”: with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) the related Benchmark Replacement Adjustment;

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

If the Benchmark Replacement as determined pursuant to clause (a) or (b) 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 (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) 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 or (b) 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 at such time.

“Benchmark Replacement Date”: the earlier to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) 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); and

(b) in the case of clause (c) 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 non-representative; provided 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, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) 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”: the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) 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; 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);

(b) 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 of the Federal Reserve System, the Federal Reserve Bank of New York, 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), 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

(c) 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 not, or as of a specified future date will not 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**”: the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.17(b).

“**Beneficial Ownership Certification**”: a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association (or such other form reasonably acceptable to the Administrative Agent).

“**Beneficial Ownership Regulation**”: United States 31 C.F.R. § 1010.230.

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

“**Benefitted Lender**”: as defined in Section 10.7(a).

“**Blocked Person**”: as defined in Section 7.23.

“**Board**”: the Board of Governors of the Federal Reserve System of the United States (or any successor).

“**Borrower**”: as defined in the preamble hereto.

“**Borrower Operating Agreement**”: the Amended and Restated Limited Liability Company Agreement of the Borrower, dated as of September 22, 2021, by and among the Borrower, Holdings and each other member party thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“Borrowing”: a borrowing consisting of simultaneous Loans of the same Type and, in the case of a SOFR Borrowing, having the same Interest Period made by the Lenders.

“Borrowing Date”: any Business Day specified by the Borrower in a Notice of Borrowing as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

“Business”: as defined in [Section 4.17\(b\)](#).

“Business Day”: a day other than a Saturday, Sunday or other day on which commercial banks in the State of New York or the State of [California](#)[North Carolina](#) are authorized or required by law to close.

“Capital Lease Obligations”: as to any Person, the obligations of such 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 on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP; provided, that for all purposes hereunder, any obligations of such Person that would have been treated as operating leases in accordance with Accounting Standards Codification 840 (regardless of whether or not then in effect) shall be treated as operating leases for purposes of all financial definitions, calculations and covenants, without giving effect to Accounting Standards Codification 842 requiring operating leases to be recharacterized or treated as capital leases.

“Capital Stock”: with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; provided that Permitted Convertible Indebtedness shall not constitute Capital Stock (it being agreed that any Capital Stock into which Permitted Convertible Indebtedness is converted into or exchanged for shall constitute Capital Stock).

“Cash Collateralize”: to pledge and deposit with or deliver to with respect to Obligations in respect of Letters of Credit, the Administrative Agent, for the benefit of the Issuing Lender and one or more of the Lenders, as applicable, as collateral for L/C Exposure or obligations of the Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, other reasonably satisfactory credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and such Issuing Lender.

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

“Cash Equivalents”: (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of one year or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000;

(c) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within one year from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's; (f) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; (g) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition; (h) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$3,000,000,000; (i) in the case of any Group Member organized or having its principal place of business outside the United States, investments denominated in the currency of the jurisdiction in which such Group member is organized or has its principal place of business which are similar and of comparable credit quality to the items specified in clauses (a) through (h) above; or (j) investments permitted by the Borrower's board-approved investment policy as in effect on the Closing Date or as otherwise modified with the prior written consent of the Administrative Agent.

"Cash Management Agreement": as defined in the definition of "Cash Management Services."

"Cash Management Bank": any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

"Cash Management Services": cash management and other services provided to one or more of the Group Members by a Cash Management Bank which may include treasury, depository, return items, netting, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system), merchant services, direct deposit of payroll, employee credit card programs, business credit card (including so-called "purchase cards", "procurement cards" or "p-cards"), credit card processing services, debit cards, stored value cards, and check cashing services identified in such Cash Management Bank's various cash management services or other similar agreements (each, a **"Cash Management Agreement"**).

"Casualty Event": any damage to or any destruction of, or any condemnation or other taking by any Governmental Authority of any property of the Loan Parties.

"Certificated Securities": as defined in Section 4.19(a).

"Change of Control": (a) at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Permitted Holders, shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 40% of the ordinary voting power for the election of directors of Holdings (determined on a fully diluted basis); (b) the Borrower shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of each other Loan Party (except for dispositions permitted by Section 7.5) free

and clear of all Liens (except Liens permitted by Section 7.3); (c) Holdings ceases to (x) be the sole managing member of the Borrower or (y) Control all of the business and affairs of the Borrower; (d) the occurrence of a “Change of Control” (or similar defined term) under and as defined in the Tax Receivable Agreement; or (e) a “change of control,” “fundamental change” or any comparable term or similar event under any agreement governing Permitted Convertible Indebtedness or any other Indebtedness of Holdings and its Subsidiaries in an aggregate principal amount in excess of the greater of (i) \$[****] and (ii) [****] % of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder, in each case that permits the holder of such Indebtedness to require repayment, redemption, purchase, retirement, defeasance, sinking fund, settlement, conversion or similar payment with respect to all or part of the principal amount thereof prior to the scheduled maturity thereof.

“**Closing Date**”: the date on which all of the conditions precedent set forth in Section 5.1 are satisfied or waived, which date is May 24, 2022.

“**Code**”: the U.S. Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document. For the avoidance of doubt, no Excluded Asset shall constitute “Collateral”.

“**Collateral Information Certificate**”: the Collateral Information Certificate to be executed and delivered by the Borrower pursuant to Section 5.1, substantially in the form of Exhibit J.

“**Collateral-Related Expenses**”: all reasonable, out-of-pocket costs and expenses of the Administrative Agent paid or incurred in connection with any sale, collection or other realization on the Collateral, including reasonable compensation to the Administrative Agent’s and its agents and counsel, and reimbursement for all other reasonable, out-of-pocket costs, expenses and liabilities and advances made or incurred by the Administrative Agent in connection therewith (including as described in Section 6.6 of the Guarantee and Collateral Agreement), and all amounts for which the Administrative Agent is entitled to indemnification under the Security Documents and all advances made by the Administrative Agent under the Security Documents for the account of any Loan Party.

“**Commitment**”: as to any Lender, the sum of its Term Commitment and its Revolving Commitment.

“**Commitment Fee Rate**”: initially, the rates per annum corresponding to Level III in the table set forth under the relevant column set forth the definition of Applicable Margin; provided that commencing on the date on which the Administrative Agent receives copies of the consolidated financial statements of the Borrower and its Subsidiaries in respect of the fiscal quarter of Holdings and its Subsidiaries ending June 30, 2022 (and each fiscal quarter thereafter), together with a Compliance Certificate in respect thereof as contemplated by Section 6.2(b), “**Commitment Fee Rate**” shall mean the rate per annum set forth under the relevant column heading set forth in the definition of Applicable Margin.

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

“**Communications**”: as defined in Section 10.2(c)(ii).

“**Compliance Certificate**”: a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B.

“Conforming Changes”: with respect to either the use or administration of any Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.14 and other technical, administrative or operational matters) that the Administrative Agent (in consultation with the Borrower) decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Connection Income Taxes”: Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Borrower Leverage Ratio”: as at the last day of any four fiscal quarter period, the ratio of (a) the Consolidated Total Indebtedness (other than (i) any such Consolidated Total Indebtedness attributable to Holdings and any Subsidiary thereof that is not a Group Member and (ii) any unsecured high yield debt or unsecured convertible debt of the Group Members) on such day to (b) the Consolidated EBITDA (other than any such Consolidated EBITDA attributable to Holdings and any Subsidiary thereof that is not a Group Member) for such period.

“Consolidated Capital Expenditures”: for any period, with respect to Holdings and its consolidated Subsidiaries, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Lease Obligations which is capitalized on the consolidated balance sheet of Holdings and its consolidated Subsidiaries) by such Person during such period for the acquisition or leasing (pursuant to a capital lease) of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that, in conformity with GAAP, are included in “additions to property, plant or equipment” or comparable items reflected in the consolidated statement of cash flows of Holdings and its consolidated Subsidiaries; provided that **“Consolidated Capital Expenditures”** shall not include (a) expenditures in respect of normal replacements and maintenance which are properly charged to current operations, (b) expenditures made in connection with the replacement, substitution or restoration of assets to the extent financed (i) from insurance proceeds paid on account of the loss of or damage to the assets being replaced or restored or (ii) with awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced, (c) expenditures made as a tenant as leasehold improvements during such period to the extent reimbursed by the landlord during such period, or (d) Permitted Acquisitions and other similar Investments permitted by Section 7.8.

“Consolidated EBITDA”: with respect to Holdings and its consolidated Subsidiaries for any period,

(a) Consolidated Net Income, plus

(b) the sum, without duplication, of the amounts for such period but solely to the extent deducted in calculating Consolidated Net Income (other than as provided for in clause (xiv)), for such period of:

- (i) Consolidated Interest Expense, plus
- (ii) provisions for taxes based on income, profits and capital gain and franchise taxes, plus
- (iii) total depreciation expense, plus
- (iv) total amortization expense, plus
- (v) other non-cash items reducing Consolidated Net Income (including non-cash interest expense, but excluding any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period), plus
- (vi) losses in connection with casualty events to the extent covered by insurance with respect to which the applicable insurer has assumed responsibility (without regard to proceeds of business interruption insurance), plus
- (vii) costs and expenses relating to the Loan Documents (including any amendments, waivers or other modifications thereto) and the refinancing of the Existing Indebtedness, plus
- (viii) other extraordinary, unusual or nonrecurring losses, charges or expenses; provided that (A) the aggregate amount added back pursuant to this clause (viii), clause (xiv) below and clause (xvi) below shall not exceed, for any period of four consecutive fiscal quarters, an amount equal to [****]% of Consolidated EBITDA for such period (calculated prior to giving effect to any such losses, charges or expenses) and (B) the aggregate amount added back pursuant to this clause (viii) shall not exceed, for any period of four consecutive fiscal quarters, an amount equal to [****]% of Consolidated EBITDA for such period (calculated prior to giving effect to any such losses, charges or expenses), plus
- (ix) non-cash charges for employee compensation plans (including stock option compensation), plus
- (x) Public Company Costs paid in cash during such period, plus
- (xi) proceeds from business interruption insurance received during such period (to the extent not reflected as revenue or income in Consolidated Net Income and to the extent that the related loss was deducted in the determination of Consolidated Net Income), plus
- (xii) any fees, costs, expenses or charges related to any actual, proposed or contemplated issuance of Capital Stock, Investment, acquisition, disposition outside of the ordinary course of business, recapitalization or the incurrence of Indebtedness (including a refinancing thereof), plus
- (xiii) contingent obligations, purchase price adjustments, milestone payments, earn-out payments and indemnity obligations incurred in connection with any Permitted Acquisition, plus
- (xiv) the amount of pro forma “run rate” cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the elimination of a public target’s Public Company Costs) and operating expense reductions attributable to operating improvements, strategic initiatives, synergies (including with respect to Permitted Acquisitions) or other actions actually taken (it is understood and agreed that “run rate” means the full recurring benefit for a

period that is associated with any action actually taken, net of the amount of actual benefits realized during such period from such actions) that are projected by Holdings and the Borrower in good faith to be realized within 18 months of the last day of such period (including from any actions taken in whole or in part prior to such date), which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a pro forma basis as though such cost savings (including cost savings with respect to salary, benefit and other direct savings resulting from workforce reductions and facility, benefit and insurance savings and any savings expected to result from the elimination of a public target's Public Company Costs) and operating expense reductions had been realized on the first day of such period, in each case, net of the amount of actual benefits realized prior to or during such period from such actions; provided that such cost savings are reasonably identifiable and factually supportable (in the good faith determination of Holdings and the Borrower); and provided further that (A) the aggregate amount added back pursuant to this clause (xiv), clause (viii) above and clause (xvi) below shall not exceed, for any period of four consecutive fiscal quarters, an amount equal to [****]% of Consolidated EBITDA for such period (calculated prior to giving effect to any such adjustments), (B) the aggregate amount added back pursuant to this clause (xiv) shall not exceed, for any period of four consecutive fiscal quarters, an amount equal to [****]% of Consolidated EBITDA for such period (calculated prior to giving effect to any such losses, charges or expenses) and (C) no such amounts added back pursuant to this clause (xiv) shall be duplicative of any expense or charges otherwise added back to Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period, plus

(xv) any fees, costs, expenses or charges related to the pre-opening of showrooms of the Group Members, plus

(xvi) the amount of any restructuring charge, accrual, reserve (and adjustments to existing reserves) or expense, integration cost, inventory optimization programs or other business optimization expense or cost (including charges directly related to the implementation of cost-savings initiatives and tax restructurings) that is deducted (and not added back) in such period in computing Consolidated Net Income, including any such costs incurred in connection with acquisitions or divestitures after the Closing Date, any severance, retention, signing bonuses, relocation, recruiting and other employee related costs, costs in respect of strategic initiatives and curtailments or modifications to pension and post-retirement employment benefit plans (including any settlement of pension liabilities), costs related to entry into new markets (including unused warehouse space costs) and new product introductions (including labor costs, scrap costs and lower absorption of costs, including due to decreased productivity and greater inefficiencies), systems development and establishment costs, operational and reporting systems, technology initiatives, contract termination costs, future lease commitments and costs related to the opening and closure and/or consolidation of facilities (including severance, rent termination, moving and legal costs) and to exiting lines of business and consulting fees incurred with any of the foregoing; provided that (A) the aggregate amount added back pursuant to this clause (xvi) and clauses (viii) and (xiv) above shall not exceed for any period of four consecutive fiscal quarters, an amount equal to [****]% of Consolidated EBITDA for such period (calculated prior to giving effect to any such adjustments) and (B) the aggregate amount added back pursuant to this clause (xvi) shall not exceed, for any period of four consecutive fiscal quarters, an amount equal to [****]% of Consolidated EBITDA for such period (calculated prior to giving effect to any such losses, charges or expenses), plus

(xvii) losses, expenses or charges (including all fees and expenses relating thereto) (A) from abandoned, closed, disposed or discontinued operations and any losses on disposal of abandoned, closed or discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and

to the extent such operations are actually disposed of) and (B) attributable to business dispositions or asset dispositions (other than in the ordinary course of business); provided that the aggregate amount added back pursuant to this clause (xvii) shall not exceed, for any period of four consecutive fiscal quarters, an amount equal to [****]% of Consolidated EBITDA for such period (calculated prior to giving effect to any such adjustments), plus

(xviii) losses attributable to (A) the application of purchase accounting and (B) changes in or the adoption, application or modification of accounting principles, minus

(c) the sum, without duplication of the amounts for such period of:

(i) non-cash items increasing Consolidated Net Income for such period (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash item in any prior period), plus

(ii) interest income increasing Consolidated Net Income for such period, plus(iii) capitalized software development costs and capitalized sales commissions; plus

(iv) gains attributable to (A) the application of purchase accounting and (B) changes in or the adoption, application or modification of accounting principles;

provided that, without duplication of any adjustment set forth above, Consolidated EBITDA for any period shall be determined on a Pro Forma Basis to give effect to any Permitted Acquisitions or any similar permitted Investment or any disposition of any business or assets consummated during such period, in each case as if such transaction occurred on the first day of such period and in accordance with Regulation S-X promulgated by the SEC.

“Consolidated Fixed Charge Coverage Ratio”: with respect to Holdings and its consolidated Subsidiaries for any period of four consecutive fiscal quarters, the ratio of (a) the result of (i) Consolidated EBITDA for such period minus (ii) the portion of taxes actually paid in cash (net of any cash refund received) during such period (including for purposes hereof, tax distributions made to Persons other than Holdings and any payments made under the Tax Receivable Agreement during such period that are permitted hereunder) minus (iii) Consolidated Capital Expenditures and other capitalized items paid in cash (excluding capitalized software development costs, capitalized sales commissions, the principal amount of Consolidated Capital Expenditures funded with Indebtedness incurred in connection with such expenditures, and expenditures in connection with the pre-opening of showrooms not to exceed [****]% of Holdings’ consolidated total revenues determined in accordance with GAAP for such period), minus (iv) cash dividends, stock repurchases and other Restricted Payments paid to any Person that is not Holdings or a Group Member such period to (b) Consolidated Fixed Charges for such period.

“Consolidated Fixed Charges”: with respect to Holdings and its consolidated Subsidiaries for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, plus (b) scheduled payments made during such period on account of principal of Indebtedness of Holdings and its consolidated Subsidiaries (including scheduled principal payments in respect of the Term Loans); provided that (A) for the fiscal quarter ending (x) June 30, 2022, the amount of Consolidated Fixed Charges for such fiscal quarter shall be the amount of Consolidated Fixed Charges for such fiscal quarter multiplied by 4, (y) September 30, 2022, the amount of Consolidated Fixed Charges for such fiscal quarter shall be the sum of the amount of Consolidated Fixed Charges for such fiscal quarter plus the amount of Consolidated Fixed Charges for the fiscal quarter ending June 30, 2022, multiplied by 2, and (z) December 31, 2022, the amount of Consolidated Fixed Charges for such fiscal quarter shall be the sum of the amount of Consolidated Fixed Charges for the fiscal quarters ending June 30, 2022, September 30, 2022 and December 31, 2022,

multiplied by 4/3 and (B) for purposes of calculating Consolidated Fixed Charges for the fiscal quarter ended June 30, 2022, the Borrower shall have been deemed to have made a principal repayment pursuant to Section 2.3 for such fiscal quarter. Notwithstanding the foregoing, “Consolidated Fixed Charges” shall exclude any amounts paid or payable in connection with the Existing Indebtedness.

“Consolidated Interest Expense”: for any period, total cash interest expense (including such expense attributable to Capital Lease Obligations) of Holdings and its consolidated Subsidiaries for such period with respect to all outstanding Indebtedness of such Persons (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP).

“Consolidated Net Income”: for any period, the consolidated net income (or loss) of Holdings and its consolidated Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from the calculation of “Consolidated Net Income” (a) the income (or deficit) of any such Person accrued prior to the date it becomes a Subsidiary of Holdings or is merged into or consolidated with Holdings or any of its Subsidiaries, (b) the income (or deficit) of any such Person (other than a Subsidiary of Holdings) in which a Group Member has an ownership interest, except to the extent that any such income is actually received by a Group Member in the form of dividends or similar distributions, and (c) the undistributed earnings of any Subsidiary of Holdings to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

“Consolidated Total Indebtedness”: as of any date of determination, all Indebtedness of Holdings and its consolidated Subsidiaries of the type described in clauses (a) through (h) of the definition of “Indebtedness”.

“Consolidated Total Leverage Ratio”: as at the last day of any four fiscal quarter period, the ratio of (a) the Consolidated Total Indebtedness on such day to (b) the Consolidated EBITDA for such period.

“Contract”: any contract, agreement, indenture, note, bond, loan, instrument, guarantee, deed, mortgage, lease, sublease, license, sublicense, other arrangement or agreement or undertaking (whether written, electronic or oral and whether express or implied) that is or purports by its terms to be legally binding, and including all amendments thereto.

“Contractual Obligation”: as to any Person, obligation under any Contract.

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

“Control Investment Affiliate”: as to any Person, any other Person that (a) directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies.

“Corresponding Tenor”: with respect to any Available Tenor means, 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.

“Convertible Indebtedness”: Indebtedness (including Permitted Convertible Indebtedness), the

terms of which provide for conversion into or exchange for Capital Stock, cash or a combination thereof (or other reference property).

“Daily Simple SOFR”: for any day (a **“SOFR Rate Day”**), a rate per annum equal to the greater of (a) SOFR for the day (such day a **“SOFR Determination Day”**) 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, and (b) the Floor. If by 5:00 p.m. (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. 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.

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

“Declined Amount”: as defined in Section 2.12(e).

“Default”: any of the events specified in Section 8.1, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Default Rate”: as defined in Section 2.15(c).

“Defaulting Lender”: subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any

Debtor Relief Law, (ii) become the subject of a Bail-In Action or (iii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

“Deposit Account”: any “deposit account” as defined in the UCC with such additions to such term as may hereafter be made.

“Designated Jurisdiction”: any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Determination Date”: as defined in the definition of “Pro Forma Basis”.

“Discharge of Obligations”: subject to Section 10.8, the satisfaction of the Obligations by the payment in full, in cash (or, as applicable, Cash Collateralization in accordance with the terms hereof) of the principal of and interest on or other liabilities relating to each Loan, all fees and all other expenses or amounts payable under any Loan Document (other than inchoate indemnification obligations and any other obligations which pursuant to the terms of any Loan Document specifically survive repayment of the Loans for which no claim has been made), to the extent (a) no Letter of Credit shall be outstanding (or, as applicable, each outstanding and undrawn Letter of Credit has been Cash Collateralized in accordance with the terms hereof or as otherwise may be reasonably satisfactory to the applicable Cash Management Bank), and (b) the aggregate Commitments of the Lenders are terminated.

“Disposition”: with respect to any property (including, without limitation, Capital Stock of any Group Member), any sale, lease, Sale Leaseback Transaction, assignment, conveyance, transfer or other disposition thereof (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) and any issuance of Capital Stock of any Subsidiary of the Borrower. The terms **“Dispose”** and **“Disposed of”** shall have correlative meanings. For the avoidance of doubt, none of (a) the sale of any Permitted Convertible Indebtedness by the Borrower, (b) the entry into any Permitted Equity Derivative Transaction by the Borrower in connection with the issuance of any Permitted Convertible Indebtedness, (c) the settlement, unwinding or termination of any Permitted Equity Derivative Transaction, or (d) the issuance of Capital Stock that is not Disqualified Stock pursuant to the conversion or exchange of Permitted Convertible Indebtedness or the settlement, unwinding or termination of any Permitted Equity Derivative Transaction shall constitute a Disposition.

“Disqualified Stock”: any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount

that the Group Members may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“Division”: in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Company Act, or any analogous action taken pursuant to any other applicable Requirements of Law.

“Dollars” and **“\$”**: dollars in lawful currency of the United States.

“Domestic Subsidiary”: any Subsidiary of the Borrower organized under the laws of the United States, and any state thereof or the District of Columbia.

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

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

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

“Election Period”: as defined in Section 2.27(c).

“Eligible Assignee”: any Person that meets the requirements to be an assignee under Section 10.6(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

“Environmental Laws”: any and all foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

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

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended, including (unless the context otherwise requires) any rules or regulations promulgated thereunder.

“ERISA Affiliate”: each business or entity which is, or within the last six years was, a member of

a “controlled group of corporations,” under “common control” or an “affiliated service group” with any Loan Party within the meaning of Section 414(b), (c), (m) or (n) of the Code, required to be aggregated with any Loan Party under Section 414(o) of the Code, or is, or within the last six years was, under “common control” with any Loan Party, within the meaning of Section 4001(a)(14) of ERISA.

“ERISA Event”: any of (a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (c) a withdrawal by any Loan Party or any ERISA Affiliate thereof from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Loan Party or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Loan Party or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the imposition of liability on any Loan Party or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Loan Party or any ERISA Affiliate thereof to make any required contribution to a Pension Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (j) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Loan Party or any Subsidiary thereof may be directly or indirectly liable; (m) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Loan Party or any ERISA Affiliate thereof may be directly or indirectly liable; (n) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (o) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Loan Party or any Subsidiary thereof in connection with any such Plan; (p) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (q) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Loan Party or any ERISA Affiliate thereof, in either case pursuant to Title I or IV of ERISA, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; or (r) the establishment or amendment by an Loan Party or any Subsidiary thereof of any “welfare plan” as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Loan Party.

“ERISA Funding Rules”: the rules regarding minimum required contributions (including any installment payment thereof) to Pension Plans, as set forth in Section 412 of the Code and Section 302 of ERISA, with respect to Plan years ending prior to the effective date of the Pension Protection Act of 2006, and thereafter, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Erroneous Payment”: as defined in Section 9.14(a).

“Erroneous Payment Deficiency Assignment”: as defined in Section 9.14(d).

“Erroneous Payment Return Deficiency”: as defined in Section 9.14(d).

“Erroneous Payment Subrogation Rights”: as defined in Section 9.14(d).

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

“Event of Default”: any of the events specified in Section 8.1; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Exchange Act”: the Securities Exchange Act of 1934, as amended from time to time and any successor statute.

“Excluded Assets”: as defined in the Guarantee and Collateral Agreement.

“Excluded Foreign Subsidiary”: in respect of any Group Member, any Subsidiary of such Group Member (including Domestic Subsidiaries, as applicable), at any date of determination, (a) that is a “controlled foreign corporation” as defined in Section 957 of the Code, (b) that is a direct or indirect Subsidiary of a “controlled foreign corporation” as defined in Section 957 of the Code, or (c) substantially all of the assets of which are equity interests in one or more “controlled foreign corporations” as defined in Section 957 of the Code.

“Excluded Subsidiary”: any Subsidiary (a) that is an Excluded Foreign Subsidiary, (b) that is an Immaterial Subsidiary, (c) that is prohibited, but only so long as such Subsidiary remains so prohibited, by any applicable Requirement of Law or by (x) Contractual Obligations existing on the Closing Date (so long as such Contractual Obligations were not created in contemplation of the Transactions) or (y) in the case of a newly acquired Subsidiary, in existence at the time of acquisition (but not entered into in contemplation thereof), in each case, from guaranteeing the Obligations or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee unless such consent, approval, license or authorization has been received (but without obligation to seek the same), (d) with respect to which providing a guarantee would result in a material adverse tax consequence to the Borrower or its Subsidiaries, as reasonably determined by the Administrative Agent in consultation with the Borrower, (e) that is a non-wholly-owned Subsidiary, other than a Subsidiary that is or becomes non-wholly-owned as a result of (x) a disposition of Capital Stock in such Subsidiary to a Person that is an Affiliate of the Borrower or Holdings for less than fair market value (as determined by the Borrower in good faith), (y) a transaction entered into primarily in contemplation of such Subsidiary ceasing to be a Guarantor, or (z) the issuance of qualifying shares or other shares that are required to be owned by third parties under applicable Requirements of Law, or (f) with respect to which, in the reasonable judgment of the Administrative Agent, the cost or other consequences of providing a guarantee of the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom.

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

“Excluded Taxes”: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.20(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Agent”: Runway Growth Credit Fund Inc., as administrative agent and collateral agent for the lenders of the Existing Indebtedness.

“Existing Indebtedness”: the Indebtedness of the Borrower arising under that certain Loan and Security Agreement, dated as of September 30, 2019, by and among the Borrower, the lenders from time to time to time party thereto and the Existing Agent, as amended or otherwise modified from time to time.

“Existing Letter of Credit”: that certain letter of credit number CTCS-978711 dated March 29, 2017, in the amount of \$203,606, issued for the account of the Borrower by JPMorgan Chase Bank, N.A.

“Facility”: each of (a) the Term Facility, (b) the L/C Facility (which is a sub-facility of the Revolving Facility), (c) the Swingline Facility (which is a sub-facility of the Revolving Facility) and (d) the Revolving Facility.

“FASB ASC”: the Accounting Standards certification of the Financial Accounting Standards Board.

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

“Federal Funds Effective Rate”: for any day, the greater of (a) 0.00% and (b) the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by SVB from three federal funds brokers of recognized standing selected by it.

“Fee Letter”: the fee letter agreement dated April 27, 2022, between the Borrower and the Administrative Agent.

“First Amendment Fee Letter”: the fee letter agreement dated February 21, 2024, between the Borrower and the Administrative Agent.

“Flood Laws”: the National Flood Insurance Reform Act of 1994 and related legislation (including the regulations of the Board of Governors of the Federal Reserve System).

“Floor”: a rate of interest equal to 0.0% per annum.

“Flow of Funds Agreement”: the spreadsheet or other similar statement prepared by the Administrative Agent and approved by the Borrower regarding the disbursement of Loan proceeds, the funding and the payment of the fees of the Administrative Agent and the Lenders and expenses of the Administrative Agent, and such other matters as may be agreed to by the Borrower, the Administrative Agent and the Lenders.

“Foreign Lender”: a Lender that is not a U.S. Person.

“Foreign Subsidiary”: any Subsidiary of the Borrower that is not a Domestic Subsidiary.

“Fronting Exposure”: at any time there is a Defaulting Lender, as applicable, (a) with respect to the Issuing Lender, such Defaulting Lender’s L/C Percentage of the outstanding L/C Exposure other than L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

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

“Funding Office”: the Revolving Loan Funding Office or the Term Loan Funding Office, as the context requires.

“GAAP”: generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 7.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1(b). In the event that any **“Accounting Change”** (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then upon the request of either the Borrower or the Administrative Agent, the Borrower and the Administrative Agent agree to enter into negotiations to amend such provisions of this Agreement so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Changes as if

such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. “**Accounting Changes**” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

“**Governmental Approval**”: any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**”: the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra national bodies such as the European Union or the European Central Bank), and any group or body charged with setting accounting or regulatory capital rules or standards (including the Financial Standards Board, the Bank for International Settlements, the Basel Committee on Banking Supervision and any successor or similar authority to any of the foregoing).

“**Group Members**”: the collective reference to the Borrower and its Subsidiaries.

“**Guarantee and Collateral Agreement**”: the Guarantee and Collateral Agreement to be executed and delivered by the Loan Parties.

“**Guarantee Obligation**”: as to any Person (the “**guaranteeing person**”), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the “**primary obligations**”) of any other third Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“**Guarantors**”: a collective reference to each Subsidiary of the Borrower which has become a Guarantor pursuant to the requirements of Section 6.12 hereof and the Guarantee and Collateral Agreement.

“Holdings”: Brilliant Earth Group, Inc., a Delaware corporation.

“Illegality Notice”: as defined in Section 2.19.

“Immaterial Subsidiary”: as of the last day of each fiscal quarter of the Borrower and at any other date of determination, any Subsidiary of the Borrower (other than a Guarantor) designated as such by the Borrower in writing and which as of such date (a) holds assets representing 5.0% or less of the Borrower’s consolidated total assets as of such date (determined in accordance with GAAP and excluding investments in Subsidiaries and intercompany receivables that would be eliminated in consolidated financial statements, and goodwill), (b) has generated less than 5.0% of the Borrower’s consolidated total revenues (excluding intercompany revenue that would be eliminated in consolidated financial statements) determined in accordance with GAAP for the four (4) consecutive fiscal quarter period ending on the last day of the most recent period for which financial statements have been delivered after the Closing Date pursuant to Section 6.1(b); provided that all Subsidiaries that are individually **“Immaterial Subsidiaries”** shall not have aggregate consolidated total assets (excluding intercompany receivables that would be eliminated in consolidated financial statements, and goodwill) that would represent 10.0% or more of the Borrower’s consolidated total assets as of such date or have generated 10.0% or more of the Borrower’s consolidated total revenues (excluding any intercompany revenue that would be eliminated in consolidated financial statements) for such four (4) consecutive fiscal quarter period, in each case determined in accordance with GAAP, (c) owns no Material IP, and (d) is not the owner of Capital Stock of any Group Member that would not constitute an Immaterial Subsidiary.

“Increase Effective Date”: as defined in Section 2.27(d).

“Incremental Facility”: an Incremental Term Loan or Incremental Revolving Commitment.

“Incremental Joinder”: an instrument, in form and substance reasonably satisfactory to the Administrative Agent, by which a Lender becomes a party to this Agreement pursuant to Section 2.27.

“Incremental Revolving Commitment”: as defined in Section 2.27(b).

“Incremental Term Loan”: as defined in Section 2.27(a).

“Incurred”: as defined in the definition of “Pro Forma Basis”.

“Indebtedness”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than (i) current trade payables incurred in the ordinary course of such Person’s business, (ii) any earn-out obligation if such obligation is not required to be reflected on the balance sheet in accordance with GAAP and (iii) accruals for payroll and other liabilities, including deferred compensation arrangements, in each case, accrued in the ordinary course of business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations and all Synthetic Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of Disqualified Stock, (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right,

contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation; provided that the amount of such Indebtedness will be the lesser of (i) the fair market value of such property secured or (ii) the amount of such Indebtedness of such other Person, and (j) the net obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor. Notwithstanding the foregoing, no Permitted Equity Derivative Transaction shall constitute Indebtedness. In no event shall the obligations described in this definition that are supported by a Letter of Credit be double counted for purposes of calculating the applicable amount of Indebtedness.

"Indemnified Taxes": (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitee": as defined in [Section 10.5\(b\)](#).

"Insolvency Proceeding": (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including any Debtor Relief Law.

"Intellectual Property": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, patents, trademarks, trade secrets and any other intellectual property rights in technology, know-how and processes.

"Intellectual Property Security Agreement": an intellectual property security agreement for recordation in the USPTO or USCO, covering United States issued Patents and applications for United States Patents, registered United States Trademarks and applications therefor, or registered United States Copyrights, and entered into between a Loan Party and the Administrative Agent pursuant to the terms of the Guarantee and Collateral Agreement in form and substance reasonably satisfactory to the Administrative Agent, together with each other intellectual property security agreement and supplement thereto delivered pursuant to [Section 6.12](#), in each case as amended, restated, supplemented or otherwise modified from time to time.

"Interest Payment Date": (a) as to any ABR Loan (including any Swingline Loan), the first Business Day of each calendar quarter to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any SOFR Loan, (i) having an Interest Period of three (3) months or less, the last Business Day of such Interest Period and the final maturity date of such Loan and (ii) having an Interest Period longer than three (3) months, each Business Day that is three (3) months after the first day of such Interest Period, the last Business Day of such Interest Period and the final maturity date of such Loan, and (c) as to any Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any SOFR Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such SOFR Loan and ending on the numerically corresponding day in the month that is one, three or six months thereafter, as selected by the Borrower in

its Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such SOFR Loan and ending on the numerically corresponding day in the month that is one, three or six months thereafter, as selected by the Borrower in a Notice of Conversion/Continuation delivered to the Administrative Agent not later than 10:00 A.M. on the date that is three (3) U.S. Government Securities Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period under a particular Facility that would extend beyond the Maturity Date;

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

(iv) no tenor that has been removed from this definition pursuant to Section 2.17(b) shall be available for specification in any Notice of Borrowing or Notice of Conversion/Continuation.

“Interest Rate Agreement”: with respect to any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with such Person’s operations, and (b) not for speculative purposes.

“Inventory”: all “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by any Loan Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Group Member for sale or lease or are furnished or are to be furnished under a contract of service, or that constitutes raw materials, work in process, finished goods, returned goods, or materials or supplies of any kind used or consumed or to be used or consumed in such Group Member’s business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

“Investments”: as defined in Section 7.8.

“IRS”: the U.S. Internal Revenue Service or any successor thereto.

“ISP”: with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuing Lender”: as the context may require, (a) SVB or any Affiliate thereof, in its capacity as issuer of any Letter of Credit, (b) any other Lender or Affiliate thereof that may become an Issuing Lender pursuant to Section 3.11 or 3.12, with respect to Letters of Credit issued by such Lender or its Affiliate, and (c) solely with respect to the Existing Letter of Credit, on and after the date the Existing Letter of Credit becomes a Letter of Credit hereunder, JPMorgan Chase Bank, N.A.; provided that JPMorgan Chase Bank, N.A. may, but shall not be obligated to issue any new Letters of Credit. The Issuing Lender may, in its

discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender or other financial institutions, in which case the term “Issuing Lender” shall include any such Affiliate or other financial institution with respect to Letters of Credit issued by such Affiliate or other financial institution. For the avoidance of doubt, no Lender shall become an Issuing Lender unless it shall so agree.

“**Issuing Lender Fees**”: as defined in Section 3.3(a).

“**Judgment Currency**”: as defined in Section 10.19.

“**Just Rocks Related Parties**”: Just Rocks, Inc., a Delaware corporation, Beth Gerstein, Eric Grossberg, The Eric S. Grossberg 2021 Annuity Trust, The Beth T. Gerstein 2021 Annuity Trust, The Sutton-Gerstein Family Trust, The Eric S. Grossberg Revocable Trust, and The Alexander M. Sutton 2021 Annuity Trust and their respective Affiliates.

“**L/C Advance**”: each L/C Lender’s funding of its participation in any L/C Disbursement in accordance with its L/C Percentage of the L/C Commitment.

“**L/C Commitment**”: as to any L/C Lender, the obligation of such L/C Lender, if any, to purchase an undivided interest in the Issuing Lenders’ obligations and rights under and in respect of each Letter of Credit (including to make payments with respect to draws made under any Letter of Credit pursuant to Section 3.5(b)) in an aggregate principal amount not to exceed the amount set forth under the heading “L/C Commitment” opposite such L/C Lender’s name on Schedule 1.1A or in the Assignment and Assumption, Incremental Joinder or amendment pursuant to which such L/C Lender becomes a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The L/C Commitment is a sublimit of the Revolving Commitment and the aggregate amount of the L/C Commitments shall not exceed the amount of the Total L/C Commitments at any time.

“**L/C Disbursements**”: a payment or disbursement made by the Issuing Lender pursuant to a Letter of Credit.

“**L/C Exposure**”: at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, and (b) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time. The L/C Exposure of any L/C Lender at any time shall equal its L/C Percentage of the aggregate L/C Exposure at such time.

“**L/C Facility**”: the L/C Commitments and the extensions of credit made thereunder.

“**L/C Fee Payment Date**”: as defined in Section 3.3(a).

“**L/C Lender**”: a Lender with an L/C Commitment.

“**L/C Percentage**”: as to any L/C Lender at any time, the percentage of the Total L/C Commitments represented by such L/C Lender’s L/C Commitment, as such percentage may be adjusted as provided in Section 2.24.

“**L/C-Related Documents**”: collectively, each Letter of Credit, all applications for any Letter of Credit (and applications for the amendment of any Letter of Credit) submitted by the Borrower to the Issuing Lender and any other document, agreement and instrument relating to any Letter of Credit, including any of the Issuing Lender’s standard form documents for letter of credit issuances.

“**LCA Election**”: as defined in Section 1.4.

“**LCA Test Date**”: as defined in Section 1.4.

“**Lenders**”: as defined in the preamble hereto; provided that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include the L/C Lenders, the Issuing Lender and the Swingline Lender.

“**Letter of Credit**”: as defined in Section 3.1(a); provided that such term may include the Existing Letter of Credit pursuant to Section 3.1(a).

“**Letter of Credit Availability Period**”: the period from and including the Closing Date to but excluding the Letter of Credit Maturity Date.

“**Letter of Credit Fees**”: as defined in Section 3.3(a).

“**Letter of Credit Fronting Fees**”: as defined in Section 3.3(a).

“**Letter of Credit Maturity Date**”: the date occurring fifteen (15) days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“**Lien**”: any mortgage, deed of trust, pledge, hypothecation, collateral 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 any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“**Limited Condition Acquisition**”: any Permitted Acquisition or similar permitted Investment, the consummation of which is not conditioned on the availability of, or on obtaining, third party financing; *provided*, that, in the event the consummation of any such Permitted Acquisition or similar permitted Investment shall not have occurred on or prior to the date that is 120 days following the signing of the applicable Limited Condition Acquisition Agreement, such Permitted Acquisition shall no longer constitute a Limited Condition Acquisition for any purpose unless such Permitted Acquisition or other permitted Investment is still pending subject only to receipt of applicable regulatory approvals.

“**Limited Condition Acquisition Agreement**”: any agreement providing for a Limited Condition Acquisition.

“**Liquidity**”: at any time, the sum of (a) cash and Cash Equivalents of the Loan Parties that would not appear as “restricted” on a consolidated balance sheet of Holdings and its Subsidiaries plus (b) the Available Revolving Commitment at such time.

“**Loan**”: any loan made or maintained by any Lender pursuant to this Agreement.

“**Loan Documents**”: this Agreement, each Security Document, each Note, the Fee Letter, the First Amendment Fee Letter, each Compliance Certificate, the Solvency Certificate, each Incremental Joinder, each subordination agreement or intercreditor agreement entered into pursuant to this Agreement, the Collateral Information Certificate, each L/C-Related Document, and any agreement creating or perfecting rights in cash collateral pursuant to the provisions of Section 3.10, or otherwise, and any amendment, waiver, supplement or other modification to any of the foregoing.

“**Loan Parties**”: each Group Member that is a party to a Loan Document, as a Borrower or a Guarantor.

“Mainsail Related Parties”: Mainsail Partners III, L.P., a Delaware limited partnership, Mainsail Incentive Program, LLC, and Mainsail Co-Investors III, L.P. and their Affiliates.

“Mandatory Prepayment Date”: as defined in Section 2.12(e).

“Material Adverse Effect”: (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of the Group Members, taken as a whole; (b) a material impairment in the perfection or priority of the Administrative Agent’s Lien in any Collateral or in the value of such Collateral or a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower or any Guarantor of any material Loan Document to which it is a party; or (c) a material impairment of the ability of Loan Parties taken as a whole to perform any of their payment or other material obligations under any Loan Document to which it is a party.

“Material IP”: intellectual property that is legally or beneficially owned (including by exclusive license) by a Group Member and that is material to the business of the Group Members, taken as a whole.

“Materials of Environmental Concern”: any substance, material or waste that is defined, regulated, governed or otherwise characterized under any Environmental Law as hazardous or toxic or as a pollutant or contaminant (or by words of similar meaning and regulatory effect), any petroleum or petroleum products, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, molds or fungus, and radioactivity and radiofrequency radiation at levels known to be hazardous to human health and safety.

“Maturity Date”: May 24, 2027.

“MFN Protection”: as defined in Section 2.27(i).

“Minority Lender”: as defined in Section 10.1(b).

“Moody’s”: Moody’s Investors Service, Inc.

“Mortgaged Properties”: the real properties as to which, pursuant to Section 6.12(b) or otherwise, the Administrative Agent, for the benefit of the Secured Parties, shall be granted a Lien pursuant to the Mortgages.

“Mortgages”: each of the mortgages, deeds of trust, deeds to secure debt or such equivalent documents hereafter entered into and executed and delivered by one or more of the Loan Parties to the Administrative Agent, in each case, as such documents may be amended, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time and in form and substance reasonably acceptable to the Administrative Agent.

“Multiemployer Plan”: a “multiemployer plan” (within the meaning of Section 3(37) of ERISA) to which any Loan Party or any ERISA Affiliate thereof makes, is making, or is obligated or has in the preceding six (6) years been obligated to make, contributions.

“Net Cash Proceeds”: (a) in connection with any Asset Sale or any Recovery Event, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received in the form of cash and Cash Equivalents), net of attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Asset

Sale or Recovery Event (other than any Lien pursuant to a Security Document) and other customary costs, fees and expenses actually incurred in connection therewith and net of taxes paid and the Borrower's reasonable and good faith estimate of income, franchise, sales, and other applicable taxes required to be paid by any Group Member in connection with such Asset Sale or Recovery Event in the taxable year that such Asset Sale or Recovery Event is consummated, the computation of which shall, in each such case, take into account the reduction in tax liability resulting from any available operating losses and net operating loss carryovers, tax credits, and tax credit carry forwards, and similar tax attributes and (b) in connection with any incurrence of Indebtedness, the cash proceeds received from such incurrence, net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary costs, fees and expenses actually incurred in connection therewith.

"Non-Consenting Lender": any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Affected Lenders in accordance with the terms of Section 10.1 and (b) has been approved by the Required Lenders.

"Non-Defaulting Lender": at any time, each Lender that is not a Defaulting Lender at such time.

"Note": a Term Loan Note, a Revolving Loan Note or a Swingline Loan Note.

"Notice of Borrowing": a notice substantially in the form of Exhibit K.

"Notice of Conversion/Continuation": a notice substantially in the form of Exhibit L.

"Obligations": (a) the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any Insolvency Proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans and all other obligations and liabilities (including any fees or expenses that accrue after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) of the Loan Parties (and the other Group Members in the case of obligations in respect of Cash Management Services) to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, and any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Cash Management Agreement, any Specified Swap Agreement or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, payment obligations, fees, indemnities, costs, expenses (including all reasonable and documented out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, the Issuing Lender, any other Lender, any applicable Cash Management Bank, to the extent that any applicable Cash Management Agreement requires the reimbursement by any applicable Group Member of any such expenses, and any Qualified Counterparty) that are required to be paid by any Group Member pursuant any Loan Document, Cash Management Agreement, Specified Swap Agreement or otherwise, and (b) Erroneous Payment Subrogation Rights. For the avoidance of doubt, the Obligations shall not include (a) any obligations arising under any warrants or other equity instruments issued by any Loan Party to any Lender, or (b) solely with respect to any Guarantor that is not a Qualified ECP Guarantor, any Excluded Swap Obligations of such Guarantor. Notwithstanding anything herein or in any other Loan Document to the contrary, (a) obligations in respect of Cash Management Agreements and Specified Swap Agreements shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed, and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Cash Management Agreements or

Specified Swap Agreements.

“OFAC”: the Office of Foreign Assets Control of the United States Department of the Treasury and any successor thereto.

“Operating Documents”: for any Person as of any date, such Person’s constitutional documents, formation documents and/or certificate of incorporation (or equivalent thereof) and, (a) if such Person is a corporation, its bylaws or memorandum and articles of association (or equivalent thereof) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

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

“Other Taxes”: all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

“Participant”: as defined in Section 10.6(d).

“Participant Register”: as defined in Section 10.6(d).

“Patriot Act”: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Title III of Pub. L. 107-56, signed into law October 26, 2001.

“Payment Recipient”: as defined in Section 9.14(a).

“Payoff Letter”: a letter, in form and substance reasonably satisfactory to the Administrative Agent, dated as of a date on or prior to the Closing Date and executed by each of the Existing Agent and the Borrower to the effect that upon receipt by the Existing Agent of the “payoff amount” (however designated) referenced therein, (a) the obligations of the Group Members under the Existing Indebtedness shall be satisfied in full, (b) the Liens held by the Existing Agent shall terminate without any further action, and (c) the Borrower or its designees shall be entitled to file UCC-3 termination statements, USPTO releases, USCO releases and any other releases reasonably necessary to further evidence the termination of such Liens.

“PBGC”: the Pension Benefit Guaranty Corporation, or any successor thereto.

“Pension Plan”: an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (b) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

“Periodic Term SOFR Determination Day”: as defined in the definition of “Term SOFR”.

“Permitted Acquisition”: as defined in Section 7.8(k).

“Permitted Convertible Indebtedness”: (x) Convertible Indebtedness that satisfies the following conditions (unless otherwise agreed to by the Administrative Agent): (a) as of the date of issuance thereof, such Indebtedness contains terms, conditions, covenants, conversion or exchange rights, redemption rights and offer to repurchase rights, in each case, as are typical and customary for notes of such type (in each case, as determined by Holdings in good faith); (b) such Indebtedness is convertible or exchangeable into shares of common stock of Holdings (or other securities of a successor Person following merger event, reclassification or other change of the common stock of Holdings), cash or a combination thereof (such amount of cash determined by reference to the price of Holdings’ common stock or such other securities or property), and cash in lieu of fractional shares of common stock of Holdings, (c) such indebtedness shall have a stated final maturity date that is no earlier than the date 180 days after the Maturity Date (the **“Earliest Date”**) and shall not be subject to any conditions that could result in such stated final maturity occurring earlier than the Earliest Date (it being understood that any conversion of such notes (whether into cash, shares of common stock in Holdings or any combination thereof), a repurchase of such notes on account of the occurrence of a “fundamental change” or any redemption of such notes at the option of Holdings shall not be deemed to constitute a change in the stated final maturity thereof), (d) such Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon any conversion of such notes (whether into cash, shares of common stock in Holdings or any combination thereof), the occurrence of an event of default or a “fundamental change” or following Holdings’ or the Borrower’s (as the case may be) election to redeem such notes) prior to the Earliest Date, (e) such Indebtedness shall be unsecured and no Group Member that is not a Loan Party shall have primary or Guarantee Obligations thereunder, and (f) any cross-default or cross acceleration (or comparable term or concept) provision contained in the agreements governing such Indebtedness that relates to indebtedness or other payment obligations of the Group Members contains a cure period of at least 30 calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under the cross defaulted obligation results in an event of default under such cross default or cross acceleration provision and/or (y) any Permitted Intercompany Convertible Note.

“Permitted Equity Derivative Transaction”: any forward purchase, accelerated share repurchase, call option, warrant or other derivative transaction relating to Holdings’ common stock (or other securities or property following a merger event, reclassification or other change of the common stock of Holdings) purchased or sold by Holdings or the Borrower in connection with the issuance of any Permitted Convertible Indebtedness and settled in common stock of Holdings (or such other securities or property), cash or a combination thereof, as the same may be amended, restated, supplemented or otherwise modified from time to time; provided that (a) the aggregate net purchase price for such Permitted Equity Derivative Transactions does not exceed the net cash proceeds received by Holdings or the Borrower from the sale of the Permitted Convertible Indebtedness in connection with which such Permitted Equity Derivative Transactions were entered into, and (b) the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by Holdings in good faith).

“Permitted Holders”: the Just Rocks Related Parties and the Mainsail Related Parties.

“Permitted Intercompany Convertible Note”: any intercompany convertible promissory note whereby Holdings will provide the net proceeds from the issuance of any Permitted Convertible Indebtedness issued by Holdings and the net proceeds of any related Permitted Equity Derivative

Transaction to the Borrower, the terms of which are substantially identical to the terms of the relevant Permitted Convertible Indebtedness issued by Holdings, taken together with the terms of any related Permitted Equity Derivative Transactions (unless the Borrower is a party to such Permitted Equity Derivative Transaction); provided that, to the extent such Permitted Intercompany Convertible Note exists in respect of any such Permitted Convertible Indebtedness issued by Holdings, neither the Borrower nor any other Group Member shall be an obligor under such Permitted Convertible Indebtedness issued by Holdings.

“Permitted Tax Distributions”: without duplication, (a) Tax Distributions under and as defined in the Borrower Operating Agreement and made in accordance therewith, (b) distributions to fund ordinary course payments made pursuant to and in accordance with the Tax Receivable Agreement (other than any payments required in connection with an early termination or change of control thereunder) and (c) distributions the proceeds of which shall be used to pay franchise taxes and other fees, Taxes and expenses required to maintain the legal existence of Holdings or the other Group Members.

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

“Plan”: (a) an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan which is or was at any time maintained or sponsored by any Group Member or to which any Group Member has ever made, or was obligated to make, contributions, (b) a Pension Plan, or (c) a Qualified Plan.

“Plan Asset Regulations”: 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA, as amended from time to time.

“Platform”: any of Debt Domain, DebtX, Intralinks, Syndtrak or a substantially similar electronic transmission system.

“Preferred Stock”: the preferred Capital Stock of the Borrower.

“Prime Rate”: greater of (a) 0.00% and (b) the rate of interest per annum published in the money rates section of the Wall Street Journal or any successor publication thereto as the “prime rate” then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Administrative Agent, the “Prime Rate” shall mean the rate of interest per annum announced by the Administrative Agent as its prime rate in effect at its principal office (such announced Prime Rate not being intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors).

“Pro Forma Basis”: with respect to any calculation or determination for any period, in making such calculation or determination on the specified date of determination (the **“Determination Date”**):

(a) pro forma effect will be given to any Indebtedness incurred by the Group Members (including by assumption of then outstanding Indebtedness or by a Person becoming a Subsidiary) (**“Incurred”**) after the beginning of the applicable period and on or before the Determination Date to the extent the Indebtedness is outstanding or is to be Incurred on the Determination Date, as if such Indebtedness had been Incurred on the first day of such period;

(b) pro forma calculations of interest on Indebtedness bearing a floating interest rate will be made as if the rate in effect on the Determination Date (taking into account any Swap Agreement applicable to the Indebtedness) had been the applicable rate for the entire reference period;

(c) Consolidated Fixed Charges related to any Indebtedness no longer outstanding or to be repaid or redeemed on the Determination Date, except for Consolidated Interest Expense accrued during the reference period under a revolving credit to the extent of the commitment thereunder (or under any successor revolving credit) in effect on the Determination Date, will be excluded as if such Indebtedness was no longer outstanding or was repaid or redeemed on the first day of such period;

(d) pro forma effect will be given to: (A) the acquisition or disposition of companies, divisions or lines of businesses by the Group Members, including any acquisition or disposition of a company, division or line of business since the beginning of the reference period by a Person that became a Subsidiary after the beginning of the applicable period; and (B) the discontinuation of any discontinued operations but, in the case of Consolidated Fixed Charges, only to the extent that the obligations giving rise to Consolidated Fixed Charges will not be obligations of the Group Members following the Determination Date; in each case of clauses (A) and (B), that have occurred since the beginning of the applicable period and before the Determination Date as if such events had occurred, and, in the case of any disposition, the proceeds thereof applied, on the first day of such period. To the extent that pro forma effect is to be given to an acquisition or disposition of a company, division or line of business, the pro forma calculation will be calculated in good faith by a responsible financial or accounting officer of the Borrower in accordance with Regulation S-X under the Securities Act based upon the most recent four full fiscal quarters for which the relevant financial information is available; it being agreed that such calculation will not be duplicative of any adjustments set forth the definition of Consolidated EBITDA.

“Projected Pro Forma Financial Statements”: pro forma and projected balance sheets, income statements and cash flow statements and projections prepared by the Borrower and its consolidated Subsidiaries that give effect (as if such events had occurred on such date) to (a) the Loans to be made on the Closing Date and the use of proceeds thereof, and (b) the payment of fees and expenses in connection with the foregoing, in each case prepared for (i) the fiscal quarter ending June 30, 2022, as if such transactions had occurred on the first date of such quarter, (ii) on a quarterly basis through December 31, 2023, and (iii) thereafter, on an annual basis through December 31, 2026, in each case, demonstrating pro forma compliance with the financial covenants set forth in Section 7.1.

“Projections”: as defined in Section 6.2(c).

“Properties”: as defined in Section 4.17(a).

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

“Public Company Costs”: as to any Person, costs associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs relating to compliance with the provisions of the Securities Act of 1933 (as amended, and the rules and regulations of the SEC promulgated thereunder, as amended) and the Securities Exchange Act of 1934 (as amended, and the rules and regulations of the SEC promulgated thereunder, as amended) or any other comparable body of laws, rules or regulations, as companies with listed equity, directors’ compensation, fees and expense reimbursement, costs relating to enhanced accounting functions and investor relations, stockholder meetings and reports to stockholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees, listing fees and other transaction costs, in each case to the extent arising solely by virtue of the listing of such Person’s equity securities on a national securities exchange or issuance of public debt securities.

“Qualified Counterparty”: with respect to any Specified Swap Agreement, any counterparty thereto that is a Lender or an Affiliate of a Lender or, at the time such Specified Swap Agreement was

entered into or as of the Closing Date, was the Administrative Agent or a Lender or an Affiliate of the Administrative Agent or a Lender.

“Qualified ECP Guarantor”: in respect of any Swap Obligation, (a) each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant Guarantee Obligation of such Guarantor provided in respect of, or the Lien granted by such Guarantor to secure, such Swap Obligation (or guaranty thereof) becomes effective with respect to such Swap Obligation, and (b) any other Guarantor that (i) constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder, or (ii) can cause another Person (including, for the avoidance of doubt, any other Guarantor not then constituting a “Qualified ECP Guarantor”) to qualify as an “eligible contract participant” at such time by entering into a “keepwell, support, or other agreement” as contemplated by Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Plan”: an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (a) that is or was at any time maintained or sponsored by any Loan Party or any ERISA Affiliate thereof or to which any Loan Party or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (b) that is intended to be tax-qualified under Section 401(a) of the Code.

“Recipient”: the (a) Administrative Agent, (b) any Lender or (c) the Issuing Lender, as applicable.

“Recovery Event”: any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Group Member in excess of the greater of (i) \$[****] and (ii) [****] % of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder.

“Refunded Swingline Loans”: as defined in Section 2.7(b).

“Register”: as defined in Section 10.6(c).

“Regulation D”: Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T”: Regulation T of the Board as in effect from time to time.

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Regulation X”: Regulation X of the Board as in effect from time to time.

“Reinvestment Deferred Amount”: with respect to any Reinvestment Event, the aggregate Net Cash Proceeds received by any Loan Party in connection therewith that are not applied to prepay the Loans or other amounts pursuant to Section 2.12(e) as a result of the delivery of a Reinvestment Notice.

“Reinvestment Event”: any Asset Sale or Recovery Event in respect of which the Borrower has delivered a Reinvestment Notice.

“Reinvestment Notice”: a written notice executed by a Responsible Officer stating that no Event of Default has occurred and that the Borrower (directly or indirectly through a Guarantor) intends and expects to use all or a specified portion of the Net Cash Proceeds of an Asset Sale or Recovery Event to acquire new or replacement assets or to repair assets useful in its business.

“Reinvestment Prepayment Amount”: with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to acquire new or replacement assets or to repair assets useful in the Borrower’s business.

“Reinvestment Prepayment Date”: with respect to any Reinvestment Event, the earlier of (a) the date occurring three hundred and sixty-five (365) days after such Reinvestment Event, and (b) the date on which the Borrower (or its Subsidiaries) shall have determined not to, or shall have otherwise ceased to, acquire new or replacement assets or not to repair assets useful in the Borrower’s business with all or any portion of the relevant Reinvestment Deferred Amount.

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

“Release”: with respect to Materials of Environmental Concern, any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration into or through the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Materials of Environmental Concern).

“Relevant Governmental Body”: the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“Replacement Lender”: as defined in [Section 2.23](#).

“Required Lenders”: at any time, (a) if only one Lender holds the outstanding Term Loans and the Revolving Commitments, such Lender; and (b) if more than one unaffiliated Lender holds the outstanding Term Loans and Revolving Commitments, then at least two unaffiliated Lenders who hold more than 50% of the sum of (i) the aggregate unpaid principal amount of the Term Loans then outstanding, and (ii) the Total Revolving Commitments (including, without duplication, the L/C Commitments) then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding; provided that for the purposes of this clause (b), the outstanding principal amount of the Term Loans held by any Defaulting Lender and the Revolving Commitments of, and the portion of the Revolving Loans and participations in L/C Exposure and Swingline Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided further that a Lender and its Affiliates shall be deemed one Lender.

“Requirement of Law”: as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including, for the avoidance of doubt, the Basel Committee on Banking Supervision and any successor thereto or similar authority or successor thereto), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

“Responsible Officer”: with respect to any Loan Party, the chief executive officer, president, vice president, chief financial officer, treasurer, controller or comptroller of such Loan Party, but in any event, with respect to financial matters, the chief financial officer, treasurer, controller or comptroller of such Loan Party.

“Restricted Payments”: as defined in Section 7.6.

“Revolving Commitment”: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading “Revolving Commitment” opposite such Lender’s name on Schedule 1.1A, as such Schedule 1.1A may be amended from time to time pursuant to Section 2.27, if Incremental Revolving Commitments are advanced thereunder, or in the Assignment and Assumption, an Incremental Joinder or other amendment pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof (including in connection with assignments and Incremental Facilities permitted hereunder). The original amount of the Total Revolving Commitments is \$40,000,000. The L/C Commitment and the Swingline Commitment are each sublimits of the Total Revolving Commitments.

“Revolving Commitment Period”: the period from and including the Closing Date to the Maturity Date.

“Revolving Extensions of Credit”: as to any Revolving Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding, plus (b) such Lender’s L/C Percentage of the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (c) such Lender’s L/C Percentage of the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time, plus (d) such Lender’s Revolving Percentage of the aggregate principal amount of Swingline Loans then outstanding.

“Revolving Facility”: the Revolving Commitments and the extensions of credit made thereunder.

“Revolving Lender”: each Lender that has a Revolving Commitment or that holds Revolving Loans.

“Revolving Loan Conversion”: as defined in Section 3.5(b).

“Revolving Loan Funding Office”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“Revolving Loan Note”: a promissory note in the form of Exhibit H-1, as it may be amended, supplemented or otherwise modified from time to time.

“Revolving Loans”: as defined in Section 2.4(a).

“Revolving Percentage”: as to any Revolving Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments of all Lenders shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Loans then outstanding constitutes of the aggregate principal amount of all Revolving Loans then outstanding; provided that in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Commitments, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Revolving Lenders on a comparable basis.

“S&P”: Standard & Poor’s Ratings Services.

“Sale Leaseback Transaction”: any arrangement with any Person or Persons, whereby in contemporaneous or substantially contemporaneous transactions a Loan Party sells substantially all of its right, title and interest in any property and, in connection therewith, acquires, leases or licenses back the right to use all or a material portion of such property.

“Sanction(s)”: any international economic sanction administered or enforced by the United States Government (including OFAC), the United States Department of State, the Hong Kong Monetary Authority, the United Nations Security Council, the European Union, **HerHis** Majesty’s Treasury or other relevant sanctions authority.

“SEC”: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

“Secured Parties”: the collective reference to the Administrative Agent, the Lenders (including any Issuing Lender in its capacity as Issuing Lender and any Swingline Lender in its capacity as Swingline Lender), any Cash Management Bank (in its or their respective capacities as providers of Cash Management Services), and any Qualified Counterparties.

“Securities Account”: any “securities account” as defined in the UCC with such additions to such term as may hereafter be made.

“Securities Act”: the Securities Act of 1933, as amended from time to time and any successor statute.

“Security Documents”: the collective reference to (a) the Guarantee and Collateral Agreement, (b) the Mortgages, (c) each Intellectual Property Security Agreement, (d) all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the Obligations of any Loan Party arising under any Loan Document, (e) each Pledge Supplement (as referenced in the Guarantee and Collateral Agreement), and (f) each Assumption Agreement (as referenced in the Guarantee and Collateral Agreement).

“SOFR”: a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

“SOFR Administrator’s Website”: the website of the Federal Reserve Bank of New York, 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 Borrowing”: as to any Borrowing, the SOFR Loans comprising such Borrowing.

“SOFR Determination Day”: as defined in the definition of “Daily Simple SOFR”.

“SOFR Loan”: a Loan that bears interest at a rate based on Adjusted Term SOFR, other than, pursuant to clause (c) of the definition of “ABR”.

“SOFR Rate Day”: as defined in the definition of “Daily Simple SOFR”.

“SOFR Tranche”: the collective reference to SOFR Loans under a particular Facility (other than

the L/C Facility), the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

“Solvency Certificate”: the Solvency Certificate, dated the Closing Date, delivered to the Administrative Agent pursuant to Section 5.1, which Solvency Certificate shall be in substantially the form of Exhibit D.

“Solvent”: when used with respect to any Person, as of any date of determination, (a) the amount of the “fair value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise,” as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the “present fair saleable value” of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts generally as they mature. For purposes of this definition, (i) “debt” means liability on a “claim,” and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Specified Acquisition Agreement Representations”: such of the representations and warranties made by the sellers and their Affiliates in the Limited Condition Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that the Borrower (or its applicable Affiliates) has the right (taking into account any applicable cure provisions) to terminate its (or such Affiliates’) obligations under the Limited Condition Acquisition Agreement, or decline to consummate the acquisition (in each case, in accordance with the terms thereof), as a result of a breach of such representations and warranties.

“Specified Representations”: those representations and warranties made in Sections 4.3(a) (with respect to the organizational existence of the Loan Parties only after giving effect to the Limited Condition Acquisition), 4.4 (excluding the third sentence thereof), 4.5 (solely with respect to the first sentence with respect to Operating Documents), 4.11, 4.14, 4.19, 4.20 (giving effect to the Limited Condition Acquisition and the incurrence of the Increase loans in connection therewith), and 4.27 (solely to the effect that the use of proceeds of any Increase loans in connection with the Limited Condition Acquisition on the date of the acquisition will not violate the Foreign Corrupt Practices Act of 1977, the Patriot Act or sanctions administered by OFAC).

“Specified Swap Agreement”: any Swap Agreement entered into by a Loan Party and any Qualified Counterparty (or any Person who was a Qualified Counterparty as of the Closing Date or as of the date such Swap Agreement was entered into) to the extent permitted under Section 7.13. Notwithstanding the foregoing, no Permitted Equity Derivative Transaction shall constitute a Specified Swap Agreement.

“Subordinated Debt Document”: any agreement, certificate, document or instrument executed or delivered by any Group Member and evidencing Indebtedness of any Group Member which is subordinated to the Obligations (including payment, lien and remedies subordination terms, as applicable) in a manner approved in writing by the Administrative Agent, and any renewals, modifications, or amendments thereof which are approved in writing by the Administrative Agent.

“Subordinated Indebtedness”: Indebtedness of a Loan Party subordinated to the Obligations pursuant to subordination terms (including payment, lien and remedies subordination terms, as applicable) reasonably acceptable to the Administrative Agent.

“Subsidiary”: 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 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 Subsidiary or Subsidiaries of the Borrower.

“Surety Indebtedness”: as of any date of determination, indebtedness (contingent or otherwise) owing to sureties arising from surety bonds issued on behalf of any Group Member as support for, among other things, their contracts with customers, whether such indebtedness is owing directly or indirectly by such Loan Party or any such Subsidiary.

“SVB”: as defined in the preamble hereto.

“Swap Agreement”: any agreement with respect to any swap, hedge, forward, future or derivative transaction or option or similar agreement (including without limitation, any Interest Rate Agreement) involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower and its Subsidiaries shall be deemed to be a “Swap Agreement.”

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

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

“Swingline Commitment”: the obligation of the Swingline Lender to make Swingline Loans pursuant to Section 2.6 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000.

“Swingline Facility”: the Swingline Commitment and the extensions of credit made thereunder.

“Swingline Lender”: SVB, in its capacity as the lender of Swingline Loans or such other Lender as the Borrower may from time to time select as the Swingline Lender hereunder pursuant to Section 2.7(f); provided that such Lender has agreed to be a Swingline Lender.

“Swingline Loan Note”: a promissory note in the form of Exhibit H-2, as it may be amended, supplemented or otherwise modified from time to time.

“Swingline Loans”: as defined in Section 2.6.

“Swingline Participation Amount”: as defined in Section 2.7(c).

“Synthetic Lease Obligation”: the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“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.

“Tax Receivable Agreement”: that certain Tax Receivable Agreement, dated as of September 22, 2021, by and among Holdings, the Borrower, and the members of the Borrower from time to time party thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

“Term Commitment”: as to any Lender, the obligation of such Lender, if any, to make a Term Loan to the Borrower in an aggregate principal amount not to exceed the amount set forth under the heading “Term Commitment” opposite such Lender’s name on Schedule 1.1A. The original aggregate principal amount of the Term Commitments is \$65,000,000.

“Term Facility”: the Term Commitments and the Term Loans made thereunder.

“Term Lender”: each Lender that has a Term Commitment or that holds a Term Loan.

“Term Loan”: the term loans made by the Lenders pursuant to Section 2.1 and any Incremental Term Loans.

“Term Loan Funding Office”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“Term Loan Note”: a promissory note in the form of Exhibit H-3, as it may be amended, supplemented or otherwise modified from time to time.

“Term Percentage”: as to any Term Lender at any time, the percentage which such Lender’s Term Commitments and funded Term Loans then constitutes of the aggregate Term Commitments and funded Term Loans of all Lenders.

“Term SOFR”: (a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **“Periodic Term SOFR Determination Day”**) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then

Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one (1) month on the day (such day, the “**ABR Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day.

“**Term SOFR Adjustment**”: for any calculation with respect to an ABR Loan or a SOFR Loan, a percentage per annum equal to 0.125%.

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

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

“**Term SOFR Borrowing**”: as to any Borrowing, the Loans bearing interest at a rate based on Adjusted Term SOFR comprising such Borrowing other than pursuant to clause (c) of the definition of “ABR”.

“**Total Credit Exposure**”: is, as to any Lender at any time, the unused Commitments, Revolving Extensions of Credit and outstanding Term Loans of such Lender at such time.

“**Total L/C Commitments**”: at any time, the sum of all L/C Commitments at such time, as the same may be reduced from time to time pursuant to [Section 2.10](#) or [3.5\(b\)](#). The initial amount of the Total L/C Commitments on the Closing Date is \$10,000,000.

“**Total Revolving Commitments**”: at any time, the aggregate amount of the Revolving Commitments then in effect.

“**Total Revolving Extensions of Credit**”: at any time, the aggregate amount of the Revolving Extensions of Credit outstanding at such time.

“**Trade Date**”: as defined in [Section 10.6\(b\)\(i\)\(B\)](#).

“**Type**”: as to any Loan, its nature as an ABR Loan or a SOFR Loan.

“**UK Financial Institution**”: any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time)

promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority”: 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.

“Unfriendly Acquisition”: any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors (or other legally recognized governing body) of the Person to be acquired; except that with respect to any acquisition of a non-U.S. Person, an otherwise friendly acquisition shall not be deemed to be unfriendly if it is not customary in such jurisdiction to obtain such approval prior to the first public announcement of an offer relating to a friendly acquisition.

“Uniform Commercial Code” or **“UCC”**: the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in the State of New York, or as the context may require, any other applicable jurisdiction.

“United States” and **“U.S.”**: the United States of America.

“USCO”: the U.S. Copyright Office.

“USPTO”: the U.S. Patent and Trademark Office.

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

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

“U.S. Tax Compliance Certificate”: as defined in [Section 2.20\(f\)](#).

“Withholding Agent”: as applicable, any of any applicable Loan Party and the Administrative Agent, as the context may require.

“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 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, (v) references to a given time of day shall, unless otherwise specified, be deemed to refer to Pacific time, and (vi) references to agreements (including this Agreement) or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated, amended and restated or otherwise modified from time to time. Notwithstanding the foregoing clause (i), for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of any Group Member shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded

(c) The words “*hereof*,” “*herein*” and “*hereunder*” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (ii) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (iii) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(e) Except as expressly provided herein, all calculations and determinations of the Consolidated Borrower Leverage Ratio, the Consolidated Total Leverage Ratio, the Consolidated Fixed Charge Coverage Ratio and Consolidated EBITDA, including any components thereof, shall be calculated on the basis of the four fiscal quarter period most recently then ended for which financial statements have been delivered to the Administrative Agent in accordance with Section 6.1 hereof.

(f) Any reference in any Loan Document to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a Division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable, to, of or with a separate Person. Any Division of a limited liability company shall constitute a separate Person under the Loan Documents (and each Division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person) on the first date of its existence. In

connection with any Division, if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then such asset shall be deemed to have been transferred from the original Person to the subsequent Person.

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

1.4 Limited Condition Acquisitions. In connection with any action being taken in connection with a Limited Condition Acquisition, for purposes of determining compliance with any provision of this Agreement which requires the calculation of Consolidated EBITDA, Consolidated Total Leverage Ratio, Consolidated Borrower Leverage Ratio, Consolidated Fixed Charge Coverage Ratio or any other financial ratio or metric, at the option of the Borrower (and, if the Borrower elects to exercise such option, such option shall be exercised on or prior to the date on which the definitive agreement for such Limited Condition Acquisition is executed) (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "*LCA Election*"), then notwithstanding anything else to the contrary contained in this Agreement, the date of determination of whether any such action is permitted hereunder, shall be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "*LCA Test Date*"), and if, after giving pro forma effect to the Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any Incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent period of four fiscal quarters then ended prior to the LCA Test Date for which consolidated financial statements of the Borrower are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any basket availability with respect to the incurrence of Indebtedness, the grant of Liens, or the making of Investments, Restricted Payments, Dispositions, mergers and consolidations or other transfer of all or substantially all of the assets of any Loan Party or any Subsidiary on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a Pro Forma Basis assuming both that such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and have not been consummated.

1.5 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other

Benchmark, in each case, pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 2 AMOUNT AND TERMS OF COMMITMENTS

2.1 Term Commitments. Subject to the terms and conditions hereof, each Term Lender severally agrees to make a Term Loan to the Borrower on the Closing Date in an amount equal to the amount of the Term Commitment of such Lender. The Term Loans may from time to time be SOFR Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.13.

2.2 Procedure for Term Loan Borrowing. The Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. one (1) Business Day prior to the anticipated Closing Date or such later time as the Administrative Agent may agree in its sole discretion) requesting that the Term Lenders make the Term Loans on the Closing Date and specifying the amount to be borrowed. Upon receipt of such Notice of Borrowing, the Administrative Agent shall promptly notify each Term Lender thereof. Not later than 10:00 A.M. on the Closing Date each Term Lender shall make available to the Administrative Agent at the Term Loan Funding Office an amount in immediately available funds equal to the Term Loan to be made by such Lender. The Administrative Agent shall credit the account of the Borrower on the books of such office of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Term Lenders in immediately available funds or, if so specified in the Flow of Funds Agreement, the Administrative Agent shall wire transfer or otherwise credit all or a portion of such aggregate amounts to the Existing Agent (for application against amounts in accordance with the wire instructions specified in the Flow of Funds Agreement).

2.3 Repayment of Term Loans. Beginning on September 30, 2022, the Term Loan shall be repaid in consecutive quarterly installments on the last day of each calendar quarter, each of which installments shall be in an amount equal to (a) from September 30, 2022 through and including June 30, 2024, 1.25% of the original principal amount of the Term Loans, (b) from September 30, 2024 through and including June 30, 2025, 1.875% of the original principal amount of the Term Loans, and (c) from September 30, 2025 and the last day of each quarter thereafter until the Maturity Date, 2.50% of the original principal amount of the Term Loans.

To the extent not previously paid, all Term Loans shall be due and payable on the Maturity Date, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

2.4 Revolving Commitments.

(a) Subject to the terms and conditions hereof, each Revolving Lender severally agrees to make revolving credit loans (each, a "**Revolving Loan**" and, collectively, the "**Revolving Loans**") to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which, when added to the aggregate outstanding amount of the Swingline Loans, the aggregate undrawn amount of all outstanding Letters of Credit, and the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans, incurred on behalf of the Borrower and owing to such Lender, does not exceed the amount of such Lender's Revolving Commitment. In addition, such aggregate obligations shall not at any time exceed the Total

Revolving Commitments in effect at such time. During the Revolving Commitment Period the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be SOFR Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.5 and 2.13.

(b) The Borrower shall repay all outstanding Revolving Loans on the Maturity Date.

2.5 Procedure for Revolving Loan Borrowing. The Borrower may borrow under the Revolving Commitments during the Revolving Commitment Period on any Business Day; provided that the Borrower shall give the Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent prior to 10:00 A.M. (a) three (3) U.S. Government Securities Business Days prior to the requested Borrowing Date, in the case of SOFR Loans, or (b) one (1) Business Day prior to the requested Borrowing Date, in the case of ABR Loans) (provided that any such Notice of Borrowing of ABR Loans under the Revolving Facility to finance payments under Section 3.5(a) may be given not later than 10:00 A.M. on the date of the proposed borrowing), in each such case specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date, (iii) in the case of SOFR Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor, and (iv) instructions for remittance of the proceeds of the applicable Loans to be borrowed. If no Interest Period is specified with respect to any requested SOFR Loan, the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration. Unless otherwise agreed by the Administrative Agent in its sole discretion, no Revolving Loan may be made as, converted into or continued as a SOFR Loan having an Interest Period in excess of one (1) month prior to the date that is thirty (30) days after the Closing Date. Each borrowing under the Revolving Commitments shall be in an amount equal to \$500,000 or a whole multiple of \$100,000 in excess thereof (or, if the then Available Revolving Commitments are less than \$500,000, such lesser amount); provided that the Swingline Lender may request, on behalf of the Borrower, borrowings under the Revolving Commitments that are ABR Loans in other amounts pursuant to Section 2.7. Upon receipt of any such Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Revolving Lender thereof. Each Revolving Lender will make the amount of its *pro rata* share of each such borrowing available to the Administrative Agent for the account of the Borrower at the Revolving Loan Funding Office prior to 10:00 A.M. on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting such account as is designated in writing to the Administrative Agent by the Borrower with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent.

2.6 Swingline Commitment. Subject to the terms and conditions hereof, the Swingline Lender agrees to make available a portion of the credit accommodations otherwise available to the Borrower under the Revolving Commitments from time to time during the Revolving Commitment Period by making swing line loans (each a "*Swingline Loan*" and, collectively, the "*Swingline Loans*") to the Borrower; provided that (a) the aggregate principal amount of Swingline Loans outstanding at any time shall not exceed the Swingline Commitment then in effect, (b) the Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, the Available Revolving Commitments would be less than zero, and (c) the Borrower shall not use the proceeds of any Swingline Loan to refinance any then outstanding Swingline Loan. During the Revolving Commitment Period, the Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be ABR Loans only. The Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Maturity Date. The Swingline Lender may (but shall not be required to) make a Swingline Loan during the period commencing at the time it has received notice (by telephone or in writing) from the

Administrative Agent at the request of any Lender, acting in good faith, that one or more of the applicable conditions specified in Section 5.2 (other than Section 5.2(d)) is not then satisfied and has had a reasonable opportunity to react to such notice and ending when such conditions are satisfied or duly waived.

2.7 Procedure for Swingline Borrowing; Refunding of Swingline Loans.

(a) Whenever the Borrower desires that the Swingline Lender make Swingline Loans the Borrower shall give the Swingline Lender irrevocable telephonic notice (which telephonic notice must be received by the Swingline Lender not later than 11:00 A.M. on the proposed Borrowing Date) confirmed promptly in writing by a Notice of Borrowing, specifying (i) the amount to be borrowed, (ii) the requested Borrowing Date (which shall be a Business Day during the Revolving Commitment Period), and (iii) instructions for the remittance of the proceeds of such Loan. Each borrowing under the Swingline Commitment shall be in an amount equal to \$100,000 or a whole multiple of \$100,000 in excess thereof. Promptly thereafter, on the Borrowing Date specified in a notice in respect of Swingline Loans, the Swingline Lender shall make available to the Borrower an amount in immediately available funds equal to the amount of the Swingline Loan to be made by depositing such amount in the account designated in writing to the Administrative Agent by the Borrower. Unless a Swingline Loan is sooner refinanced by the advance of a Revolving Loan pursuant to Section 2.7(b), such Swingline Loan shall be repaid by the Borrower no later than five (5) Business Days after the advance of such Swingline Loan.

(b) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), on one Business Day's telephonic notice given by the Swingline Lender no later than 10:00 A.M. and promptly confirmed in writing, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Revolving Percentage of the aggregate amount of such Swingline Loan (each a "**Refunded Swingline Loan**") outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the Revolving Loan Funding Office in immediately available funds, not later than 10:00 A.M. one Business Day after the date of such notice. The proceeds of such Revolving Loan shall immediately be made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loan. The Borrower irrevocably authorizes the Swingline Lender to charge the Borrower's accounts with the Administrative Agent (up to the amount available in each such account) immediately to pay the amount of any Refunded Swingline Loan to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loan.

(c) If prior to the time that the Borrower has repaid the Swingline Loans pursuant to Section 2.7(a) or a Revolving Loan has been made pursuant to Section 2.7(b), one of the events described in Section 8.1(f) shall have occurred or if for any other reason, as determined by the Swingline Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.7(b), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.7(b) or on the date requested by the Swingline Lender (with at least one (1) Business Days' notice to the Revolving Lenders), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "**Swingline Participation Amount**") equal to (i) such Revolving Lender's Revolving Percentage times (ii) the sum of the aggregate principal amount of the outstanding Swingline Loans that were to have been repaid with such Revolving Loans.

(d) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the

period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's *pro rata* portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(e) Each Revolving Lender's obligation to make the Loans referred to in Section 2.7(b) and to purchase participating interests pursuant to Section 2.7(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other Revolving Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) The Swingline Lender may resign at any time by giving thirty (30) days' prior notice to the Administrative Agent, the Lenders and the Borrower. Following such notice of resignation from the Swingline Lender, the Swingline Lender may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the Required Lenders and the successor Swingline Lender. After the resignation or replacement of the Swingline Lender hereunder, the retiring Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of the Swingline Lender under this Agreement and the other Loan Documents with respect to Swingline Loans made by it prior to such resignation or replacement, but shall not be required or permitted to make any additional Swingline Loans.

2.8 [Reserved].

2.9 Fees.

(a) Fee Letter. The Borrower agrees to pay to the Administrative Agent the fees specified in the Fee Letter and the First Amendment Fee Letter.

(b) Commitment Fee. As additional compensation for the Revolving Commitments, the Borrower shall pay to the Administrative Agent for the account of the Lenders, in arrears, on the first day of each quarter prior to the Maturity Date and on the Maturity Date, a fee for the Borrower's non-use of available funds in an amount equal to the Commitment Fee Rate per annum multiplied by the difference between (x) the Total Revolving Commitments (as they may be reduced from time to time) and (y) the sum of (A) the average for the period of the daily closing balance of the Revolving Loans, excluding the aggregate principal amount of Swingline Loans which shall be deemed to be zero for purposes hereof, (B) the aggregate undrawn amount of all Letters of Credit outstanding at such time and (C) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans or Swingline Loans at such time.

(c) Fees Nonrefundable. All fees payable under this Section 2.9 shall be fully earned on the date paid and nonrefundable.

2.10 Termination or Reduction of Revolving Commitments. The Borrower shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments without premium or penalty; provided that no such termination or reduction of the Revolving Commitments

shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans and Swingline Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed Total Revolving Commitments in effect; provided that if such notice indicates that such termination or reduction is conditioned on the occurrence of a transaction it may be revoked if such transaction is not consummated. Any such reduction shall be in an amount equal to \$5,000,000, or a whole multiple thereof (or, if the then Total Revolving Commitments are less than \$5,000,000, such lesser amount), and shall reduce permanently the Revolving Commitments then in effect; provided further, if in connection with any such reduction or termination of the Revolving Commitments a SOFR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21. The Borrower shall have the right without premium or penalty, upon not less than three (3) Business Days' notice to the Administrative Agent, to terminate the L/C Commitments or, from time to time, to reduce the amount of the L/C Commitments; provided that no such termination or reduction of L/C Commitments shall be permitted if, after giving effect thereto, the Total L/C Commitments shall be reduced to an amount that would result in the aggregate L/C Exposure exceeding the Total L/C Commitments (as so reduced). Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple thereof (or, if the then Total Revolving Commitments are less than \$1,000,000, such lesser amount), and shall reduce permanently the L/C Commitments then in effect.

2.11 Optional Loan Prepayments. The Borrower may at any time and from time to time prepay the Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 10:00 A.M. three (3) U.S. Government Securities Business Days prior thereto, in the case of SOFR Loans, and no later than 10:00 A.M. one (1) Business Day prior thereto, in the case of ABR Loans, which notice shall specify the date and amount of the proposed prepayment; provided that if a SOFR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.21; provided further that if such notice of prepayment indicates that such prepayment is conditioned on the occurrence of a transaction, such notice of prepayment may be revoked if such transaction is not consummated. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are ABR Loans and Swingline Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Term Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple thereof. Partial prepayments of Swingline Loans and Revolving Loans shall be in an aggregate principal amount of \$100,000 or a whole multiple thereof. Amounts to be applied in connection with prepayments made pursuant to this Section 2.11 shall be applied to the then outstanding balance of the Term Loans as directed by Borrower (provided that the prepaid amounts (i.e., all regularly scheduled amortization installments of the Term Loan) shall remain included as Consolidated Fixed Charges for purposes of calculating the Consolidated Fixed Charge Coverage Ratio, but not in excess of the principal amount of the applicable schedule amortization installment).

2.12 Mandatory Prepayments.

- (a) [reserved].
- (b) If any Indebtedness shall be incurred by any Group Member (excluding any Indebtedness incurred in accordance with Section 7.2), an amount equal to 100% of the Net Cash Proceeds thereof shall be applied on the date of such incurrence toward the prepayment of the Term Loans and other amounts as set forth in Section 2.12(e).
- (c) If on any date any Group Member shall receive Net Cash Proceeds from any Asset Sale or Recovery Event then, unless a Reinvestment Notice shall be delivered in respect thereof, such Net Cash Proceeds shall be applied within three (3) Business Days toward the prepayment of the Loans and

other amounts as set forth in Section 2.12(e) (or, if later, immediately upon notification by the Administrative Agent of the prepayment amount, after giving effect to any Declined Amounts determined in accordance with Section 2.12(e)); provided that on each Reinvestment Prepayment Date, an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event shall be applied toward the prepayment of the Loans and other amounts as set forth in Section 2.12(e).

(d) [reserved].

(e) Amounts to be applied in connection with prepayments made pursuant to this Section 2.12 shall be applied first to the prepayment of installments due in respect of the Term Loans in direct order of maturity and in accordance with Sections 2.3 and 2.18(b) and second to repay outstanding Revolving Loans and Swingline Loans in accordance with Section 2.18(c) (with no corresponding permanent reduction in the Revolving Commitments); provided that any Term Lender may decline any such prepayment (the aggregate amount of all such prepayments declined in connection with any particular prepayment, collectively, the “**Declined Amount**”), in which case the Declined Amount shall be distributed first, to the prepayment, on a *pro rata* basis, of the Term Loans held by Term Lenders that have elected to accept such Declined Amounts; and second, to the extent of any residual, if no Term Loans remain outstanding, to the prepayment of the Revolving Loans and Swingline Loans in accordance with Section 2.18(c) (with no corresponding permanent reduction in the Revolving Commitments) (provided further that the prepaid amounts (i.e., all regularly scheduled amortization installments of the Term Loan) shall remain included as Consolidated Fixed Charges for purposes of calculating the Consolidated Fixed Charge Coverage Ratio, but not in excess of the principal amount of the applicable schedule amortization installment). Each prepayment of the Loans under this Section 2.12 (except in the case of Revolving Loans that are ABR Loans and Swingline Loans, in the event all Revolving Commitments have not been terminated) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid. The Borrower shall deliver to the Administrative Agent and each Term Lender notice of each prepayment of Term Loans in whole or in part pursuant to this Section 2.12 not less than five (5) Business Days (or such shorter period as agreed by the Administrative Agent) prior to the date such prepayment shall be made (each, a “**Mandatory Prepayment Date**”). Such notice shall set forth (i) the anticipated Mandatory Prepayment Date, (ii) the aggregate expected amount of such prepayment and (iii) the options of each Term Lender to (x) decline or accept its share of such prepayment and (y) to accept Declined Amounts. Any Term Lender that wishes to exercise its option to decline such prepayment or to accept Declined Amounts shall notify the Administrative Agent by facsimile not later than three (3) Business Days prior to the Mandatory Prepayment Date.

2.13 Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert SOFR Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. at least three Business Days preceding the proposed conversion date. The Borrower may elect from time to time to convert ABR Loans to SOFR Loans by giving the Administrative Agent prior irrevocable notice in a Notice of Conversion/Continuation of such election no later than 10:00 A.M. three (3) U.S. Government Securities Business Days prior to the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor); provided that no ABR Loan may be converted into a SOFR Loan when any Event of Default has occurred and is continuing. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof. If no Interest Period is specified with respect to any SOFR Loan in a Notice of Conversion/Continuation delivered by the Borrower to the Administrative Agent, the Borrower shall be deemed to have selected an Interest Period of one (1) month’s duration.

(b) The Borrower may elect from time to time to continue any SOFR Loan by giving

the Administrative Agent prior notice of such election in a Notice of Conversion/Continuation, in accordance with the applicable provisions of the term “Interest Period” set forth in Section 1.1, of the length of the next Interest Period to be applicable to such SOFR Loan; provided that no SOFR Loan may be continued as such when any Event of Default has occurred and is continuing; provided further that (x) if the Borrower shall fail to give any required notice as described above in this paragraph, upon the expiration of the then current Interest Period, such SOFR Loans shall be automatically continued as SOFR Loans bearing interest at a rate based upon Adjusted Term SOFR and with an Interest Period of the same length as then expiring Interest Period or (y) if such continuation is not permitted pursuant to the preceding proviso, such SOFR Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(c) After the occurrence and during the continuance of an Event of Default, (i) the Borrower may not elect to have a Loan be made or continued as, or converted to, a SOFR Loan after the expiration of any Interest Period then in effect for such Loan and (ii) any Notice of Conversion/Continuation given by the Borrower with respect to a requested conversion/continuation that has not yet occurred shall, at the Administrative Agent’s option, be deemed to be rescinded by the Borrower and be deemed a request to convert or continue Loans referred to therein as ABR Loans.

2.14 Limitations on SOFR Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of SOFR Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the SOFR Loans comprising each SOFR Tranche shall be equal to \$1,000,000 or a whole multiple of \$100,000 in excess thereof, and (b) no more than seven (7) SOFR Tranches shall be outstanding at any one time.

2.15 Interest Rates and Payment Dates.

(a) Each SOFR Loan shall bear interest at a rate per annum equal to (i) Adjusted Term SOFR for the Interest Period therefor plus (ii) the Applicable Margin.

(b) Each ABR Loan (including any Swingline Loan) shall bear interest at a rate per annum equal to (i) the ABR plus (ii) the Applicable Margin.

(c) During the continuance of an Event of Default, at the request of the Required Lenders, all outstanding Loans, shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.00% (the “**Default Rate**”); provided that the Default Rate shall apply to all outstanding Loans automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f).

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that (x) interest accruing pursuant to Section 2.15(c) shall be payable from time to time on demand and (y) in the event of any conversion of any SOFR Loan prior to the end of the Interest Period therefor, accrued interest on such SOFR Loan and any amounts owing pursuant to Section 2.21 shall be payable on the effective date of such conversion.

2.16 Computation of Interest and Fees; Conforming Changes.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to ABR Loans the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. All

interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. Any change in the interest rate on a Loan resulting from a change in the ABR shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.16(a).

(c) In connection with the use or administration of any Benchmark, the Administrative Agent (in consultation with the Borrower) shall have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes shall become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of such Benchmark.

2.17 Inability to Determine Interest Rate.

(a) Inability to Determine Interest Rate. Subject to Section 2.17(b), if, as of any date:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof, or

(ii) the Required Lenders determine that for any reason, in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that “Adjusted Term SOFR” for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making and maintaining such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent,

the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans shall be suspended (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or, in the case of a Term SOFR Borrowing, the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans immediately or, in the case of a Term SOFR Borrowing, at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.21. Subject to Section 2.17(b), if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that “Adjusted Term SOFR” cannot be determined pursuant to the definition thereof, in each case on any given day, the interest rate on ABR Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of “ABR” until the Administrative

Agent revokes such determination.

(b) Benchmark Replacement Setting.

(i) Benchmark Replacement. 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 any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) 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 (b) 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 affected Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent (in consultation with the Borrower) will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.17(b)(iv) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.17(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action 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 2.17(b).

(iv) Unavailability of Tenor of Benchmark. 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 Term SOFR Reference 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 the Administrative 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 not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) 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 not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) **Benchmark Unavailability Period.** Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, (i) the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into ABR Loans at the end of the applicable Interest Period. 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 ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

2.18 Pro Rata Treatment and Payments.

(a) Except as otherwise provided herein, each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Commitments shall be made *pro rata* according to the respective Term Percentages, L/C Percentages or Revolving Percentages, as the case may be, of the relevant Lenders.

(b) Except as otherwise provided herein, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term Loans then held by the Term Lenders. Except as provided in Sections 2.11 and 2.12(e), the amount of each principal prepayment (whether optional or mandatory) of the Term Loans shall be applied to reduce the then remaining installments of the Term Loans as directed by the Borrower. Except as otherwise may be agreed by the Borrower and the Required Lenders, any prepayment of the Term Loans shall be applied to the then outstanding Term Loans on a *pro rata* basis regardless of Type. Amounts prepaid on account of the Term Loans may not be reborrowed.

(c) Except as otherwise provided herein with respect to Defaulting Lenders, each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Revolving Loans then held by the Revolving Lenders.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made prior to 10:00 A.M. on the due date thereof to the Administrative Agent, for the account of the Lenders, at the applicable Funding Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. Any payment received by the Administrative Agent after 10:00 A.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment hereunder (other than payments on the SOFR Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a SOFR Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then

applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to the proposed date of any borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date in accordance with Section 2, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not in fact made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender and the Borrower severally agree to pay to the Administrative Agent forthwith, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the rate per annum applicable to ABR Loans under the relevant Facility. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(f) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Loan Party.

(g) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable extension of credit set forth in Section 5.1 or Section 5.2 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(h) The obligations of the Lenders hereunder to (i) make Term Loans, (ii) make Revolving Loans, (iii) fund its participations in L/C Disbursements in accordance with its respective L/C Percentage, (iv) fund its respective Swingline Participation Amount of any Swingline Loan, and (v) make payments pursuant to Section 9.7, as applicable, are several and not joint. The failure of any Lender to make any such Loan, to fund any such participation or to make any such payment under Section 9.7 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.7.

(i) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(j) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(k) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it, its participation in the L/C Exposure or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Term Percentage, Revolving Percentage or L/C Percentage, as applicable, of such payment on account of the Loans or participations obtained by all of the Lenders, such Lender shall (a) notify the Administrative Agent of the receipt of such payment, and (b) within five (5) Business Days of such receipt purchase (for cash at face value) from the other Term Lenders, Revolving Lenders or L/C Lenders, as applicable (through the Administrative Agent), without recourse, such participations in the Term Loans or Revolving Loans made by them and/or participations in the L/C Exposure held by them, as applicable, or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Term Percentages, Revolving Percentages or L/C Percentages, as applicable; provided, however, that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower or any of its Affiliates (as to which the provisions of this paragraph shall apply). The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.18(k) may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. No documentation other than notices and the like referred to in this Section 2.18(k) shall be required to implement the terms of this Section 2.18(k). The Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section 2.18(k) and shall in each case notify the Term Lenders, the Revolving Lenders or the L/C Lenders, as applicable, following any such purchase. The provisions of this Section 2.18(k) shall not be construed to apply to (i) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (ii) the application of Cash Collateral provided for in Section 3.10, or (iii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in any L/C Exposure to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply). The Borrower consents on behalf of itself and each other Loan Party to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation. For the avoidance of doubt, no amounts received by the Administrative Agent or any Lender from any Guarantor that is not a Qualified ECP

Guarantor shall be applied in partial or complete satisfaction of any Excluded Swap Obligations.

(l) Notwithstanding anything to the contrary in this Agreement, the Administrative Agent may, in its discretion at any time or from time to time, without the Borrower's request and even if the conditions set forth in Section 5.2 would not be satisfied, make a Revolving Loan in an amount equal to the portion of the Obligations constituting overdue interest and fees and Swingline Loans from time to time due and payable to itself, any Revolving Lender, the Swingline Lender or the Issuing Lender, and apply the proceeds of any such Revolving Loan to those Obligations; provided that after giving effect to any such Revolving Loan, the aggregate outstanding Revolving Loans will not exceed the Total Revolving Commitments then in effect.

2.19 Illegality; Requirements of Law.

(a) Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate, or to determine or charge interest based upon SOFR, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent) (an "*Illegality Notice*"), (i) any obligation of the Lenders to make, and the right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended, and (ii) the interest rate on ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to SOFR component of the definition of "ABR", in each case until each affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to ABR Loans (the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to SOFR component of the definition of "ABR"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day, in each case, until the Administrative Agent is advised in writing by each affected Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon, Adjusted Term SOFR, Term SOFR or Term SOFR Reference Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.21.

(b) Requirements of Law. If the adoption of or any change in any Requirement of Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority made subsequent to the date hereof:

(i) shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its Loans, Loan principal, Letters of Credit, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(ii) shall impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with

or for the account of or credit extended or participated in by, any Lender; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining Loans or of maintaining its obligation to make such Loans, or to increase the cost to such Lender or such other Recipient of issuing, maintaining or participating in Letters 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 receivable or received by such Lender or other Recipient hereunder in respect thereof (whether of principal, interest or any other amount), then, in any such case, upon the request of such Lender or other Recipient, the Borrower will promptly pay such Lender or other Recipient, as the case may be, any additional amount or amounts necessary to compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(c) If any Lender determines that any change in any Requirement of Law affecting such Lender or any lending office of 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 capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such change in such Requirement of Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(d) For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case (i) and (ii) be deemed to be a change in any Requirement of Law, regardless of the date enacted, adopted or issued.

(e) A certificate as to any additional amounts payable pursuant to paragraphs (b), (c), or (d) of this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation. Notwithstanding anything to the contrary in this [Section 2.19](#), the Borrower shall not be required to compensate a Lender pursuant to this [Section 2.19](#) for any amounts incurred more than nine (9) months prior to the date that such Lender notifies the Borrower of the change in the Requirement of Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor; provided that if the circumstances giving rise to such claim have a retroactive effect, then such nine-month period shall be extended to include the period of such retroactive effect. The obligations of the Borrower arising pursuant to this [Section 2.19](#) shall survive the Discharge of Obligations and the resignation of the Administrative Agent.

2.20 Taxes.

For purposes of this Section 2.20, the term “Lender” includes the Issuing Lender and the term “applicable law” includes FATCA.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Requirements of Law, and the Borrower shall, and shall cause each other Loan Party, to comply with the requirements set forth in this Section 2.20. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with such applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.20) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes. The Borrower shall, and the Borrower shall cause each other Loan Party to, timely pay to the relevant Governmental Authority in accordance with any applicable Requirement of Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes applicable to such Loan Party.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.20, the Borrower shall, or shall cause such other Loan Party to, deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by Loan Parties. The Borrower shall, and shall cause each other Loan Party to, jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including any recording and filing fees with respect thereto or resulting therefrom and any liabilities with respect to, or resulting from, any delay in paying such Indemnified Taxes), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If any Loan Party fails to pay any Indemnified Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Loan Party shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure.

(e) Indemnification by Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.6(d) relating to the

maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.20(e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.20(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if the Lender is not legally entitled to complete, execute or deliver such documentation or, in the Lender's reasonable judgment, such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or any successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Each Foreign Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Foreign Lender shall not be required to deliver any form pursuant to this paragraph that such Foreign Lender is not legally able to deliver.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion

exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.20(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.20(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.20(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.20 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender and the Discharge of Obligations.

2.21 Indemnity. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.23), then, in any such event, the Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds or from any fees payable. 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 the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

2.22 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate a different lending office for funding or booking its Loans affected by such event 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 (i) would eliminate or reduce amounts payable pursuant to Section 2.19 or 2.20, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender; provided that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.19(b), Section 2.19(c), Section 2.20(a), Section 2.20(b) or Section 2.20(d). The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment made at the request of the Borrower.

2.23 Substitution of Lenders. Upon the receipt by the Borrower of any of the following (or in the case of clause (a) below, if the Borrower is required to pay any such amount), with respect to any Lender

(any such Lender described in clauses (a) through (c) below being referred to as an “*Affected Lender*” hereunder):

(a) a request from a Lender for payment of Indemnified Taxes or additional amounts under Section 2.20 or of increased costs pursuant to Section 2.19(b) or Section 2.19(c) (and, in any such case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.22 or is a Non-Consenting Lender);

(b) a notice from the Administrative Agent under Section 10.1(b) that one or more Minority Lenders are unwilling to agree to an amendment or other modification approved by the Required Lenders and the Administrative Agent; or

(c) notice from the Administrative Agent that a Lender is a Defaulting Lender;

then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent and such Affected Lender: (i) request that one or more of the other Lenders acquire and assume all or part of such Affected Lender’s Loans and Commitment; or (ii) designate a replacement lending institution (which shall be an Eligible Assignee) to acquire and assume all or a ratable part of such Affected Lender’s Loans and Commitment (the replacing Lender or lender in (i) or (ii) being a “*Replacement Lender*”); provided, however, that the Borrower shall be liable for the payment upon demand of all costs and other amounts arising under Section 2.21 that result from the acquisition of any Affected Lender’s Loan and/or Commitment (or any portion thereof) by a Lender or Replacement Lender (other than any Affected Lender that is a Defaulting Lender), as the case may be, on a date other than the last day of the applicable Interest Period with respect to any SOFR Loans then outstanding; and provided further, however, that if the Borrower elects to exercise such right with respect to any Affected Lender under clause (a) or (b) of this Section 2.23, then the Borrower shall be obligated to replace all Affected Lenders under such clauses. The Affected Lender replaced pursuant to this Section 2.23 shall be required to assign and delegate, without recourse, all of its interests, rights and obligations under this Agreement and the related Loan Documents to one or more Replacement Lenders that so agree to acquire and assume all or a ratable part of such Affected Lender’s Loans and Commitment upon payment to such Affected Lender of an amount (in the aggregate for all Replacement Lenders) equal to 100% of the outstanding principal of the Affected Lender’s Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from such Replacement Lenders (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including amounts under Section 2.21 hereof). Any such designation of a Replacement Lender shall be effected in accordance with, and subject to the terms and conditions of, the assignment provisions contained in Section 10.6 (with the assignment fee to be paid by the Borrower in such instance), and, if such Replacement Lender is not already a Lender hereunder or an Affiliate of a Lender or an Approved Fund, shall be subject to the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, with respect to any assignment pursuant to this Section 2.23, (a) in the case of any such assignment resulting from a claim for compensation under Section 2.19 or payments required to be made pursuant to Section 2.20, such assignment shall result in a reduction in such compensation or payments thereafter; (b) such assignment shall not conflict with applicable law and (c) in the case of any assignment resulting from a Lender being a Minority Lender referred to in clause (b) of this Section 2.23, the applicable assignee shall have consented to the applicable amendment, waiver or consent. Notwithstanding the foregoing, an Affected Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Affected Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

2.24 Defaulting Lenders.

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.1 and in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 10.7), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Lender or to the Swingline Lender hereunder; third, to be held as Cash Collateral for the funding obligations of such Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a Deposit Account and released *pro rata* to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, and (y) be held as Cash Collateral for the future funding obligations of such Defaulting Lender of any participation in any future Letter of Credit; sixth, to the payment of any amounts owing to any L/C Lender, Issuing Lender or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any L/C Lender, Issuing Lender or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans or L/C Advances in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans or L/C Advances were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Advances owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Advances and Swingline Loans are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Facility without giving effect to Section 2.24(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(b) for any period during which such Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender, nor shall any such fee accrue).

(B) Each Defaulting Lender shall be limited in its right to receive Letter of Credit Fees as provided in Section 3.3(d).

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's or the Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Pro Rata Share to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 3.4 or in Swingline Loans pursuant to Section 2.7(c), the L/C Percentage of each Non-Defaulting Lender of any such Letter of Credit and the Revolving Percentage of each Non-Defaulting Lender of any such Swingline Loan, as the case may be, shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that the aggregate obligations of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that Non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Loans of that Lender plus the aggregate amount of that Lender's L/C Percentage of the then outstanding Letters of Credit plus the aggregate amount of such Lender's pro rata percentage of the then outstanding Swingline Loans. Subject to Section 10.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) second, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.10.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their respective Revolving Percentages, L/C Percentages, and Term Percentages, as applicable (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure in respect of Letters of Credit after giving effect thereto.

(d) Termination of Defaulting Lender. The Borrower may terminate the unused amount of the Revolving Commitment of any Revolving Lender that is a Defaulting Lender upon not less than ten (10) Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that (i) no Event of Default shall have occurred and be continuing, and (ii) such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender may have against such Defaulting Lender.

2.25 [Reserved].

2.26 Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) (promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loans.

2.27 Incremental Loans.

(a) Term Loans. At any time commencing on the Closing Date until the Maturity Date, subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Revolving Commitments, not more than five (5) increases in the aggregate, unless the Administrative Agent otherwise agrees) to the Term Commitment or fundings of new Term Loans from one or more existing Lenders or from other Eligible Assignees reasonably acceptable to the Administrative Agent and the Borrower (each, an "***Incremental Term Loan***") in an aggregate amount for all such Incremental Term Loans and Incremental Revolving Commitments (pursuant to clause (b) below) not to exceed \$125,000,000. Any Incremental Term Loan shall be in the amount of at least \$10,000,000 and integral multiples of \$1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(a)).

(b) Revolving Loans. At any time during the Revolving Commitment Period, subject to the conditions set forth in clause (e) below, upon notice to the Administrative Agent, the Borrower may, from time to time, request one or more increases (but, together with increases in respect of Incremental Term Loans, not more than five (5) increases in the aggregate, unless the Administrative Agent otherwise agrees) to the Revolving Commitment from one or more existing Lenders or from other Eligible Assignees reasonably acceptable to the Administrative Agent, the Issuing Lender, the Swingline Lender and the Borrower (the "***Incremental Revolving Commitment***"), in an aggregate amount for all such Incremental Revolving Commitments and Incremental Term Loans (pursuant to clause (a) above) not to exceed \$125,000,000. Any Incremental Revolving Commitment shall be in the amount of at least \$10,000,000 (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)) and integral multiples of \$1,000,000 in excess thereof (or such lower amount that represents all remaining availability pursuant to this Section 2.27(b)).

(c) Lender Election to Increase; Prospective Lenders. At the time of sending such

notice in accordance with clauses (a) or (b) above, the Borrower shall specify the time period (such period, the "*Election Period*") within which each Lender is requested to respond (which Election Period shall in no event be less than fifteen (15) Business Days from the date of delivery of such notice to the Administrative Agent, unless otherwise agreed by the Administrative Agent), and the Administrative Agent shall promptly thereafter notify each Lender of the Borrower's request for such Incremental Term Loan and/or such Incremental Revolving Commitment and the Election Period during which each Lender is requested to respond to such Borrower request; provided that if such notice indicates that it is conditioned upon the occurrence of a specified event, such notice may be revoked if such event does not occur prior to the requested funding date. Each Term Lender shall have the right to participate in any Incremental Term Loan in accordance with its pro rata share of the then-existing Term Loans, and each Revolving Lender shall have the right to participate in any Incremental Revolving Commitment in accordance with its pro rata share of the then-existing Revolving Commitments. No Term Lender shall be obligated to participate in any Incremental Term Loan, and no Revolving Lender shall be obligated to participate in any Incremental Revolving Commitment, and each such Lender's determination to participate shall be in such Lender's sole and absolute discretion. Any Lender not responding by the end of such Election Period shall be deemed to have declined to increase its respective Revolving Commitment or Term Commitment or to participate in the funding of a new Term Loan, as applicable. To the extent sufficient Term Lenders (or their Affiliates) or Revolving Lenders (or their Affiliates), as applicable, do not agree to provide an Incremental Term Loan or Incremental Revolving Commitment, as applicable, on terms acceptable to the Borrower, the Borrower may invite any prospective lender that satisfies the criteria of being an "Eligible Assignee" and is reasonably satisfactory to the Administrative Agent to become a Lender.

(d) Effective Date and Allocations. If any Incremental Revolving Commitment or an Incremental Term Loan is extended in accordance with this Section 2.27, the Administrative Agent and the Borrower shall determine the effective date (the "*Increase Effective Date*") and the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such Incremental Revolving Commitment or Incremental Term Loan, as applicable and the Increase Effective Date.

(e) Each of the following shall be the only conditions precedent to the making of an Incremental Term Loan or Incremental Revolving Commitment:

(i) The Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of each such Loan Party certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Incremental Revolving Commitment or Incremental Term Loan, together with recently dated good standing certificates from each Loan Party's jurisdiction of organization, and customary opinions of counsel, in form and substance reasonably satisfactory to the Administrative Agent.

(ii) Immediately after giving pro forma effect to the extension of such Incremental Facility, each of the conditions precedent set forth in Section 5.2(a) shall be satisfied (other than in connection with Limited Condition Acquisitions, in which case (i) Section 5.2(a) shall be satisfied only in connection with the Specified Representations and (ii) the Specified Acquisition Agreement Representations shall be true and correct on the Increase Effective Date.

(iii) Immediately after giving pro forma effect to the extension of such Incremental Facility, no Default or Event of Default shall have occurred and be continuing (other than in connection with Limited Condition Acquisitions, in which case there shall be (x) no Default or Event of Default as of the LCA Test Date and (y) no Event of Default under Section 8.1(a) or (f) immediately after giving pro forma effect to the making of such Incremental Term Loan).

(iv) Holdings and the Borrower shall be in pro forma compliance with the then applicable financial covenants set forth in Section 7.1 (except that the pro forma Consolidated Total Leverage Ratio and Consolidated Borrower Leverage Ratio shall not, in each case, exceed 0.25x less than the then-prevailing Consolidated Total Leverage Ratio and Consolidated Borrower Leverage Ratio covenant compliance level set forth in Sections 7.1(b) and (c) (including any increase in such level in accordance with such terms)) as of the end of the most recently ended fiscal quarter for which financial statements of Holdings and its Subsidiaries were required to have been delivered in accordance with the terms hereof immediately after giving effect to the making of such Incremental Term Loan or extension of such Incremental Revolving Commitment and the use of proceeds thereof (calculated as though any new Incremental Revolving Commitment and then existing Revolving Commitments are fully funded); provided that in the case of a Limited Condition Acquisition, such calculations shall be made in compliance with Section 1.4.

(v) Each Lender agreeing to participate in any such Incremental Facility, the Borrower and the Administrative Agent shall have signed an Incremental Joinder (any Incremental Joinder may, with the consent of the Administrative Agent, the Borrower and the Lenders agreeing to participate in such Incremental Facility, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate to effectuate the provisions of this Section 2.27) and the Borrower shall have executed any Notes requested by any Lender in connection with the incurrence of the Incremental Facility. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, an Incremental Joinder reasonably satisfactory to the Administrative Agent, and the amendments to this Agreement effected thereby, shall not require the consent of any Lender other than the Lender(s) agreeing to participate in such Incremental Facility.

(vi) The Borrower shall have paid to the Administrative Agent any fees required to be paid pursuant to the terms of the Fee Letter, and shall have paid to any Lender providing such Incremental Term Loan or Incremental Revolving Commitments any fees required to be paid to such Lender in connection with the increased Revolving Commitment (or in the case of a new Lender, such new Revolving Commitment) or increased Term Commitment, as applicable (or in the case of a new Lender, such new Term Commitment) hereunder (in each case, unless otherwise waived by the applicable party).

(vii) With respect to any increase in the Revolving Commitment, all outstanding Loans, participations hereunder in Letters of Credit and participations hereunder in Swingline Loans held by each Revolving Lender shall be reallocated among the Revolving Lenders (including any newly added Revolving Lenders) in accordance with the Revolving Lenders' respective revised Revolving Percentages and L/C Percentages, pursuant to procedures reasonably determined by the Administrative Agent in consultation with the Borrower.

(f) Distribution of Revised Commitments Schedule. The Administrative Agent shall promptly distribute to the parties an amended Schedule 1.1A (which shall be deemed incorporated into this Agreement), to reflect any such changes in the Revolving Commitments or Term Commitments, if applicable of the existing Lenders, or the addition of any new Lenders and their respective Revolving Commitment amounts or Term Commitment amounts, as applicable, and the respective Revolving Percentages or Term Percentages, as applicable, resulting therefrom.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.18 or 10.1 to the contrary.

(h) Any additional Revolving Loans made available pursuant to any such Incremental Revolving Commitment shall be treated on the same terms (including with respect to pricing and maturity date) as, and made pursuant to the same documentation as is applicable to, the original Revolving Facility.

(i) The Incremental Term Loans shall, for purposes of prepayments, be treated substantially the same as the Term Loans funded on the Closing Date and shall have the same terms as the then existing Term Loans, except as may be mutually agreed among the Borrower, the Administrative Agent and the Lenders providing such Incremental Term Loan; provided, in any case, that (i) no Incremental Term Loan shall have a final maturity date earlier than the Maturity Date, (ii) the amortization schedule of any Incremental Term Loan shall not have a weighted average life to maturity shorter than the remaining weighted average life to maturity of the Term Loans funded on the Closing Date, (iii) any Incremental Term Loan shall rank *pari passu* in right of security in respect of the Collateral and will not be guaranteed by any Person that is not a Guarantor hereunder and shall not be secured by any property or assets of any Group Member other than the Collateral, (iv) to the extent the terms and conditions of such Incremental Term Loan are not substantially identical to the terms and conditions of any then-existing Term Loans, such terms and conditions shall not be more restrictive to the Group Members than the terms of any then-existing Term Loans (it being understood that (1) to the extent that any such more favorable terms are added for the benefit of any corresponding Term Loans or Revolving Commitments, such materially more restrictive terms shall be permitted and (2) any materially more restrictive terms that are only applicable after the Maturity Date shall be permitted); and (iv) to the extent the initial yield (including any original issue discount or similar yield-related discounts, deductions or payments but excluding any customary arrangement, structuring, ticking or commitment fees (or similar fees) payable to the arrangers thereof) applicable to the Incremental Term Loan, as applicable, is higher than the initial yield applicable to the Term Loans funded on the Closing Date by more than 0.50%, this Agreement shall be amended to increase the Applicable Margin applicable to the Term Loans funded on the Closing Date, to the extent necessary so that the initial yield applicable to such Incremental Term Loan is no more than 0.50% greater than the initial yield applicable to the Term Loans funded on the Closing Date (the “**MFN Protection**”).

(j) Effect of Increase. Upon the increase in the Total Revolving Commitments or the funding of an Incremental Term Loan, as applicable, under this Section 2.27, all references in this Agreement and in any other Loan Document to the Revolving Commitment or Loans, as applicable, of any Lender (including any additional lender that becomes a Lender pursuant to Section 2.27(c)) shall be deemed to include any increase in such Lender’s Revolving Commitment, Revolving Loans or Incremental Term Loan, as applicable, pursuant to this Section 2.27 and any amendments effected through the applicable Increase Joinder. The Incremental Facilities established pursuant to this Section 2.27 shall constitute Revolving Loans, Revolving Commitments and Term Loans, as applicable, under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from any guarantees and the security interests created by the Loan Documents. The Borrower shall take any actions reasonably required by Administrative Agent to ensure and demonstrate that the Liens and security interests granted by the Loan Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such Incremental Facility.

(k) No New Obligors. In no event shall there be any obligors under the Incremental Term Loan or Incremental Revolving Commitment that are not Loan Parties.

2.28 MIRE Event. The parties hereto acknowledge and agree that, if there is any Mortgaged Property, any increase, extension, or renewal of any of the Loans or Commitments (including any Incremental Term Loan and any increase in the Revolving Commitments, but excluding (a) any continuation or conversion of borrowings, (b) the making of any Revolving Loans or Swingline Loans or (c) the issuance, renewal or extension of Letters of Credit) shall be subject to (and conditioned upon): (i) the prior delivery of all flood zone determination certifications, acknowledgements and evidence of flood insurance and other flood-related documentation with respect to such Mortgaged Property reasonably sufficient to evidence compliance with flood insurance laws and as otherwise reasonably required by the Administrative Agent and (ii) the earlier to occur of (A) the date that occurs thirty (30) days after the

Administrative Agent has delivered the documentation set forth in clause (i) of this Section to the Lenders (which may be delivered electronically) or (B) the Administrative Agent's receipt of written confirmation from each of the Lenders that flood insurance due diligence and flood insurance compliance has been completed by such Lender (such written confirmation not to be unreasonably withheld, conditioned or delayed).

SECTION 3 LETTERS OF CREDIT

3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, the Issuing Lender agrees to issue standby letters of credit ("*Letters of Credit*") for the account of the Borrower on any Business Day during the Letter of Credit Availability Period in such form as may reasonably be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, the L/C Exposure would exceed either the Total L/C Commitments or the Available Revolving Commitment at such time. Unless otherwise agreed to by the Administrative Agent and the Issuing Lender, in their sole discretion, each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the Letter of Credit Maturity Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above unless Cash Collateralized at a rate of 103% or otherwise backstopped to the reasonable satisfaction of the Administrative Agent and the Issuing Lender). Notwithstanding anything to the contrary set forth in any Loan Document or other agreement, arrangement or understanding between the parties, no Existing Letter of Credit shall for any intent or purpose under the Loan Documents be deemed a Letter of Credit or reduce the Available Revolving Commitment unless and until (i) the Borrower delivers a written request to the Administrative Agent and the Issuing Lender that such Existing Letter of Credit be designated as a Letter of Credit, and (ii) the conditions set forth in Section 5.02(a), (b) and (d) have been satisfied in respect of such designation.

(b) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit if:

(i) such issuance would conflict with, or cause the Issuing Lender or any L/C Lender to exceed any limits imposed by, any applicable Requirement of Law;

(ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing, amending or reinstating such Letter of Credit, or any law, rule or regulation applicable to the Issuing Lender or any request, guideline or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance, amendment, renewal or reinstatement of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it;

(iii) the Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance, amendment, renewal or reinstatement of such Letter of Credit, that one or more of the applicable conditions contained in Section 5.2 shall not then be satisfied (which notice shall contain a description of any such

condition asserted not to be satisfied);

(iv) any requested Letter of Credit is not in form and substance acceptable to the Issuing Lender, or the issuance, amendment or renewal of a Letter of Credit shall violate any applicable laws or regulations or any applicable policies of the Issuing Lender;

(v) such Letter of Credit contains any provisions providing for automatic reinstatement of the stated amount after any drawing thereunder;

(vi) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial face amount of less than \$250,000; or

(vii) any Lender is at that time a Defaulting Lender unless the Issuing Lender has entered into arrangements, including the delivery of Cash Collateral, pursuant to Section 3.10, satisfactory to the Issuing Lender (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 2.24(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Exposure as to which the Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion.

3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit for the account of the Borrower by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof). In the event of a conflict between the terms of an Application and the terms of this Agreement, the terms of this Agreement shall govern.

3.3 Fees and Other Charges.

(a) The Borrower agrees to pay, with respect to each outstanding Letter of Credit issued for the account of (or at the request of) the Borrower, (i) a fronting fee of 0.125% per annum on the daily amount available to be drawn under each such Letter of Credit to the Issuing Lender for its own account (a "**Letter of Credit Fronting Fee**"), (ii) a letter of credit fee equal to the Applicable Margin relating to Revolving Loans that are SOFR Loans multiplied by the daily amount available to be drawn under each such Letter of Credit on the drawable amount of such Letter of Credit to the Administrative Agent for the ratable account of the L/C Lenders (determined in accordance with their respective L/C Percentages) (a "**Letter of Credit Fee**"), in each case payable quarterly in arrears on the last Business Day of March, June, September and December of each year and on the Letter of Credit Maturity Date (each, an "**L/C Fee Payment Date**") after the issuance date of such Letter of Credit, and (iii) the Issuing Lender's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit issued for the account of (or at the request of) the Borrower or processing of drawings thereunder (the fees in this

clause (iii), collectively, the “*Issuing Lender Fees*”). All Letter of Credit Fronting Fees and Letter of Credit Fees shall be computed on the basis of the actual number of days elapsed in a year of three hundred sixty (360) days. During the continuance of an Event of Default, at the request of the Required Lenders, Letter of Credit Fees shall accrue a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2.00%; provided that such increased fee rate shall apply to all outstanding Letters of Credit automatically and without any Required Lender consent therefor upon the occurrence of any Event of Default arising under Section 8.1(a) or (f).

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

(c) The Borrower shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to any requested Letter of Credit issuance, amendment or renewal, including any L/C-Related Documents, as the Issuing Lender or the Administrative Agent may require. This Agreement shall control in the event of any conflict with any L/C-Related Document (other than any Letter of Credit).

(d) Any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Issuing Lender pursuant to Section 3.10 shall be payable, to the maximum extent permitted by applicable law, to the other L/C Lenders in accordance with the upward adjustments in their respective L/C Percentages allocable to such Letter of Credit pursuant to Section 2.24(a)(iv), with the balance of such fee, if any, payable to the Issuing Lender for its own account.

(e) All fees payable under this Section 3.3 shall be fully earned on the date paid and nonrefundable.

3.4 L/C Participations. The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Lender, and, to induce the Issuing Lender to issue Letters of Credit, each L/C Lender irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Lender’s own account and risk an undivided interest equal to such L/C Lender’s L/C Percentage in the Issuing Lender’s obligations and rights under and in respect of each Letter of Credit and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Lender agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower pursuant to Section 3.5(a), such L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender’s address for notices specified herein an amount equal to such L/C Lender’s L/C Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Lender’s obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 5.2, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Loan Party or any other L/C Lender, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

3.5 Reimbursement.

(a) If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof and the Borrower

shall pay or cause to be paid to the Issuing Lender an amount equal to the entire amount of such L/C Disbursement not later than (i) the immediately following Business Day if the Issuing Lender issues such notice before 10:00 a.m. on the date of such L/C Disbursement, or (ii) on the second following Business Day if the Issuing Lender issues such notice at or after 10:00 a.m. on the date of such L/C Disbursement. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.5 or Section 2.7(a) that such payment be financed with a Revolving Loan or a Swingline Loan, as applicable, in an equivalent amount and, to the extent so financed, the Borrower's obligations to make such payment shall be discharged and replaced by the resulting Revolving Loan or Swingline Loan.

(b) If the Issuing Lender shall not have received from the Borrower the payment that it is required to make pursuant to Section 3.5(a) with respect to a Letter of Credit within the time specified in such Section, the Issuing Lender will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each L/C Lender of such L/C Disbursement and its L/C Percentage thereof, and each L/C Lender shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Lender's L/C Percentage of such L/C Disbursement (and the Administrative Agent may apply Cash Collateral provided for this purpose); upon such payment pursuant to this paragraph to reimburse the Issuing Lender for any L/C Disbursement, the Borrower shall be required to reimburse the L/C Lenders for such payments (including interest accrued thereon from the date of such payment until the date of such reimbursement at the rate applicable to Revolving Loans that are ABR Loans plus 2% per annum) on demand; provided that if at the time of and after giving effect to such payment by the L/C Lenders, the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied, the Borrower may, by written notice to the Administrative Agent certifying that such conditions are satisfied and that all interest owing under this paragraph has been paid, request that such payments by the L/C Lenders be converted into Revolving Loans (a "***Revolving Loan Conversion***"), in which case, if such conditions are in fact satisfied, the L/C Lenders shall be deemed to have extended, and the Borrower shall be deemed to have accepted, a Revolving Loan in the aggregate principal amount of such payment without further action on the part of any party, and the Total L/C Commitments shall be permanently reduced by such amount; any amount so paid pursuant to this paragraph shall, on and after the payment date thereof, be deemed to be Revolving Loans for all purposes hereunder; provided that the Issuing Lender, at its option, may effectuate a Revolving Loan Conversion regardless of whether the conditions to borrowings and Revolving Loan Conversions set forth in Section 5.2 are satisfied.

3.6 Obligations Absolute. The Borrower's obligations under this Section 3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's obligations hereunder shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

In addition to amounts payable as elsewhere provided in the Agreement, the Borrower hereby agrees to pay and to protect, indemnify, and save Issuing Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) that the Issuing Lender may incur or be subject to as a consequence, direct or indirect, of (a) the issuance of any Letter of Credit, or (b) the failure of Issuing Lender or of any L/C Lender to honor a demand for payment under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent solely as a result of the gross negligence or willful misconduct of Issuing Lender or such L/C Lender (as finally determined by a court of competent jurisdiction).

3.7 Letter of Credit Payments. If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower and the Administrative Agent of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

3.8 Applications. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 3, the provisions of this Section 3 shall apply.

3.9 Interim Interest. If the Issuing Lender shall make any L/C Disbursement in respect of a Letter of Credit, then, unless either the Borrower shall have reimbursed such L/C Disbursement in full within the time period specified in Section 3.5(a) or the L/C Lenders shall have reimbursed such L/C Disbursement in full on such date as provided in Section 3.5(b), in each case the unpaid amount thereof shall bear interest for the account of the Issuing Lender, for each day from and including the date of such L/C Disbursement to but excluding the date of payment by the Borrower, at the rate per annum that would apply to such amount if such amount were a Revolving Loan that is an ABR Loan; provided that the provisions of Section 2.15(c) shall be applicable to any such amounts not paid when due.

3.10 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Advance by all the L/C Lenders that is not reimbursed by the Borrower or converted into a Revolving Loan or Swingline Loan pursuant to Section 3.5(b), or (ii) if, as of the Letter of Credit Maturity Date, any L/C Exposure for any reason remains outstanding, the Borrower shall, (x) in the case of clause (ii), immediately and, (y) in the case of clause (i) within one (1) Business Day, Cash Collateralize the then effective L/C Exposure in an amount equal to 103% of such L/C Exposure.

At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent), the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover 103% of the Fronting Exposure relating to the Letters of Credit (after giving effect to Section 2.24(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts with the Administrative Agent. The Borrower, and to the extent provided by any Lender or Defaulting Lender, such Lender or Defaulting Lender, hereby grants to (and subjects to the control of) the

Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the L/C Lenders, and agrees to maintain, a first priority security interest and Lien in all such Cash Collateral and in all proceeds thereof, as security for the Obligations to which such Cash Collateral may be applied pursuant to Section 3.10(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or any Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than 103% of the applicable L/C Exposure, Fronting Exposure and other Obligations secured thereby, the Borrower or the relevant Lender or Defaulting Lender, as applicable, will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by such Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.10, Section 2.24 or otherwise in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Exposure, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure in respect of Letters of Credit or other Obligations shall no longer be required to be held as Cash Collateral pursuant to this Section 3.10 following (i) the elimination of the applicable Fronting Exposure and other Obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender), or (ii) a determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of an Event of Default, and (B) that, subject to Section 2.24, the Person providing such Cash Collateral and the Issuing Lender may agree that such Cash Collateral shall not be released but instead shall be held to support future anticipated Fronting Exposure or other obligations, and provided further, that to the extent that such Cash Collateral was provided by the Borrower or any other Loan Party, such Cash Collateral shall remain subject to any security interest and Lien granted pursuant to the Loan Documents including any applicable Cash Management Agreement.

3.11 Additional Issuing Lenders. The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld) and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this paragraph shall be deemed to be an “*Issuing Lender*” (in addition to being a Lender) in respect of Letters of Credit issued or to be issued by such Lender, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Lender and such Lender.

3.12 Resignation of the Issuing Lender. The Issuing Lender may resign at any time by giving at least thirty (30) days’ prior written notice to the Administrative Agent, the Lenders and the Borrower. Subject to the next succeeding paragraph, upon the acceptance of any appointment as the Issuing Lender hereunder by a Lender that shall agree to serve as successor Issuing Lender, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Lender and the retiring Issuing Lender shall be discharged from its obligations to issue additional Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 3.3. The acceptance of any appointment as the Issuing Lender hereunder by a successor Lender shall be evidenced by an agreement entered into by such successor, in a form satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such

successor Lender shall have all the rights and obligations of the previous Issuing Lender under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term “Issuing Lender” shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the resignation of the Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

3.13 Applicability of ISP. Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued and subject to applicable laws, the Letters of Credit shall be governed by the rules of the ISP.

SECTION 4 REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans and issue the Letters of Credit, the Borrower hereby represents and warrants to the Administrative Agent and each Lender, as to themselves and each other Group Member, that:

4.1 Financial Condition.

(a) The Projected Pro Forma Financial Statements have been prepared giving effect (as if such events had occurred on such date) to (i) the Loans to be made on the Closing Date and the use of proceeds thereof, and (ii) the payment of fees and expenses in connection with the foregoing. The Projected Pro Forma Financial Statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the Borrower’s firm of accountants and disclosed therein and except for the absence of footnotes and subject to year-end adjustments for unaudited financial statements). The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(b) The audited consolidated balance sheet of Holdings and its Subsidiaries as of December 31, 2021, and the related consolidated statements of income and cash flows for the fiscal year ended on such date (together with the reconciliation prepared by the Borrower showing the differences between the financial results of the Borrower and its Subsidiaries and Holdings and its Subsidiaries for such period), present fairly in all material respects the consolidated financial condition of Holdings and its Subsidiaries as at such date, and the results of its operations for the respective fiscal year then ended. The unaudited consolidated balance sheet of Holdings and its Subsidiaries as of March 31, 2022, and the related unaudited consolidated statements of income and cash flows for the three month period ended on such date (together with the reconciliation prepared by the Borrower showing the differences between the financial results of the Borrower and its Subsidiaries and Holdings and its Subsidiaries for such period), present fairly in all material respects the consolidated financial condition of Holdings and its Subsidiaries as at such date, and the consolidated results of their operations and consolidated cash flows for the three month period then ended (subject to normal year-end audit adjustments and the absence of footnotes). No Group Member has, as of the Closing Date, any material Guarantee Obligations, contingent liabilities and liabilities for past due taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not

reflected in the most recent financial statements referred to in this paragraph. During the period from December 31, 2021 to and including the date hereof, there has been no Disposition by any Group Member of any material part of its business or property and not disclosed in the financial statements referred to in this paragraph.

4.2 No Change. Since December 31, 2021, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3 Existence; Compliance with Law. Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and in good standing under the laws of each jurisdiction where the failure to be so qualified or in good standing could reasonably be expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law except in such instances in which (i) such Requirement of Law is being contested in good faith by appropriate proceedings diligently conducted and the prosecution of such contest could not reasonably be expected to result in a Material Adverse Effect, or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

4.4 Power, Authorization; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No Governmental Approval or consent or authorization of, filing with, notice to or other act by or in respect of, any other Person is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) Governmental Approvals, consents, authorizations, filings and notices described on Schedule 4.4, which Governmental Approvals, consents, authorizations, filings and notices have been obtained or made and are in full force and effect and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution and delivery will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5 No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the extensions of credit hereunder and the use of the proceeds thereof will not violate any material applicable Requirement of Law, Operating Documents or any material Contractual Obligation of any Group Member and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law, Operating Document or any such material Contractual Obligation (other than the Liens permitted by Section 7.3). No Group Member has violated any Requirement of Law or violated or failed to comply with any Contractual Obligation applicable to the Group Members, which violation or failure could reasonably be expected to have a Material Adverse Effect.

4.6 Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened in writing by or

against any Group Member or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) that could reasonably be expected to have a Material Adverse Effect.

4.7 No Default. No Group Member is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing, nor shall either result from the making of a requested credit extension.

4.8 Ownership of Property; Liens; Investments. Each Group Member has title in fee simple to, or a valid leasehold interest in, all of its real property, and good title to, or a valid leasehold interest in, all of its other property, and none of such property is subject to any Lien except as permitted by Section 7.3. Section 10 of the Collateral Information Certificate sets forth a complete and accurate list of all real property owned by each Loan Party as of the Closing Date, if any. The Collateral Information Certificate sets forth a complete and accurate list of all leases of real property under which any Loan Party is the lessee as of the Closing Date.

4.9 Intellectual Property. Except as could not reasonably be expected to have a Material Adverse Effect, each Loan Party owns, or is licensed or has the right to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No claim has been asserted and is pending by any Person challenging the validity or enforceability of any Intellectual Property owned by any Loan Party, unless such claim could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Loan Parties, the use of Intellectual Property by each Group Member, and the conduct of each Group Member's business, as currently conducted, does not infringe on or otherwise violate the rights of any Person, unless such infringement could not reasonably be expected to have a Material Adverse Effect, and there are no claims pending or, to the knowledge of the Borrower, threatened in writing to such effect, unless such claim could not reasonably be expected to have a Material Adverse Effect. No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Group Member's rights in, any Intellectual Property purported to be owned by such Group Member or Intellectual Property license in any respect that could reasonably be expected to have a Material Adverse Effect. No action or proceeding is pending, or, to the knowledge of such Group Member, threatened in writing (a) seeking to limit, cancel or question the validity of any material Intellectual Property owned by a Group Member or such Group Member's ownership interest therein, and (b) which could reasonably be expected to have a Material Adverse Effect.

4.10 Taxes. Each Group Member has, after giving effect to any extensions granted or grace periods in effect, filed or caused to be filed all federal and state income and all other material tax returns that are required under applicable law to be filed by it and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, other than Taxes the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Group Member or where the amount is less than \$[****] in the aggregate. No tax Lien has been filed (other than Liens permitted by Section 7.3(a)) upon any property or assets of any Group Member.

4.11 Federal Regulations. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of "buying" or "carrying" "margin stock" (within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect) or extending credit for the purpose of purchasing or carrying margin stock. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for buying or carrying any such margin stock or for extending credit to others for the purpose of purchasing or carrying margin stock in

violation of Regulations T, U or X of the Board. If any margin stock directly or indirectly constitutes Collateral securing the Obligations, Borrower shall notify Administrative Agent in writing, and, if requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

4.12 Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Group Members, threatened in writing; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

4.13 ERISA.

(a) Schedule 4.13 sets forth a complete and accurate list of all Pension Plans maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes as of the Closing Date;

(b) except as in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the Borrower and its ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA with respect to each Plan, and have performed all their obligations under each Plan;

(c) except as in the aggregate, could not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur;

(d) except as in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the Borrower and each of its ERISA Affiliates have met all applicable requirements under the ERISA Funding Rules with respect to each Pension Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained;

(e) except as in the aggregate, could not reasonably be expected to have a Material Adverse Effect, 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%, and neither the Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date;

(f) except as in the aggregate, could not reasonably be expected to have a Material Adverse Effect and except to the extent required under Section 4980B of the Code, or as described on Schedule 4.13, no Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower or any of its ERISA Affiliates;

(g) as of the most recent valuation date for any Pension Plan, the amount of outstanding benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder;

(h) except as in the aggregate, could not reasonably be expected to have a Material

Adverse Effect, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code;

(i) all liabilities under each Pension Plan are (i) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Pension Plans, (ii) insured with a reputable insurance company, (iii) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto or (iv) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and

(j) except as in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (i) the Borrower is not and will not be a “plan” within the meaning of Section 4975(e) of the Code; (ii) the assets of the Borrower do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. §2510.3-101; (iii) the Borrower is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with the Borrower are not and will not be subject to state statutes applicable to the Borrower regulating investments of fiduciaries with respect to governmental plans.

4.14 Investment Company Act; Other Regulations. No Loan Party is an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board) that limits its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

4.15 Subsidiaries. Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15 sets forth the name and jurisdiction of organization of each Subsidiary of the Borrower and, as to each such Subsidiary, the direct owner or owners thereof and the percentage of each class of Capital Stock owned by such owner or owners, and (b) there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of the Borrower or any Subsidiary, except as may be created by the Loan Documents and except as are disclosed on Schedule 4.15. No Subsidiary which has been designated as an Immaterial Subsidiary fails to satisfy the limitations set forth in the definition thereof.

4.16 Use of Proceeds. The proceeds of the Loan made on the Closing Date shall be used to refinance the Existing Indebtedness, to pay related fees and expenses, and for ongoing working capital and general corporate purposes. All or a portion of the proceeds of the Revolving Loans, Swingline Loans, Incremental Facilities and the Letters of Credit made after the Closing Date, shall be used to provide for ongoing working capital and general corporate purposes (including any Investments or Restricted Payments permitted hereunder) and to pay related fees and expenses.

4.17 Environmental Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) except as disclosed on Schedule 4.17, Materials of Environmental Concern have not been Released and are not present at, on, under, in, or about any facility and property owned, leased or operated by any Group Member (the “*Properties*”) in amounts or concentrations or under circumstances that constitute or have constituted a violation of, or could reasonably be expected to give rise to liability under, any Environmental Law;

(b) no Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “**Business**”), nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) no Group Member has transported or disposed of Materials of Environmental Concern from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any applicable Environmental Law, nor has any Group Member generated, treated, stored or disposed of Materials of Environmental Concern at, on or under any of the Properties in violation of, or in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law to which any Group Member is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) all operations of the Group Members at the Properties are in compliance, and have in the last five (5) years been in compliance, with all applicable Environmental Laws, and except as disclosed on Schedule 4.17, to the knowledge of the Borrower, there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(f) no Group Member has assumed any liability of any other Person under Environmental Laws.

4.18 Accuracy of Information, etc. No written statement or information prepared by or on behalf of any Loan Party contained in this Agreement, any other Loan Document or any other document, certificate or written statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents (excluding projections, pro forma information and information of a general economic or industry nature), when taken as a whole, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading in any material respect in light of the circumstances in which they were made. The projections and *pro forma* financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

4.19 Security Documents.

(a) The Guarantee and Collateral Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law)) security interest in the Collateral described

therein and proceeds thereof. In the case of the Pledged Stock (as defined in the Guarantee and Collateral Agreement) that are securities represented by stock certificates or otherwise constituting certificated securities within the meaning of Section 8-102(a)(15) of the UCC or the corresponding code or statute of any other applicable jurisdiction (“*Certificated Securities*”), when certificates representing such Pledged Stock (which, in the case of certificated securities in registered form, are indorsed to the Administrative Agent or in blank by an effective indorsement) are delivered to the Administrative Agent, and in the case of the other Collateral constituting personal property described in the Guarantee and Collateral Agreement, when financing statements, Intellectual Property Security Agreements and other filings specified on Schedule 4.19(a) in appropriate form are filed in the USPTO and USCO and the offices specified on Schedule 4.19(a), as applicable (to the extent a security interest may be perfected by such filing), the Administrative Agent, for the benefit of the Secured Parties, shall have a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except, in the case of Collateral other than Pledged Stock, Liens permitted by Section 7.3). As of the Closing Date, none of the Capital Stock of any direct Subsidiary of a Loan Party that is a limited liability company or partnership has any Capital Stock that is a Certificated Security and included in the Collateral.

(b) Each of the Mortgages delivered after the Closing Date will be, upon execution, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law)) Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the offices for the applicable jurisdictions in which the Mortgaged Properties are located, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person.

4.20 Solvency; Voidable Transaction. The Group Members (when taken as a whole), and after giving effect to the incurrence of all Indebtedness, Obligations and obligations being incurred in connection herewith, will be Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party

4.21 Regulation H. No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has not been made available under the National Flood Insurance Act of 1968.

4.22 Designated Senior Indebtedness. The Loan Documents and all of the Obligations have been deemed “Designated Senior Indebtedness” or a similar concept thereto, if applicable, for purposes of any other Indebtedness of the Loan Parties.

4.23 Insurance. All insurance maintained by the Loan Parties is in full force and effect, all premiums have been duly paid, no Loan Party has received notice of violation or cancellation thereof, and there exists no default under any requirement of such insurance beyond any applicable grace period (in each case, except to the extent such default could not reasonably be expected to be materially adverse to the Lenders or result in cancellation of such party or a reduction in coverage thereunder). Each Loan Party maintains insurance with what, to the knowledge of such Loan Party, are financially sound and reputable insurance companies on its property in at least such amounts and against at least such risks (but including

in any event public liability, product liability, and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business.

4.24 No Casualty. No Loan Party has received any notice of, nor does any Loan Party have any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting its property that could reasonably be expected to have a Material Adverse Effect.

4.25 Holding Company. Holdings is a holding company and does not have any material liabilities (excluding, for the avoidance of doubt, any Permitted Convertible Indebtedness), own any material assets (other than the Capital Stock of the Borrower, any Permitted Intercompany Convertible Note or cash and cash equivalents) or engage in any operations or business (other than (i) the ownership of the Capital Stock of the Borrower and activities incidental to the ownership thereof and (ii) such other activities as may be necessary to comply with the rules and regulations of the Exchange Act or the Securities Act).

4.26 Capitalization. Schedule 4.26 sets forth the beneficial owners of all Capital Stock of the Borrower and its consolidated Subsidiaries, and the amount of Capital Stock held by each such owner, as of the Closing Date

4.27 OFAC. No Group Member, nor, to the knowledge of any such Group Member, any director, officer, employee, agent, or Affiliate thereof, is an individual or an entity that is, or is directly (or, to the knowledge of any such Group Member, indirectly) owned or controlled by an individual or entity that is (a) currently the subject of any Sanctions, or (b) located, organized or resident in a Designated Jurisdiction.

4.28 Anti-Corruption Laws. No Group Member, nor, to the knowledge of any such Group Member, any director, officer, agent, employee or other person acting on behalf of such Group Member has taken any action, directly or indirectly, that would result in a violation by such person of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder, the UK Bribery Act 2010 or any other applicable anti-corruption laws, and each Group Member has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

SECTION 5 CONDITIONS PRECEDENT

5.1 Conditions to Effectiveness and Initial Extension of Credit. This Agreement shall be effective and valid and binding on each party hereto, subject to the satisfaction or waiver of each of the following conditions on or prior to the Closing Date:

(a) Loan Documents. The Administrative Agent shall have received each of the following, each of which shall be in form and substance reasonably satisfactory to the Administrative Agent:

(i) this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender listed on Schedule 1.1A;

(ii) the Collateral Information Certificate, executed by a Responsible Officer;

(iii) if required by any Term Lender, a Term Loan Note executed by the Borrower in favor of such Term Lender;

(iv) if required by any Revolving Lender, a Revolving Loan Note executed by the Borrower in favor of such Revolving Lender;

(v) if required by the Swingline Lender, the Swingline Loan Note executed by the Borrower in favor of such Swingline Lender;

(vi) the Guarantee and Collateral Agreement, executed and delivered by each Grantor named therein;

(vii) each Intellectual Property Security Agreement, executed by the applicable Grantor related thereto;

(viii) each other Security Document, executed and delivered by the applicable Loan Party party thereto; and

(ix) the Flow of Funds Agreement.

(b) Pro Forma Financial Statements; Financial Statements; Projections. The Lenders shall have received the Projected Pro Forma Financial Statements, and the other financial statements described in Section 4.1.

(c) Approvals. All Governmental Approvals and consents and approvals of, or notices to, any other Person (including the holders of any Capital Stock issued by any Loan Party) required in connection with the execution and performance of the Loan Documents and the consummation of the transactions contemplated hereby shall have been obtained and be in full force and effect.

(d) Secretary's or Managing Member's Certificates; Certified Operating Documents; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Closing Date and executed by the Secretary, Managing Member or equivalent officer of such Loan Party, substantially in the form of Exhibit C, with appropriate insertions and attachments, including (A) the Operating Documents of such Loan Party certified, in the case of formation documents, as of a recent date by the secretary of state or similar official of the relevant jurisdiction of organization of such Loan Party, (B) the relevant board resolutions or written consents of such Loan Party adopted by such Loan Party for the purposes of authorizing such Loan Party to enter into and perform the Loan Documents to which such Loan Party is party and (C) the names, titles, incumbency and signature specimens of those representatives of such Loan Party who have been authorized by such resolutions and/or written consents to execute Loan Documents on behalf of such Loan Party, (ii) a long form good standing certificate for each Loan Party certified as of a recent date from its respective jurisdiction of organization and (iii) a certificate of foreign qualification certified as of a recent date from each jurisdiction where the failure of any Loan Party to be qualified could reasonably be expected to have a Material Adverse Effect.

(e) Patriot Act, etc. The Administrative Agent and each Lender shall have received, prior to the Closing Date, all documentation and other information reasonably requested to comply with applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act, and a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(f) No Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of any Loan Party, threatened in writing, that could reasonably be expected to have a Material Adverse Effect.

(g) [Reserved].

(h) Responsible Officer's Certificates. The Administrative Agent shall have received a certificate signed by a Responsible Officer, dated as of the Closing Date and in form and substance reasonably satisfactory to it, certifying (A) that the conditions specified in Sections 5.2(a) and (d) have been satisfied, and (B) that there has been no event or circumstance since December 31, 2021 that has had or that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect

(i) Payoff Letters, Etc. (i) The Administrative Agent shall have received the Payoff Letter duly executed by the parties thereto, (ii) all obligations of the Group Members in respect of the Existing Indebtedness shall, substantially contemporaneously with the funding of certain Loan proceeds on the Closing Date directly to the Existing Agent, as contemplated by the Flow of Funds Agreement, have been paid in full, and (iii) the Administrative Agent shall be satisfied that all actions necessary to terminate the agreements evidencing the obligations of the Group Members in respect of the Existing Indebtedness and the Liens of the Existing Agent in the assets of the Group Members securing obligations under the Existing Indebtedness shall have been, or substantially contemporaneously with the Closing Date, shall be, taken.

(j) Collateral Matters.

(i) Lien Searches. The Administrative Agent shall have received the results of recent lien, judgment and litigation searches reasonably required by the Administrative Agent, and such searches shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 7.3, or Liens to be discharged on or prior to the Closing Date pursuant to the Payoff Letter or other documentation reasonably satisfactory to the Administrative Agent.

(ii) Pledged Stock; Stock Powers; Pledged Notes. The Administrative Agent shall have received (A) the certificates representing the shares of Capital Stock pledged to the Administrative Agent (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, if any, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof, and (B) each promissory note (if any) pledged to the Administrative Agent (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement, endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(iii) Filings, Registrations, Recordings, Agreements, Etc. Each document (including any UCC financing statements, Intellectual Property Security Agreements) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create in favor of the Administrative Agent (for the benefit of the Secured Parties), a perfected Lien on the Collateral described therein, prior and superior in right and priority to any Lien in the Collateral held by any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall have been executed and delivered to the Administrative Agent or, as applicable, be in proper form for filing, registration or recordation.

(k) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid on or prior to the Closing Date (including pursuant to the Fee Letter), and all reasonable and documented fees and expenses for which invoices have been presented (including the reasonable and documented fees and expenses of legal counsel to the Administrative Agent) for payment on or before the Closing Date. All such amounts will be paid with proceeds of Loans made on the Closing Date and will be reflected in the Flow of Funds Agreement.

(l) Legal Opinions. The Administrative Agent shall have received the executed legal opinion of Latham & Watkins LLP, counsel to the Loan Parties, in form and substance reasonably

satisfactory to the Administrative Agent.

(m) Closing Date Leverage; Liquidity. The Administrative Agent shall have received evidence that (i) the pro forma Consolidated Total Leverage Ratio as of March 31, 2022, shall not exceed 4.00 to 1.00, (ii) the pro forma Consolidated Borrower Leverage Ratio as of March 31, 2022, shall not exceed 3.00 to 1.00, and (iii) Liquidity shall be at least \$50,000,000, in each case, after giving effect to the funding of the initial Loans on the Closing Date and to the consummation of the transactions contemplated hereby, including payment in full of the obligations under the Existing Indebtedness.

(n) Borrowing Notice. The Administrative Agent shall have received, in respect of the Term Loans to be made on the Closing Date, a completed Notice of Borrowing executed by the Borrower and otherwise complying with the requirements of Section 2.2.

(o) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the chief financial officer or treasurer of the Borrower.

(p) No Material Adverse Effect. There shall not have occurred since December 31, 2021, any event or condition that has had or could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

For purposes of determining compliance with the conditions specified in this Section 5.1, each Lender that has made available to the Administrative Agent on or prior to the Closing Date such Lender's Revolving Percentage or Term Percentage, as the case may be, shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter either sent (or made available) by the Administrative Agent to such Lender for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender.

5.2 Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit, but excluding any Revolving Loan Conversion and any conversion or continuation of Loans pursuant to Section 2.13) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by each Loan Party in or pursuant to any Loan Document (i) that is qualified by materiality shall be true and correct, and (ii) that is not qualified by materiality, shall be true and correct in all material respects, in each case, on and as of such date as if made on and as of such date, except to the extent any such representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects (or all respects, as applicable) as of such earlier date, subject to the limitations set forth in Section 2.27 and to the provisions of Section 1.4 with respect to an Incremental Facility.

(b) Availability. With respect to any requests for any Revolving Extensions of Credit, after giving effect to such Revolving Extension of Credit, the availability and borrowing limitations specified in Section 2.4 shall be complied with.

(c) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing in connection with any such request for extension of credit which complies with the requirements hereof.

(d) No Default. No Default or Event of Default shall have occurred and be continuing as of or on such date or after giving effect to the extensions of credit requested to be made on such date and

the use of proceeds thereof (other than in connection with Limited Condition Acquisitions as set forth in Section 1.4 with respect to an Incremental Facility, and Section 2.27, in which case there shall be (i) no Default or Event of Default as of the LCA Test Date and (ii) no Event of Default under Section 8.1(a) or (f) as of or on the date of such extension of credit or after giving effect to the extensions of credit requested to be made on such date and the use of proceeds thereof).

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit, Revolving Loan Conversion or conversion of a Term Loan, as applicable, that the conditions contained in this Section 5.2 have been satisfied.

5.3 Post-Closing Conditions Subsequent. The Borrower shall satisfy each of the conditions subsequent to the Closing Date specified in this Section 5.3 to the satisfaction of the Administrative Agent, in each case, by no later than the date specified for such condition below (or such later date as the Administrative Agent shall agree in its sole discretion):

(a) on or before the date which is thirty days after the Closing Date, to the extent not delivered to the Administrative Agent on or prior to the Closing Date, the Borrower shall deliver to the Administrative Agent insurance certificates and endorsements satisfying the requirements of Section 6.6 hereof and Section 5.2(b) of the Guarantee and Collateral Agreement in form and substance reasonably satisfactory to the Administrative Agent; and

(b) on or before the date which is thirty days after the Closing Date, the Borrower shall deliver to the Administrative Agent and to the applicable counterparty executed termination agreements in respect of landlord waivers and bailee letters in favor of the Existing Agent under the Existing Indebtedness.

SECTION 6 AFFIRMATIVE COVENANTS

Borrower hereby agrees that, at all times prior to the Discharge of Obligations, each of the Loan Parties shall, and, where applicable, shall cause each of its Subsidiaries to:

6.1 Financial Statements. Furnish to the Administrative Agent, for distribution to each Lender:

(a) as soon as available, but in any event within (i) ninety (90) days after the end of each fiscal year of Holdings or (ii) if Holdings has been granted an extension by the SEC with respect to any fiscal year of Holdings permitting the late filing by Holdings of any annual report on form 10-K, the earlier of (x) one hundred twenty (120) days after the end of such fiscal year of Holdings and (y) the last day of such extension period, a copy of the audited consolidated balance sheet of Holdings and its consolidated Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, reported on without a “going concern” or like qualification or exception, or qualification arising out of the scope of the audit (other than with respect to a potential breach of a financial covenant or resulting from an upcoming maturity date under this Agreement or other Indebtedness permitted pursuant to Section 7.2), by any “Big Four” accounting firm, or any other independent certified public accountants of nationally recognized standing and reasonably acceptable to the Administrative Agent, together with a reconciliation prepared by the Borrower showing any differences between the financial results of the Borrower and its Subsidiaries and Holdings and its Subsidiaries; and

(b) as soon as available, but in any event within (i) forty-five (45) days after the end

of each of the first three fiscal quarters of each fiscal year of Holdings or (ii) if Holdings has been granted an extension by the SEC with respect to any fiscal quarter of Holdings permitting the late filing by Holdings of any quarterly report on form 10-Q, the earlier of (x) sixty (60) days after the end of such fiscal quarter of Holdings and (y) the last day of such extension period, the unaudited consolidated balance sheet of Holdings and its consolidated Subsidiaries as at the end of such fiscal quarter and the related unaudited consolidated statements of income and of cash flows for such fiscal quarter, the portion of the fiscal year through the end of such fiscal quarter, and the most recent period of trailing twelve months then ended, setting forth, as applicable, in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects, together with a reconciliation prepared by the Borrower showing any differences between the financial results of the Borrower and its Subsidiaries and Holdings and its Subsidiaries for such periods.

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied (except as approved by such accountants or officer, as the case may be, and disclosed in reasonable detail therein, and in the case of quarterly financials, except for the absence of footnotes and subject to year-end adjustments) consistently throughout the periods reflected therein and with prior periods.

Additionally, information required to be delivered pursuant to this Section 6.1 and Section 6.2(e) (to the extent any such information is included in forms 10-K or 10-Q or otherwise filed with the SEC) may be delivered electronically and, shall be deemed to have been delivered on the date (i) on which Holdings posts such information, or provides a link thereto on Holdings' website on the Internet at the website address listed in Section 10.2; (ii) when such information is posted electronically on Holdings' behalf on an internet or intranet website to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), if any; or (iii) on which Holdings files such form 10-K, form 10-Q or other report, as applicable, with the SEC and such documents are publicly available on the SEC's EDGAR filing system or any successor thereto, if any; provided that, in the case of clauses (i) and (ii), the Borrower shall promptly notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.2 Certificates; Reports; Other Information. Furnish to the Administrative Agent, for distribution to each Lender:

(a) [reserved];

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (x) a Compliance Certificate containing all information and calculations necessary for determining compliance with any applicable financial covenant set forth in this Agreement referred to therein as of the last day of the fiscal quarter or fiscal year of the Borrower or Holdings, as the case may be, and (y) to the extent not previously disclosed to the Administrative Agent, a description of any change in the jurisdiction of organization of any Loan Party, and (z) a list of any Collateral comprised of registered Intellectual Property issued by, or registered or applied for in the USPTO or USCO and issued to, applied for or acquired by any Loan Party since the date of the most recent report delivered pursuant to this clause (b) (or, in the case of the first such report so delivered, since the Closing Date);

(c) as soon as available, and in any event no later than ninety (90) days after the end of each fiscal year of Holdings, a detailed board approved consolidated budget for the following fiscal year

(including a projected consolidated balance sheet of Holdings and its Subsidiaries as of the end of each fiscal quarter of such fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income and a description of the underlying assumptions applicable thereto, together with a reconciliation prepared by the Borrower showing any projected differences between the financial results of the Borrower and its Subsidiaries and Holdings and its Subsidiaries), and, as soon as available, and in any event no later than fifteen (15) days thereafter, significant revisions, if any, of such budget and projections (collectively, the “*Projections*”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on estimates, information and assumptions believed by the Borrower to be reasonable, and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect (it being understood that Projections are not to be viewed as fact and that actual results may differ by a material amount);

(d) promptly, and in any event within five (5) Business Days after receipt thereof by Holdings or any of its Subsidiaries, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation by such agency regarding financial or other operational results of Holdings or any of its Subsidiaries (other than routine comment letters from the staff of the SEC relating to Holdings’ filings with the SEC);

(e) within five (5) Business Days after the same are sent, copies of each annual report, proxy or financial statement or other material report that Holdings or any of its Subsidiaries sends to the holders of any class of its Indebtedness or public equity securities and, within five (5) Business Days after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which Holdings or any of its Subsidiaries may file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) upon request by the Administrative Agent, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law that, in each case, could reasonably be expected to have a Material Adverse Effect;

(g) concurrently with the delivery of the financial statements referred to in Section 6.1(a), updated certificates evidencing insurance coverage required to be maintained pursuant to Section 6.6, together with any supplemental reports with respect thereto which the Administrative Agent may reasonably request; and

(h) promptly, such additional financial and other information as the Administrative Agent or any Lender (through the Administrative Agent) may from time to time reasonably request.

6.3 [Reserved].

6.4 Payment of Obligations; Taxes. (a) Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent (after giving effect to any extensions granted or grace periods in effect), as the case may be, all of its material obligations (including all Taxes) of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member. (b) File or cause to be filed all federal and state income and other material tax returns that are required to be filed by the relevant Group Member under applicable law.

6.5 Maintenance of Existence; Compliance. (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain or obtain all Governmental Approvals and all other rights, privileges and franchises necessary or desirable in the normal conduct of its business or necessary for the performance by such Person of its Obligations under any Loan Document, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) comply with all Contractual Obligations (including with respect to leasehold interests of the Borrower) and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) comply with all Governmental Approvals, and any term, condition, rule, filing or fee obligation, or other requirement related thereto, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each of its ERISA Affiliates to (in each case, except as could not reasonably be expected to have a Material Adverse Effect): (1) maintain each Plan in compliance with the applicable provisions of ERISA, the Code or other Federal or state law; (2) cause each Qualified Plan to maintain its qualified status under Section 401(a) of the Code; (3) make all required contributions to any Plan; (4) not become a party to any Multiemployer Plan; (5) ensure that all liabilities under each Plan are either (x) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Plan; (y) insured with a reputable insurance company; or (z) provided for or recognized in the financial statements most recently delivered to the Administrative Agent and the Lenders pursuant hereto; and (6) ensure that the contributions or premium payments to or in respect of each Plan are and continue to be promptly paid at no less than the rates required under the rules of such Plan and in accordance with the most recent actuarial advice received in relation to such Plan and applicable law.

6.6 Maintenance of Property; Insurance. (a) Keep all tangible property useful and necessary in its business in good working order and condition, ordinary wear and tear and casualty loss excepted, and (b) maintain with financially sound and reputable insurance companies insurance on all its material property in at least such amounts and against at least such risks as are usually insured against in the same general geographic area by companies that are engaged in the same or a similar business.

6.7 Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities; and (b) at reasonable times on five (5) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties and examine and make abstracts from any of its books and records and to discuss the business, operations, properties and financial and other condition of the Group Members with officers, directors and employees of the Group Members and with their independent certified public accountants; provided that such inspections at the Borrower's expense shall not be undertaken more frequently once every twelve (12) months, unless an Event of Default has occurred and is continuing, in which case such inspections and audits at the Borrower's expense shall occur as often as the Administrative Agent shall reasonably determine is necessary.

6.8 Notices. Give prompt written notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default (it being understood that if any such Default or Event of Default is waived by the Required Lenders (or other requisite number of Lenders), such waiver shall automatically cure any Default or Event of Default then existing solely with respect to any failure to deliver such notice);

(b) any (i) default or event of default under any Contractual Obligation of any Group

Member that could reasonably be expected to have a Material Adverse Effect; and (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority that could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding affecting any Group Member (i) that could reasonably be expected to have a Material Adverse Effect or (ii) which relates to any Loan Document;

(d) to the extent such occurrence could reasonably be expected to have a Material Adverse Effect:

(i) promptly after the Borrower has knowledge or becomes aware of the occurrence of any of the following ERISA Events affecting the Borrower or any ERISA Affiliate (but in no event more than ten days after such event), the occurrence of any of the following events, and shall provide the Administrative Agent with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Borrower or any ERISA Affiliate with respect to such event: (A) an ERISA Event, (B) the adoption of any new Pension Plan by the Borrower or any ERISA Affiliate, (C) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), or (D) the commencement of contributions by the Borrower or any ERISA Affiliate to any Plan that is subject to Title IV of ERISA or Section 412 of the Code; and

(ii) (A) promptly after the giving, sending or filing thereof, or the receipt thereof, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any of its ERISA Affiliates with the IRS with respect to each Pension Plan, (2) all notices received by the Borrower or any of its ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event, and (3) copies of such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request; and (B), without limiting the generality of the foregoing, such certifications or other evidence of compliance with the provisions of Sections 4.13 and 7.9 as any Lender (through the Administrative Agent) may from time to time reasonably request;

(e) any material change in accounting policies or financial reporting practices by any Loan Party;

(f) any changes to the beneficial ownership information set forth in the most recently delivered Beneficial Ownership Certification; the Loan Parties understand and acknowledge that the Secured Parties rely on such true, accurate and up-to-date beneficial ownership information to meet their regulatory obligations to obtain, verify and record information about the beneficial owners of their legal entity customers; and

(g) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.8 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

6.9 Environmental Laws. Except as could not reasonably be expected to have a Material

Adverse Effect:

(a) comply with, and use reasonable and customary efforts to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply with and maintain, and use reasonable and customary efforts to ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws; and

(b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

6.10 Operating Accounts. Except as otherwise agreed to by the Administrative Agent or in respect of any such accounts existing on the Closing Date (or accounts with the account bank for accounts maintained on the Closing Date), at all times until the Discharge of Obligations, maintain all of the Borrower's and its Domestic Subsidiaries' material domestic operating accounts and investment accounts with one or more Lenders or an Affiliate thereof.

6.11 [Reserved].

6.12 Additional Collateral, Etc.

(a) With respect to any property (to the extent included in the definition of Collateral) acquired after the Closing Date by any Loan Party (other than (x) any property described in paragraph (b), (c) or (d) below and (y) any property subject to a Lien expressly permitted by Section 7.3(g)), as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien, promptly (and in any event within three (3) Business Days or such longer period as the Administrative Agent shall agree in its sole discretion) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Administrative Agent reasonably deems necessary or advisable to evidence that such Loan Party is a Guarantor and to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or advisable in the reasonable opinion of the Administrative Agent to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority (except as expressly permitted by Section 7.3) security interest and Lien in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement (or any comparable foreign collateral document) or by law or as may be reasonably requested by the Administrative Agent.

(b) With respect to any fee interest in any real property having a fair market value (together with improvements thereof) of at least \$5,000,000 (or such greater amount as the Administrative Agent may agree in its sole discretion) acquired after the Closing Date by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 7.3(g)), promptly (and in any event within ninety (90) days (or such longer time period as the Administrative Agent may agree in its sole discretion)) after such acquisition, to the extent requested by the Administrative Agent, (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, (ii) if requested by the Administrative Agent, provide the Lenders with title and extended coverage insurance covering such real property in an amount not in excess of the fair market value as reasonably estimated by the Borrower as well as a current ALTA survey thereof, together with a surveyor's certificate, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance

reasonably satisfactory to the Administrative Agent. In connection with the foregoing, no later than five (5) Business Days prior to the date on which a Mortgage is executed and delivered pursuant to this [Section 6.12](#), in order to comply with the Flood Laws, the Administrative Agent (for delivery to each Lender) shall have received the following documents (collectively, the “**Flood Documents**”): (A) a completed standard “life of loan” flood hazard determination form (a “**Flood Determination Form**”) and such other documents as any Lender may reasonably request to complete its flood due diligence, (B) if the improvement(s) to the applicable improved real property is located in a special flood hazard area, a notification to the applicable Loan Party (if applicable) (“**Loan Party Notice**”) that flood insurance coverage under the National Flood Insurance Program (“**NFIP**”) is not available because the community does not participate in the NFIP, (C) documentation evidencing the applicable Loan Party’s receipt of any such Loan Party Notice (e.g., countersigned Loan Party Notice, return receipt of certified U.S. Mail, or overnight delivery), and (D) if the Loan Party Notice is required to be given and, to the extent flood insurance is required by any applicable Requirement of Law or any Lenders’ written regulatory or compliance procedures and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the applicable Loan Party’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance that complies with all applicable laws and regulations reasonably satisfactory to the Administrative Agent and each Lender (any of the foregoing being “**Evidence of Flood Insurance**”). Notwithstanding anything contained herein to the contrary, no Mortgage will be executed and delivered until each Lender has confirmed to the Administrative Agent that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements. Each of the parties hereto acknowledges and agrees that, if there are any Mortgaged Properties, any increase, extension or renewal of any of the Commitments, including the provision of any Incremental Facility (but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Revolving Loans or Swingline Loans or (iii) the issuance, renewal or extension of Letters of Credit) shall be subject to (and conditioned upon): (A) the prior delivery of all applicable Flood Documents with respect to such Mortgaged Properties as required by the Flood Laws and as otherwise reasonably required by the Lenders and (B) the Administrative Agent having received written confirmation from each Lenders that such Lender has satisfactorily completed its flood insurance due diligence and compliance requirements.

(c) With respect to any Domestic Subsidiary (other than an Excluded Subsidiary) created or acquired (including pursuant to a Permitted Acquisition or other permitted Investment) after the Closing Date by any Loan Party, or Domestic Subsidiary formed by Division or any Subsidiary no longer qualifying as an Excluded Subsidiary promptly (and in any event within forty-five (45) days (or such longer time period as the Administrative Agent may determine in its sole discretion)) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement as the Administrative Agent reasonably deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such Subsidiary that is owned directly by such Loan Party, (ii) deliver to the Administrative Agent such documents and instruments as may be reasonably required to grant, perfect, protect and ensure the priority of such security interest, including but not limited to, the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, (iii) cause such Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions as are necessary or advisable in the reasonable opinion of the Administrative Agent to grant to the Administrative Agent for the benefit of the Secured Parties a perfected first priority security interest and Lien in the Collateral described in the Guarantee and Collateral Agreement, with respect to such Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Administrative Agent and (C) to deliver to the Administrative Agent a certificate of such Subsidiary of the type described in [Section 5.1\(d\)](#), in a form reasonably satisfactory to the Administrative Agent, with appropriate insertions and attachments, and (iv) if requested by the Administrative Agent, deliver to the

Administrative Agent legal opinions relating to the matters described above, which opinions shall be in customary form and substance reasonably satisfactory to the Administrative Agent; it being agreed that if such Subsidiary is formed by a Division, the foregoing requirements shall be satisfied substantially concurrently with the formation of such Subsidiary.

(d) With respect to any new first-tier Excluded Foreign Subsidiary created or acquired after the Closing Date by any Loan Party, promptly (and in any event within forty-five (45) days (or such longer period of time as the Administrative Agent may determine in its sole discretion)) (i) execute and deliver to the Administrative Agent such amendments to the Guarantee and Collateral Agreement, as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected first priority security interest and Lien in the Capital Stock of such new Excluded Foreign Subsidiary that is owned by any such Loan Party (provided that Capital Stock that possess more than 65% of the total combined voting power of all outstanding classes of stock entitled to vote (within the meaning of Section 1.956-2(c)(2) of the Treasury Regulations, and taking into account all other direct or indirect pledges by the Borrower of the voting Capital Stock of such Excluded Foreign Subsidiary) of any such new first-tier Excluded Foreign Subsidiary shall not be required be so pledged, and in no event shall any Capital Stock of any lower-tier Excluded Foreign Subsidiary be so pledged), (ii) deliver to the Administrative Agent the certificates (if any) representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action (including, as applicable, the delivery of any foreign law pledge documents reasonably requested by the Administrative Agent) as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Administrative Agent's security interest therein, and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance reasonably satisfactory to the Administrative Agent.

(e) Notwithstanding the foregoing, the Borrower shall not be required to obtain security documents, or take any other action (including with respect to perfection), under the laws of a jurisdiction outside of the United States or any state thereof in circumstances where (i) such action would result in material adverse tax consequences to the Borrower and the other Group Members (as reasonably determined by the Borrower in good faith) or (ii) the Borrower and the Administrative Agent reasonably agree that the cost or other consequence of such security documents or other action is excessive in relation to the value afforded thereby.

6.13 Use of Proceeds. Use the proceeds of each credit extension only for the purposes specified in Section 4.16.

6.14 Designated Senior Indebtedness. Cause the Loan Documents and all of the Obligations to be deemed "Designated Senior Indebtedness" or a similar concept thereto for purposes of any other Indebtedness for borrowed money of the Loan Parties, to the extent that the agreements governing such other Indebtedness includes such concept.

6.15 Anti-Corruption Laws; Sanctions. Conduct its business in compliance in all material respects with applicable Sanctions, with the Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and any other applicable anti-corruption laws, and maintain policies and procedures reasonably designed to promote and achieve compliance by the Borrower, its Subsidiaries, and their respective directors, officers, employees and agents with such laws.

6.16 Further Assurances. Execute any further instruments and take such further action as the Administrative Agent reasonably deems necessary to perfect, protect, ensure the priority of or continue the Administrative Agent's Lien on the Collateral or to effect the purposes of this Agreement.

SECTION 7
NEGATIVE COVENANTS

Borrower hereby agrees that, at all times prior to the Discharge of Obligations, no Loan Party shall, nor shall any Loan Party permit any of its respective Subsidiaries, to, directly or indirectly:

7.1 Financial Condition Covenants.

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as at the last day of any period of four (4) consecutive fiscal quarters of Holdings and its Subsidiaries, commencing with the fiscal quarter ending June 30, 2022, to be less than 1.25:1.00; provided that this financial covenant shall not be tested on the last day of the fiscal quarters ending December 31, 2023, March 31, 2024 and June 30, 2024.

(b) Consolidated Total Leverage Ratio. Permit the Consolidated Total Leverage Ratio as at the last day of any period of four (4) consecutive fiscal quarters of Holdings and its Subsidiaries, commencing with the fiscal quarter ending June 30, 2022, to exceed 4.00 to 1.00.

(c) Consolidated Borrower Leverage Ratio. Permit the Consolidated Borrower Leverage Ratio as at the last day of any period of four (4) consecutive fiscal quarters of the Group Members, commencing with the fiscal quarter ending June 30, 2022, to exceed 3.00 to 1.00; provided that upon the consummation of any Permitted Acquisition that involves payment of cash consideration of at least [****] and the written election of the Borrower to the Administrative Agent, the maximum permitted Consolidated Borrower Leverage Ratio set forth above shall increase to 4.00 to 1.00, with respect to the last day of the fiscal quarter of the Borrower during which such Permitted Acquisition is consummated and the last day of each of the next three full fiscal quarters of the Borrower ending after the date of the consummation of such Permitted Acquisition.

(d) Balance Sheet Cash. Commencing on February 21, 2024 until the last day of the fiscal quarter ending June 30, 2024, permit Balance Sheet Cash, at any time and reported as of the last day of each fiscal quarter, to be less than the sum of the Total Revolving Extensions of Credit and the aggregate principal amount of Term Loans outstanding at such time.

7.2 Indebtedness. Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party (i) pursuant to any Loan Document, (ii) under any Cash Management Agreement or banking arrangements with banks that the Group Members have a banking relationship with on the Closing Date, and (iii) cash management services specifically described in the definition of "Cash Management Services" (other than such cash management services contemplated in clause (ii) above) with a Person that is not a Cash Management Bank in the ordinary course of business;

(b) Indebtedness of (i) any Loan Party owing to any other Loan Party; (ii) any Group Member (which is not a Loan Party) owing to any other Group Member (which is not a Loan Party); (iii) any Group Member (which is not a Loan Party) owing to any Loan Party, which constitutes an Investment permitted by Sections 7.8(f)(iii) or (l); and (iv) any Loan Party owing to any Group Member (which is not a Loan Party); provided that such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent;

(c) Guarantee Obligations (i) of any Loan Party of the Indebtedness of any other Loan Party; (ii) of any Group Member (which is not a Loan Party) of the Indebtedness of any Loan Party; (iii)

by any Group Member (which is not a Loan Party) of the Indebtedness of any other Group Member (which is not a Loan Party) or (iv) of any Loan Party of the Indebtedness of any Group Member that is not a Loan Party, so long as the aggregate amount of such Guarantee Obligations is an Investment permitted by Section 7.8(f)(iii) or (l); provided that, in any case of clauses (i), (ii), (iii) or (iv), the underlying Indebtedness so guaranteed is otherwise permitted by the terms hereof;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any refinancings, refundings, renewals or extensions thereof (which do not shorten the maturity thereof or increase the principal amount thereof);

(e) Indebtedness (including Capital Lease Obligations and purchase money financing) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder, at any one time outstanding and any refinancings, refundings, renewals or extensions thereof (which do not shorten the maturity thereof or increase the principal amount thereof);

(f) Surety Indebtedness, performance or appeal bonds, and any other Indebtedness in respect of letters of credit, banker's acceptances or similar arrangements entered into in the ordinary course of business or in connection with the enforcement of rights or claims of the Borrower or any Subsidiary in connection with judgments that have not resulted in an Event of Default under Section 8.1(h);

(g) Indebtedness owed to any Person providing worker's compensation, health, disability or other employee benefits (other than ERISA) pursuant to reimbursement or indemnification obligations to such Person, in each case in the ordinary course of business;

(h) Indebtedness of the Group Members in an aggregate principal amount at any one time outstanding, for all such Indebtedness taken together, not to exceed the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder;

(i) obligations (contingent or otherwise) of the Borrower or any of its Subsidiaries existing or arising under any Swap Agreement, provided that such obligations are (or were) entered into by such Person in accordance with Section 7.13 and not for purposes of speculation;

(j) Indebtedness of a Person (other than the Borrower or a Subsidiary) existing at the time such Person is merged with or into the Borrower or a Subsidiary or becomes a Subsidiary, provided that (i) such Indebtedness was not, in any case, incurred by such other Person in connection with, or in contemplation of, such merger or acquisition, (ii) such merger or acquisition constitutes a Permitted Acquisition or other permitted Investment, (iii) with respect to any such Person who becomes a Subsidiary, (A) such Subsidiary and its Subsidiaries are the only obligors in respect of such Indebtedness, and (B) to the extent such Indebtedness is permitted to be secured hereunder, only the assets of such Subsidiary and its Subsidiaries secure such Indebtedness, and (iv) the aggregate principal amount of such Indebtedness shall not exceed the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder at any time outstanding;

(k) Indebtedness in the form of purchase price adjustments, earn outs, deferred compensation, deferred purchase price, seller notes, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with Investments permitted by Section 7.8; provided that the amount of such obligation shall be deemed part of the cost of such

Investment (the amount of which shall be deemed to be the amount required to be accrued as a liability in accordance with GAAP or the amount actually paid);

(l) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(m) Indebtedness consisting of the financing of insurance premiums;

(n) Indebtedness with an aggregate principal amount not to exceed [****] at any one time outstanding consisting of (I) Indebtedness under any Permitted Intercompany Convertible Note of any Loan Party and/or (II) Guarantee Obligations of any Loan Party of Permitted Convertible Indebtedness of Holdings; in each case, so long as immediately before and after giving effect to the incurrence of such Guarantee Obligations, (i) no Event of Default shall have occurred and be continuing and (ii) the Borrower shall be in compliance with the financial covenants set forth in Section 7.1 after giving effect to the incurrence of such Guarantee Obligations as of the last day of the most recent fiscal quarter for which financial statements were required to be delivered hereunder; and so long as the proceeds of such Permitted Convertible Indebtedness are contributed to the Borrower; and

(o) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Indebtedness described in clauses (a) through (n) above (but without duplication of such clauses).

7.3 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings; provided that adequate reserves with respect thereto are maintained on the books of the applicable Group Member in conformity with GAAP;

(b) carriers', warehousemen's, landlord's, worker's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than forty-five (45) days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and social security or similar legislation;

(d) pledges or deposits to secure the performance of bids, tenders, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business (other than for indebtedness or any Liens arising under ERISA);

(e) covenants, conditions, easements, rights-of-way, restrictions, encroachments, protrusions, building codes and other similar encumbrances that, in the aggregate, do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Group Member;

(f) Liens in existence on the date hereof listed on Schedule 7.3(f) to secure Indebtedness permitted under Section 7.2(d) and any Liens granted as a replacement or substitute therefor; provided that no such Lien is spread to cover any additional property after the Closing Date;

(g) Liens securing Indebtedness incurred pursuant to Section 7.2(e) to finance the

acquisition, improvement, repair, lease or construction of fixed or capital assets; provided that (i) such Liens shall be created substantially simultaneously with, or within one hundred and twenty (120) days after, the acquisition, improvement, repair, lease or construction of such fixed or capital assets, (ii) such Liens do not at any time encumber any property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and products thereof and customary security deposits; provided that, individual financings permitted hereunder of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender and (iii) the amount of Indebtedness secured thereby is not increased unless such increased Indebtedness is permitted hereunder;

(h) Liens created pursuant to the Security Documents;

(i) (x) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease, sublease, license or sublicense entered into by a Group Member in the ordinary course of its business and covering only the assets so leased or licensed and customary rights attendant thereto, (y) leases, licenses, subleases and sublicenses of real property granted to others in the ordinary course of business and (z) licenses or sublicenses of Intellectual Property permitted under Section 7.5(f);

(j) Liens arising from attachments or judgments, orders or decrees in circumstances that do not constitute a Default or an Event of Default;

(k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash, Cash Equivalents, securities, commodities and other funds on deposit in one or more accounts maintained by a Group Member, in each case arising in the ordinary course of business in favor of banks, other depository institutions, securities or commodities intermediaries or brokerages with which such accounts are maintained securing amounts owing to such banks or financial institutions with respect to cash management and operating account management or are arising under Section 4-208 or 4-210 of the UCC on items in the course of collection or otherwise as occurring as a matter of law;

(l) (i) cash deposits and liens on cash and Cash Equivalents pledged to secure Indebtedness permitted under Section 7.2(f), (ii) Liens securing reimbursement obligations with respect to letters of credit permitted by Section 7.2(f) that encumber documents and other property relating to such letters of credit, and (iii) Liens securing Obligations under any Specified Swap Agreements permitted by Section 7.2(i);

(m) Liens on property of a Person existing at the time such Person is acquired by, merged into or consolidated with a Group Member or becomes a Subsidiary of a Group Member or acquired by a Group Member; provided that (i) such Liens were not created in contemplation of such acquisition, merger, consolidation or Investment, (ii) such Liens do not extend to any assets other than those of such Person, and (iii) the applicable Indebtedness secured by such Lien is permitted under Section 7.2;

(n) the replacement, extension or renewal of any Lien permitted by clause (m) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Indebtedness secured thereby;

(o) Liens on insurance proceeds in favor of insurance companies granted solely to secure financed insurance premiums;

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods;

(q) Liens on any earnest money deposits consisting of earnest money deposits required in connection with a Permitted Acquisition or other permitted Investment in connection with an acquisition of property not otherwise prohibited hereunder;

(r) other Liens securing obligations in an outstanding amount not to exceed the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder at any time outstanding;

(s) the filing of UCC financing statements solely as a precautionary measure in connection with leases, subleases, licenses, consignments or factoring of receivables entered into by the Borrower or any Subsidiary; in each case, not constituting Indebtedness hereunder;

(t) Liens consisting of agreements to Dispose any property permitted under Section 7.5;

(u) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of its business; and

(v) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof.

7.4 Fundamental Changes. Consummate any merger, consolidation or amalgamation, Division, or an allocation of assets to a series of a limited liability company (or the unwinding of such Division or allocation) or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) (i) any Group Member that is not a Loan Party may be merged, amalgamated or consolidated with or into (A) any Loan Party (provided that a Loan Party shall be the continuing or surviving Person, or the continuing or surviving Person shall become a Loan Party substantially contemporaneous with such merger, amalgamation or consolidation) or (B) any Group Member that is not a Loan Party, and (ii) any Loan Party may be merged, amalgamated or consolidated with or into with any other Loan Party (provided that if such merger, amalgamation or consolidation involves the Borrower, the Borrower shall be the continuing or surviving Person);

(b) (i) any Group Member that is not a Loan Party may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Group Member or (B) pursuant to a Disposition permitted by Section 7.5 and (ii) any Loan Party (other than the Borrower) may Dispose of any or all of its assets (including upon voluntary liquidation, dissolution or otherwise) (A) to any other Loan Party or (B) pursuant to a Disposition permitted by Section 7.5; and

(c) any Investment expressly permitted by Section 7.8 may be structured as a merger, consolidation or amalgamation.

7.5 Disposition of Property. Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) Dispositions of obsolete or worn out property in the ordinary course of business;

- (b) Dispositions of Inventory in the ordinary course of business;
- (c) Dispositions permitted by Sections 7.4(b)(i)(A) and (b)(ii)(A);
- (d) the sale or issuance of the Capital Stock of any Subsidiary of the Borrower (i) to the Borrower or any other Loan Party, or (ii) by a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party or (iii) in connection with any transaction that does not result in a Change of Control;
- (e) the use or transfer of money, cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;
- (f) (i) the non-exclusive licensing of patents, trademarks, copyrights, and other Intellectual Property rights in the ordinary course of business and (ii) licensing of patents, trademarks, copyrights and other Intellectual Property rights customary for companies of similar size and in the same industry as the Group Members and which would not result in a legal transfer of title of such licensed Intellectual Property, but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete geographical areas outside of the United States;
- (g) the Disposition of property (i) from any Loan Party to any other Loan Party, and (ii) from any Group Member (which is not a Loan Party) to any other Group Member; provided that in each case in which there is a Lien over the relevant property in favor of the Administrative Agent in advance of the Disposition, an equivalent Lien will be granted to the Administrative Agent by the Group Member which acquires the property;
- (h) Dispositions of property subject to a Casualty Event;
- (i) leases or subleases of real property;
- (j) the sale, transfer, disposition or discount without recourse of accounts receivable arising in the ordinary course of business in connection with the compromise, settlement or collection thereof;
- (k) any abandonment, cancellation, non-renewal, discontinuance of maintenance or other Disposition of Intellectual Property (or rights relating thereto) of any Group Member that the Borrower determines is no longer material to the conduct of its business or no longer economically practicable to maintain;
- (l) Restricted Payments permitted by Section 7.6, Investments permitted by Section 7.8 and Liens permitted by Section 7.3;
- (m) any Foreign Subsidiary may issue Capital Stock to qualified directors where required by or to satisfy any applicable Requirement of Law, including any Requirement of Law with respect to ownership of Capital Stock in Foreign Subsidiaries; and
- (n) Dispositions of other property having a fair market value not to exceed, in any fiscal year, the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder, provided that at the time of any such Disposition, no Event of Default shall have occurred and be continuing or would result from such Disposition; and provided further that the Net Cash Proceeds thereof are used to prepay the Term Loans or the Revolving Loans, as applicable, in accordance with Section 2.12(e);

provided, however, that any Disposition made pursuant to this Section 7.5 (other than (w) Restricted Payments, (x) Dispositions solely between Loan Parties, (y) Dispositions solely between Group Members that are not Loan Parties or (z) Dispositions between a Loan Party and a Group Member that is not a Loan Party in which the terms thereof in favor of a Loan Party are at least arm's length terms) shall be made for fair value (as reasonably determined by the Borrower in good faith).

7.6 Restricted Payments. Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, pay any earn-out payment, seller debt or deferred purchase price payments, declare or pay any dividend (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Group Member (other than a conversion or exchange of any Convertible Indebtedness in accordance with its terms) (collectively, "**Restricted Payments**"), except that:

(a) any Group Member may make Restricted Payments to any Loan Party, and any Group Member that is not a Loan Party may make Restricted Payments to any other Group Member;

(b) so long as no Event of Default shall have occurred and be continuing at the time of such purchase or would arise after giving effect thereto, each Group Member may make distributions to Holdings to allow Holdings to substantially contemporaneously purchase common stock or common stock options from present or former officers, directors, employees or consultants of any Group Member upon the death, disability or termination of employment of such person or otherwise in accordance with any stock option or stock appreciation rights plan or any stock ownership or subscription plan or equity incentive or other similar plan or termination agreement; provided that the aggregate amount of payments made under this clause (b) shall not exceed \$[****] during any fiscal year of the Group Members (with any unused amounts in any fiscal year being carried forward to increase the permitted amount solely in the immediately following fiscal year);

(c) any Group Member may make payments in respect of Subordinated Indebtedness to the extent expressly permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders;

(d) so long as no Event of Default shall have occurred and be continuing at the time of such purchase or would arise after giving effect thereto (i) the Borrower may make distributions to Holdings to allow Holdings to substantially contemporaneously make cashless repurchases of Capital Stock deemed to occur upon exercise of stock options or warrants if such repurchased Capital Stock represents a portion of the exercise price of such options or warrants, and (ii) the Borrower may make distributions to Holdings to allow Holdings to substantially contemporaneously make repurchases of Capital Stock deemed to occur upon the withholding of a portion of the Capital Stock granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such Person upon such grant or award (or upon vesting thereof);

(e) each Group Member may purchase, redeem or otherwise acquire Capital Stock issued by it with the proceeds received from the substantially concurrent issue of new shares of its Capital Stock (other than Disqualified Stock); provided that any such issuance is otherwise permitted hereunder;

(f) so long as no Event of Default shall have occurred and be continuing at the time of any such Restricted Payment or would result therefrom, the Group Members may make Restricted Payments not to exceed the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder during any fiscal year of the Borrower;

(g) the Borrower may make dividends payable solely in Capital Stock (other than Disqualified Stock) (including stock splits);

(h) the Borrower may make Permitted Tax Distributions;

(i) the Borrower may make any payment (including payment of any premium) or delivery with respect to, or early unwind or settlement or termination of, any Permitted Equity Derivative Transaction;

(j) the Borrower may make distributions to Holdings solely for purposes of funding Public Company Costs and other ordinary course operating costs of Holdings;

(k) the Borrower may pay dividends and distributions within 60 days after the date of declaration thereof, if on the date of declaration of such payment, such payment would have complied with the other provisions of this Section 7.6; and

(l) the Borrower may make earn-out payments, payments in respect of seller debt or deferred purchase price payments in connection with a Permitted Acquisition so long as immediately after giving effect to such payment (i) Liquidity shall equal or exceed \$[****], (ii) immediately after giving effect to such purchase or other acquisition, the Borrower shall be in compliance with each of the covenants set forth in Section 7.1 based upon financial statements delivered to the Administrative Agent which give pro forma effect to the making of such payment, and (iii) the pro forma Consolidated Total Leverage Ratio and Consolidated Borrower Leverage Ratio shall in each case not exceed the ratio that is [****]x less than the applicable covenant level (as such level may be increased in accordance with the terms thereof), as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder (provided that if any such payment obligations constitute Subordinated Indebtedness, such payment must be permitted under Section 7.22).

7.7 [Reserved].

7.8 Investments. Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "**Investments**"), except:

(a) extensions of trade credit and advances made in connection with purchases of goods or services, in each case, in the ordinary course of business;

(b) Investments in cash and Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2;

(d) loans and advances to employees, officers and directors of any Group Member (i) in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount for all Group Members not to exceed \$1,000,000 at any one time outstanding or (ii)

relating to the purchase of equity securities of the Borrower pursuant to employee stock purchase plans or agreements approved by the Borrower's board of directors in an aggregate amount of cash advanced for all Group Members not to exceed \$1,000,000 at any one time outstanding;

(e) Swap Agreements permitted hereunder;

(f) intercompany Investments by (i) any Loan Party in any other Loan Party, (ii) any Group Member that is not a Loan Party in any other Group Member, or (iii) any Loan Party in any Group Member that is not a Loan Party to the extent that (A) no Default or Event of Default exists or would result therefrom, and (B) such Investments do not exceed the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder during any fiscal year of the Group Members;

(g) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit or similar transactions;

(h) Investments received in settlement of amounts due to any Group Member effected in the ordinary course of business or owing to such Group Member as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of such Group Member, or on settlement of any delinquent obligations of, or other disputes with, customers or suppliers in the ordinary course of business;

(i) Investments held by any Person as of the date such Person becomes a Subsidiary of the Borrower, including in connection with a Permitted Acquisition, provided that (A) such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Person becoming a Subsidiary, and (B) with respect to any such Person which becomes a Subsidiary as a result of such Permitted Acquisition or other permitted Investment, such Subsidiary remains the only holder of such Investment;

(j) deposits made to secure the performance of leases, licenses or contracts in the ordinary course of business, and other deposits made in connection with the incurrence of Liens permitted under Section 7.3;

(k) purchases or other acquisitions by any Group Member of the Capital Stock in a Person that, upon the consummation thereof, will be a Subsidiary (including as a result of a merger or consolidation) or all or substantially all of the assets of, or assets constituting one or more business units of, any Person (each, a "**Permitted Acquisition**"); provided that, with respect to each such purchase or other acquisition:

(i) the newly-created or acquired Subsidiary (or assets acquired in connection with such asset sale) shall be (A) in the same or a related line of business as that conducted by the Borrower on the date hereof or (B) in a business that is permitted by Section 7.17, and (C) (x) organized under the laws of the United States and engaged in business primarily conducted within the United States and which becomes a Loan Party (or Collateral in the case of assets acquired) or (y) organized under the laws of a jurisdiction other than the United States; provided that the total consideration paid in connection with all purchases or acquisitions pursuant to this clause (C)(y) shall not exceed [****] in the aggregate;

(ii) all transactions related to such purchase or acquisition shall be consummated in all material respects in accordance with all Requirements of Law;

(iii) if the cash consideration to be paid (or payable) in connection with such purchase or acquisition is greater than \$25,000,000, the Borrower shall, to the extent practicable, give the Administrative Agent at least fifteen (15) days (or such later date as agreed to by the Administrative Agent in its sole discretion) prior written notice of any such purchase or acquisition;

(iv) if the cash consideration to be paid (or payable) in connection with such purchase or acquisition is greater than \$25,000,000, the Borrower shall provide to the Administrative Agent as soon as available but in any event not later than five (5) Business Days (or such longer period as approved by the Administrative Agent in its sole discretion) after the execution thereof, a copy of any executed purchase agreement or similar agreement with respect to any such purchase or acquisition;

(v) any such newly-created or acquired Subsidiary, or the Loan Party that is the acquirer of assets in connection with an asset acquisition, shall comply with any applicable requirements of Section 6.12 within the timeframes set forth therein,

(vi) Liquidity shall be at least \$[****] as of the date the definitive agreements relating to any such acquisition or other purchase are executed (after giving effect, on a Pro Forma Basis, to the consummation of such acquisition or other purchase);

(vii) (A) immediately before and immediately after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing (other than in connection with a Limited Condition Acquisition, in which case there shall be (x) no Default or Event of Default as of the LCA Test Date and (y) no Event of Default under Section 8.1(a) or (f) immediately before and immediately giving effect to such purchase or other acquisition), (B) immediately after giving effect to such purchase or other acquisition, the Group Members shall be in pro forma compliance with each of the financial covenants set forth in Section 7.1 and (C) the pro forma Consolidated Total Leverage Ratio and Consolidated Borrower Leverage Ratio shall in each case not exceed the ratio that is [****]x less than the applicable covenant level (as such level may be increased in accordance with the terms thereof), as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder (which shall be calculated in accordance with Section 1.4 in the case of a Limited Condition Acquisition);

(viii) no Indebtedness is assumed or incurred in connection with any such purchase or acquisition other than Indebtedness permitted by the terms of Section 7.2;

(ix) such purchase or acquisition shall not constitute an Unfriendly Acquisition; and

(x) if the cash consideration to be paid (or payable) in connection with such purchase or acquisition is greater than \$25,000,000, the Borrower shall have delivered to the Administrative Agent, at least five (5) Business Days prior to the date on which any such purchase or other acquisition is to be consummated (or such later date as is agreed by the Administrative Agent in its sole discretion), (A) to the extent practicable, a copy of all applicable business and financial due diligence information reasonably available to the Borrower, and (B) a certificate of a Responsible Officer, certifying that that such purchase or acquisition constitutes a Permitted Acquisition and demonstrating compliance with clause (vii) above;

(l) so long as no Event of Default exists at the time of such Investment or immediately after giving effect thereto, in addition to Investments otherwise expressly permitted by this Section, Investments by the Group Members the aggregate amount of all of which Investments (valued at cost) does not exceed the greater of (i) [****] and (ii) [****] of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been

delivered hereunder during any fiscal year of the Group Members;

(m) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 7.5, to the extent not exceeding the limits specified therein with respect to the receipt of non-cash consideration in connection with such Dispositions;

(n) Investments (i) in existence on the date hereof listed on Schedule 7.8(n), (ii) consisting of capital contributions made to Subsidiaries prior to the Closing Date and (iii) any modification, replacement, renewal or extension of any Investments made by the Borrower in an Excluded Subsidiary so long as any such modification, replacement, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 7.8; and

(o) Investments in Permitted Equity Derivative Transactions.

7.9 ERISA. Except as could not reasonably be expected to have a Material Adverse Effect, the Borrower shall not, and shall not permit any of its ERISA Affiliates to: (a) terminate any Pension Plan so as to result in any liability to the Borrower or any ERISA Affiliate, (b) permit to exist any ERISA Event, or any other event or condition, which presents the risk of a liability to the Borrower or any ERISA Affiliate, (c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any liability to the Borrower or any ERISA Affiliate, (d) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which could result in any liability to the Borrower or any ERISA Affiliate, (e) permit the present value of all nonforfeitable accrued benefits under any Pension Plan (using the actuarial assumptions utilized by the PBGC upon termination of a Plan) to exceed the fair market value of Pension Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Pension Plan, or (f) engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by the Administrative Agent or any Lender of any of its rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

7.10 Payments and Modifications of Certain Preferred Stock and Debt Instruments. (a) Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of the Preferred Stock, if any (i) that would move to an earlier date the scheduled cash redemption date or increase the amount of any scheduled cash redemption payment or increase the rate or move to an earlier date any date for cash payment of dividends thereon or (ii) that could reasonably be expected to be otherwise materially adverse to any Lender or any other Secured Party; or (b) make any payment or prepayment of principal of, premium, if any, or redemption, purchase, retirement, defeasance, sinking fund, settlement, conversion or similar payment with respect to any Permitted Convertible Indebtedness unless made exclusively with common stock of Holdings (it being agreed that nothing herein shall prohibit settlement of expressly required conversion or expressly required payment obligations of Permitted Convertible Indebtedness for cash (or a combination of cash and common stock, and including such obligations which Borrower elects to settle in cash or a combination of cash and common stock) so long as both (i) the aggregate amount of cash payable upon conversion or payment of any Permitted Convertible Indebtedness (excluding any required payment of interest with respect to such Permitted Convertible Indebtedness and excluding any payment of cash in lieu of a fractional share due upon conversion thereof) does not exceed the aggregate principal amount thereof (as increased by a net payment to Borrower or Holdings pursuant to an exercise or early unwind or settlement of a corresponding portion of the Permitted Equity Derivative Transaction relating to such Permitted Convertible Indebtedness) and (ii) such conversion or payment does not require any net payment of cash by Group Members pursuant to an exercise or early unwind or settlement of a corresponding portion of the Permitted Equity Derivative Transaction relating to such Permitted Convertible Indebtedness).

7.11 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than any other Loan Party), except for (a) intercompany transactions permitted by Section 7.6 and (b) any such transaction that is (i) otherwise permitted under this Agreement, (ii) in the ordinary course of business of the relevant Group Member, (c) upon fair and reasonable terms no less favorable to the relevant Group Member than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate, (d) employment, indemnification, benefits and compensation arrangements (including arrangements made with respect to bonuses and equity-based awards) entered into in the ordinary course of business with members of the board of directors or management committee, officers and employees of Holdings, the Borrower or a Subsidiary, and (e) agreements entered into on or prior to the date hereof in connection with the initial public offering of stock of Holdings that were publicly filed in connection with such initial public offering.

7.12 Sale Leaseback Transactions. Enter into any Sale Leaseback Transaction, except in connection with transactions that would be permitted under this Section 7.

7.13 Swap Agreements. Enter into any Swap Agreement, except (a) Swap Agreements which are entered into by a Group Member to (i) hedge or mitigate risks to which such Group Member has actual exposure (other than those in respect of Capital Stock), and not for speculative purposes or (ii) effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of such Group Member or (b) Permitted Equity Derivative Transactions.

7.14 Accounting Changes. Make any change in its (a) accounting policies or reporting practices, except as required or permitted by GAAP, or (b) fiscal year.

7.15 Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, to secure its Obligations under the Loan Documents to which it is a party, other than (a) this Agreement and the other Loan Documents, (b) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (c) customary restrictions on the assignment of leases, licenses and other agreements, (d) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Loan Party, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary or, in any such case, that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement applies only to such Subsidiary and does not otherwise expand in any material respect the scope of any restriction or condition contained therein (e) customary transfer restrictions in shareholder agreements on the shares of the issuer (other than issuers that are Subsidiaries) covered thereby and (f) any restriction pursuant to any agreement governing or related to any Lien permitted under Sections 7.3(c), (d), (f), (m), (n), (q), or (t) or Liens securing Indebtedness of any Foreign Subsidiary.

7.16 Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on any Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or to pay any Indebtedness owed to, any other Group Member, (b) make loans or advances to, or other Investments in, any other Group Member, or (c) transfer any of its assets to any other Group Member, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with a

Disposition permitted hereby of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) customary restrictions on the assignment of leases, licenses and other agreements, (iv) restrictions of the nature referred to in clause (c) above under agreements governing purchase money liens or Capital Lease Obligations otherwise permitted hereby which restrictions are only effective against the assets financed thereby, (v) Indebtedness of any Foreign Subsidiary in the ordinary course of business, (vi) any agreement in effect at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement applies only to such Subsidiary, was not entered into solely in contemplation of such Person becoming a Subsidiary or (vii) any agreement governing or related to any Lien permitted under Sections 7.3(c), (d), (f), (m), (n), (q), or (t) or Liens securing Indebtedness of any Foreign Subsidiary or in each case that is set forth in any agreement evidencing any amendments, restatements, supplements, modifications, extensions, renewals and replacements of the foregoing, so long as such amendment, restatement, supplement, modification, extension, renewal or replacement does not expand in any material respect the scope of any restriction or condition contained therein.

7.17 Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Group Members are engaged on the date of this Agreement or that are reasonably related, ancillary or incidental thereto.

7.18 Designation of other Indebtedness. Designate any Indebtedness or indebtedness other than the Obligations as "Designated Senior Indebtedness" or a similar concept thereto, if applicable.

7.19 [Reserved].

7.20 Amendments to Organizational Agreements and Tax Receivable Agreement. Amend or permit any amendments to any Loan Party's Operating Documents or the Tax Receivable Agreement, in each case, if such amendment would be adverse to the Administrative Agent or the Lenders in any material respect.

7.21 Use of Proceeds. Use the proceeds of any Loan or extension of credit hereunder, whether directly or indirectly, (a) to purchase or carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board; (b) to finance an Unfriendly Acquisition; or (c) to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Joint Lead Arranger, Administrative Agent, Issuing Lender, Swingline Lender, Bookrunner or otherwise) of Sanctions (or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity in violation of the foregoing); or (c) for any purpose which would breach the Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or other similar legislation in other jurisdictions.

7.22 Subordinated Indebtedness.

(a) **Amendments.** Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any Subordinated Debt Document, unless the amendment, modification, supplement, waiver or consent (i) does not adversely affect the Loan Parties' ability to pay and perform each of their respective Obligations at the time and in the manner set forth herein and in the other Loan Documents and is not otherwise adverse to the Administrative Agent and the Lenders, and (ii) is in compliance with the subordination provisions therein and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

(b) Payments. Make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness, except as permitted by the subordination provisions in the applicable Subordinated Debt Documents and any subordination agreement with respect thereto in favor of the Administrative Agent and the Lenders.

7.23 Anti-Terrorism Laws. Conduct, deal in or engage in or permit any Affiliate or agent of any Loan Party within its control to conduct, deal in or engage in any of the following activities: (a) conduct any business or engage in any transaction or dealing with any person blocked pursuant to Executive Order No. 13224 (a “*Blocked Person*”), including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or the Patriot Act.

SECTION 8 EVENTS OF DEFAULT

8.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default:

(a) the Borrower shall fail to pay any amount of principal of any Loan when due in accordance with the terms hereof; or the Borrower shall fail to pay any amount of interest on any Loan, or any other amount payable hereunder or under any other Loan Document, within three (3) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other written statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document (i) if qualified by materiality, shall be incorrect or misleading when made or deemed made, or (ii) if not qualified by materiality, shall be incorrect or misleading in any material respect when made or deemed made; or

(c) any Loan Party shall default in the observance or performance of any agreement contained in (i) Section 5.3, Section 6.1, Section 6.2(b), Section 6.2(c), Section 6.5(a)(i), Section 6.6(b), Section 6.8(a), Section 6.15 or Section 7 of this Agreement, or (ii) Section 6.2(d), Section 6.2(e), Section 6.2(f) and Section 6.2(h), and, solely with respect to this clause (ii), such default shall continue unremedied for a period of ten (10) days thereafter; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document applicable to it (other than as provided in paragraphs (a) through (c) of this Section 8.1), and such default shall continue unremedied for a period of thirty (30) days thereafter; or

(e) (i) any Group Member shall (A) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation with respect thereto, but excluding the Loans) on the scheduled or original due date with respect thereto; or (B) default in making any payment of any interest, fees, costs or expenses on any such Indebtedness (other than the Loans) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; (C) default in making any payment or delivery under any such Indebtedness constituting a Swap Agreement beyond the period of

grace, if any, provided in such Swap Agreement; or (D) default in the observance or performance of any other agreement or condition relating to any such Indebtedness (other than the Loans) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to (x) cause, or to permit the holder or beneficiary of, or, in the case of any such Indebtedness constituting a Swap Agreement, counterparty under, such Indebtedness (or a trustee or agent on behalf of such holder, beneficiary, or counterparty) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable or (in the case of any such Indebtedness constituting a Swap Agreement) to be terminated, or (y) to cause, with the giving of notice if required, any Group Member to purchase, redeem, mandatorily prepay or make an offer to purchase, redeem or mandatorily prepay such Indebtedness prior to its stated maturity; provided that, a default, event or condition described in clause (A), (B), (C), or (D) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (A), (B), (C), and (D) of this paragraph (e) shall have occurred with respect to Indebtedness the outstanding principal amount (and, in the case of Swap Agreements, the Swap Termination Value) of which, individually or in the aggregate of all such Indebtedness, exceeds in the aggregate the greater of (x) \$[****] and (y) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder; provided further that this paragraph (e)(i) shall not apply to any event that permits or causes repurchase, payment, prepayment, redemption, conversion, settlement or exchange of Permitted Convertible Indebtedness that is not the result of a breach or default by Holdings or any of its Subsidiaries of the terms of an agreement governing such Permitted Convertible Indebtedness or an event or condition that constitutes an Event of Default hereunder or (ii) any default or event of default (however designated, but subject to the expiration of any applicable grace periods (but not the expiration of any standstill period in any related intercreditor or subordination agreement) with respect thereto) shall occur with respect to any (a) Subordinated Indebtedness of any Group Member or (b) Permitted Equity Derivative Transaction with respect to which (x) Holdings or any of its Subsidiaries is the “defaulting party” or otherwise in breach under the terms of such Permitted Equity Derivative Transaction and (y) the aggregate termination value payable by any Group Member in cash (after giving effect to any election to settle the relevant Permitted Equity Derivative Transaction in shares of the common stock of Holdings) in respect of thereof exceeds the greater of (1) \$[****] and (2) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder; or

(f) (i) any Group Member (other than any Immaterial Subsidiary that is not a Loan Party (regardless of whether it was designated as an Immaterial Subsidiary hereunder)) shall commence any case, proceeding or other action (a) under any Debtor Relief Law seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Group Member (other than any Immaterial Subsidiary that is not a Loan Party (regardless of whether it was designated as an Immaterial Subsidiary hereunder)) shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member (other than any Immaterial Subsidiary that is not a Loan Party (regardless of whether it was designated as an Immaterial Subsidiary hereunder)) any case, proceeding or other action of a nature referred to in clause (i) above that (x) results in the entry of an order for relief or any such adjudication or appointment or (y) remains undismissed, undischarged or unbonded for a period of 60 days (provided that, during such 60 day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iii) there shall be commenced against any Group Member (other than any Immaterial Subsidiary that is not a Loan Party (regardless of whether it was designated as an Immaterial Subsidiary hereunder)) any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar

process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof (provided that, during such 60 day period, no Loan shall be advanced or Letters of Credit issued hereunder); or (iv) any Group Member (other than any Immaterial Subsidiary that is not a Loan Party (regardless of whether it was designated as an Immaterial Subsidiary hereunder)) shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member (other than any Immaterial Subsidiary that is not a Loan Party (regardless of whether it was designated as an Immaterial Subsidiary hereunder)) shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) there shall occur one or more ERISA Events which individually or in the aggregate results in a Material Adverse Effect; or there exists an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities) which results in a Material Adverse Effect; or

(h) there is entered against any Group Member (i) one or more final judgments or orders for the payment of money involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) in excess of the greater of (i) \$[****] and (ii) [****]% of Consolidated EBITDA for the trailing twelve month period ended as of the last day of the most recent fiscal quarter for which financial statements have been delivered hereunder, or (ii) one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) all such judgments or decrees shall not have been paid, vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof; or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than pursuant to the terms thereof), or any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby, in each case, with respect to Collateral having a fair market value in excess of \$[****]; or

(j) any court order enjoins, restrains or prevents a Loan Party from conducting all or any material part of its business; or

(k) the guarantee contained in Section 2 of the Guarantee and Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party shall so assert; or

(l) a Change of Control shall occur; or

(m) any material Governmental Approvals necessary for any Loan Party to operate in the ordinary course shall have been revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term and such decision or such revocation, rescission, suspension, modification or nonrenewal has, or could reasonably be expected to have, a Material Adverse Effect; or

(n) any Loan Document (including the subordination provisions of any subordination agreement or intercreditor agreement governing Subordinated Indebtedness) not otherwise referenced in Section 8.1(i) or (k), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the Discharge of Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan

Document; or any Loan Party denies that it has any or any further liability or obligation under any Loan Document to which it is a party, or purports to revoke, terminate or rescind any such Loan Document; or

(o) there shall occur any material breach or default under any subordination or intercreditor agreement with the Administrative Agent with respect to the subordination or intercreditor provisions of any Subordinated Indebtedness; or

(p) Holdings shall have any material liabilities (excluding, for the avoidance of doubt, any Permitted Convertible Indebtedness), own any material assets (other than the Capital Stock of the Borrower or any Permitted Intercompany Convertible Note), or engage in any operations or business activities (other than (i) the ownership of the Capital Stock of the Borrower and activities incidental to the ownership thereof and (ii) such other activities as may be necessary to comply with the rules and regulations of the Exchange Act or the Securities Act); provided that the foregoing shall not limit Holdings' ability to receive cash from the Group Members in a transaction otherwise permitted hereunder, including any permitted Restricted Payments.

8.2 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) of Section 8.1 with respect to any Loan Party, the Commitments shall immediately terminate automatically and the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall automatically immediately become due and payable, and

(b) if such event is any other Event of Default, any of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments, the Term Commitments, the Swingline Commitments and the L/C Commitments to be terminated forthwith, whereupon the Revolving Commitments, the Term Commitments, the Swingline Commitments and the L/C Commitments shall immediately terminate; (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; (iii) any Cash Management Bank may terminate any Cash Management Agreement then outstanding and declare all Obligations then owing by the Group Members under any such Cash Management Agreements then outstanding to be due and payable forthwith, whereupon the same shall immediately become due and payable; and (iv) the Administrative Agent may exercise on behalf of itself, any Cash Management Bank, the Lenders and the Issuing Lender all rights and remedies available to it, any such Cash Management Bank, the Lenders and the Issuing Lender under the Loan Documents.

With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall Cash Collateralize an amount equal to 105% of the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts so Cash Collateralized shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents in accordance with Section 8.3.

In addition, (x) the Borrower shall also Cash Collateralize the full amount of any Swingline

Loans then outstanding, and (y) to the extent elected by any applicable Cash Management Bank, the Borrower shall also Cash Collateralize the amount of any Obligations in respect of Cash Management Services then outstanding, which Cash Collateralized amounts shall be applied by the Administrative Agent to the payment of all such outstanding Cash Management Services, and any unused portion thereof remaining after all such Cash Management Services shall have been fully paid and satisfied in full shall be applied by the Administrative Agent to repay other Obligations of the Loan Parties hereunder and under the other Loan Documents in accordance with the terms of Section 8.3.

(c) After all such Letters of Credit and Cash Management Agreements shall have been terminated, expired or fully drawn upon, as applicable, and all amounts drawn under any such Letters of Credit shall have been reimbursed in full and all other Obligations of the Borrower and the other Loan Parties (including any such Obligations arising in connection with Cash Management Services) shall have been paid in full, the balance, if any, of the funds having been so Cash Collateralized shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

8.3 Application of Funds. After the exercise of remedies provided for in Section 8.2, any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including any Collateral-Related Expenses, fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Sections 2.19, 2.20 and 2.21 (including interest thereon)) payable to the Administrative Agent, in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and Letter of Credit Fees) payable to the Lenders, the Issuing Lender ((including any Letter of Credit Fronting Fees and Issuing Lender Fees), and any Qualified Counterparty and any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and the reasonable, documented out-of-pocket fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender, and amounts payable under Sections 2.19, 2.20 and 2.21), in each case, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to the extent that the Swingline Lender has advanced any Swingline Loans that have not been refunded by each Lender's Swingline Participation Amount, payment to the Swingline Lender of that portion of the Obligations constituting the unpaid principal of and interest upon the Swingline Loans advanced by the Swingline Lender;

Fourth, to the payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest in respect of any Cash Management Services and on the Loans and L/C Disbursements which have not yet been converted into Revolving Loans, and to payment of premiums and other fees (including any interest thereon) under any Specified Swap Agreements and any Cash Management Agreements, in each case, ratably among the Lenders, any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and any Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the

Loans, L/C Disbursements which have not yet been converted into Revolving Loans, and settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements, in each case, ratably among the Lenders, any applicable Cash Management Bank (in its respective capacity as a provider of Cash Management Services), and any applicable Qualified Counterparties, in each case, ratably among them in proportion to the respective amounts described in this clause Fifth and payable to them;

Sixth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize that portion of the L/C Exposure comprised of the aggregate undrawn amount of Letters of Credit pursuant to Section 3.10;

Seventh, for the account of any applicable Qualified Counterparty and any applicable Cash Management Bank, to any settlement amounts, payment amounts and other termination payment obligations under any Specified Swap Agreements and Cash Management Agreements not paid pursuant to clause Fifth and to cash collateralize Obligations arising under any then outstanding Specified Swap Agreements and Cash Management Services, in each case, ratably among them in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to the payment of all other Obligations of the Loan Parties that are then due and payable to the Administrative Agent and the other Secured Parties on such date, in each case, ratably among them in proportion to the respective aggregate amounts of all such Obligations described in this clause Eighth and payable to them; and

Last, the balance, if any, after the Discharge of Obligations, to the Borrower or as otherwise required by applicable Requirements of Law.

Subject to Sections 2.24(a), 3.4, 3.5 and 3.10, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral for Letters of Credit after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, no Excluded Swap Obligation of any Guarantor shall be paid with amounts received from such Guarantor or from any Collateral in which such Guarantor has granted to the Administrative Agent a Lien (for the benefit of the Secured Parties) pursuant to the Guarantee and Collateral Agreement or any other applicable Security Document; provided, however, that each party to this Agreement hereby acknowledges and agrees that appropriate adjustments shall be made by the Administrative Agent (which adjustments shall be controlling in the absence of manifest error) with respect to payments received from other Loan Parties to preserve the allocation of such payments to the satisfaction of the Obligations in the order otherwise contemplated in this Section 8.3.

SECTION 9 THE ADMINISTRATIVE AGENT

9.1 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints SVB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) The provisions of Section 9 are solely for the benefit of the Administrative Agent, the Lenders, the Issuing Lender, and the Swingline Lender, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions (other than Sections 9.9 and 9.10). Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or obligations, except those expressly set forth herein and in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(c) The Administrative Agent shall also act as the collateral agent under the Loan Documents, and each of the Lenders (in their respective capacities as a Lender and, as applicable, Qualified Counterparty and provider of Cash Management Services) hereby irrevocably (i) authorizes the Administrative Agent to enter into all other Loan Documents, as applicable, including the Guarantee and Collateral Agreement and any intercreditor or subordination agreements, and (ii) appoints and authorizes the Administrative Agent to act as the agent of the Secured Parties for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent, as collateral agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.2 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Section 9 and Section 10 (including Section 9.7, as though such co-agents, sub-agents and attorneys-in-fact were the collateral agent under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit the any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

9.2 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities provided for herein as well as activities as the Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

9.3 Exculpatory Provisions. The Administrative Agent shall have no duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent shall not:

(a) be subject to any fiduciary or other implied duties, regardless of whether any Default or any Event of Default has occurred and is continuing;

(b) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), as applicable; provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and the Administrative Agent shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.2 and 10.1), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5.1, Section 5.2 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for any of the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be

fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of Lenders as shall be provided for herein or in the other Loan Documents), and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and all future holders of the Loans.

9.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice in writing from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “*notice of default*.” In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

9.6 Non-Reliance on Administrative Agent and Other Lenders. Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys in fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Group Member or any Affiliate of a Group Member, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates and made its own credit analysis and decision to make its Loans hereunder and enter into this Agreement. Each Lender also agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, the other Loan Documents or any related agreement or any document furnished hereunder or thereunder, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Group Members and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Group Member or any Affiliate of a Group Member that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or Affiliates.

9.7 Indemnification. Each of the Lenders agrees to indemnify each of the Administrative Agent, the Issuing Lender and the Swingline Lender and each of its Related Parties in its capacity as such (to the extent not reimbursed by any Loan Party and without limiting the obligation of the Loan Parties to do so) according to its Aggregate Exposure Percentage in effect on the date on which indemnification is sought under this Section 9.7 (or, if indemnification is sought after the date upon which the Commitments

shall have terminated and the Loans shall have been paid in full, in accordance with its Aggregate Exposure Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent or such other Person in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent or such other Person under or in connection with any of the foregoing and any other amounts not reimbursed by the Loan Parties; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from the Administrative Agent's or such other Person's gross negligence or willful misconduct, and that with respect to such unpaid amounts owed to any Issuing Lender or Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought). The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

9.8 Agent in Its Individual Capacity. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Group Members or any Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.9 Successor Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, and so long as no Event of Default is then continuing with the consent of the Borrower, which consent shall not be unreasonably withheld, conditioned or delayed, to appoint a successor. If no such successor shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Administrative Agent meeting customary qualifications, and solely to the extent no Event of Default is then continuing, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed); provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, so long as no Event of Default is then continuing with the consent of the Borrower, which consent shall not be unreasonably withheld, conditioned or delayed, appoint a successor. If no such successor shall have been so appointed and shall have accepted such appointment within 30 days (or such earlier day as shall be

agreed by the Required Lenders) (the “*Removal Effective Date*”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed and such collateral security is assigned to such successor Administrative Agent) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of Section 9 and Section 10.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as the Administrative Agent.

9.10 Collateral and Guaranty Matters.

(a) The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion (without limiting Section 10.16),

(i) to release any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document (A) upon the Discharge of Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Lender shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (C) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any Collateral or other property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Sections 7.3(g) and (i); and

(iii) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the guaranty pursuant to this Section

9.10.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Notwithstanding anything contained in any Loan Document, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guaranty of the Obligations (including any such guaranty provided by the Guarantors pursuant to the Guarantee and Collateral Agreement), it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof; provided that, for the avoidance of doubt, in no event shall a Secured Party be restricted hereunder from filing a proof of claim on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law or any other judicial proceeding. In the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Secured Party may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Administrative Agent, as agent for and representative of such Secured Party (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent on behalf of the Secured Parties at such sale or other disposition. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, to have agreed to the foregoing provisions. In furtherance of the foregoing, and not in limitation thereof, no Specified Swap Agreement and no Cash Management Agreement, the Obligations under which constitute Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the Obligations of any Loan Party under any Loan Document except as expressly provided herein or in the Guarantee and Collateral Agreement. By accepting the benefits of the Collateral and of the guarantees of the Obligations provided by the Loan Parties under the Guarantee and Collateral Agreement, any Secured Party that is a Cash Management Bank or a Qualified Counterparty shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and to have agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

9.11 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation in respect of any Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Obligations in respect of any Letter of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.9

and 10.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.9 and 10.5.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.12 No Other Duties, etc. Anything herein to the contrary notwithstanding, the Joint Lead Arranger and Bookrunner listed on the cover page hereof shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Issuing Lender or the Swingline Lender hereunder.

9.13 Cash Management Bank and Qualified Counterparty Reports. Each Cash Management Bank and each Qualified Counterparty agrees to furnish to the Administrative Agent, as frequently as the Administrative Agent may reasonably request, with a summary of all Obligations in respect of Cash Management Services and/or Specified Swap Agreements, as applicable, due or to become due to such Cash Management Bank or Qualified Counterparty, as applicable. In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Cash Management Bank or Qualified Counterparty (in its capacity as a Cash Management Bank or Qualified Counterparty and not in its capacity as a Lender) unless the Administrative Agent has received written notice thereof from such Cash Management Bank or Qualified Counterparty and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Cash Management Bank or Qualified Counterparty on account of Cash Management Services or Specified Swap Agreements are set forth in such notice.

9.14 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, Issuing Lender, Swingline Lender, or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender, or Secured Party (any such Lender, Issuing Lender, Swingline Lender, Secured Party or other recipient, a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative 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, Issuing Lender, Swingline Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Lender, Swingline Lender, or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its

behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Lender, Swingline Lender or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Lender, Swingline Lender or Secured Party, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Lender, Swingline Lender, or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Lender, Swingline Lender or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.14(b).

(c) Each Lender, Issuing Lender, Swingline Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Lender, Swingline Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Lender, Swingline Lender or Secured Party from any source, against any amount due to the Administrative Agent under clause (a) hereof or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with clause (a) hereof, from any Lender, Issuing Lender or Swingline 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 the Administrative Agent’s notice to such Lender, Issuing Lender or Swingline Lender at any time, (i) such Lender, Issuing Lender or Swingline Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments), the “**Erroneous Payment Deficiency Assignment**”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the

Administrative 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, Issuing Lender or Swingline Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, Issuing Lender or Swingline Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender, assigning Issuing Lender or assigning Swingline Lender shall cease to be a Lender, Issuing Lender or Swingline 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, assigning Issuing Lender or assigning Swingline Lender and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative 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, Issuing Lender or Swingline Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender, Issuing Lender or Swingline 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, Issuing Lender or Swingline 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 the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender, Issuing Lender, Swingline Lender or Secured Party 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 Loan Party, 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 the Administrative Agent from the Borrower or any other Loan Party 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 the Administrative Agent for the return of any Erroneous Payment received, including without limitation any defense based on “discharge for value” or any similar doctrine

Each party’s obligations, agreements and waivers under this Section 9.14 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, a Swingline Lender or Issuing Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

9.15 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the

Bookrunner, the Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited 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 Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Bookrunner and the Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, the Bookrunner or the Joint Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(b) The Administrative Agent, the Bookrunner and the Joint Lead Arranger hereby inform the Lenders that each such Person is not undertaking to provide 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 Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including

structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.16 Survival. This Section 9 shall survive the Discharge of Obligations.

SECTION 10 MISCELLANEOUS

10.1 Amendments and Waivers.

(a) Neither this Agreement, any other Loan Document (other than any L/C Related Document), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1, Section 2.17 or Section 2.27. The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (i) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (A) forgive the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any amortization payment in respect of any Term Loan, reduce the stated rate of any interest or fee or other amount payable hereunder (except that no amendment or modification of defined terms used in the financial covenants in this Agreement or waiver of any Default or Event of Default or the right to receive interest at the Default Rate shall constitute a reduction in the rate of interest or fees for purposes of this clause (A)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment or Term Commitment, in each case, without the written consent of each Lender directly affected thereby; (B) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (C) reduce any percentage specified in the definition of Required Lenders or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any Loan Document, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the value of the guarantees (taken as a whole) of the Guarantors from their obligations under the Guarantee and Collateral Agreement, in each case without the written consent of all Lenders; (D) amend, modify or waive the *pro rata* requirements of Section 2.18, Section 10.7(a), or any other provision of the Loan Documents requiring *pro rata* treatment of the Lenders without the written consent of each Lender; (E) contractually subordinate the Obligations (including any guarantee thereof), or the Liens on all or substantially all of the Collateral granted under the Loan Documents, to any other Indebtedness or Lien (including, without limitation, any other Indebtedness or Lien issued under the Credit Agreement or any other agreement), in each case without the written consent of all Lenders; (F) amend, modify or waive any of the requirements in Section 5.1 or Section 5.2 without the written consent of all Lenders; (G) amend, modify or waive any provision of Section 9 without the written consent of the Administrative Agent; (H) amend, modify or waive any provision of Section 2.6 or 2.7 without the written consent of the Swingline Lender; (I) amend, modify or waive any provision of Section 3 without the written consent of the Issuing Lender; or (J) amend or modify the application of prepayments set forth in Section 2.12(e) or the application of payments set forth in Section 8.3 without the

written consent each Lender and the Issuing Lender. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent, the Issuing Lender, each Cash Management Bank, each Qualified Counterparty, and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured during the period such waiver is effective; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Notwithstanding the foregoing, the Issuing Lender may amend any of the L/C Related Documents without the consent of the Administrative Agent or any other Lender, and the Issuing Lender, Administrative Agent and the Borrower may make customary technical amendments if any Letter of Credit shall be issued hereunder in a currency other than U.S. Dollars. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment or Term Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(b) Notwithstanding anything to the contrary contained in Section 10.1(a) above, in the event that the Borrower or any other Loan Party, as applicable, requests that this Agreement or any of the other Loan Documents, as applicable, be amended or otherwise modified in a manner which would require the consent of all of the Lenders and such amendment or other modification is agreed to by the Borrower and/or such other Loan Party, as applicable, the Required Lenders and the Administrative Agent, then, with the consent of the Borrower and/or such other Loan Party, as applicable, the Administrative Agent and the Required Lenders, this Agreement or such other Loan Document, as applicable, may be amended without the consent of the Lender or Lenders who are unwilling to agree to such amendment or other modification (each, a “*Minority Lender*”), to provide for:

- (i) the termination of the Commitment of each such Minority Lender;
- (ii) the assumption of the Loans and Commitment of each such Minority Lender by one or more Replacement Lenders pursuant to the provisions of Section 2.23; and
- (iii) the payment of all interest, fees and other obligations payable or accrued in favor of each Minority Lender and such other modifications to this Agreement or to such Loan Documents as the Borrower, the Administrative Agent and the Required Lenders may determine to be appropriate in connection therewith.

(c) Notwithstanding any other provision, no consent of any Lender (or other Secured Party other than the Administrative Agent) shall be required to effectuate any amendment to implement any Incremental Facility permitted by Section 2.27 or to effect an alternate interest rate in a manner consistent with Section 2.17.

(d) Notwithstanding any provision herein to the contrary, any Cash Management Agreement and Specified Swap Agreement may be amended or otherwise modified by the parties thereto in accordance with the terms thereof without the consent of the Administrative Agent or any Lender.

(e) Notwithstanding any provision herein or in any other Loan Document to the contrary, no Cash Management Bank and no Qualified Counterparty shall have any voting or approval

rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of Cash Management Services or Specified Swap Agreements or Obligations owing thereunder, nor shall the consent of any such Cash Management Bank or Qualified Counterparty, as applicable, be required for any matter, other than in their capacities as Lenders, to the extent applicable.

(f) The Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the Loan Documents to cure any omission, mistake or defect.

10.2 Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile or electronic mail), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three (3) Business Days after being deposited in the mail, postage prepaid, or, in the case of facsimile or electronic mail notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Borrower:	Brilliant Earth, LLC 300 Grant Avenue, Third Floor San Francisco, California 94108 Attention: Alex Grab, General Counsel Email: agrab@brilliantearth.com
with a copy (which shall not constitute notice) to:	Latham & Watkins LLP 555 11 th Street NW, Suite 1000 Washington, DC 20004 Attention: Scott D. Forchheimer, Esq. Email: scott.forchheimer@lw.com
Administrative Agent:	Silicon Valley Bank, <u>a division of First-Citizens Bank & Trust Company</u> 505 Howard Street San Francisco, CA 94105 Attention: Sarah HeRob MacNamara Email: fhermacnamara@svb.com
with a copy (which shall not constitute notice) to:	Morrison & Foerster, LLP 200 Clarendon Street, 20 th Floor Boston, Massachusetts 02116 Attn.: Charles W. Stavros, Esq. Email: cstavros@mof.com

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

(a) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including email and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or any Loan Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by

it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent and the Borrower otherwise prescribe, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment); and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice 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 for the recipient.

(b) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(c) (i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "*Agent Parties*") have any liability to the Borrower or the other Loan Parties, any Lender or any other Person for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of communications through the Platform in the absence of gross negligence and willful misconduct as determined by court of competent jurisdiction by final and nonappealable judgment. "*Communications*" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

10.3 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay or reimburse (i) all reasonable

out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary counsel for the Administrative Agent and one local counsel in each relevant jurisdiction retained by the Administrative Agent plus additional counsel in the event of an actual or perceived conflict of interest), in connection with the syndication of the Facilities, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent and the Lenders (which shall be counsel to the Administrative Agent), one local counsel in each relevant jurisdiction retained by the Administrative Agent) and, solely in the case of a conflict of interest, one additional counsel and, to the extent necessary, one local counsel in each relevant jurisdiction to each group of similarly situated Persons actually affected by such conflict taken as a whole)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued or participated in hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender (including the Issuing Lender), and each Related Party of any of the foregoing Persons (each such Person being called an “*Indemnitee*”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Materials of Environmental Concern on or from any property owned or operated by the Group Members, or any Environmental Liability related in any way to the Group Members, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or its Related Parties (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for a material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) are determined by a court of competent jurisdiction by final and nonappealable judgment to have not resulted from an act or omission by any Group Member and have been brought by an Indemnified Party against any other Indemnified Party (other than disputes involving SVB, solely in its capacity as Administrative Agent). This Section 10.5(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails indefeasibly to pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Lenders' Revolving Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Sections 2.1, 2.4 and 2.20(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower and each other Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby in the absence of gross negligence and willful misconduct.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the Discharge of Obligations.

10.6 Successors and Assigns; Participations and Assignments.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (which, for purposes of this Section 10.6, shall include any Cash Management Bank and any Qualified Counterparty), except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of Section 10.6(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.6(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of

this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "**Trade Date**" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Facility, or the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld, conditioned, or delayed; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis. Notwithstanding the foregoing or anything herein to the contrary, the L/C Facility is a sublimit of the Revolving Facility and the commitments and obligations in respect of the Revolving Facility and the L/C Facility shall be assigned on a pro rata basis with each other.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section 10.6 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Facility

or any unfunded Commitments with respect to the Term Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or (ii) any Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the Issuing Lender and the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent any such administrative questionnaire as the Administrative Agent may request.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of its Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.19, 2.20, 2.21 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided,

that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in ~~California~~the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, a holding company, investment vehicle or trust established for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities under Sections 2.20(e) and 9.7 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver which affects such Participant and for which the consent of such Lender is required (as described in Section 10.1). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.19, 2.20 and 2.21 (subject to the requirements and limitations therein, including the requirements under Section 2.20(f) (it being understood that the documentation required under Section 2.20(f) shall be delivered by such Participant to the Lender granting such participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(b); provided that such Participant (A) agrees to be subject to the provisions of Sections 2.23 as if it were an assignee under Section 10.6(b); and (B) shall not be entitled to receive any greater payment under Sections 2.19 or 2.20, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in any Requirement of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.23 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.7 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(k) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal

amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Notes. The Borrower, upon receipt by the Borrower of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in Section 10.6.

(g) Representations and Warranties of Lenders. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments or Loans, as the case may be, represents and warrants as of the Closing Date or as of the effective date of the applicable Assignment and Assumption that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments, loans or investments such as the Commitments and Loans; and (iii) it will make or invest in its Commitments and Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments and Loans within the meaning of the Securities Act or the Exchange Act, or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments and Loans or any interests therein shall at all times remain within its exclusive control).

10.7 Adjustments; Set-off.

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders under a particular Facility, if any Lender (a "**Benefitted Lender**") shall receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) Upon (i) the occurrence and during the continuance of any Event of Default and (ii) obtaining the prior written consent of the Administrative Agent, each Lender and each of its Affiliates

is hereby authorized at any time and from time to time, without prior notice to any Loan Party, any such notice being expressly waived by each Loan Party, 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 any currency, at any time held or owing, and any other credits, indebtedness, claims or obligations, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, its Affiliates or any branch or agency thereof to or for the credit or the account of any Loan Party, as the case may be, against any and all of the obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender or any of its Affiliates shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.23 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate thereof from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or Affiliate thereof as to which it exercised such right of setoff. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application made by such Lender or any of its Affiliates; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and its Affiliates under this Section 10.7 are in addition to other rights and remedies (including other rights of set-off) which such Lender or its Affiliates may have.

10.8 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the Discharge of Obligations.

10.9 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Electronic Execution of Assignments.

(a) This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic mail transmission shall be effective as delivery of an original executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Administrative Agent.

(b) The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.11 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited under or in connection with any Insolvency Proceeding, as determined in good faith by the Administrative Agent or the Issuing Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.12 Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the other Loan Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

10.13 GOVERNING LAW. THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, AND ANY CLAIM, CONTROVERSY, DISPUTE, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE CONFLICT OF LAW RULES) OF THE STATE OF NEW YORK. This Section 10.13 shall survive the Discharge of Obligations.

10.14 Submission to Jurisdiction. Each party hereto hereby irrevocably and unconditionally:

(a) agrees that all disputes, controversies, claims, actions and other proceedings involving, directly or indirectly, any matter in any way arising out of, related to, or connected with, this Agreement, any other Loan Document, any contemplated transactions related hereto or thereto, or the relationship between any Loan Party, on the one hand, and the Administrative Agent or any Lender or any other Secured Party, on the other hand, and any and all other claims of any Group Member against the Administrative Agent or any Lender or any other Secured Party of any kind, shall be brought only in a state

court located in the Borough of Manhattan or the Southern District of New York, or in a federal court sitting in the Borough of Manhattan or the Southern District of New York; provided that nothing in this Agreement shall be deemed to operate to preclude the Administrative Agent or any Lender or any other Secured Party from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Administrative Agent or such Lender or any other Secured Party. The Borrower, on behalf of itself and each other Loan Party, (i) expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, (ii) hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum *non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court, and (iii) agrees that it shall not file any motion or other application seeking to change the venue of any such suit or other action. The Borrower, on behalf of itself and each other Loan Party, hereby waives personal service of any summons, complaints, and other process issued in any such action or suit and agrees that service of any such summons, complaints, and other process may be made by registered or certified mail addressed to the Borrower at the address set forth in Section 10.2 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid;

(b) **WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ITS RIGHT TO A JURY TRIAL OF ANY CLAIM, CAUSE OF ACTION, OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) BASED UPON, ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY AND THEREBY, AMONG ANY OF THE PARTIES HERETO AND THERETO. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. BORROWER HAS REVIEWED THIS WAIVER WITH ITS COUNSEL;** and

(c) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages; provided that nothing contained herein shall limit the right of any Indemnitee to be indemnified as provided in this Agreement and the other Loan Documents.

This Section 10.14 shall survive the Discharge of Obligations.

10.15 Acknowledgements. Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) in connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Borrower, on behalf of each Group Member, acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, and the Lenders and any Affiliate thereof are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Lenders and their respective applicable Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, its Affiliates, each Lender and their Affiliates is and has been acting solely as a principal and, except

as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, its Affiliates, the Lenders and their Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, its Affiliates, any Lender nor any of their Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, its Affiliates, each Lender and any of their Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Group Members and the Lenders.

10.16 Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (1) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (2) under the circumstances described in Section 10.16(b) below.

(b) Upon the Discharge of Obligations, the Collateral (other than any cash collateral securing outstanding Letters of Credit) shall be released from the Liens created by the Security Documents and Cash Management Agreements, and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents and Cash Management Agreements shall terminate, all without delivery of any instrument or performance of any act by any Person.

10.17 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g)

on a confidential basis to (i) any rating agency in connection with rating any Group Member or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower. In addition, the Administrative Agent, the Lenders, and any of their respective Related Parties, may (A) disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent or the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments; and (B) use any information (not constituting Information subject to the foregoing confidentiality restrictions) related to the syndication and arrangement of the credit facilities contemplated by this Agreement in connection with marketing, league tables, press releases, or other transactional announcements or updates provided to investor or trade publications, including the placement of “tombstone” advertisements in publications of its choice at its own expense.

Each of the Administrative Agent, the Lenders, and the Issuing Lender acknowledges that (x) the Information may include material non-public information concerning the Group Members, (y) it has developed compliance procedures regarding the use of material non-public information, and (z) it will handle such material non-public information in accordance with applicable Requirements of Law, including applicable federal and state securities laws, rules and regulations.

Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. However, any such information relating to the tax treatment or tax structure is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws, rules, and regulations.

For purposes of this Section, “**Information**” means all information received from the Group Members relating to the Group Members or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by the Group Members; provided that, in the case of information received from the Group Members after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

10.18 Automatic Debits. With respect to any principal, interest, fee, or any other cost or expense (including attorney costs of the Administrative Agent or any Lender payable by the Borrower hereunder) due and payable to the Administrative Agent or any Lender under the Loan Documents, the Borrower hereby irrevocably authorizes the Administrative Agent to debit any deposit account of the Borrower maintained with the Administrative Agent in an amount such that the aggregate amount debited from all such deposit accounts does not exceed such principal, interest, fee or other cost or expense. If there are insufficient funds in such deposit accounts to cover the amount then due, such debits will be reversed (in whole or in part, in the Administrative Agent’s sole discretion) and such amount not debited shall be deemed to be unpaid. No such debit under this Section 10.18 shall be deemed a set-off.

10.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is

necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under any other Loan Document shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or other Loan Party, as applicable (or to any other Person who may be entitled thereto under applicable law).

10.20 Patriot Act; Other Regulations. Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and 31 C.F.R. § 1010.230, it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party and certain related parties thereto, which information includes the names and addresses and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower, each other Loan Party and certain of their beneficial owners and other officers in accordance with the Patriot Act and 31 C.F.R. § 1010.230. The Borrower and each other Loan Party will, and will cause each of their respective Subsidiaries to, provide, to the extent commercially reasonable or required by any Requirement of Law, such information and documents and take such actions as are reasonably requested by the Administrative Agent or any Lender to assist the Administrative Agent and the Lenders in maintaining compliance with “know your customer” requirements under the PATRIOT Act, 31 C.F.R. § 1010.230 or other applicable anti-money laundering laws.

10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in this Agreement or in any other 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 liability, including, if applicable
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge

institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

10.22 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, “*QFC Credit Support*” and each such QFC a “*Supported QFC*”), the parties hereto hereby acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “*U.S. Special Resolution Regimes*”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “*Covered Party*”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.22, 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).

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[Signature pages intentionally omitted]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

BORROWER:

BRILLIANT EARTH, LLC

By: _____

Name: _____

Title: _____

ADMINISTRATIVE AGENT:

SILICON VALLEY BANK

By: _____

Name: _____

Title: _____

LENDERS:

**SILICON VALLEY BANK,
as a Lender**

By: _____

Name: _____

Title: _____

**JPMORGAN CHASE BANK, N.A.,
as a Lender**

By: _____

Name: _____

Title: _____


as a Lender

By: _____

Name: _____

Title:

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-267784), and Form S-8 (Nos. 333-259736, 333-266807 and 333-270725) of Brilliant Earth Group, Inc. of our report dated March 28, 2024, relating to the consolidated financial statements, which appear in this Annual Report on Form 10-K.

/s/ BDO USA, P.C.

Denver, Colorado
March 28, 2024

CERTIFICATION

I, Beth Gerstein, certify that:

1. I have reviewed this Annual Report on Form 10-K of Brilliant Earth Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 28, 2024

By: /s/Beth Gerstein
Name: Beth Gerstein
Title: Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Jeffrey Kuo, certify that:

1. I have reviewed this Annual Report on Form 10-K of Brilliant Earth Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 28, 2024

By: /s/ Jeffrey Kuo
Name: Jeffrey Kuo
Title: Chief Financial Officer
(Principal Financial Officer)

**Certification Pursuant to 18 U.S.C. Section 1350,
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of Brilliant Earth Group, Inc. (the "Company") for the year ended December 31, 2023 (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, I, the undersigned, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 28, 2024

By: /s/ Beth Gerstein
Name: Beth Gerstein
Title: Chief Executive Officer
(Principal Executive Officer)

**Certification Pursuant to 18 U.S.C. Section 1350,
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of Brilliant Earth Group, Inc. (the "Company") for the year ended December 31, 2023 (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, I, the undersigned, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 28, 2024

By: /s/ Jeffrey Kuo
Name: Jeffrey Kuo
Title: Chief Financial Officer
(Principal Financial Officer)

BRILLIANT EARTH GROUP, INC.
POLICY FOR RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION

Brilliant Earth Group, Inc. (the “**Company**”) has adopted this Policy for Recovery of Erroneously Awarded Compensation (the “**Policy**”), effective as of November 22, 2023 (the “**Effective Date**”). Capitalized terms used in this Policy but not otherwise defined herein are defined in Section 11.

1. Persons Subject to Policy

This Policy shall apply to current and former Officers of the Company.

2. Compensation Subject to Policy

This Policy shall apply to Incentive-Based Compensation received on or after the Effective Date. For purposes of this Policy, the date on which Incentive-Based Compensation is “received” shall be determined under the Applicable Rules, which generally provide that Incentive-Based Compensation is “received” in the Company’s fiscal period during which the relevant Financial Reporting Measure is attained or satisfied, without regard to whether the grant, vesting or payment of the Incentive-Based Compensation occurs after the end of that period.

3. Recovery of Compensation

In the event that the Company is required to prepare a Restatement, the Company shall recover, reasonably promptly, the portion of any Incentive-Based Compensation that is Erroneously Awarded Compensation, unless the Committee has determined that recovery would be Impracticable. Recovery shall be required in accordance with the preceding sentence regardless of whether the applicable Officer engaged in misconduct or otherwise caused or contributed to the requirement for the Restatement and regardless of whether or when restated financial statements are filed by the Company. For clarity, the recovery of Erroneously Awarded Compensation under this Policy will not give rise to any person’s right to voluntarily terminate employment for “good reason,” or due to a “constructive termination” (or any similar term of like effect) under any plan, program or policy of or agreement with the Company or any of its affiliates.

4. Manner of Recovery; Limitation on Duplicative Recovery

The Committee shall, in its sole discretion, determine the manner of recovery of any Erroneously Awarded Compensation, which may include, without limitation, reduction or cancellation by the Company or an affiliate of the Company of Incentive-Based Compensation or Erroneously Awarded Compensation, reimbursement or repayment by any person subject to this Policy of the Erroneously Awarded Compensation, and, to the

extent permitted by law, an offset of the Erroneously Awarded Compensation against other compensation payable by the Company or an affiliate of the Company to such person. Notwithstanding the foregoing, unless otherwise prohibited by the Applicable Rules, to the extent this Policy provides for recovery of Erroneously Awarded Compensation already recovered by the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 or Other Recovery Arrangements, the amount of Erroneously Awarded Compensation already recovered by the Company from the recipient of such Erroneously Awarded Compensation may be credited to the amount of Erroneously Awarded Compensation required to be recovered pursuant to this Policy from such person.

5. Administration

This Policy shall be administered, interpreted and construed by the Committee, which is authorized to make all determinations necessary, appropriate or advisable for such purpose. The Board of Directors of the Company (the "**Board**") may re-vest in itself the authority to administer, interpret and construe this Policy in accordance with applicable law, and in such event references herein to the "Committee" shall be deemed to be references to the Board. Subject to any permitted review by the applicable national securities exchange or association pursuant to the Applicable Rules, all determinations and decisions made by the Committee pursuant to the provisions of this Policy shall be final, conclusive and binding on all persons, including the Company and its affiliates, equityholders and employees. The Committee may delegate administrative duties with respect to this Policy to one or more directors or employees of the Company, as permitted under applicable law, including any Applicable Rules.

6. Interpretation

This Policy will be interpreted and applied in a manner that is consistent with the requirements of the Applicable Rules, and to the extent this Policy is inconsistent with such Applicable Rules, it shall be deemed amended to the minimum extent necessary to ensure compliance therewith.

7. No Indemnification; No Liability

The Company shall not indemnify or insure any person against the loss of any Erroneously Awarded Compensation pursuant to this Policy, nor shall the Company directly or indirectly pay or reimburse any person for any premiums for third-party insurance policies that such person may elect to purchase to fund such person's potential obligations under this Policy. None of the Company, an affiliate of the Company or any member of the Committee or the Board shall have any liability to any person as a result of actions taken under this Policy.

8. Application; Enforceability

Except as otherwise determined by the Committee or the Board, the adoption of this Policy does not limit, and is intended to apply in addition to, any other clawback, recoupment, forfeiture or similar policies or provisions of the Company or its affiliates, including any such policies or provisions of such effect contained in any employment agreement, bonus plan, incentive plan, equity-based plan or award agreement thereunder or similar plan, program or agreement of the Company or an affiliate or required under applicable law (the “**Other Recovery Arrangements**”). The remedy specified in this Policy shall not be exclusive and shall be in addition to every other right or remedy at law or in equity that may be available to the Company or an affiliate of the Company.

9. Severability

The provisions in this Policy are intended to be applied to the fullest extent of the law; provided, however, to the extent that any provision of this Policy is found to be unenforceable or invalid under any applicable law, such provision will be applied to the maximum extent permitted, and shall automatically be deemed amended in a manner consistent with its objectives to the extent necessary to conform to any limitations required under applicable law.

10. Amendment and Termination

The Board or the Committee may amend, modify or terminate this Policy in whole or in part at any time and from time to time in its sole discretion. This Policy will terminate automatically when the Company does not have a class of securities listed on a national securities exchange or association.

11. Definitions

“**Applicable Rules**” means Section 10D of the Exchange Act, Rule 10D-1 promulgated thereunder, the listing rules of the national securities exchange or association on which the Company’s securities are listed, and any applicable rules, standards or other guidance adopted by the Securities and Exchange Commission or any national securities exchange or association on which the Company’s securities are listed.

“**Committee**” means the committee of the Board responsible for executive compensation decisions comprised solely of independent directors (as determined under the Applicable Rules), or in the absence of such a committee, a majority of the independent directors serving on the Board.

“**Erroneously Awarded Compensation**” means the amount of Incentive-Based Compensation received by a current or former Officer that exceeds the amount of Incentive-Based Compensation that would have been received by such current or former Officer based on a restated Financial Reporting Measure, as determined on a pre-tax

basis in accordance with the Applicable Rules.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Financial Reporting Measure” means any measure determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measures derived wholly or in part from such measures, including GAAP, IFRS and non-GAAP/IFRS financial measures, as well as stock or share price and total equityholder return.

“GAAP” means United States generally accepted accounting principles.

“IFRS” means international financial reporting standards as adopted by the International Accounting Standards Board.

“Impracticable” means (a) the direct costs paid to third parties to assist in enforcing recovery would exceed the Erroneously Awarded Compensation; provided that the Company (i) has made reasonable attempts to recover the Erroneously Awarded Compensation, (ii) documented such attempt(s), and (iii) provided such documentation to the relevant listing exchange or association, (b) to the extent permitted by the Applicable Rules, the recovery would violate the Company’s home country laws pursuant to an opinion of home country counsel; provided that the Company has (i) obtained an opinion of home country counsel, acceptable to the relevant listing exchange or association, that recovery would result in such violation, and (ii) provided such opinion to the relevant listing exchange or association, or (c) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and the regulations thereunder.

“Incentive-Based Compensation” means, with respect to a Restatement, any compensation that is granted, earned, or vested based wholly or in part upon the attainment of one or more Financial Reporting Measures and received by a person: (a) after beginning service as an Officer; (b) who served as an Officer at any time during the performance period for that compensation; (c) while the issuer has a class of its securities listed on a national securities exchange or association; and (d) during the applicable Three-Year Period.

“Officer” means each person who serves as an executive officer of the Company, as defined in Rule 10D-1(d) under the Exchange Act.

“Restatement” means an accounting restatement to correct the Company’s material noncompliance with any financial reporting requirement under securities laws, including restatements that correct an error in previously issued financial statements (a) that is material to the previously issued financial statements or (b) that would result in a

material misstatement if the error were corrected in the current period or left uncorrected in the current period.

“Three-Year Period” means, with respect to a Restatement, the three completed fiscal years immediately preceding the date that the Board, a committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare such Restatement, or, if earlier, the date on which a court, regulator or other legally authorized body directs the Company to prepare such Restatement. The “Three-Year Period” also includes any transition period (that results from a change in the Company’s fiscal year) within or immediately following the three completed fiscal years identified in the preceding sentence. However, a transition period between the last day of the Company’s previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months shall be deemed a completed fiscal year.

Effective: November 22, 2023

