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

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): August 27, 2021

ASCEND WELLNESS HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

333-254800

(Commission File Number)

83-0602006

(I.R.S. Employer Identification
No.)

**1411 Broadway
16th Floor
New York, NY 10018**
(Address of principal executive offices)

(646) 661-7600

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below).

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act: None

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

Credit Agreement.

On August 27, 2021, Ascend Wellness Holdings, Inc., as borrower (the “Company”), a group of lenders and Acquiom Agency Services LLC, as administrative agent and collateral agent, entered into a Credit Agreement (the “Credit Agreement”), for which Seaport Global Securities LLC acted as placement agent, providing for a term loan facility of \$210,000,000 (the “Debt Facility”).

On August 27, 2021, the Company used a portion of the proceeds from the Debt Facility to prepay in full and terminate (a) the Credit and Guaranty Agreement, dated as of October 15, 2020, as amended, among the Company, Ascend Illinois Holdings, LLC, Ascend Illinois, LLC, their subsidiaries, a group of lenders and Seventh Avenue Investments, LLC as administrative and collateral agent, which provided a term loan facility of which \$25,000,000 was then outstanding and (b) the Amended and Restated Financing Agreement, dated as of October 29, 2020, among Ascend New Jersey, LLC, AWH NJ HoldCo LLC, their subsidiaries, and the lenders, collateral agent and administrative agent party thereto, which provided a term loan facility of which \$20,000,000 was then outstanding.

The Debt Facility matures on August 27, 2025 and does not require scheduled principal amortization payments. Mandatory prepayments are required from the proceeds of (i) indebtedness that is not permitted by the Credit Agreement and (ii) asset sales and casualty events, subject to customary reinvestment rights. The Company may prepay the Debt Facility at any time, provided that principal prepayments (a) prior to February 27, 2023 must be accompanied by a customary make-whole payment, (b) on and after such date and prior to February 27, 2024 must be accompanied by a prepayment premium equal to 4.75% of the principal amount prepaid and (c) on and after February 27, 2024 and prior to February 27, 2025, must be accompanied by a prepayment premium equal to 3.75% of the principal amount prepaid. No prepayment premium is required for prepayments on or after February 27, 2025. Once repaid, amounts borrowed under the Debt Facility may not be re-borrowed.

Advances made under the Debt Facility bear interest at the fixed rate of 9.5% per annum, payable quarterly and, as to any portion of the term loan that is prepaid, on the date of prepayment.

The Credit Agreement permits the Company (a) to request an extension of the maturity date for 364 days in the lenders’ discretion and (b) to increase the Debt Facility up to \$275,000,000 if the then existing lenders (or other lenders) agree to provide such additional term loans.

Under the Credit Agreement, the Company is required to comply with two financial covenants, commencing with its fiscal quarter ending December 31, 2021. The Company may not permit its Liquidity (defined as unrestricted cash and cash equivalents pledged under the Debt Facility plus any future revolving credit availability) to be below \$20,000,000 as of the last day of any fiscal quarter. Additionally, the Company may not permit the ratio of consolidated EBITDA to consolidated cash interest expense for any period of four consecutive fiscal quarters to be less than the following ratios: (i) for the period ending December 31, 2021, 2.00:1.00, (ii) for the period ending March 31, 2022, 2.25: 1:00 and (iii) for the period ending June 30, 2022 and thereafter 2.50:1.00. The Company has a customary equity cure right for each of these financial covenants.

The Credit Agreement requires the Company to make representations and warranties and to comply with covenants that are customary in loan agreements of this type, including restrictions on the payment of dividends, repurchase of stock, incurrence of indebtedness, dispositions and acquisitions. The Credit Agreement also contains customary events of default, including non-payment of principal or interest, violations of covenants, bankruptcy, change of control, cross defaults to other debt and material judgments.

The Company intends to use the proceeds from the Debt Facility to repay existing subsidiary credit facilities, to finance pending transactions with MedMen NY, Inc. and Chicago Alternative Health Center, LLC and for general corporate purposes.

The Debt Facility is guaranteed by all the Company's subsidiaries. The Debt Facility is secured by substantially all the assets of the Company and its subsidiaries.

The foregoing description of the Debt Facility is only a summary and is qualified in its entirety by reference to the Credit Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

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

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

[10.1+ Credit Agreement](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

+ Portions of this exhibit have been redacted in compliance with Regulation S-K Item 601(b)(10)(iv). The omitted information is not material and is the type that the registrant treats as private or confidential. The Company agrees to furnish an unredacted copy to the SEC upon its request.

SIGNATURES

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

Ascend Wellness Holdings, Inc.

September 1, 2021

/s/ Daniel Neville

Daniel Neville
Chief Financial Officer
(Principal Financial Officer)

CREDIT AGREEMENT

dated as of

August 27, 2021

among

ASCEND WELLNESS HOLDINGS, INC.,
as the Borrower

The LENDERS Party Hereto,

and

ACQUIOM AGENCY SERVICES LLC,
as Administrative Agent and Collateral Agent

SEAPORT GLOBAL SECURITIES LLC,
as Placement Agent

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT dated as of August 27, 2021 (this “Agreement”), between ASCEND WELLNESS HOLDINGS, INC., a Delaware corporation (the “Borrower”), the LENDERS party hereto, and ACQUIOM AGENCY SERVICES LLC, as administrative agent (in such capacity, including any successor thereto, the “Administrative Agent”) and as collateral agent (in such capacity, including any successor thereto, the “Collateral Agent”).

The Borrower has requested that the Lenders extend credit to the Borrower, and the Lenders are willing to do so on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Acquisition” means, as to any Person, the purchase or other acquisition (in one transaction or a series of transactions, including through a merger) of all of the Equity Interests of another Person or all or substantially all of the property, assets or business of another Person or of the assets constituting a business unit, line of business or division of another Person.

“Additional Lender” has the meaning specified in Section 2.16(d).

“Administrative Agency Fee Letter” means that certain fee letter, dated as of the Closing Date, by and between the Borrower and Acquiom Agency Services LLC, in its capacity as Administrative Agent and Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Agent or such form provided by a Lender and otherwise acceptable to the Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Affiliated Lender” means each Lender that is an Affiliate of a Loan Party.

“Agent” means Acquiom Agency Services LLC, in its capacity as Administrative Agent and Collateral Agent, as applicable, under any of the Loan Documents. For the avoidance of doubt, any reference herein or in any other Loan Document to the Administrative Agent (and any provision benefitting, or granting any right or power to, the Administrative Agent) shall, unless the context requires otherwise, be construed as a reference to (and provision benefitting, or granting any right or power to) the Administrative Agent and the Collateral Agent.

“Agent’s Office” means the Agent’s address and, as appropriate, account as set forth in Section 9.01, or such other address or account as the Agent may from time to time notify to the Borrower and the Lenders.

“Agent Parties” has the meaning specified in Section 9.01(d)(ii).

“Agreement” has the meaning specified in introductory paragraph hereof.

“Anti-Corruption Laws” means the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada), or any other applicable anti-corruption or anti-bribery Laws.

“Anti-Money Laundering Laws” means applicable anti-money laundering Laws.

“Applicable Accounting Principles” means, subject to Section 1.03, with respect to the Borrower and its Subsidiaries, GAAP, as in effect on the date hereof.

“Applicable Law” means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

“Applicable Percentage” means, with respect to any Lender, (a) on or prior to the Closing Date, the percentage of the total Commitments of all Lenders represented by such Lender’s Commitments at such time and (b) thereafter, the percentage of the total Outstanding Amount of Loans of all Lenders represented by the aggregate Outstanding Amount of Loans of such Lender as of such date.

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

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Agent, in substantially the form of Exhibit A or any other form approved by the Agent.

“Attributable Indebtedness” means, as of any date of determination, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with Applicable Accounting Principles, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with Applicable Accounting Principles if such lease were accounted for as a capital lease; provided, for avoidance of doubt, that Attributable Indebtedness shall not include any obligations in respect of operating leases (including operating leases recorded as right of use assets, and related lease liabilities in respect of operating leases).

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2020 and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries.

“Basel III” means, collectively, those certain:

- (a) agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring” and “Guidance for National Authorities Operating the Countercyclical Capital Buffer,” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

- (b) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

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

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

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

“Borrower” has the meaning specified in the introductory paragraph.

“Borrower Materials” has the meaning specified in Section 9.01(e).

“Borrowing” means a borrowing consisting of simultaneous Loans.

“Borrowing Request” means a request for a Borrowing, which in each case shall be in such form as the Agent may reasonably approve, signed by a Responsible Officer of the Borrower.

“Business Day” means any day that is not a Saturday, Sunday or other day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions in such state are authorized or required by Law to close.

“Capitalized Lease” means each lease that has been or is required to be, in accordance with Applicable Accounting Principles, recorded as a financing lease (but not a right of use lease).

“Cash Equivalents” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within one year from the date of issuance thereof and having, at such date of acquisition, the highest or second-highest credit rating obtainable from a Credit Rating Agency;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of issuance thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State or territory thereof, as applicable, that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA and Aaa (or equivalent rating) by at least two Credit Rating Agencies and (iii) have portfolio assets of at least \$5,000,000,000.

“Casualty Event” shall mean any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower or any of its Subsidiaries.

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

“Change of Control” means (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Founding Shareholders, is or shall at any time become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of the greater of (I) 35% or more on a fully diluted basis of the voting interests in Borrower’s Stock and (II) the percentage (measured on a fully diluted basis) of the voting interests in Borrower’s Stock then owned immediately prior to such transaction, (b) the sale, lease or transfer (other than by way of merger or consolidation), in one or a series of transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person other than the Borrower or a Subsidiary of the Borrower, or (c) the adoption of a plan of liquidation or dissolution of the Borrower.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 9.02.

“Closing Date Refinancing” means the repayment, repurchase, redemption, defeasance or other discharge of the following credit facilities, as now in effect: (a) Credit and Guaranty Agreement dated as of October 15, 2020, among the Borrower, Ascend Illinois Holdings, LLC, certain other Illinois Subsidiaries of the Borrower, the lenders party thereto and Seventh Avenue Investments, LLC, as agent, (b) Amended and Restated Financing Agreement dated as of October 29, 2020, among Ascend New Jersey, LLC, certain other New Jersey Subsidiaries of the Borrower, the lenders party thereto and [***], as agent, (c) Loan and Security Agreement dated as of May 30, 2019, among Ascend Friend Street RE LLC and Lexington Friend Street, LLC, (d) Secured Term Note dated July 1, 2019 from Ascend Ohio, LLC to One Tower Atlantic, LLC, (e) Secured Term Note dated July 8, 2019 from Ascend Ohio, LLC to One Tower Access Fund, LLC, (f) Secured Promissory Note dated September 10, 2019 from FPAW Michigan, LLC to James F. Daly and (g) Loan and Security Agreement dated as of December 31, 2020 among Ascend GI Borrower, LLC, the Borrower, the lenders party thereto and Chicago Atlantic Loan Services, LLC, as agent.

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

“Collateral” means the property, rights, assets, and interests that are pledged by the Loan Parties in favor of the Administrative Agent for the benefit of the Lenders pursuant to the Collateral Documents, as the same may be amended, supplemented or otherwise modified at any time or from time to time.

“Collateral Assignments” means Collateral Assignments (as such Collateral Assignments may be amended, supplemented or otherwise modified from time to time), entered into or to be entered into, as the context requires, by the applicable Loan Parties party thereto in favor of the Agent, assigning each such Loan Party’s rights under the Collateral identified therein.

“Collateral Documents” means the Pledge and Security Agreement, the Collateral Assignments, the Founder Pledge Agreement, any mortgages or other documents delivered pursuant to the Material Real Property Requirement, and all security agreements, intellectual property security agreements, control agreements, financing statements (together with any schedules the Agent requests that the Borrower includes to itemize state and common law trademarks included as Collateral), and other instruments and documents required to be delivered by a Loan Party in connection with any of the foregoing or pursuant to Section 5.14.

“Commitments” mean the Initial Commitments and the Incremental Commitments.

“Communications” has the meaning specified in Section 9.01(d)(ii).

“Compliance Certificate” has the meaning specified in Section 5.02(a).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Adjusted Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDAR for the most recently ended four quarter period to (b) (i) Consolidated Interest Expense for the most recently ended four fiscal quarter period *plus* (ii) to the extent not included in Consolidated Interest Expense, Consolidated Rental Expense for the most recently ended four fiscal quarter period.

“Consolidated EBITDA” means for any period, Consolidated Net Income for such period,

plus, without duplication and to the extent deducted in determining Consolidated Net Income for such period, the sum of (a) interest expense (including, without limitation, any interest component in respect of lease obligations, right of use assets and any revaluation thereof), (b) provision for taxes based on income and deferred tax obligations, (c) depreciation expense, (d) amortization expense, (e) unusual or non-recurring charges, expenses or losses, including resulting from a charge of \$36,511,000 in settlement of litigation in April 2021; provided that the aggregate amounts added back pursuant to this clause (e) (other than amounts resulting from the charge of \$36,511,000 in settlement of litigation in April 2021) shall not exceed, together with amounts added back pursuant to clauses (q), (r) and (s), 20% of Consolidated EBITDA for such period (determined after giving effect to all such amounts that would be added back pursuant to this clause (e) and clauses (q), (r) and (s)), (f) unrealized losses on changes in fair value of biological assets, (g) fair value changes in biological assets included in inventory sold, (h) other non-cash charges, expenses or losses (excluding any such non-cash charge to the extent it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period, but including purchase accounting adjustments under ASC 805 under GAAP), (i) impairments, (j) restructuring charges, (k) purchase accounting adjustments, (l) transaction costs relating to actual or proposed equity or debt financings (and amendments), Investments and Dispositions, regardless of whether consummated, including costs relating to the initial public offering of the Borrower’s shares in May 2021 (including repurchase of warrants in connection with such offering), (m) share based compensation, (n) revaluation of warrants, Swap Agreements and other derivative liabilities, (o) unrealized loss on investments, (p) expenses and payments that are covered by indemnification, reimbursement, guaranty or purchase price adjustment provisions in any agreement entered into by Borrower or any of its Subsidiaries to the extent such expenses and payments have been reimbursed pursuant to the applicable indemnity, guaranty or acquisition agreement in such period or an earlier period if not added back to Consolidated EBITDA in such earlier period, (q) run rate cost savings and synergy savings resulting any Acquisition or other permitted Investment that are factually supportable and reasonably anticipated to result from actions taken or anticipated to be taken in the good faith judgment of the Borrower, within 12 months after the consummation of the such Acquisition or permitted Investment, as applicable; provided that the aggregate amounts added back pursuant to this clause (q) shall not exceed, together with amounts added back pursuant to clauses (e), (r) and (s), 20% of Consolidated EBITDA for such period (determined after giving effect to all such amounts that would be added back pursuant to this clause (q) and clauses (e), (r) and (s)), (r) start-up and opening costs with respect to new facilities prior to such facilities achieving revenue; provided that the aggregate amounts added back pursuant to this clause (r) shall not exceed, together with amounts added back pursuant to clauses (e), (q) and (s), 20% of Consolidated EBITDA for such period (determined after giving effect to all such amounts that would be added back pursuant to this clause (r) and clauses (e), (q) and (s)) and (s) integration costs in connection with any Acquisition or other permitted Investment, including severance costs, noncompetition and nonsolicitation costs, retention and completion bonuses, integration costs, business optimization expenses, transition costs, costs related to the closure, relocation and/or consolidation of offices and facilities (including the termination or discontinuance of activities constituting a business), contract termination costs, recruiting, signing and completion bonuses and expenses, future lease commitments, systems establishment costs, conversion costs, excess pension charges and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities); provided that the aggregate amounts added back pursuant to this clause (s) shall not exceed, together with amounts added back pursuant to clauses (e), (q) and (r), 20% of Consolidated EBITDA for such period (determined after giving effect to all such amounts that would be added back pursuant to this clause (s) and clauses (e), (q) and (r)),

minus, without duplication and to the extent included in determining Consolidated Net Income for such period, the sum of (i) unusual or non-recurring gains and non-cash income, (ii) any other noncash income or gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash charge in any prior period), (iii) unrealized gains on changes in fair value of biological assets, and (iv) any gains realized from the disposition of property outside of the ordinary course of business, all as determined on a consolidated basis.

For the purpose of calculating Consolidated EBITDA for any period, if during such period the Borrower or any Subsidiary shall have consummated an Acquisition, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Acquisition occurred on the first day of such period.

“Consolidated EBITDAR” means for any period, an amount equal to Consolidated EBITDA *plus*, without duplication, Consolidated Rental Expense for such period.

“Consolidated Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the most recently ended four quarter period to (b) Consolidated Interest Expense for the most recently ended four quarter period.

“Consolidated Interest Expense” means, for any period, total sum, without duplication, of (a) cash interest expense (including that attributable to Capitalized Leases) and (b) any interest component (cash or otherwise) of Capitalized Leases (but not with respect to leases of right of use assets) and any revaluation thereof to the extent such interest component is included in clause (a) of the definition of Consolidated EBITDA, net of (c) total cash interest income of the Borrower and its Subsidiaries on a consolidated basis for such period with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net realized costs under Swap Contracts in respect of interest rates to the extent that such net costs are allocable to such period, including interest expense for the Specified Lease).

“Consolidated Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Total Debt minus the amount of unrestricted cash and Cash Equivalents, in each case, included on the consolidated balance sheet of the Borrower and its Subsidiaries as of such date and held in a deposit account pledged to the Collateral Agent pursuant to a Control Agreement in favor of the Collateral Agent to (b) Consolidated EBITDA for the most recently ended four fiscal quarter period.

“Consolidated Net Income” means, for any period, the consolidated net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Borrower) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of the Borrower that is not a Loan Party 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 Rental Expense” means, without duplication, the average annual fixed and contingent rental expenses of the Borrower and its Subsidiaries to be paid in cash during such period.

“Consolidated Total Debt” means, as of any date of determination, without duplication, an amount equal to the sum of Indebtedness of the type set forth in clauses (a), (b)(i) (but only to the extent that any letter of credit, bankers’ acceptance or similar instrument has been drawn and not reimbursed), (e) (but only to the extent constituting a purchase money obligation), (f) and (h) (without duplication and only to the extent of Guarantees of Indebtedness of the type set forth in clauses (a), (b)(i) (but only to the extent that any letter of credit, bankers’ acceptance or similar instrument has been drawn and not reimbursed), (e) (but only to the extent constituting a purchase money obligation) and (f) of the definition thereof, including the Specified Lease.

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

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

“Control Agreement” shall mean, with respect to any deposit account or securities account, an agreement, in form and substance reasonably satisfactory to the Agent and the Loan Party maintaining such account, among the Agent, the financial institution or other Person at which such account is maintained and the Loan Party maintaining such account, effective to grant “control” (within the meaning of Articles 8 and 9 under the applicable UCC jurisdiction) over such account to the Agent.

“Controlled Substances Act” means Title 21 of the United States Code, as amended from time to time.

“Credit Rating Agency” means a nationally recognized credit rating agency that evaluates the financial condition of issuers of debt instruments and then assigns a rating that reflects its assessment of the issuer’s ability to make debt payments.

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar laws providing debtor relief or otherwise affecting the enforcement of creditors’ rights generally, including any proceeding under corporate law or other law whereby a corporation seeks a stay or a compromise of the claims of its creditors against it, of the United States, or other applicable jurisdictions from time to time in effect.

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

“Default Rate” means an interest rate (before as well as after judgment) equal to (a) with respect to overdue principal, the applicable interest rate plus 2.00% per annum and (b) with respect to any other overdue amount (including fees and overdue interest), the interest rate applicable to Loans plus 2.00% per annum.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” means any Equity Interest that, by its terms (or the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Equity Interests that are not Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one days after the Maturity Date; provided that if such Equity Interests are issued pursuant to a plan for the benefit of employees of the Borrower or any Subsidiary or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability.

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

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 9.04(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 9.04(b)(iii)).

“Environmental Laws” means any and all federal, state, territorial, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions, including all common law, relating to pollution or the protection of health, safety or the environment, natural resources, or the release of any materials into the environment, including those related to Hazardous Materials, air emissions, discharges to waste or public systems and health and safety matters.

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

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

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code or Section 302 of ERISA).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the failure by the Borrower or any ERISA Affiliate to satisfy the minimum funding standards (within the meaning of Sections 412 or 430 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived; (c) the incurrence by the Borrower or any ERISA Affiliate of any liability pursuant to Section 4063 or 4064 of ERISA or a cessation of operations with respect to a Pension Plan within the meaning of Section 4062(e) of ERISA; (d) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is “insolvent” (within the meaning of Section 4245 of ERISA); (e) the filing of a notice of intent to terminate a Pension Plan under, or the treatment of a Pension Plan amendment as a termination under, Section 4041 of ERISA; (f) the institution by the PBGC of proceedings to terminate a Pension Plan; (g) any event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the determination that any Pension Plan is, or is expected to be, in “at-risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA) or that a Multiemployer Plan is in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (i) the imposition or incurrence of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (j) the engagement by the Borrower or any ERISA Affiliate in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; (k) the imposition of a lien upon the Borrower pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; or (l) the making of an amendment to a Pension Plan that could result in the posting of bond or security under Section 436(f)(1) of the Code.

“Event of Default” has the meaning specified in Article VII.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Accounts” means the following deposit accounts: (a) accounts holding solely cash collateral for a third party that constitutes a Lien permitted under Section 6.02 hereof or deposits or advance payments by a third party, (b) payroll accounts that are used solely for the funding and payment of payroll and employee benefits of any Loan Party, and (c) accounts with amounts on deposit (in cash or Cash Equivalents) that do not exceed an average daily balance of \$[***] individually and \$[***] for all such accounts in the aggregate, during any fifteen (15) consecutive day period.

“Excluded Taxes” means 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 2.15(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.14, 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 2.14(g) and any withholding Taxes imposed under FATCA.

“Existing Maturity Date” has the meaning specified in Section 2.16(a).

“Extending Lender” has the meaning specified in Section 2.16(b).

“Facility” means the Initial Facility and each Incremental Facility.

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

“Federal Funds Effective Rate” means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

“Federal Marijuana Law” means any U.S. federal laws, civil, criminal or otherwise, that are directly or indirectly related to the cultivation, harvesting, manufacturing, production, marketing, commercialization, labeling, distribution, sale and possession of cannabis, Marijuana or related substances or products containing cannabis, Marijuana or related substances, including the prohibition on drug trafficking under the Controlled Substances Act (21 U.S.C. § 801, et seq.), the conspiracy statute under 18 U.S.C. § 846, the bar against aiding and abetting the conduct of an offense under 18 U.S.C. § 2, the bar against misprision of a felony (concealing another’s felonious conduct) under 18 U.S.C. § 4, the bar against being an accessory after the fact to criminal conduct under 18 U.S.C. § 3, and federal money laundering statutes under 18 U.S.C. §§ 1956, 1957 and 1960.

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

“Fee Letters” means the Administrative Agency Fee Letter and the Placement Agent Fee Letter.

“Financial Covenants” means the covenants set forth in Section 6.12.

“Financial Officer” means, as to any Person, the chief financial officer, principal accounting officer, treasurer or controller of such Person.

“Foreign Lender” means any Lender or Agent that is not a “U.S. Person”.

“Foreign Plan” means any employee pension benefit plan, program, policy, arrangement or agreement maintained or contributed to by the Borrower or any Subsidiary with respect to employees employed outside the United States (other than any governmental arrangement).

“Founder Pledge Agreement” means the Limited-Recourse Pledge Agreement dated as of the date hereof, as from time to time in effect, among Abner Kurtin, Frank Perullo, Steve Rohlring and the Collateral Agent with respect to a pledge of the Equity Interests of Ascend Illinois Holdings, LLC and Ascend Illinois, LLC.

“Founding Shareholders” means (i) Abner Kurtin, Frank Perullo and their respective Permitted Transferees and (ii) AGP Partners LLC so long as it is controlled by Persons described in the foregoing clause (i).

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

“GAAP” means, subject to Section 1.03, United States generally accepted accounting principles as in effect as of the date of determination thereof; provided, however, that so long as Ascend Illinois Holdings, LLC and Ascend Illinois, LLC are Guarantors, their financial condition and performance shall be consolidated with the Borrower and its Subsidiaries.

“Governmental Authority” means the government of the United States of America or of any political subdivision thereof, whether state, territorial 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).

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

“Guarantor” means each Subsidiary Guarantor and each other Person that guarantees all or any part of the Obligations.

“Guaranty Agreement” means a Guaranty Agreement, in form and substance reasonably satisfactory to the Agent, dated as of the date hereof, made by each Guarantor in favor of the Agent for the benefit of the Lenders, guaranteeing the Obligations, as such Guaranty Agreement may be amended, supplemented or modified from time to time.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and other substances, materials, or wastes of any nature capable of causing harm to human health or the environment, or which are regulated under or with respect to which liability or standards of conduct are imposed pursuant to any Environmental Law.

“Incremental Commitment” has the meaning specified in Section 2.17(a).

“Incremental Commitment Effective Date” has the meaning specified in Section 2.17(c).

“Incremental Facility” means the Incremental Commitments and all Borrowings thereunder.

“Incremental Lender” has the meaning specified in Section 2.17(b).

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under (i) letters of credit (including standby and commercial), bankers’ acceptances and bank guaranties and (ii) surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness;
- (g) all obligations of such Person in respect of Disqualified Equity Interests; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Indebtedness of any Person for purposes of clause (e) that is expressly made non-recourse or limited-recourse (limited solely to the assets securing such Indebtedness) to such Person shall be deemed to be equal to the lesser of (i) the aggregate principal amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnatee” has the meaning specified in Section 9.03(b).

“Information” has the meaning specified in Section 9.12.

“Initial Commitment” means, with respect to each Lender, the commitment of such Lender to make a Loan on the Closing Date in the amount of such Lender’s Initial Commitment set forth on Schedule 2.01, as such commitment shall be terminated pursuant to Section 2.06. As of the Closing Date, the aggregate Initial Commitments are \$210,000,000.

“Initial Facility” means the Initial Commitments and the Borrowings thereunder.

“Initial Lender” means each Person listed on Schedule 2.01.

“Initial Loan” means a loan made by an Initial Lender to the Borrower pursuant to Section 2.01(a) of this Agreement.

“Intellectual Property” means any trademarks, service marks, and any other identifiers of source or origin, trade names, domain names, copyrights, patents, industrial designs, trade secrets, know-how and all other intellectual property rights and similar or equivalent rights anywhere in the world.

“Interest Payment Date” means the last Business Day of each March, June, September and December and the Maturity Date, commencing with September 30, 2021.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor incurs Indebtedness of the type referred to in clause (h) of the definition of “Indebtedness” in respect of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any returns or distributions of capital or repayment of principal actually received in cash by such Person with respect thereto.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means a joinder or similar agreement entered into by any Person (including any Lender) under Section 2.17 pursuant to which such Person shall provide an Incremental Commitment hereunder and (if such Person is not then a Lender) shall become a Lender party hereto.

“Latest Maturity Date” means, as of any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time.

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

“Legalized Marijuana State” means any U.S. state, territory or locality whose Requirements of Law permit or authorize any form of Marijuana Activities.

“Lenders” means the Initial Lenders any other Person that shall have become party hereto pursuant to an Assignment and Assumption or a Joinder Agreement, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

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

“Liquidity” means, as of any date of determination, the sum of (a) the amount of cash and Cash Equivalents of the Borrower and its Subsidiaries that is held in a deposit account or securities account, as applicable, pledged in favor of the Agent pursuant to the Pledge and Security Agreement and, with effect from the date a Control Agreement in respect of such account is required to be delivered pursuant to this Agreement, subject to a Control Agreement and (b) any commitments for loans under revolving credit facilities which constitute Indebtedness permitted under this Agreement and are available to be drawn by the Borrower or any of its the Subsidiaries, it being understood that in each case, such amount shall exclude any cash or Cash Equivalents identified on a balance sheet as “restricted” (other than cash restricted in favor of the Agent and the Lenders).

“Loan” means an Initial Loan and any loan under an Incremental Facility made pursuant to Section 2.17.

“Loan Documents” means, collectively, this Agreement, the Guaranty Agreement, the Pledge and Security Agreement, the Founder Pledge Agreement, any Joinder Agreement, the Collateral Assignments, any other Collateral Documents, any promissory notes issued pursuant to Section 2.10(b), the Fee Letters, the Perfection Certificate and any other agreements, instruments, certificates, reports or other documents entered into in connection herewith.

“Loan Party” means individually or collectively Borrower and each Guarantor.

“Make-Whole Amount” means as of the date of the applicable prepayment or acceleration of any Loans, an amount equal to the excess of (i) the present value at the prepayment date, refinancing date or acceleration date of (1) the principal amount of such Loans on the No Call Expiration Date, plus (2) all required remaining scheduled interest payments due on such Loans from such prepayment date, refinancing date or acceleration date through the No Call Expiration Date, assuming that the rate of interest will be equal to the rate of interest in effect on the date of notice of prepayment, refinancing or acceleration, other than accrued but unpaid interest to such prepayment, refinancing or acceleration date, computed using a discount rate equal to the Treasury Rate plus 50 basis points per annum discounted on a semi-annual bond equivalent basis, plus (3) the Prepayment Premium payable as if such prepayment, refinancing or acceleration occurred on the day immediately following the No Call Expiration Date, over (ii) the outstanding principal amount of such Loan as at the applicable date.

“Margin Stock” means margin stock within the meaning of Regulations T, U and X.

“Marijuana” means “marihuana” as defined in the Controlled Substances Act, its constituents and any compound, mixture, preparation, substance or product derived therefrom. The term “Marijuana” does not include hemp as defined in section 297A of the Agricultural Marketing Act of 1946.

“Marijuana Activities” means those activities that include, but are not limited to, (a) the acquisition, cultivation, manufacture, extraction, testing, inspection, possession, sale (at retail or wholesale), dispensing, donation, distribution, transportation, packaging, labeling, warning, monitoring, reporting or disposing of Marijuana and (b) activities by which a Person receives, holds, transfers (in exchange for any form of value, by gift or otherwise), deposits or distributes monetary proceeds from the sale of Marijuana.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole; or (b) a material adverse effect on (i) the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents to which the Loan Parties are a party, (ii) the legality, validity, binding effect or enforceability against the Loan Parties of the Loan Documents, (iii) the rights, remedies and benefits available to, or conferred upon, the Agent or any Lender under the Loan Documents or (iv) the validity, perfection or priority of the Liens in favor of Agent for the benefit of the Lenders on a material portion of the Collateral.

“Material License” means any license, permit, approval, entitlement, consent, agreement or similar permission from a Governmental Authority that is required for Borrower or any of its Subsidiaries to conduct Marijuana Activities (for which it is actually conducting such Marijuana Activities) in a specific state, territory, geographic region, and/or local jurisdiction. For purposes of this definition only, neither the U.S. Federal government nor any agency thereof shall constitute a Governmental Authority.

“Material Real Property” means any parcel or related parcels of real property with a fair market value in excess of \$[***].

“Material Real Property Requirement” means, with respect to any Material Real Property owned by any Loan Party, the requirement that (a) the applicable Loan Party execute and deliver to the Agent a mortgage in form and substance reasonably acceptable to the Agent, (b) the applicable Loan Party deliver a mortgagee title policy (or binding pro forma therefor) covering Agent’s interest under the applicable mortgage, in form and amount and by a title insurer reasonably acceptable to the Agent, and such title policy shall include endorsements as reasonably requested by Agent and to be fully paid and subject to no other conditions on such effective date, (c) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably require with respect to other Persons having an interest in the such Material Real Property, (d) unless Agent otherwise agrees, either (i) a current, as-built survey of the Material Real Property, meeting the 2016 minimum standard detail requirements for ALTA/ACSM land title surveys, including, but not limited to, (w) a metes-and-bounds property description, (x) a flood plain certification, (y) certification by a licensed surveyor reasonably acceptable to Agent and (z) any other optional table A items as reasonably requested by Agent or (ii) existing surveys with respect to a particular piece of Material Real Property that are in the possession of the applicable Loan Party accompanied by a no-change survey affidavit, or similar document, in form and substance sufficient for a title insurer to issue any applicable survey related endorsement coverage as reasonably requested by Agent; and (e) flood zone determinations and, if the Material Real Property is within a special flood hazard area, an acknowledged borrower notice, and flood insurance in compliance (including as to amount) with all applicable flood insurance Laws and in a commercially reasonable amount, with endorsements and by an insurer reasonably acceptable to Agent.

“Maturity Date” means August 27, 2025 subject to extension in accordance with Section 2.16 (except that, if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day).

“Maximum Rate” has the meaning specified in Section 9.14.

“MedMen NY” means MedMen New York, Inc., a New York corporation.

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

“Multiple Employer Plan” means a Plan with respect to which the Borrower or any ERISA Affiliate is a contributing sponsor, and that has two or more contributing sponsors at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” shall mean with respect to any Disposition or Casualty Event, the proceeds consisting of cash and Cash Equivalents, net of (i) selling expenses (including reasonable broker’s fees or commissions, legal fees, transfer and similar taxes and the Borrower’s good faith estimate of income taxes paid or payable in connection with such sale), and (ii) amounts provided as a reserve, in accordance with Applicable Accounting Principles, against any liabilities under any indemnification obligations or purchase price adjustment associated with such Disposition (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); provided that any non-cash consideration received in connection with any transaction, which is subsequently converted to cash or Cash Equivalents, shall become Net Cash Proceeds only at such time as it is so converted; provided further that, solely with respect to proceeds from a Disposition or Casualty Event, if (x) subject to no Event of Default having occurred and be continuing, the Borrower notifies the Agent within ten Business Days of receiving such Net Cash Proceeds that it intends to reinvest such Net Cash Proceeds in assets of a kind used or usable in the business of a Loan Party or a Subsidiary and (y) either (I) the Borrower or the applicable Loan Party or Subsidiary consummates any such reinvestment within 365 days of receipt of such proceeds or (II) if the Borrower or applicable Loan Party or Subsidiary enters into a contractual obligation to reinvest such Net Cash Proceeds within 365 days following receipt thereof, within 180 days following such contractual obligation, such proceeds shall not constitute Net Cash Proceeds except to the extent not so used at the end of such 180-day period (or 365 day period, if applicable), at which time such proceeds shall be deemed to be Net Cash Proceeds.

“Non-Consenting Lender” has the meaning specified in Section 9.02(b).

“Non-Extending Lender” has the meaning specified in Section 2.16(b).

“Notice Date” has the meaning specified in Section 2.16(b).

“No Call Expiration Date” means the date that is the 18 month anniversary of the Closing Date.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the foregoing, the Obligations include (a) the obligation to pay principal, interest, charges, expenses, fees, indemnities and other amounts payable by the Borrower under any Loan Document and (b) the obligation of the Borrower to reimburse any amount in respect of any of the foregoing that the Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Borrower.

“OFAC” has the meaning specified in Section 3.16(a).

“OID” has the meaning specified in Section 2.09(c).

“Organizational Documents” means (a) as to any corporation, the charter or certificate or articles of incorporation or amalgamation, as applicable, and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) as to any limited liability company, the certificate or articles of formation or organization and operating or limited liability agreement and (c) as to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement or instrument with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.15(b)).

“Outstanding Amount” means, with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“Participant” has the meaning specified in Section 9.04(d).

“Participant Register” has the meaning specified in Section 9.04(d).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any employee pension benefit plan within the meaning of Section 3(2) of ERISA (including a Multiple Employer Plan, but excluding a Multiemployer Plan) that is subject to the provisions Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Perfection Certificate” means a certificate, dated as of the date hereof, regarding the property and assets owned by the Loan Parties, in form and substance reasonably acceptable to the Agent, as such certificate may be supplemented from time to time pursuant to the terms of this Agreement and the Pledge and Security Agreement.

“Permitted Acquisition” means the purchase or other acquisition of all or substantially all of the business, a line of business or a business unit (whether by the acquisition of Equity Interests, assets or any combination thereof) of any Person that, upon the consummation thereof, will be a Subsidiary (including, without limitation, as a result of a merger, amalgamation or consolidation) and the purchase or other acquisition by the Borrower or any Subsidiary of all or substantially all of the property and assets of any Person (including any Investment which serves to increase the Borrower’s or its Subsidiary’s respective equity ownership in any Subsidiary); provided that, with respect to each purchase or other acquisition made pursuant to this definition, such purchase or other acquisition shall be at all times negotiated without the objection of the Board of Directors of the entity to be acquired, and, if applicable, has been approved by the target’s Board of Directors; and provided, further that:

(a) the Borrower and its Subsidiaries and any such newly created or acquired Subsidiary shall comply with any applicable requirements of Section 5.14; provided that the aggregate consideration payable for all Permitted Acquisitions with respect to any Subsidiary acquired in connection therewith that does not become a Subsidiary Guarantor or any assets which are not acquired by a Loan Party shall not exceed \$[***], except that a Subsidiary Guarantor may acquire at least an 85% equity interest in Medmen NY, which shall not become a Subsidiary Guarantor unless and until the Borrower and its Subsidiary Guarantors acquire 100% of the equity interest in MedMen NY;

(b) the lines of business of the Person to be (or the property and assets of which are to be) so purchased or otherwise acquired shall be of the type engaged in by the Borrower or its Subsidiaries on the Closing Date or substantially similar, incidental, complementary, ancillary or reasonably related thereto;

(c) immediately before and after giving effect to any such purchase or other acquisition, no Event of Default shall have occurred and be continuing and (b) immediately after giving effect to such purchase or other acquisition, the Borrower shall be in compliance with the covenants set forth in Section 6.12 as of the most recently ended fiscal period for which financial statements were delivered pursuant to Section 5.01(a) or (b);

(d) with respect to any transaction involving total consideration of more than \$[***], the Borrower shall have provided the Agent (for distribution to the Lenders) at least five Business Days prior to the date of consummation of such transaction (i) a reasonably detailed description of all material information relating thereto and copies of all material documentation (or substantially final drafts of) pertaining to such transaction, (ii) copies of any material existing environmental reports (solely to the extent reasonably available and in the possession or reasonable control of the Borrower or any of its Subsidiaries), and (iii) available financial statements of the target prepared within the previous twelve (12) month period, including unaudited financial statements thereof for the most recent interim period which are available.

“Permitted Convertible Notes” means convertible promissory notes issued by the Borrower or a Guarantor.

“Permitted Transferees” means with respect to any Person that is a natural person (and any Permitted Transferee of such Person), (a) such Person's immediate family, including his or her spouse, ex-spouse, children, stepchildren and their respective lineal descendants and (b) any trust or other legal entity the beneficiary of which is such Person's immediate family, including his or her spouse, ex-spouse, children, stepchildren or their respective lineal descendants and which is controlled by such Person, and (c) without duplication with any of the foregoing, such Person's heirs, executors and/or administrators upon the death of such Person and any other Person who was an Affiliate of such Person upon the death of such Person and who, upon such death, directly or indirectly owned Equity Interests in the Borrower.

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

“Placement Agent” means Seaport Global Securities LLC.

“Placement Agent Fee Letter” means the letter agreement, dated June 24, 2021, between the Borrower and the Placement Agent.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA, maintained for employees of the Borrower or any Subsidiary, or any such plan to which the Borrower or any Subsidiary is required to contribute on behalf of any of its employees or with respect to which the Borrower has any liability.

“Platform” means Debt Domain, Intralinks, Syndtrak, DebtX or a substantially similar electronic transmission system.

“Pledge and Security Agreement” means the Pledge and Security Agreement, dated as of the date hereof by and between the Borrower and the Agent.

“Pledged Collateral” has the meaning specified in the Pledge and Security Agreement.

“Prepayment Notice” means a notice by the Borrower to prepay Loans, which shall be in such form as the Agent may reasonably approve.

“Prepayment Premium” has the meaning specified in Section 2.05(d).

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

“Public Lender” has the meaning specified in Section 9.01(e).

“Purchase Money Obligation” shall mean, for any Person, the obligations of such Person in respect of Indebtedness incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets or the cost of installation, construction or improvement of any fixed or capital assets and any refinancing thereof, *provided, however*, that such Indebtedness is incurred within one hundred eighty (180) days after the acquisition, installation, construction, repair, replacement, exchange or improvement of such fixed or capital assets by such person.

“Recipient” means (a) the Agent or (b) any Lender, as applicable.

“Register” has the meaning specified in Section 9.04(c).

“Regulation D” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, 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.

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

“Required Lenders” means, at any time, Lenders having Loans representing more than 50% of the aggregate Outstanding Amount of Loans of all Lenders at such time; provided that, notwithstanding anything to the contrary contained in this Agreement, the aggregate Outstanding Amount of Loans held by Lenders that are Affiliated Lenders shall be excluded for purposes of making a determination of Required Lenders.

“Requirements of Law” means all Laws (including Environmental Laws), excluding (a) Federal Marijuana Law to the extent its then effective provisions forbid or restrict the conduct of Marijuana Activities and (b) any other U.S. federal law which by extension would be violated solely because a Marijuana Activity violates the then effective provisions of any Federal Marijuana Law.

“Resignation Effective Date” has the meaning specified in Section 8.06(a).

“Responsible Officer” means (a) the chief executive officer, president, executive vice president or a Financial Officer of the Borrower, (b) solely for purposes of the delivery of incumbency certificates and certified Organizational Documents and resolutions pursuant to Section 4.01, any vice president, secretary or assistant secretary of the Borrower and (c) solely for purposes of Borrowing Requests, prepayment notices and notices for Commitment terminations or reductions given pursuant to Article II, any other officer or employee of the Borrower so designated from time to time by one of the officers described in clause (a) in a notice to the Agent (together with evidence of the authority and capacity of each such Person to so act in form and substance reasonably satisfactory to the Agent). Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of any Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to such Person’s shareholders, partners or members (or the equivalent Persons thereof).

“Sale Leaseback Transaction” means any arrangement with any Person providing for the leasing by the Borrower or any of its Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Subsidiary to such Person in contemplation of such leasing.

“Sanctions” has the meaning specified in Section 3.16(a).

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

“Shareholders’ Equity” means, as of any date of determination, consolidated shareholders’ equity of the Borrower and its Subsidiaries as of such date determined in accordance with Applicable Accounting Principles.

“Solvent” means, as to any Person as of any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Lease” means the \$17,000,000 Capitalized Lease with respect to the Borrower’s Illinois facilities

“Subsidiary” of a Person means a corporation, partnership, limited liability company, unlimited liability company, association or joint venture or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time owned or the management of which is controlled, directly, or indirectly through one or more intermediaries, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower and Ascend Illinois Holdings, LLC and Ascend Illinois, LLC, and each of their respective Subsidiaries, shall constitute Subsidiaries of the Borrower so long as such Persons are Guarantors.

“Subsidiary Guarantor” means (a) each Subsidiary of the Borrower party to the Guaranty Agreement as of the Closing Date and (b) each other Subsidiary of the Borrower that guarantees, pursuant to Section 5.14 or otherwise, all or any part of the Obligations.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

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

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“Trade Date” has the meaning specified in Section 9.04(b)(i)(3).

“Treasury Rate” means, with respect to a prepayment prior to the No Call Expiration Date, the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two (2) Business Days prior to such prepayment date (or, if such Federal Reserve Statistical Release referred to in the previous parenthetical is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such prepayment date to the No Call Expiration Date; provided that if the period from such prepayment date to the No Call Expiration Date is not equal to the constant maturity of the United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a twelve (12) month period) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from such prepayment date to the No Call Expiration Date, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

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

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

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

“U.S. Tax Compliance Certificate” has the meaning specified in Section 2.14(g)(ii)(B)(3).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years calculated to the nearest one-twelfth that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“Wholly-Owned” means, as to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (a) director’s qualifying shares and (b) shares issued to foreign nationals to the extent required by Applicable Law) are owned by such Person and/or by one or more Wholly-Owned Subsidiaries of such Person.

“Withholding Agent” means the Borrower or the Agent as the context shall require in accordance with Section 2.14(b).

SECTION 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” The word “or” is not exclusive. The word “year” shall refer (i) in the case of a leap year, to a year of three hundred sixty-six (366) days, and (ii) otherwise, to a year of three hundred sixty-five (365) days. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) 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, (e) 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, and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.03 Accounting Terms; Changes in Applicable Accounting Principles.

(a) Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall be construed in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to the Agent for the benefit of the Lenders pursuant to Sections 5.01(a) and 5.01(b) relating to the Borrower and its consolidated Subsidiaries shall be prepared in accordance with GAAP as in effect at the time of such preparation.

(b) Changes in Applicable Accounting Principles. If the Borrower notifies the Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in Applicable Accounting Principles or in the application thereof on the operation of such provision (or if the Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in Applicable Accounting Principles or in the application thereof, then such provision shall be interpreted on the basis of Applicable Accounting Principles as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.04 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

COMMITMENTS AND BORROWINGS

SECTION 2.01 Commitments.

(a) Subject to the terms and conditions set forth herein each Initial Lender severally agrees to make a Loan to the Borrower on the Closing Date in an aggregate principal amount equal to such Initial Lender's Initial Commitment.

(b) Subject to the terms and conditions set forth herein and in the applicable Joinder Agreement with respect to the applicable Incremental Facility, each Incremental Lender under the applicable Incremental Facility severally agrees to make a Loan to the Borrower on such applicable Incremental Commitment Effective Date in an aggregate principal amount equal to such Incremental Lender's Incremental Commitment under such Incremental Facility.

(c) Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed.

SECTION 2.02 Loans and Borrowings.

(a) Borrowings. Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments as listed on Schedule 2.01 and, with respect to any Loans under the Incremental Facility, their respective Commitments as listed on the applicable Joinder Agreement, in each case, so long as no Default or Event of Default exists hereunder.

(b) Making of Loans. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Minimum Amounts. Each Borrowing shall be in an aggregate amount of \$5,000,000 or a larger amount in integral multiples of \$100,000 in excess thereof.

SECTION 2.03 Borrowing Requests.

(a) Notice by Borrower. Each Borrowing shall be made upon the Borrower's irrevocable notice to the Agent. Each such notice shall be in the form of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower, or may be provided telephonically or by electronic communication to the Agent (if promptly confirmed by such a written Borrowing Request consistent with such telephonic or electronic notice) and must be received by the Agent not later than 11:00 a.m. (New York City time) three (3) Business Days prior to the date of the requested Borrowing.

(b) Content of Borrowing Requests. Each Borrowing Request for a Borrowing pursuant to this Section shall specify the following information in compliance with Section 2.02: (i) the aggregate amount of the requested Borrowing; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the location and number of the Borrower's account to which funds are to be disbursed; and (iv) that no Default or Event of Default then exists hereunder. The Borrower shall provide a copy of each Borrowing Request to the Agent contemporaneously with the delivery thereof to the Lenders.

SECTION 2.04 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make the amount of each Borrowing to be made by it hereunder available to the Agent in immediately available funds, without counterclaim or setoff and free and clear of, and without any deduction or withholding for, any taxes or other payments, at the Agent's Office not later than 12:00 noon (New York City time) one (1) Business Day prior to any Borrowing. The Agent will make all such funds so received available to the Borrower in like funds, by wire transfer of such funds in accordance with the instructions provided in the applicable Borrowing Request.

(b) Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.04(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Lender and the Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the 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 interest rate applicable to such Loans. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the 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 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 Agent.

SECTION 2.05 Prepayments.

(a) Optional Prepayments. The Borrower may at any time and from time to time prepay the Loan in whole or in part without premium or penalty except as set forth in Section 2.05(d), subject to the requirements of this Section.

(b) Mandatory Prepayments.

(i) Indebtedness for Borrowed Money. In the event the Borrower or any Subsidiary shall receive proceeds from the issuance or incurrence of Indebtedness for borrowed money (other than any proceeds from issuance of Indebtedness for borrowed money expressly permitted pursuant to Section 2.17 or Section 6.01 of this Agreement), the Borrower shall, substantially simultaneously with the receipt of such proceeds by the Borrower or such Subsidiary, apply an amount equal to 100% of such proceeds to prepay the outstanding Loans on a pro rata basis, pay interest owed pursuant to Section 2.05(e), and to pay any prepayment premium required pursuant to Section 2.05(d).

(ii) Asset Sales and Casualty Events. Not later than the tenth Business Day following the receipt of Net Cash Proceeds with respect to any Disposition consummated pursuant to Section 6.04(h), 6.04(i) or any Casualty Event, the Borrower shall apply 100% of the Net Cash Proceeds received with respect thereto to prepay outstanding Loans on a pro rata basis, pay interest owed pursuant to Section 2.05(e) and, solely with respect to Net Cash Proceeds from a Disposition, to pay any prepayment premium required pursuant to Section 2.05(d) below.

(c) Notices. Borrower shall provide notice of each prepayment to be made pursuant to this Section 2.05 in the form of a written Prepayment Notice, appropriately completed and signed by a Responsible Officer of the Borrower, or by telephone to the Agent (if promptly confirmed by such a written Prepayment Notice consistent with such telephonic notice) and must be received by the Agent not later than 11:00 a.m. (New York City time) three (3) Business Days before the date of prepayment (which prepayment may be made expressly contingent upon the consummation of the related borrowing, Disposition or Casualty Event, as the case may be). Each Prepayment Notice shall specify (x) the prepayment date and (y) the principal amount of each Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice relating to a Borrowing, the Agent shall advise the applicable Lenders of the contents thereof. Each Prepayment Notice shall be irrevocable.

(d) Prepayment Premium. Any prepayment made (1) pursuant to Section 2.05(a), (2) Section 2.05(b)(i) above, or (3) as otherwise set forth in this Agreement (including any amounts paid or due upon acceleration) (each, a "Prepayment Premium Trigger Event"):

(i) on or prior to the No Call Expiration Date, shall be accompanied by a premium, paid to the applicable Lenders on a pro rata basis, in an amount equal to the Make-Whole Amount, or

(ii) after the No Call Expiration Date, shall be accompanied by a premium, paid to the applicable Lenders on a pro rata basis, on the principal amount so prepaid in accordance with the table set forth below (the "Prepayment Premium"):

<u>Prepayment Date</u>	<u>Prepayment Premium</u>
after the date that is the 18 month anniversary of the Closing Date but on or prior to the date that is the 30 month anniversary of the Closing Date	4.75%
after the date that is the 30 month anniversary of the Closing Date but on or prior to the date that is the 42 month anniversary of the Closing Date	2.375%
Thereafter	0%

It is understood and agreed that the Make-Whole Amount or Prepayment Premium applicable at the time of a Prepayment Premium Trigger Event shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Any Make-Whole Amount or Prepayment Premium payable under the terms of this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, and the Borrower agrees that it is reasonable under the circumstances currently existing. EACH LOAN PARTY EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING MAKE WHOLE PREMIUM IN CONNECTION WITH SUCH PREPAYMENT OR ACCELERATION. The Borrower expressly agrees (to the fullest extent that it may lawfully do so) that: (A) the Make-Whole Amount and Prepayment Premium are reasonable and are the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Make-Whole Amount and Prepayment Premium shall be payable notwithstanding the then-prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Make-Whole Amount or Prepayment Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Borrower expressly acknowledges that its agreement to pay the Make-Whole Amount and Prepayment Premium to the Lenders as herein described is a material inducement to the Lenders to provide the Commitments and make the Loans. For the avoidance of doubt, the Administrative Agent shall have no obligation to calculate, or to verify the Borrower's or any Lender's calculation of, any Make-Whole Amount or Prepayment Premium due under this Agreement.

(e) Amounts; Application. Each partial prepayment of any Borrowing made pursuant to Section 2.05(a) shall be in an amount that would be permitted in the case of a Borrowing as provided in Section 2.02(c). Each prepayment shall be applied ratably to the outstanding Loans and to each Lender on a pro rata basis. All prepayments pursuant to Section 2.05(a) and (b) shall be accompanied by accrued but unpaid interest up to, but not including, the date of the applicable repayment with respect to the applicable Loans being prepaid, to the extent required by Section 2.08.

(f) Lender Opt-Out. With respect to any prepayment of Loans pursuant to Section 2.05(b)(ii), any Lender, at its option, may elect to decline such prepayment by notifying the Borrower any time on or after the day on which such Lender received notice of such prepayment pursuant to Section 2.05(c) and on or before the day that is two (2) Business Days prior to the day on which such prepayment is to be made. Any amounts declined by a Lender pursuant to this Section 2.05(f) shall be retained by the Borrower or applicable Subsidiary.

SECTION 2.06 Termination of Commitments. The Initial Commitments shall automatically and permanently terminate on the Closing Date upon the funding of the Loans under the Initial Facility. The Incremental Commitments under such Incremental Facility shall automatically and permanently terminate on the applicable Incremental Commitment Effective Date upon the funding of the Loans under such Incremental Facility.

SECTION 2.07 Repayment of Loans. The Borrower shall repay to each Lender on a pro rata basis the aggregate principal amount of all Loans outstanding under the Facility on the Maturity Date.

SECTION 2.08 Interest.

(a) Interest Rates. Subject to clause (b) of this Section, each Loan shall bear interest at fixed rate of 9.50% per annum.

(b) Default Interest. If any amount payable by the Borrower under this Agreement or any other Loan Document (including principal of any Loan, interest, fees and other amount) is not paid when due, whether at stated maturity, by acceleration or otherwise (including any automatic acceleration in connection with clause (g), (h) or (i) of Section 7.01), such amount shall thereafter bear interest at a rate per annum equal to the applicable Default Rate. Upon the written request of the Required Lenders while any Event of Default exists, the Borrower shall pay interest on the principal amount of all Loans outstanding hereunder at a rate per annum equal to the applicable Default Rate from and after the date of such request while such Event of Default exists.

(c) Payment Dates. Interest on the unpaid principal amount of each Loan shall accrue from the date of such Loan (based on the amount of such Loan in United States dollars determined as of the date that such Loan was funded hereunder) until the Maturity Date at a rate per annum equal at all times to the interest rate pursuant to Section 2.08(a). Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein; provided that (i) interest accrued pursuant to clause (b) of this Section shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment. All accrued, unpaid interest shall be due and payable in full on the Maturity Date. The payment of interest shall be made to an account held by each Lender and designated by each Lender in writing in not less than five (5) Business Days prior to the date when the interest is due. Interest shall be payable in the lawful currency of the United States.

(d) Interest Computation. All interest hereunder shall be computed on the basis of a year of 365 days (or 366 days in a leap year) and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

SECTION 2.09 Fees.

(a) Agent Fees. The Borrower agrees to pay to the Agent for its own account the fees payable in the amounts and at the times agreed pursuant to the Administrative Agency Fee Letter or otherwise in writing between the Borrower and the Agent. Once due, all fees shall be fully earned and shall not be refundable under any circumstances (except to the extent set forth in the Administrative Agency Fee Letter). Acquiom Agency Services LLC (and any successor acting as Agent) and its Affiliates may accept fees and other consideration from the Borrower or any Affiliate of the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

(b) Fee Computation. All fees payable under this Section shall be computed on the basis of a year of 360 days and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Each determination by the Agent of a fee hereunder shall be conclusive absent manifest error.

(c) Original Issue Discount. The Borrower agrees that Initial Loans shall be issued with original issue discount (“OID”) of 1.00% of the amount of all of the Initial Commitments of the Lenders as of the Closing Date (prior to the termination of such Initial Commitments); provided that all calculations of interest and fees in respect of the Initial Loans shall be calculated on the basis of their full stated principal amount. OID shall be in all respects fully earned as of the Closing Date.

SECTION 2.10 Evidence of Debt.

(a) Maintenance of Records. Each Lender shall maintain in accordance with its usual practice records evidencing the indebtedness of the Borrower to such Lender resulting from each Borrowing made by such Lender. The Agent shall maintain the Register in accordance with Section 9.04(c). The entries made in the records maintained pursuant to this clause (a) shall be prima facie evidence absent manifest error of the existence and amounts of the obligations recorded therein. Any failure of any Lender or the Agent to maintain such records or make any entry therein or any error therein shall not in any manner affect the obligations of the Borrower under this Agreement and the other Loan Documents. In the event of any conflict between the records maintained by any Lender and the records maintained by the Agent in such matters, the records of the Agent shall control in the absence of manifest error.

(b) Promissory Notes. Upon the request of any Lender made through the Agent, the Borrower shall prepare, execute and deliver to such Lender a promissory note of the Borrower payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and a form approved by the Agent, which shall evidence such Lender's Loan in addition to such records.

SECTION 2.11 Payments Generally; Several Obligations of Lenders.

(a) Payments by Borrower. All payments to be made by the Borrower hereunder and the other Loan Documents shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Subject to Section 2.14, all payment of interest and principal shall be made by the Borrower to each Lender to the account or at the address of such Lender as specified by the Agent, in United States Dollars in immediately available funds, without counterclaim or setoff and free and clear of, and without any deduction or withholding for, any Taxes or other payments. The amount payable to each Lender and information regarding the account of each Lender shall be provided by the Agent to the Borrower not less than five (5) Business Days prior to the date any such payment is due and payable hereunder. If any payment to be made by the Borrower shall fall due on a day that is not a Business Day, payment shall be made on the next succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day. Except as otherwise expressly provided herein, all payments hereunder or under any other Loan Document shall be made in Dollars.

(b) Application of Insufficient Payments. Subject to Section 7.02, if at any time insufficient funds are received by and available to the Agent to pay fully all amounts of principal, interest, fees and other amounts then due hereunder, such funds shall be applied (i) first, to pay interest, fees and other amounts then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest, fees and other amounts then due to such parties, and (ii) second, to pay principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Presumptions by Agent. Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the 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 the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such 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 Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

(d) Deductions by Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(b), 2.12 or 9.03(c), then the Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Agent for the account of such Lender for the benefit of the Agent to satisfy such Lender's obligations to the Agent until all such unsatisfied obligations are fully paid or (ii) hold any such amounts in a segregated account as cash collateral for, and for application to, any future funding obligations of such Lender under any such Section, in the case of each of clauses (i) and (ii) above, in any order as determined by the Agent in its discretion.

(e) Several Obligations of Lenders. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan or to make any such payment 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 or to make its payment under Section 9.03(c).

SECTION 2.12 Sharing of Payments. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided 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 subclause 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 or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this subclause shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

SECTION 2.13 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

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 any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender reasonably determines that any Change in 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 such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth calculations (in reasonable detail) of the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in clauses (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) Delay in Requests. 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; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 2.14 Taxes.

(a) Defined Terms. For purposes of this Section, the term "Applicable Law" includes FATCA.

(b) 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 Law. 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 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) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law any Other Taxes.

(d) Indemnification by Loan Parties. The Loan Parties shall indemnify each Recipient, within 10 Business 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) 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, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the calculation (in reasonable detail) of the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the 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 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 9.04(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 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the 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 Agent to the Lender from any other source against any amount due to the Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.14, the Loan Party shall deliver to the 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 Agent.

(g) Status of Lenders. (i) Any Recipient (including for all purposes of this Section 2.14(g)(i) any Agent) 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 Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Recipient, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Recipient 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 clauses (g)(ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(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 Agent on or about 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 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 Agent (in such number of copies as shall be requested by the recipient) on or about 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 Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E 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 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 B-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 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as 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; 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, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit B-2 or Exhibit B-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 B-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 Agent (in such number of copies as shall be requested by the recipient) on or about 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 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 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 Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the 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 Agent as may be necessary for the Borrower and the 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, if any, 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.

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 Agent in writing of its legal inability to do so.

(h) 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 (including by the payment of additional amounts pursuant to this Section), 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 paragraph (h) (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 paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) 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.

(i) Survival. Each party's obligations under this Section shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 2.15 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.13, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.14, 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 in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with clause (a) of this Section, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.04), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.13 or Section 2.14) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Agent the assignment fee (if any) specified in Section 9.04;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.13 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.16 Extension of Maturity Date.

(a) Request for Extension. The Borrower may, by notice to the Agent (who shall promptly notify the Lenders) not earlier than sixty (60) days and not later than thirty-five (35) days prior to the Maturity Date then in effect hereunder (the "Existing Maturity Date"), request that each Lender extend the Maturity Date for such Lender's Loans for an additional 364 days from the Existing Maturity Date.

(b) Lender Elections to Extend. Each Lender, acting in its sole and individual discretion, shall, by notice to the Agent (who shall promptly notify the Lenders) given not earlier than thirty (30) days prior to the Existing Maturity Date and not later than the date (the "Notice Date") that is twenty (20) days prior to the Existing Maturity Date, advise the Agent whether or not such Lender agrees to such extension (each Lender that determines to so extend its Maturity Date, an "Extending Lender"; and each Lender that determines not to so extend its Maturity Date, a "Non-Extending Lender") shall notify the Agent of such fact promptly after such determination (but in any event no later than the Notice Date) and any Lender that does not so advise the Agent on or before the Notice Date shall be deemed to be a Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender to so agree.

(c) Notification by Agent. The Agent shall notify the Borrower of each Lender's determination under this Section no later than the date fifteen (15) days prior to the Existing Maturity Date (or, if such date is not a Business Day, on the immediately preceding Business Day).

(d) Additional Lenders. The Borrower shall have the right on or before the Existing Maturity Date to replace each Non-Extending Lender with, and add as "Lenders" under this Agreement in place thereof, one or more Eligible Assignees (each, an "Additional Lender") as provided in Section 9.04 each of which Additional Lenders shall have entered into an Assignment and Assumption pursuant to which such Additional Lender shall, effective as of the Existing Maturity Date, assume the Outstanding Amount of Loans of such Non-Extending Lender set forth in such Assignment and Assumption (and, if any such Additional Lender is already a Lender, such Outstanding Amount of Loans so assigned and assumed shall be in addition to the Outstanding Amount of Loans of such Lender hereunder on such date).

(e) Minimum Extension Requirement. If (and only if) the total Outstanding Amount of Loans of the Lenders that have agreed so to extend their Maturity Date and the Outstanding Amount of Loans of the Additional Lenders shall be more than 50% of the Outstanding Amount of Loans of all Lenders immediately prior to the Existing Maturity Date, then, effective as of the Existing Maturity Date, the Maturity Date of each Extending Lender and of each Additional Lender (but not, for the avoidance of doubt, the Loans of Lenders that are not Extending Lenders or Additional Lenders) shall be extended to the date falling 364 days after the Existing Maturity Date (except that, if such date is not a Business Day, such Maturity Date as so extended shall be the immediately preceding Business Day) and each Additional Lender shall thereupon become a "Lender" for all purposes of this Agreement.

(f) Conditions to Effectiveness of Extensions. Notwithstanding the foregoing, the extension of the Maturity Date pursuant to this Section shall not be effective with respect to any Lender unless:

(i) no Default or Event of Default shall have occurred and be continuing on the date of such extension and after giving effect thereto;

(ii) the representations and warranties of the Loan Parties in this Agreement and in any other Loan Document shall be true and correct in all material respects (or, in the case of any such representation or warranty already qualified by materiality, in all respects) on and as of the date of such Borrowing (or, in the case of any such representation or warranty expressly stated to have been made as of a specific date, as of such specific date); and

(iii) on the Maturity Date, (1) the Borrower shall have paid in full the principal of and interest on all of the Loans made by each Non-Extending Lender to the Borrower hereunder and (2) the Borrower shall have paid in full all other amounts owing to such Non-Extending Lender hereunder.

(g) Amendment; Sharing of Payments. In connection with any extension of the Maturity Date, the Borrower, the Agent and each Extending Lender may make such amendments to this Agreement as the Agent determines to be reasonably necessary to evidence the extension. This Section shall supersede Sections 2.12 and 9.02.

SECTION 2.17 Incremental Commitments.

(a) Request for Incremental Facility. The Borrower may, by notice to the Agent (who shall promptly notify the Lenders), request the establishment of one or more new term loan commitments (each, an "Incremental Commitment") in the form of an increase to the Initial Facility up to an aggregate amount (for all such requests) that, when combined with the amount of the Initial Facility, shall not exceed \$275,000,000; provided that (i) any such request for an Incremental Facility shall be in a minimum amount of the lesser of (x) \$10,000,000 and (y) the entire remaining amount available under this Section and (ii) the Borrower shall make no more than a total of three (3) requests for an Incremental Facility under this Section 2.17.

(b) Incremental Lenders. An Incremental Commitment may be provided by any existing Lender or other Person that is an Eligible Assignee (each such existing Lender or other Person that agrees to provide an Incremental Commitment, an “Incremental Lender”); provided that each Incremental Lender shall be subject to the consent (in each case, not to be unreasonably withheld or delayed) of the Agent. Notwithstanding anything herein to the contrary, no Lender shall have any obligation to agree to provide an Incremental Commitment pursuant to this Section 2.17 and any election to do so shall be in the sole discretion of such Lender. Incremental Commitments shall first be offered to then-existing Lenders with respect to the Initial Commitments on a pro rata basis in accordance with such Lender’s holdings of the existing Loans (but each existing Lender shall have no obligation to accept such Incremental Commitments) and, to the extent such existing Lender has not agreed or declined to provide such Incremental Commitment within seven (7) days following such offer on the terms specified by the Borrower to the arranger of such Incremental Commitments, after being provided a bona fide opportunity to do so, the Borrower may then offer such opportunity to any other Person that is an Eligible Assignee.

(c) Terms of Incremental Commitments. The Agent and the Borrower shall determine the effective date for such Incremental Facility pursuant to this Section (an “Incremental Commitment Effective Date”) and, if applicable, the final allocation of such Incremental Commitments among the Persons providing such Incremental Facility; provided that such date shall be a Business Day at least ten (10) Business Days after delivery of the request for such Incremental Facility (unless otherwise approved by the Agent) and at least thirty (30) days prior to the Maturity Date then in effect. Each Incremental Facility shall have the same terms and be subject to the same conditions as the Initial Facility other than that the Incremental Facilities shall be subject to original issue discount and/or upfront fees as agreed among the Borrower and the applicable Incremental Lenders and such original issue discount and/or upfront fees shall not be required to be the same as the OID applicable to the Initial Loans.

In order to effect such Incremental Facility, the Borrower, the applicable Incremental Lender(s) and the Agent (but no other Lenders or Persons) shall enter into one or more Joinder Agreements, each in form and substance reasonably satisfactory to the Borrower and the Agent, pursuant to which the applicable Incremental Lender(s) will provide the Incremental Commitment(s).

Effective as of the applicable Incremental Commitment Effective Date, subject to the terms and conditions set forth in this Section, each Incremental Commitment shall be a Commitment and Schedule 2.01 shall be updated accordingly to reflect such Incremental Commitment, each Incremental Lender providing such Incremental Commitment shall be, and have all the rights of, a Lender, and the Loans made by it on such Incremental Commitment Effective Date pursuant to clause (e) of this Section shall be Loans, for all purposes of this Agreement.

(d) Conditions to Effectiveness. Notwithstanding the foregoing, the Incremental Commitments pursuant to this Section shall not be effective with respect to any Incremental Lender unless:

(i) no Default or Event of Default shall have occurred and be continuing on the Incremental Commitment Effective Date and after giving effect to the Borrowings under the Incremental Facility to be made on the Incremental Commitment Effective Date;

(ii) the representations and warranties contained in this Agreement are true and correct in all material respects (or, in the case of any such representation or warranty already qualified by materiality, in all respects) on and as of the Incremental Commitment Effective Date and after giving effect to such Incremental Facility, as though made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(iii) the Agent shall have received one or more Joinder Agreements contemplated above, providing for Incremental Commitments in the amount of such Incremental Facility;

(iv) immediately after giving pro forma effect to the funding of such Incremental Commitments, the Borrower shall be in compliance with Section 6.12 as of the most recently ended fiscal period for which financial statements were delivered pursuant to Section 5.01(a) or (b); and

(v) the Agent shall have received such legal opinions and other documents reasonably requested by the Agent in connection therewith;

As of such Incremental Commitment Effective Date, upon the Agent's receipt of the documents required by this clause (d), the Agent shall record the information contained in the applicable Joinder Agreement(s) in the Register and give prompt notice of the Incremental Commitments to the Borrower and the Lenders (including each Incremental Lender).

SECTION 2.18 Payment Protocols. The Agent shall, with one (1) Business Day of any request by Borrower, whether in connection with a payment, prepayment or otherwise, furnish to the Borrower a true and complete copy of the Register. The Borrower shall be entitled to rely upon, and shall not incur any liability for relying upon, the Register in connection with any payment or prepayment or otherwise.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Agent and the Lenders that:

SECTION 3.01 Existence, Qualification and Power. Each Loan Party and each other Subsidiary (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license, except, in each case referred to in clause (a) (other than with respect to the Borrower), (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which it is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of its Organizational Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which a Loan Party is a party or affecting a Loan Party or the properties of the Borrower or any Subsidiary or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which the Borrower or any Subsidiary or its property is subject or (c) violate any Requirements of Law.

SECTION 3.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Borrower of this Agreement or any other Loan Document or, with respect to the other Loan Parties, the Loan Documents to which such Loan Party is a party, except for (a) filings and recordings with respect to the Collateral to be made as of the Closing Date and (b) such approvals, consents, exemptions, authorizations, actions or notices that have been duly obtained, taken or made and in full force and effect.

SECTION 3.04 Execution and Delivery; Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against such Loan Party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other Laws affecting creditors' rights generally and by general principles of equity.

SECTION 3.05 Financial Statements; No Material Adverse Effect.

(a) Financial Statements. Each of (x) the audited consolidated balance sheet of the Borrower and its Subsidiaries dated December 31, 2020, and the related audited consolidated statements of income or operations, shareholders' equity and cash flows for the Fiscal Year ended on that date and (y) the unaudited interim consolidated balance sheet of the Borrower and its Subsidiaries dated June 30, 2021 and the related unaudited consolidated statements of income, shareholders' equity and cash flows for the six fiscal months then ended:

(i) were prepared in accordance with GAAP consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and

(ii) present fairly in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as of the dates thereof and results of operations for the periods covered thereby in accordance with GAAP consistently applied throughout the period covered thereby.

(b) No Material Adverse Change. Since December 31, 2020, there has been no event or circumstance that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 3.06 Litigation. There are no actions, suits, proceedings, claims, disputes or investigations pending or, to the knowledge of the Borrower, threatened, at Law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any Subsidiary or against any of their properties or revenues that (a) except as specifically disclosed in Schedule 3.06, either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (b) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby. There has been no change in the status, or financial effect on the Borrower or any Subsidiary, of the matters disclosed in Schedule 3.06 that, either individually or in the aggregate, has increased or could reasonably be expected to increase the likelihood that such matter(s) could have a Material Adverse Effect.

SECTION 3.07 No Defaults. Neither the Borrower nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

SECTION 3.08 Property.

(a) Ownership of Properties. Each of the Borrower and its Subsidiaries has good record and marketable title to, license to use, or valid leasehold interests in, or easements or other limited property interests in, as applicable, all property necessary or used in the ordinary conduct of its business, free and clear of all Liens, other than Liens permitted by Section 6.02, except to the extent a failure to have such good record and marketable title to, license to use, or valid leasehold interests in, or easements or other limited property interests in, as applicable, could not reasonably be expected to have a Material Adverse Effect.

(b) Intellectual Property. Each of the Borrower and its Subsidiaries owns, licenses or possesses the right to use all Intellectual Property rights that are reasonably necessary for the operation of their respective businesses, as currently conducted, and the use thereof by the Borrower and its Subsidiaries does not conflict with the rights of any Person, except to the extent that such failure to own, license or possess or such conflicts, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, no Person is infringing or violating any such Intellectual Property rights owned by the Borrower or any of its Subsidiaries, except to the extent that such infringements and violations, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. The conduct of the business of the Borrower or any Subsidiary as currently conducted or as contemplated to be conducted does not infringe upon, or violate any rights held by any Person, except to the extent that such infringements and violations, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened that could reasonably be expected to have a Material Adverse Effect.

(c) Material Licenses. Set forth on Schedule 3.08 is a complete and accurate list, as of the Closing Date, of all Material Licenses of the Borrower and each of its Subsidiaries, showing the parties and subject matter, and the remaining term thereof. Each of the Borrower and its Subsidiaries is in compliance in all material respects with each Material License and no investigation or proceeding is pending or, to the knowledge of the Loan Party, threatened in writing, that would reasonably be expected to result in the suspension, revocation or non-renewal of any such Material License.

SECTION 3.09 Taxes. The Borrower and its Subsidiaries have filed all federal, state, local and other tax returns and reports required to be filed, and have paid all federal, state, local and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) Taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.10 Disclosure. (a) The Borrower has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which the Borrower or any of its Subsidiaries is subject, and all other matters known to it, that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The reports, financial statements, certificates and other written information (other than projected or pro forma financial information) furnished by or on behalf of the Borrower to any Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished), taken as a whole, do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected or pro forma financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation and delivery (it being understood that such projected information may vary from actual results and that such variances may be material).

(b) The information included in the Beneficial Ownership Certification is true and correct in all respects.

SECTION 3.11 Compliance with Laws. Each of the Borrower and its Subsidiaries is in compliance with all Requirements of Law and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such Requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to so comply, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 3.12 ERISA Compliance.

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Borrower, threatened or contemplated claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(c) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan that, either individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(d) The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount. As of the most recent valuation date for each Multiemployer Plan, the potential liability of the Borrower or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 or Section 4205 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero.

(e) To the extent applicable, each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Requirements of Law and has been maintained, where required, in good standing with applicable regulatory authorities, except to the extent that the failure so to comply could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect. Neither the Borrower nor any Subsidiary has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan that is funded, determined as of the end of the most recently ended fiscal year of the Borrower or Subsidiary, as applicable, on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan by a material amount, and for each Foreign Plan that is not funded, the obligations of such Foreign Plan are properly accrued.

SECTION 3.13 Environmental Matters. Except with respect to any matters that, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, neither the Borrower nor any Subsidiary (a) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (b) knows of any basis for any permit, license or other approval required under any Environmental Law to be revoked, canceled, limited, terminated, modified, appealed or otherwise challenged, (c) has or could reasonably be expected to become subject to any Environmental Liability, (d) is aware of or has received notice of any claim, suit, complaint, proceeding, investigation or governmental inquiry with respect to any Environmental Liability (and no such claim, suit, complaint, proceeding, investigation or inquiry is pending or, to the knowledge of the Borrower, is threatened or contemplated) or (e) knows of any facts, events or circumstances that could give rise to any basis for any Environmental Liability of the Borrower or any Subsidiary.

SECTION 3.14 Margin Regulations. Neither the Borrower nor any of its Subsidiaries is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing hereunder will be used to buy or carry any Margin Stock except in compliance with applicable margin regulations. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) will be Margin Stock.

SECTION 3.15 Investment Company Act. Neither the Borrower nor any of its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.16 Sanctions; Anti-Money Laundering; Anti-Corruption.

(a) None of the Borrower, any of its Subsidiaries or any director, officer, employee, agent, or affiliate of the Borrower or any of its Subsidiaries is an individual or entity (“person”) that is, or is owned or controlled by persons that are: (i) the target of any sanctions administered or enforced by the United States (including without limitation the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) and the U.S. Departments of State or Commerce), the United Nations Security Council, the European Union and member states thereof, the United Kingdom (including without limitation Her Majesty’s Treasury), the government of Canada, or other relevant sanctions authority (collectively, “Sanctions”), or (ii) located, organized or resident in or operating from a country or territory that is the target of Sanctions (including the Crimea region of Ukraine, Cuba, Iran, North Korea and Syria).

(b) The Borrower, its Subsidiaries and their respective directors, officers and employees and, to the knowledge of the Borrower, the agents of the Borrower and its Subsidiaries, are and have been in compliance with all Sanctions, Anti-Money Laundering Laws, and with Anti-Corruption Laws. The Borrower and its Subsidiaries have instituted and maintain policies and procedures designed to ensure continued compliance with Sanctions, Anti-Money Laundering Laws, and Anti-Corruption Laws. There are no pending or, to the knowledge of the Borrower, threatened claims, actions, suits, inquiries, investigations, or proceedings involving the Borrower, its Subsidiaries, or their respective directors, officers, and employees with respect to any Sanctions, Anti Money-Laundering Laws, or Anti-Corruption Laws.

SECTION 3.17 Solvency. The Borrower and its Subsidiaries on a consolidated basis are, before and immediately upon giving effect to the incurrence of the Loans hereunder, Solvent.

SECTION 3.18 Collateral Documents.

(a) The Collateral Documents, upon execution and delivery thereof by the parties thereto, will create in favor of the Agent for the benefit of the Lenders, a legal, valid and enforceable security interest in the Collateral.

(b) (i) when UCC financing statements in the appropriate form are filed in respect of the applicable Loan Parties in the offices of secretaries of state of those states specified in paragraph 1(a) of the Perfection Certificate, to the extent perfection can be obtained by filing UCC financing statements, the Agent (for the benefit of the Lenders) shall have a fully perfected Lien on, and security interest in all right, title and interest of the relevant Loan Parties in the Collateral described therein (including, in the case of Intellectual Property, all state trademark registrations, common law trademarks and any applications for the registration of any of the foregoing, but excluding the Collateral described in the following clauses (ii) through (iv)) and, subject to Section 9-315 of the UCC, the proceeds thereof, as security for the Obligations, prior and superior in right to any other person (except for Liens permitted under Section 6.02), (ii) in the case of the Pledged Collateral, when the original stock certificates representing the Pledged Collateral and related transfer powers are delivered to the Agent and UCC financing statements in the appropriate form are filed in respect of the applicable Loan Parties in the offices of secretaries of state of those states specified in paragraph 1(a) of the Perfection Certificate, to the extent perfection can be obtained by the deposit of the original stock certificates and related transfer powers and the filing of UCC financing statements, the Agent (for the benefit of the Lenders) shall have a fully perfected Lien on, and security interest in all right, title and interest of the relevant Loan Parties in such Pledged Collateral and, subject to Section 9-315 of the UCC, the proceeds thereof, as security for the Obligations, prior and superior in right to any other person (except for Liens permitted under Section 6.02), (iii) in the case of any deposit or securities accounts included in the Collateral (which, for the avoidance of doubt, excludes Excluded Accounts), to the extent perfection can be obtained by entering into a Control Agreement, when a Control Agreement is entered into with respect to such deposit or securities accounts, the Agent (for the benefit of the Lenders) shall have a fully perfected Lien on, and security interest in all right, title and interest of the applicable Loan Parties in such deposit or securities accounts, as applicable, as security for the Obligations, prior and superior in right to any other person (except for Liens permitted under Section 6.02) and (iv) in the case of United States patent, United States copyright, and United States federal trademark registrations, and applications for the issuance or registration of any of the foregoing upon the recordation of a short-form security agreement in form and substance reasonably satisfactory to the Agent with the United States Patent and Trademark Office, or the United States Copyright Office, as applicable, together with the filing of UCC financing statements (together with any schedules the Agent requests that the Borrower includes to itemize such Intellectual Property included as Collateral) in the appropriate form in respect of the applicable Loan Parties in the offices of secretaries of state of those states specified in paragraph 1(a) of the Perfection Certificate, the Agent (for the benefit of the Lenders) shall have a fully perfected Lien on, and security interest in all right, title and interest of the applicable Loan Parties organized in the United States in such Intellectual Property in which a security interest may be perfected by such filing in the United States, in each case, prior and superior in right to any other Person (except for Liens permitted under Section 6.02 that have priority as a matter of law) (it being understood that subsequent recordings in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, may be necessary to perfect a Lien on patents, patent applications, and trademark and copyright registrations and applications for registration acquired, obtained or initiated by, or granted to, the Loan Parties after the date hereof).

ARTICLE IV

CONDITIONS

SECTION 4.01 Closing Date. The obligation of each Lender to make Borrowings on the Closing Date hereunder is subject to the satisfaction (or waiver in accordance with Section 9.02) of the following conditions (and, in the case of each document specified in this Section to be received by the Agent, such document shall be in form and substance satisfactory to the Agent and each Lender):

(a) Executed Counterparts. The Agent shall have received (i) from each party hereto a counterpart of this Agreement signed on behalf of such party (or written evidence reasonably satisfactory to the Agent (which may include transmission by electronic mail of a signed signature page to this Agreement) that such party has signed a counterpart of this Agreement), (ii) from each party to the Guaranty Agreement a counterpart of the Guaranty Agreement signed on behalf of such party (or written evidence reasonably satisfactory to the Agent (which may include transmission by electronic mail of a signed signature page to the Guaranty Agreement) that such party has signed a counterpart of the Guaranty Agreement), (iii) from each party to the Pledge and Security Agreement a counterpart of the Pledge and Security Agreement signed on behalf of such party (or written evidence reasonably satisfactory to the Agent (which may include transmission by electronic mail of a signed signature page to the Pledge and Security Agreement) that such party has signed a counterpart of the Pledge and Security Agreement), and (iv) from each party to the Collateral Assignments a counterpart of the Collateral Assignments signed on behalf of such party (or written evidence reasonably satisfactory to the Agent (which may include transmission by electronic mail of a signed signature page to the Collateral Assignments) that such party has signed a counterpart of the Collateral Assignments).

(b) Certificates. The Agent shall have received a certificate of a Responsible Officer of each Loan Party (or other person duly authorized by the constituent documents of such Loan Party) dated the Closing Date and certifying:

(i) that attached thereto is a true and complete copy of the Organizational Documents of such Loan Party as in effect on the Closing Date;

(ii) that attached thereto is a true and complete copy of resolutions (or equivalent authorizing actions) duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member), authorizing the execution, delivery and performance of the Loan Documents to which such Loan Party is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date; and

(iii) as to the incumbency and specimen signature of each officer or other duly authorized person executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party;

(c) Good Standing Certificates. The Agent shall have received a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of the relevant jurisdiction) of each Loan Party as of a recent date from the applicable Governmental Authority (or other similar official or registry).

(d) Opinion of Counsel to Borrower. The Agent shall have received an opinion of (i) Foley Hoag, LLP, counsel to the Loan Parties, (ii) Dentons US LLP, Illinois Counsel to the Loan Parties, (iii) Frantz Ward LLP, Ohio counsel to the Loan Parties, (iv) Benjamin D. Joffe PLLC, Michigan counsel to the Loan Parties and (v) O'Toole Scrivo, New Jersey counsel to the Loan Parties, in each case, addressed to the Agent and the Lenders and dated the Closing Date, in customary form and substance reasonably satisfactory to the Agent (and the Borrower hereby instructs such counsel to deliver such opinion to such Persons).

(e) Collateral Matters. The Agent shall have received (i) the Perfection Certificate signed on behalf of each Loan Party (or written evidence reasonably satisfactory to the Agent (which may include transmission by electronic mail of a signed signature page to the Perfection Certificate) that such party has signed a counterpart of the Perfection Certificate) with respect to the Loan Parties dated as of the Closing Date and duly, (ii) in respect of each Loan Party, the results of searches for any UCC financing statements in the applicable jurisdictions, tax Liens or judgment Liens, as applicable, filed against any Loan Property or its property, which results shall not show any such Liens (other than Liens permitted pursuant to Section 6.02), (iii) evidence reasonably satisfactory to the Agent that arrangements are in place for the filing of financing statements in respect of each Loan Party on Form UCC 1 in each office specified in Section 2.03(e) of the Pledge and Security Agreement, (iv) evidence reasonably satisfactory to the Agent that arrangements are in place for all original stock certificates or membership interest certificates representing all of the Equity Interests required to be pledged pursuant to each Pledge and Security Agreement or the Founder Pledge Agreement, accompanied by undated stock or membership interest transfer powers or other proper instruments of transfer reasonably acceptable to the Agent executed in blank, to be delivered to the Agent, (v) evidence reasonably satisfactory to the Agent that arrangements are in place for all original promissory notes and other instruments required to be pledged pursuant to each Pledge and Security Agreement, accompanied by note transfer powers or other proper instruments of transfer reasonably acceptable to the Agent executed in blank, to be delivered to the Agent and (vi) a certificate of a Responsible Officer of the Borrower certifying that attached thereto are true, complete and correct copies of each Material License as in effect on the Closing Date.

(f) Fees and Expenses. The Borrower shall have paid all fees, costs and expenses (including legal fees and expenses) agreed in writing to be paid by it to the Agent and the Lenders in connection herewith (including pursuant to the Fee Letters) to the extent due (and, in the case of expenses (including legal fees and expenses), to the extent that statements for such expenses shall have been delivered to the Borrower on or prior to the Closing Date).

(g) KYC Information.

(i) Upon the reasonable request of any Lender made at least five (5) Business Days prior to the Closing Date, the Borrower shall have provided to such Lender the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least three (3) days prior to the Closing Date.

(ii) At least five (5) days prior to the Closing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall deliver a Beneficial Ownership Certification.

(h) Financial Statements. The Borrower shall have delivered to the Agent the Audited Financial Statements and the unaudited quarterly financial statements of the Borrower and its consolidated Subsidiaries, in each case, referred to in Section 3.05(a).

(i) Officer's Certificate. The Agent shall have received a certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming satisfaction of the conditions set forth in this Section and compliance with the conditions set forth in clauses (b) and (c) of the first sentence of Section 4.02.

(j) Solvency Certificates. The Agent shall have received a certificate in the form attached hereto as Exhibit D, executed by a Financial Officer of the Borrower, certifying that the Borrower and its Subsidiaries are (after giving effect to the Loans made on the Closing Date), on a consolidated basis, Solvent.

(k) Other Documents. The Agent shall have received such other documents as the Agent or the Required Lenders (through the Agent) may reasonably request.

(l) Closing Date Refinancing. Substantially simultaneously with the making of the Initial Loan on the Closing Date, the Closing Date Refinancing shall be consummated (or irrevocably commenced and subject only to existing required notice periods with respect thereto).

Without limiting the generality of Section 8.03(c), for purposes of determining satisfaction of the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

The Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding.

SECTION 4.02 Conditions to All Borrowings. The obligation of each Lender to make a Borrowing (including its initial Borrowing and any Borrowing under an Incremental Facility) is additionally subject to the satisfaction of the following conditions:

(a) the Agent shall have received a written Borrowing Request in accordance with the requirements hereof;

(b) the representations and warranties of the Loan Parties set forth in this Agreement and in any other Loan Document shall be true and correct in all material respects (or, in the case of any such representation or warranty already qualified by materiality, in all respects) on and as of the date of such Borrowing (or, in the case of any such representation or warranty expressly stated to have been made as of a specific date, as of such specific date); and

(c) no Default shall have occurred and be continuing or would result from such Borrowing or from the application of proceeds thereof.

Each Borrowing Request by the Borrower hereunder and each Borrowing shall be deemed to constitute a representation and warranty by the Borrower on and as of the date of the applicable Borrowing as to the matters specified in clauses (b) and (c) above in this Section 4.02.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and all Obligations shall have been paid in full, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01 Financial Statements. The Borrower will furnish to the Agent and each Lender:

(a) as soon as available, and in any event within one hundred five (105) days after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, audited and accompanied by a report and opinion of independent public accountants of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards (and shall not be subject to any "going concern" (other than as a result of the Obligations coming due) or like qualification, exception or explanatory paragraph or any qualification, exception or explanatory paragraph as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries on a consolidated basis in accordance with Applicable Accounting Principles consistently applied, together with customary management's discussion and analysis of financial information; and

(b) as soon as available, but in any event within fifty (50) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ending September 30, 2021), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, certified by a Financial Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries on a consolidated basis in accordance with Applicable Accounting Principles consistently applied, subject only to normal year-end audit adjustments and the absence of notes, together with a customary management's discussion and analysis of financial information.

SECTION 5.02 Certificates; Other Information. The Borrower will deliver to the Agent and each Lender:

(a) concurrently with the delivery of the financial statements referred to in Section 5.01(a), but only to the extent consistent with applicable accounting industry policies generally followed by independent certified public accountants, a certificate of its independent certified public accountants stating that in making the examination necessary therefor no knowledge was obtained of any Default arising from a breach under Section 6.12 or, if any such Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in Sections 5.01(a) and (b), a duly completed certificate in the form of Exhibit C signed by a Responsible Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.12, and (iii) together with the financial statements referred to in Sections 5.01(a) and 5.01(b), providing supplemental information pertaining to Collateral and property of the Loan Parties as required pursuant to Section 5.14(c);

(c) promptly after the same are publicly available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements that the any Loan Party may file or be required to file with the SEC or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, and not otherwise required to be delivered pursuant hereto;

(d) promptly after the furnishing thereof, copies of any material request or notice received by any Loan Party, or any statement or report furnished by any Loan Party to any holder of debt securities of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished pursuant hereto;

(e) promptly after receipt thereof by any Loan Party, 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 the Borrower or any Subsidiary thereof;

(f) promptly following request therefor, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party, or any audit of any of them as the Agent or any Lender (through the Agent) may from time to time reasonably request; and

(g) promptly following any request therefor, (i) such other information regarding the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Loan Party, or compliance with the terms of the Loan Documents, as the Agent or any Lender (through the Agent) may from time to time reasonably request; or (ii) information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other Anti-Money Laundering Laws.

Documents required to be delivered pursuant to Section 5.01(a) or (b) or Section 5.02(c) or (d) (to the extent any such documents are included in materials otherwise filed with the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR) or similar foreign service, or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (A) upon written request by the Agent, the Borrower shall deliver paper copies of such documents to the Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (B) the Borrower shall notify the Agent and each Lender (by electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or 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 timely accessing posted documents or requesting delivery of paper copies of such document to it and maintaining its copies of such documents.

SECTION 5.03 Notices. The Borrower will promptly notify the Agent and each Lender of:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit, investigation, inquiry, claim or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof, including pursuant to any applicable Environmental Laws, that could reasonably be expected to be adversely determined, and, if so determined, could reasonably be expected to have a Material Adverse Effect;
- (c) the occurrence of any ERISA Event that, either individually or together with any other ERISA Events, could reasonably be expected to have a Material Adverse Effect;
- (d) notice of any action, suit, investigation, inquiry, claim or proceeding arising under any Environmental Law or of any noncompliance by the Borrower or any Subsidiary with any Environmental Law or any permit, approval, license or other authorization required thereunder that, if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- (e) any material change in accounting or financial reporting practices by the Borrower or any Subsidiary;
- (f) any matter or development that has had or could reasonably be expected to have a Material Adverse Effect;
- (g) any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification; and
- (h) any material breach or default by the Borrower or any of its Subsidiaries under a Material License or any dispute, claim, legal action, arbitration or other proceeding that is pending or has been threatened in writing, involving or affecting the validity, renewal or compliance with a Material License.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the occurrence requiring such notice and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 5.04 Preservation of Existence, Etc. The Borrower will, and will cause each of its Subsidiaries to, (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 6.03 or 6.04; (b) take all reasonable action to maintain all rights, licenses (including the Material Licenses), permits, privileges and franchises necessary or desirable in the normal conduct of its business, except, other than in the case of a Material License, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve and renew all of its registered Intellectual Property rights, and protect all of its material unregistered Intellectual Property rights, used in the operation of its business, the non-preservation, non-renewal or non-protection of which could reasonably be expected to have a Material Adverse Effect.

SECTION 5.05 Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, (a) maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order and condition (ordinary wear and tear excepted) and (b) make all necessary repairs thereto and renewals and replacements thereof, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.06 Maintenance of Insurance. The Borrower will, and will cause each of its Subsidiaries to, maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such Persons. If any portion of any Material Real Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, to the extent required by Applicable Laws, the Borrower shall, or shall cause the applicable Subsidiary to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance sufficient to comply with all applicable rules and regulations promulgated pursuant to any applicable flood insurance Laws and (ii) deliver to the Agent and the Lenders as requested evidence of such compliance in such form, on such terms and in such amounts reasonably acceptable to the Agent and the Lenders. Any such insurance shall name the Agent as additional insured or loss payee, as applicable.

SECTION 5.07 Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay, discharge or otherwise satisfy as the same shall become due and payable, all of its obligations and liabilities, including Tax liabilities, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.08 Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to:

(a) comply with all Requirements of Law and all orders, writs, injunctions and decrees applicable to it or to its business or property, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(b) take all reasonable and customary measures within its control (i) to conduct its business in a way that prevents the distribution of Marijuana to minors except by a caregiver qualified to provide such care for a minor, (ii) to prevent revenue from the sale of Marijuana going to criminal enterprises, gangs, cartels or any other illegal organization, activity or conspiracy, (iii) to prevent unlawful diversion of Marijuana from any Legalized Marijuana State to any other U.S. state (including any other Legalized Marijuana State), (iv) to prevent Marijuana Activities from being used as a cover or pretext for the trafficking of other drugs or other illegal activity, and (v) to discourage drugged driving and the exacerbation of other adverse public health consequences associated with Marijuana use.

SECTION 5.09 Environmental Matters. Except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect, the Borrower will, and will cause each of its Subsidiaries to, (a) comply with all Environmental Laws, (b) obtain, maintain in full force and effect and comply with any permits, licenses or approvals required for the facilities or operations of the Borrower or any of its Subsidiaries, and (c) conduct and complete any investigation, study, sampling or testing, and undertake any corrective, cleanup, removal, response, remedial or other action necessary to identify, report, remove and clean up all Hazardous Materials present or released at, on, in, under or from any of the facilities or real properties of the Borrower or any of its Subsidiaries.

SECTION 5.10 Books and Records. The Borrower will, and will cause each of its Subsidiaries to, maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be.

SECTION 5.11 Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, permit representatives and independent contractors of the Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the reasonable expense of the Borrower and at such reasonable times during normal business hours as may be reasonably requested; provided that, other than with respect to such visits and inspections during the continuation of an Event of Default, (a) only the Agent on behalf of the Lenders may exercise rights under this Section and (b) the Agent shall not exercise such rights more often than one (1) time during any calendar year; provided, further, that when an Event of Default exists the Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing under this Section at the expense of the Borrower and at any time during normal business hours and without advance notice. The Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's accountants.

SECTION 5.12 Use of Proceeds. The Borrower will, and will cause each of its Subsidiaries to, use the proceeds of the Loans to (a) effect the Closing Date Refinancing, (b) fund the acquisition of equity interests in MedMen NY in accordance with the Investment Agreement dated as of February 25, 2021 among the Borrower, AWH New York, LLC, Medmen NY and MM Enterprises USA, LLC, as now in effect, (c) fund the purchase commitment in accordance with the Membership Interest Purchase Agreement, dated as of December 14, 2020, among Ascend Illinois Holdings, LLC and the equity owners of Chicago Alternative Health Holdings, LLC and its affiliates, (d) pay transaction fees and expenses in connection with this Agreement and the other Loan Documents and the incurrence of the Loans, and (e) for working capital and general corporate purposes of the Borrower and its Subsidiaries not in contravention of any Requirement of Law or of any Loan Document.

SECTION 5.13 Sanctions; Anti-Money Laundering Laws; Anti-Corruption Laws. The Borrower will maintain in effect policies and procedures designed to promote compliance by the Borrower, its Subsidiaries, and their respective directors, officers, employees, and agents with Sanctions, Anti-Money Laundering Laws, and Anti-Corruption Laws.

SECTION 5.14 Additional Guarantors and Collateral Matters.

(a) The Borrower shall cause each Subsidiary of the Borrower organized or acquired after the Closing Date to become a Loan Party within sixty (60) days (or such later time as the Agent may agree) following the date of acquisition or organization, by (i) executing and delivering a supplement to the Guaranty Agreement, a supplement to the Pledge and Security Agreement, a supplement to the Perfection Certificate and each schedule thereto and such other documents as the Agent or the Required Lenders may reasonably request and (ii) taking such other actions as are necessary to deliver certificates, documents, opinions and statements with respect to such new Subsidiary substantially consistent with those certificates, instruments, documents, opinions and statements delivered on or before the Closing Date pursuant to Section 4.01(b) through (e).

(b) The Borrower shall, and shall cause each other Loan Party, to (i) notify the Agent promptly upon its acquiring or obtaining any Material Real Property after the Closing Date and shall satisfy the Material Real Property Requirement with respect to such Material Real Property within ninety (90) days (or such later time as the Agent may agree) of the date of acquiring or obtaining such Material Real Property and (ii) notify the Agent promptly upon entering into any lease agreements with respect to real property.

(c) The Borrower shall, and shall cause each other Loan Party, to deliver or cause to be delivered to the Agent, (i) concurrent with the delivery of the Compliance Certificate delivered pursuant to Section 5.02, a Perfection Certificate Supplement (as defined in the applicable Pledge and Security Agreement) or a certification of a Responsible Officer of the Borrower stating that the Perfection Certificate (as supplemented by delivery of any previous Perfection Certificate Supplement) remains true and accurate since last delivered to the Agent either on or before the Closing Date or pursuant to this clause (c) and (ii) all such information as the Agent or the Required Lenders shall reasonably request regarding such additional Collateral.

(d) The Borrower shall, and shall cause such new Subsidiary and each other Loan Party, to execute any and all further documents, financing statements, agreements and instruments (including, without limitation, legal opinions, corporate documents, corporate authorizations, title insurance policies and other insurance documents and endorsements and/or lien searches) with respect to such new Subsidiary, and take all further action (including filing Uniform Commercial Code and other financing statements, mortgages and deeds of trust) that may be required under Applicable Law, or that the Required Lenders or the Agent may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and first priority of the security interests created or intended to be created by the Collateral Documents. In addition, from time to time, the Borrower shall, and shall cause each other Loan Party and each such new Subsidiary, at its cost and expense, promptly secure the Obligations by pledging, charging, or creating, or causing to be pledged, charged or created, perfected security interests with respect to such of its assets and properties as the Agent or the Required Lenders shall designate (it being understood that it is the intent of the parties that the Obligations shall be secured by substantially all the assets of the Loan Parties including real and other properties acquired subsequent to the Closing Date). Such security interests and Liens will be created under the Collateral Documents and other security agreements, mortgages, deeds of trust and other instruments and documents in form and substance reasonably satisfactory to the Agent or the Required Lenders. The Borrower agrees to provide such evidence as the Agent or the Required Lenders shall reasonably request as to the perfection and priority status of each such security interest and Lien.

(e) On or prior to the date that is sixty (60) days (or such later date as the Agent may agree) after the later of (a) the date of acquisition or opening of any new deposit account or securities account maintained in the United States (in each case, other than any Excluded Accounts) by the Borrower, any other Loan Party (or if later, sixty (60) days after the date such Person became a Loan Party (or such later time as the Agent may agree)), or (b) the date any deposit account or securities account maintained in the United States ceases to be an Excluded Account (or, in each case, such later date reasonably agreed to by the Agent in its sole discretion), the Borrower or such other Loan Party shall enter into, and cause each depository or securities intermediary to enter into, Control Agreements with respect to such deposit account or securities account (other than any Excluded Accounts), or if such depository or securities intermediary does not timely enter into such Control Agreements, the Borrower or applicable Loan Party shall promptly close such accounts and move such accounts to a depository or securities intermediary that does comply with the requirements herein to enter into such Control Agreements.

SECTION 5.15 Post-Closing Obligations. The Borrower shall, and shall cause each of its Subsidiaries to, satisfy the requirements set forth on Schedule 5.15 in the time periods set forth therein. The parties acknowledge and agree that notwithstanding anything herein to the contrary, all conditions, representations, warranties and covenants of the Loan Documents with respect to the taking of such actions are qualified by the non-completion of such actions until the earlier of the time at which they are completed or required to be completed in accordance with this Section 5.15.

SECTION 5.16 Quarterly Lender Calls. Borrower shall participate in a quarterly conference call for Lenders to discuss financial and other information regarding the Borrower and its Subsidiaries and their business, at times mutually agreed by the Agent and the Borrower, each acting reasonably; provided that such calls shall be limited to once per quarter and shall be held within ten (10) Business Days following the earlier of (a) the delivery of the Compliance Certificate pursuant to Section 5.02(a) or (b) the date on which such a Compliance Certificate was required to be delivered pursuant to Section 5.02(a) or (b); provided, further, that the foregoing may be satisfied by holding of any quarterly earnings call with public equity holders.

ARTICLE VI

NEGATIVE COVENANTS

Until the Commitments have expired or been terminated and all Obligations have been paid in full, the Borrower covenants and agrees with the Agent and the Lenders that:

SECTION 6.01 Indebtedness. The Borrower will not, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Loan Documents;
- (b) Indebtedness outstanding on the date hereof and listed on Schedule 6.01;
- (c) Guarantees by the Borrower or any Subsidiary in respect of Indebtedness otherwise permitted hereunder incurred by (i) the Borrower or any Subsidiary Guarantor and (ii) to the extent such Guarantee is permitted as an Investment under Section 6.06, any Subsidiary that is not a Guarantor;
- (d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, provided that such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of mitigating risks associated with liabilities, commitments, investments, assets or property held or reasonably anticipated by such Person, or changes in the value of securities or currencies issued by such Person, and not for speculative purposes;
- (e) Indebtedness in respect of capital leases, Synthetic Lease Obligations and Purchase Money Obligations, provided that the aggregate amount of all such Indebtedness at any time outstanding shall not exceed \$[***];
- (f) Indebtedness of the Borrower or any Subsidiary as an account party in respect of standby letters of credit in the ordinary course of business, including with respect to bids for proposed Permitted Acquisitions, but not in any event with respect to borrowed money;
- (g) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(h) Indebtedness (i) resulting from a bank or other financial institution honoring a check, draft or similar instrument in the ordinary course of business or (ii) arising under or in connection with cash management services in the ordinary course of business;

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

(j) Indebtedness owing (i) from the Borrower or any Subsidiary Guarantor to any other Subsidiary Guarantor or the Borrower, (ii) from any Subsidiary that is not a Guarantor to any other Subsidiary that is not a Guarantor and (iii) in an aggregate principal amount not exceeding \$[***] at any time outstanding, from the Borrower or any Subsidiary Guarantor to any Subsidiary that is not a Guarantor; provided that, prior to the incurrence of any Indebtedness pursuant to this clause (j), the borrower and lender with respect to such Indebtedness shall have executed and delivered to the Agent either an intercompany subordination agreement or, to the extent required by the Pledge and Security Agreement, an intercompany note, in each case, reasonably satisfactory to the Agent;

(k) Indebtedness arising as a direct result of judgments, orders, awards or decrees against any Loan Party, in each case not constituting an Event of Default;

(l) unsecured Indebtedness representing any Taxes to the extent such Taxes are being contested by any Loan Party in good faith by appropriate proceedings and adequate reserves are being maintained by such Loan Party in accordance with Applicable Accounting Principles;

(m) unsecured Indebtedness in respect of obligations of the Borrower or any Subsidiary of the Borrower to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money; and

(n) Indebtedness that is either (i) assumed at the time of a Permitted Acquisition or (ii) incurred for the purposes of financing a Permitted Acquisition, provided that, in each case, (A) to the extent such Indebtedness is secured, it is not secured by any assets other than those assets that were acquired through such Permitted Acquisition (including, for avoidance of doubt, a limited recourse pledge of the Equity Interests of the relevant Subsidiary acquired in such Permitted Acquisition) or owned by a Subsidiary acquired through such Permitted Acquisition, (B) to the extent such Indebtedness is guaranteed, it is not guaranteed by any of the Loan Parties other than any Subsidiaries that are acquired as part of such Permitted Acquisition, (C) before and after giving effect to the incurrence or assumption of such Indebtedness and the related Permitted Acquisition as if such actions had occurred at the beginning of the most recently ended four fiscal quarter period, (I) the Financial Covenants on a pro forma basis would each be satisfied as of the last day of the most recently ended fiscal quarter and (II) the Consolidated Net Leverage Ratio on a pro forma basis as of the last day of the most recently ended fiscal quarter would be equal to or less than [***], (D) except in the case of deferred purchase price owing to the sellers, such Indebtedness does not have a scheduled final maturity earlier than at least 91 days following the Latest Maturity Date and (E) except in the case of deferred purchase price owing to the sellers, the Weighted Average Life to Maturity applicable to such Indebtedness is equal to or greater than the Weighted Average Life to Maturity of the Loans;

(o) Indebtedness incurred in connection with Sale Leaseback Transactions permitted pursuant to Section 6.04(h);

(p) Permitted Convertible Notes, provided that (i) the aggregate amount of the Permitted Convertible Notes at any time outstanding shall not exceed \$[***], (ii) the Permitted Convertible Notes shall be unsecured and shall not be guaranteed by the Borrower or any of its Subsidiaries, (iii) before and after giving effect to the incurrence of the Permitted Convertible Notes as if the Permitted Convertible Notes had been incurred at the beginning of the most recently ended four fiscal quarter period, (A) the Financial Covenants on a pro forma basis would each be satisfied as of the last day of the most recently ended fiscal quarter and (B) the Consolidated Net Leverage Ratio on a pro forma basis as of the last day of the most recently ended fiscal quarter would be equal to or less than [***], (iv) the Permitted Convertible Notes shall not have a scheduled final maturity earlier than at least 91 days following the Latest Maturity Date, (v) the Permitted Convertible Notes shall be expressly contractually subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent, (vi) the Weighted Average Life to Maturity applicable to the Permitted Convertible Notes shall be equal to or greater than the Weighted Average Life to Maturity of the Loans and (vii) the Permitted Convertible Notes shall have no scheduled amortization or scheduled payments of principal prior to ninety one (91) days following the Latest Maturity Date;

(q) Other Indebtedness not exceeding \$[***] at any one time outstanding that is subordinated to the Obligations on customary terms reasonably satisfactory to the Required Lenders; *provided* that, before and after giving effect to the incurrence of any Indebtedness pursuant to this clause, the Consolidated Net Leverage Ratio on a pro forma basis as of the last day of the most recently ended fiscal quarter would be equal to or less than [***]; and

(r) any refinancings, refundings, renewals or extensions of Indebtedness incurred under clause (b), (e), (j), (n), (o) and (p); *provided* that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to premiums, original issue discount, or other amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder, (ii) to the extent such Indebtedness incurred under clauses (b), (e), (j), (n), (o) and (p) is secured, such Indebtedness incurred under this clause (r) refinancing, refunding, renewing or extending such Indebtedness shall not be secured by any assets other than those assets securing the original Indebtedness that is subject to such refinancing, refunding, renewal or extension and (iii) to the extent such Indebtedness incurred under clauses (b), (e), (j), (n), (o) and (p) is guaranteed, such Indebtedness incurred under this clause (r) refinancing, refunding, renewing or extending such Indebtedness shall not be guaranteed by any Loan Party other than those Loan Parties guaranteeing the original Indebtedness that is subject to such refinancing, refunding, renewal or extension.

SECTION 6.02 Liens. The Borrower will not, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens in favor of the Borrower or any of its Subsidiaries or created under the Loan Documents;

(b) Liens existing on the date hereof and listed on Schedule 6.02 and any renewals or extensions thereof, *provided* that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 6.01(r), (iii) the direct or any contingent obligor with respect thereto is not changed and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 6.01(r);

(c) Liens for Taxes or other governmental charges not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with Applicable Accounting Principles, or for property Taxes on property that the Borrower or any of its Subsidiaries has determined to abandon if the sole recourse for such Tax, assessment, charge, levy or claim is to such property;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business and which, if they secure obligations that are then due and unpaid and are overdue for more than sixty (60) days are being contested in good faith by appropriate proceedings for which adequate reserves have been established with respect thereto on the books of the applicable Person;

(e) Liens securing Indebtedness permitted under Section 6.01(e); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (except for additions and accessions to such assets, the proceeds and products thereof and customary security deposits) and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, plus related transaction costs, of the property being acquired on the date of acquisition; provided that, in the case of clause (e)(i), individual financings provided by one lender may be cross collateralized to other financings provided by such lender or its affiliates;

(f) Liens imposed by Requirements of Law or pledges or deposits in the ordinary course of business in connection with (i) workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA, and (ii) public utility services provided to the Borrower or a Subsidiary;

(g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting real property that, in the aggregate, are not substantial in amount, and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person, and any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries;

(i) Liens securing judgments for the payment of money, or orders, attachments, decrees or awards, in each case not constituting an Event of Default under Section 7.01(j);

(j) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary (or that is merged or amalgamated into the Borrower or any Subsidiary of the Borrower) after the date hereof prior to the time such Person becomes a Subsidiary (or that is merged or amalgamated into the Borrower or any Subsidiary of the Borrower); provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary (provided, however, that such Liens may include a limited recourse pledge of the Equity Interests of the relevant acquired Subsidiary) and (iii) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof (other than increases relating to transaction costs of such extensions, renewals and replacements);

(k) Liens securing Indebtedness incurred pursuant to Section 6.01(o); provided that any such Liens attach only to the property being financed pursuant to such Indebtedness and do not encumber any other property of the Borrower or any of its Subsidiaries;

(l) Liens (i) of a collecting bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of setoff) that are customary in the banking industry;

(m) any interest or title of a lessor, sublessor, licensor or sublicensor under leases or non-exclusive licenses permitted by this Agreement that are entered into in the ordinary course of business;

(n) leases, non-exclusive licenses, subleases or non-exclusive sublicenses granted to others in the ordinary course of business that do not (i) interfere in any material respect with the ordinary conduct of the business of the Borrower and its Subsidiaries, or (ii) secure any Indebtedness;

(o) Liens securing Indebtedness permitted under Section 6.01(n);

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(q) Liens incurred in the ordinary course of business in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller or shipper of such goods or assets and only attach to such goods or assets, and;

(r) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Loan Party in the ordinary course of business in accordance with the past practices of such Loan Party;

(s) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Loan Party, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts, sweep accounts and netting arrangements and similar arrangements of the Loan Parties consisting of the right to apply the funds held therein to satisfy overdraft or similar obligations incurred in the ordinary course of business of such person; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness, and Liens granted in the ordinary course of business by the Borrower or any of its Subsidiaries to any bank with whom it maintains accounts to the extent required by the relevant bank's (or custodian's or trustee's, as applicable) standard terms and conditions, in each case, which are within the general parameters customary in the banking industry;

(t) Liens (i) on advances of cash or Cash Equivalents in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 6.06 to be applied against the purchase price for such Investment, (ii) Liens on deposits or other amounts held in escrow to secure contractual payments (contingent or otherwise) payable by the Borrower or its Subsidiaries to a seller after the consummation of a Permitted Acquisition or other permitted Investment, and (iii) Liens attaching solely to cash earnest money deposits in connection with an Investment permitted by Section 6.06;

(u) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(v) (i) deposits of cash with the owner or lessor of premises leased or operated by the Borrower or any of its Subsidiaries and (ii) cash collateral on deposit with banks or other financial institutions issuing standby letters of credit (or backstopping such letters of credit) or other equivalent bank guarantees, in each case, in the ordinary course of business of the Borrower and such Subsidiaries, including to secure bids in connection with proposed Permitted Acquisitions, but not in any event to secure the payment of borrowed money;

(w) statutory Liens incurred or pledges or deposits made in favor of a Governmental Authority to secure the performance of obligations of any Loan Party under Environmental Laws to which any assets of such Loan Party are subject; and

(x) Liens securing Indebtedness and other obligations in an aggregate amount not exceeding \$[***] at any one time outstanding.

SECTION 6.03 Fundamental Changes. The Borrower will not, nor will it permit any Subsidiary to, merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Subsidiary Guarantor is merging with another Subsidiary, a Subsidiary Guarantor shall be the continuing or surviving Person;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Subsidiary Guarantor, then the transferee shall either be the Borrower or another Subsidiary Guarantor;

(c) the Borrower and its Subsidiaries may make Dispositions permitted by Section 6.04;

(d) any Investment permitted by Section 6.06 may be structured as a merger, consolidation or amalgamation; and

(e) any Subsidiary may dissolve, liquidate or wind up its affairs if it owns no material assets, engages in no business and otherwise has no activities other than activities related to the maintenance of its existence and good standing.

SECTION 6.04 Dispositions. The Borrower will not, and will not permit any Subsidiary to, make any Disposition or enter into any agreement to make any Disposition, except:

- (a) Dispositions of property no longer used or useful in the business, or obsolete or worn out property in the ordinary course of business;
- (b) Dispositions of inventory in the ordinary course of business;
- (c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (d) Dispositions of property by any Subsidiary to the Borrower or by the Borrower or a Subsidiary to a Subsidiary, provided that if the transferor of such property is a Loan Party, the transferee must be a Loan Party;
- (e) Dispositions permitted by Section 6.03;
- (f) leases, non-exclusive licenses, subleases or non-exclusive sublicenses granted in the ordinary course of business and on ordinary commercial terms that do not interfere in any material respect with the business of the Borrower and its Subsidiaries;
- (g) Restricted Payments permitted by Section 6.05 and Investments permitted by Section 6.06;
- (h) Sale Leaseback Transactions either (i) in an aggregate amount not to exceed \$[***] or (ii) so long as, before and after giving effect to such Sale Leaseback Transaction, the Consolidated Adjusted Interest Coverage Ratio on a pro forma basis as of the last day of the most recently ended fiscal quarter would be not less than [***], and
- (i) Dispositions by the Borrower and its Subsidiaries not otherwise permitted under this Section; provided that such Disposition must (i) be for the fair market value, (ii) with respect to any aggregate consideration received in respect thereof in excess of \$[***], at least 75% of consideration for such Disposition must consist of cash or Cash Equivalents (with any securities, notes or other obligations or assets received by the Borrower or any Subsidiary from such transferee that are converted by such Person into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred eighty (180) days following the closing of the applicable disposition, treated as cash) and (iii) the aggregate book value of all property Disposed of pursuant to this clause (i) in any fiscal year shall not exceed \$[***].

SECTION 6.05 Restricted Payments. The Borrower will not, and will not permit any Subsidiary to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

- (a) each Subsidiary may make Restricted Payments to the Borrower and any other Subsidiary of the Borrower that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of such Equity Interests in respect of which such Restricted Payment is being made;
- (b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in common Equity Interests of such Person;

(c) the Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new common Equity Interests by the Borrower or such Subsidiary;

(d) the Borrower may (i) declare or pay cash dividends to its shareholders and (ii) purchase, redeem or otherwise acquire for cash its Equity Interest in an aggregate amount for this clause (c) not to exceed 50% of Consolidated Net Income of the Borrower and its Subsidiaries (or, if Consolidated Net Income shall be a deficit, minus 100.0% of such deficit) accrued on a cumulative basis from the period (treated as one accounting period) beginning on July 1, 2021 to the end of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 5.01(a) or (b), but in no event shall such amount be less than zero; provided that use of this clause (d) shall be subject to (A) no Default or Event of Default then occurring or continuing or resulting therefrom, (B) the Borrower and its Subsidiaries being in compliance with the Financial Covenants on a pro forma basis after giving effect to such Restricted Payment and (C) so long as, before and after giving effect to such Restricted Payment, (i) the Consolidated Adjusted Interest Coverage Ratio on a pro forma basis as of the last day of the most recently ended fiscal quarter would not be less than [***] and (ii) the Consolidated Net Leverage Ratio on a pro forma basis as of the last day of the most recently ended fiscal quarter would not exceed [***];

(e) the Borrower and each Subsidiary may pay withholding or similar taxes payable by any future, present or former employee, director or officer (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) in connection with any repurchases of Equity Interests or the exercise of stock options;

(f) the Borrower may purchase, redeem or otherwise acquire Equity Interests constituting unexercised stock options, warrants, rights to acquire Equity Interests or other convertible securities, in an aggregate amount not to exceed \$[***],

(g) the Borrower may repurchase Equity Interests issued by it deemed to occur upon the cashless exercise of warrants and stock options.

SECTION 6.06 Investments. The Borrower will not, and will not permit any Subsidiary to, make any Investments, except:

(a) Investments held by the Borrower or such Subsidiary in the form of Cash Equivalents;

(b) (i) Investments in Subsidiaries in existence on the Closing Date, and (ii) other Investments in existence on the Closing Date and identified on Schedule 6.06, and any refinancing, refunding, renewal or extension of any such Investment that does not increase the amount thereof;

(c) Investments of the Borrower in any Subsidiary Guarantor and Investments of any Subsidiary in the Borrower or in another Subsidiary of the Borrower, provided that if the Subsidiary making such Investment is a Subsidiary Guarantor, then the Subsidiary that is receiving such Investment must also be a Subsidiary Guarantor;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

- (e) Investments consisting of the indorsement by the Borrower or any Subsidiary of negotiable instruments payable to such Person for deposit or collection in the ordinary course of business;
- (f) to the extent constituting an Investment, transactions otherwise permitted by Sections 6.01, 6.03 and 6.05;
- (g) Permitted Acquisitions and, after a binding contract with respect to a proposed Permitted Acquisition is signed, bridge loans to the proposed target company so long as any outstanding bridge loans are applied to the purchase price upon the consummation of such Permitted Acquisition; and
- (h) other Investments not exceeding \$[***] in the aggregate in any fiscal year of the Borrower.

SECTION 6.07 Transactions with Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to (a) transactions between or among the Borrower and any of its Wholly-Owned Subsidiaries or between and among any Wholly-Owned Subsidiaries, (b) Restricted Payments permitted by Section 6.05, (c) director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification arrangements and severance agreements, in each case approved by the Board of Directors of the Borrower or direct or indirect parent entity of the Borrower or the applicable Subsidiary, (d) transactions in respect of agreements and arrangements in effect on the Closing Date and set forth on Schedule 6.07 and any amendment or modification with respect to such agreement, arrangement or transaction, and the performance of obligations thereunder, so long as such amendment or modification is not materially adverse to the interests of the Lenders, and (e) any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by or merged into the Borrower or its Subsidiaries in accordance with the terms of this Agreement; provided that such agreement was not entered into in contemplation of such acquisition, merger or amalgamation, or any amendment thereto (so long as any such amendment is not disadvantageous to the Lenders in any material respect in the good faith judgment of the Borrower when taken as a whole as compared to such agreement as in effect on the date of such acquisition or merger).

SECTION 6.08 Certain Restrictive Agreements. The Borrower will not, and will not permit any Subsidiary to, enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that, directly or indirectly, (a) limits the ability of (i) any Subsidiary to make Restricted Payments to the Borrower or to otherwise transfer property to the Borrower, (ii) any Subsidiary to Guarantee Indebtedness of the Borrower or (iii) the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person to secure the Obligations or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided that this Section 6.08 shall not prohibit:

- (a) covenants in documents creating Liens permitted by Section 6.02 prohibiting further Liens on the properties encumbered thereby (other than Liens securing the Obligations);
- (b) customary restrictions on cash or other deposits;
- (c) net worth provisions in leases and other agreements entered into by a Loan Party in the ordinary course of business;

(d) contractual encumbrances or restrictions existing on the Closing Date and identified on Schedule 6.08;

(e) any prohibition or limitation that (i) exists pursuant to applicable Requirements of Law, (ii) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 6.04, stock sale agreement, purchase agreements, or acquisition agreements (including by way of merger, amalgamation, acquisition or consolidation) entered into by Borrower or any of its Subsidiaries solely to the extent pending the consummation of such transaction, which covenant or restriction is limited to the assets that are the subject of such agreements, or (iii) restricts subletting or assignment of leasehold interests contained in any lease governing a leasehold interest of the Borrower or any of its Subsidiaries;

(f) any documents relating to Indebtedness permitted hereunder that are, taken as a whole, in the good faith judgment of the Borrower, not materially more restrictive with respect to Borrower or any Subsidiary than (I) the restrictions contained in this Agreement or (II) restrictions in effect on the Closing Date (pursuant to documents included on Schedule 6.08);

(g) customary provisions restricting placing a lien on or sublicensing, or assignment of any license;

(h) customary provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business;

(i) customary restrictions and conditions contained in any software license;

(j) any agreement in effect at the time such Subsidiary becomes a Subsidiary, so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary of the Borrower and such agreement's restrictions are not applicable to any person, or the properties or assets of any person, other than the person or the properties or assets of the person so acquired; and

(k) customary provisions in partnership agreements, limited liability company organizational governance documents and other similar agreements entered into in the ordinary course of business that restrict the transfer of ownership interests in such partnership, limited liability company or similar person.

SECTION 6.09 Changes in Fiscal Periods. The Borrower will not permit the last day of its fiscal year to end on a day other than December 31 or change any Loan Party's method of determining its fiscal quarters.

SECTION 6.10 Changes in Nature of Business. The Borrower will not, and will not permit any Subsidiary to, engage to any material extent in any business other than those businesses conducted by the Borrower and its Subsidiaries on the date hereof or any business reasonably related, ancillary, complimentary or incidental thereto, necessary or appropriate for, or representing a reasonable expansion thereof.

SECTION 6.11 Restriction on Use of Proceeds. The Borrower will not use the proceeds of any Borrowing, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry Margin Stock, or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund indebtedness originally incurred for such purpose.

SECTION 6.12 Financial Covenants.

(a) Minimum Liquidity. The Borrower and its consolidated Subsidiaries will not permit Liquidity as of 5:00 pm (New York City time) on the last day of each fiscal quarter (commencing with the fiscal quarter ending December 31, 2021) and each fiscal quarter thereafter to be less than \$20,000,000.

(b) Consolidated Interest Coverage Ratio. The Borrower and its consolidated Subsidiaries will not permit the Consolidated Interest Coverage Ratio as of the end of any fiscal quarter of the Borrower, starting with the fiscal quarter ending on December 31, 2021, to be less than the ratio set forth below opposite such fiscal quarter:

Fiscal Quarters Ending	Minimum Consolidated Interest Coverage Ratio
December 31, 2021	2.00:1.00
March 31, 2022	2.25:1.00
June 30, 2022 and thereafter	2.50:1.00

(c) Equity Cure. For the purpose of determining whether a breach of the covenant set forth in Section 6.12(a) and/or Section 6.12(b) as of the last day of any fiscal quarter has occurred (each, a “Specified Covenant Default”), and so long as no other Default or Event of Default is then in existence, the Borrower shall have the right (a “Cure Right”), subject to the limitations set forth in Section 6.12(d), to designate any portion of the net cash proceeds from the sale or issuance of common Equity Interests of the Borrower or any cash contribution to the common capital of the Borrower made after the Closing Date, with subsequent contributions of the proceeds thereof to the common capital of the Borrower (the “Cure Amount”) as, solely to the extent set forth in this Section 6.12(c), an increase to Consolidated EBITDA and/or Liquidity for the specified fiscal quarter (the “Specified Period”); provided that: (a) the Cure Amount is received during the Specified Period or prior to the 10th day after the date on which financial statements with respect to the Specified Period are required to be delivered to the Agent (the “Cure Standstill Period”); (b) the Cure Amount does not exceed the aggregate amount necessary to cure the Specified Covenant Default for the Specified Period; (c) during the Cure Standstill Period, Borrower shall have provided written notice to Agent (which shall be irrevocable) that such amounts are designated as a “Cure Amount” with respect to the Specified Period; and (d) during the Cure Standstill Period, no Default or Event of Default shall be deemed to be outstanding under this Agreement as a result of the Specified Covenant Default. Upon actual receipt of the Cure Amount by the Borrower in accordance with the foregoing, Consolidated EBITDA and/or Liquidity (as applicable) for the Specified Period solely in respect of the covenants under Section 6.12 shall be deemed retroactively to have been increased in the amount of the Cure Amount, and any Default or Event of Default arising as a result of the Specified Covenant Default for such Specified Period, to the extent that it would not have existed had Consolidated EBITDA for the Specified Period been increased by the Cure Amount, shall be deemed not to have occurred for purposes of the Loan Documents.

(d) The Cure Amount included in the calculation of Consolidated EBITDA and/or Liquidity for the Specified Period shall be used and included when calculating Consolidated EBITDA and Liquidity for each four fiscal quarter period that includes the Specified Period, but solely for purposes of determining whether a Specified Covenant Default has occurred, and for no other purposes. For the avoidance of doubt, any right to utilize any basket levels, or any right to engage in any transaction under this Agreement, the Cure Amount will be disregarded in determining Consolidated EBITDA or Liquidity for such purposes, and there shall be no pro forma reduction in Indebtedness with the proceeds of any Cure Amount for determining compliance with Section 6.12 for the Specified Period or for determining any pricing, financial covenant-based conditions, or baskets with respect to the covenants contained in this Agreement. Notwithstanding anything to the contrary contained in this Section 6.12, the Cure Right set forth in clause (c) of this Section 6.12 may not be exercised in more than two (2) consecutive fiscal quarters.

SECTION 6.13 Sanctions; Anti-Corruption Use of Proceeds. The Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of the Anti-Corruption Laws, or (b) (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is the target of Sanctions, or (ii) in any other manner that would result in any Person (including any Person participating in the Loans, whether as Agent, Placement Agent, Lender, underwriter, advisor, investor, or otherwise) breaching Sanctions or becoming the target of any Sanctions.

SECTION 6.14 Federal Enforcement Priorities

. The Borrower will not, and will not permit any Subsidiary to, permit any of its directors, officers, employees, consultants, agents or representatives to (a) engage in violence or the use of firearms (except as may be required or permitted for security purposes under applicable state law governing Marijuana Activities), or permit the use of violence or firearms, in the conduct of any Marijuana Activities, (b) grow or permit the growth of Marijuana on any public lands, or (c) possess or use, or permit the possession or use of, Marijuana on federal property.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01 Events of Default. If any of the following events (each, an “Event of Default”) shall occur:

- (a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the Borrower shall fail to pay any interest on any Loan, or any fee or any other amount (other than an amount referred to in clause (a) of this Section) payable under this Agreement or under any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) or more Business Days;
- (c) any representation or warranty made or deemed made by or on behalf of the Borrower, as applicable, in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or any waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or any waiver hereunder or thereunder, shall prove to have been incorrect in any material respect (or, in the case of any such representation or warranty under this Agreement or any other Loan Document already qualified by materiality, such representation or warranty shall prove to have been incorrect in any respect) when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.03(a), Section 5.04 (with respect to the Borrower's existence), Section 5.12, Section 5.15 or in Article VI;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document (other than those specified in clause (a), (b) or (d) of this Section) and such failure shall continue unremedied for a period of thirty (30) or more days after receipt by the Borrower of written notice thereof from the Agent;

(f) (i) any Loan Party shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness under the Loan Documents) having an aggregate principal amount of more than \$[***], in each case beyond the applicable grace period with respect thereto, if any; or (ii) the Borrower or any Subsidiary shall fail to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided that this clause (f)(ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness is repaid when required under the documents providing for such documents;

(g) an involuntary case or proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief or any analogous case, proceeding, step or procedure in any jurisdiction (including any application for winding-up or dissolution) in respect of any Loan Party or its debts, or of a substantial part of its assets, under any Debtor Relief Law now or hereafter in effect or (ii) the appointment of a receiver, interim receiver, receiver and manager, monitor, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or for a substantial part of its assets, and, in any such case, such case, proceeding or petition shall continue undismissed for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Loan Party shall (i) voluntarily commence any case or proceeding or file any petition seeking liquidation, reorganization or other relief or any analogous case, proceedings, step or procedure in any jurisdiction (including any application for winding-up or dissolution) under any Debtor Relief Law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (g) of this Section, (iii) apply for or consent to the appointment of a receiver, interim receiver, receiver and manager, monitor, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such case or proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any formal action for the purpose of effecting any of the foregoing;

(i) any Loan Party shall become unable or admit in writing its inability or fail generally to pay its debts as they become due;

(j) there is entered against any Loan Party (i) a final judgment or order for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding [***] (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and has not denied or failed to acknowledge coverage), or (ii) a non-monetary final judgment or order that, either individually or in the aggregate, has or could reasonably be expected to have a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect;

(k) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount that could reasonably be expected to have a Material Adverse Effect;

(l) a Change of Control shall occur;

(m) any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations, ceases to be in full force and effect; or the Borrower, any Loan Party or any other Person contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports in writing to revoke, terminate or rescind any Loan Document; or

(n) any Loan Party is criminally indicted or convicted under any Requirement of Law, that may reasonably be expected to lead to a forfeiture of any property of such Loan Party having a fair market value in excess of \$[***]

then, and in every such event (other than an event with respect to the Borrower described in clause (g), (h) or (i) of this Section), and at any time thereafter during the continuance of such event, the Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times:

(i) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Borrower accrued hereunder and, to the extent applicable, the Make-Whole Amount and Prepayment Premium, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and

(ii) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents and Applicable Law;

provided that, in case of any event with respect to the Borrower described in clause (g), (h) or (i) of this Section, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations accrued hereunder and, to the extent applicable, the Make-Whole Amount and Prepayment Premium, shall automatically become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

SECTION 7.02 Application of Payments. Notwithstanding anything herein to the contrary, following the occurrence and during the continuance of an Event of Default, and notice thereof to the Agent by the Borrower or the Required Lenders, all payments received on account of the Obligations, including, without limitation, all proceeds of the Collateral, shall be applied by the Agent as follows:

(i) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees and disbursements and other charges of counsel payable under Section 9.03 and amounts payable under the Administrative Agency Fee Letter) payable to the Agent in its capacity as such;

(ii) second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees and disbursements and other charges of counsel payable under Section 9.03) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this clause (ii) payable to them;

(iii) third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause (iii) payable to them;

(iv) fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans ratably among the Lenders in proportion to the respective amounts described in this clause (iv) payable to them;

(v) fifth, to the payment in full of all other Obligations, in each case ratably among the Agent and the Lenders based upon the respective aggregate amounts of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(vi) finally, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

ARTICLE VIII

AGENCY

SECTION 8.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints Acquiom Agency Services LLC to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the 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.

SECTION 8.02 Merger or Consolidation. Any corporation or association into which Acquiom Agency Services LLC may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which Acquiom Agency Services LLC is a party, will be and become the successor Agent under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

SECTION 8.03 Rights as a Lender. The Person serving as the Agent (including any sub-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 Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent (including any sub-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 Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders. Acquiom Agency Services LLC (and any successor acting as Agent or any sub-agent) and its Affiliates may accept fees and other consideration from the Borrower or any Affiliate of the Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

SECTION 8.04 Exculpatory Provisions.

(a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and 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 the Person serving as the Agent or any of its Affiliates in any capacity;

(iv) shall not be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder; and

(v) shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Agent shall use its best efforts to resume performance as soon as practicable under the circumstances.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 7.01 and 9.02), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Agent in writing by the Borrower or a Lender. In the event that the Agent receives such a notice of the occurrence of a Default, the Agent shall take such action with respect to such Default or Event of Default as shall reasonably be directed by the Required Lenders, provided that, unless and until the Agent shall have received such directions, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Lenders.

(c) The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation (whether written or oral) made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the value, validity, enforceability, effectiveness, sufficiency or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent, (vi) any litigation or collection proceeding (or to initiate or conduct any such litigation or proceeding) under any Loan Document unless requested by the Required Lenders in writing and it receives indemnification satisfactory to it from the Lenders or (vii) the value or rating of any Collateral.

(d) If a payment is made by the Administrative Agent (or its Affiliates) in error (whether known to the recipient or not) or if a Lender or another recipient of funds is not otherwise entitled to receive such funds at such time of such payment or from such Person in accordance with the Loan Documents, then such Lender or recipient shall forthwith on demand repay to the Administrative Agent the portion of such payment that was made in error (or otherwise not intended (as determined by the Administrative Agent) to be received) in the amount made available by the Administrative Agent (or its Affiliate) to such Lender or recipient, with interest thereon, for each day from and including the date such amount was made available by the Administrative Agent (or its Affiliate) 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. Each Lender and other party hereto waives the discharge for value defense in respect of any such payment.

SECTION 8.05 Reliance by Agent. The 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 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 that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for the Borrower), 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.

SECTION 8.06 Delegation of Duties.

(a) The 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 Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Agent. The 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 Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(b) Any corporation or other entity into which the Agent may be merged or converted or with which the Agent may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Agent shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Agent, shall be the successor to the Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 8.07 Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, (i) the Required Lenders shall have the right, with the prior written consent of the Borrower (which consent is not required if an Event of Default has occurred and is continuing and which consent shall not be unreasonably withheld or delayed), to appoint, as applicable, a successor Agent (which shall be a Lender or such other Person appointed by the Required Lenders). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring 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 Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. 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 no such successor shall have been so appointed by applicable Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the applicable 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 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 Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring collateral agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Agent (other than any rights to indemnity payments owed to the retiring or removed Agent), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor 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 Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent.

SECTION 8.08 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges and agrees that it has, independently and without reliance upon the 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 credit analysis and decision to enter into this Agreement. Each Lender also acknowledges and agrees that it will, independently and without reliance upon the 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 decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the Agent hereunder and for other information in the Agent's possession which has been requested by a Lender and for which such Lender pays the Agent's expenses in connection therewith, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of any Loan Party or any of its Affiliates that may come into the possession of the Agent or any of its Affiliates.

SECTION 8.09 No Other Duties. Anything herein to the contrary notwithstanding, the Placement Agent 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 Agent or a Lender hereunder.

SECTION 8.10 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 Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the 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 and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and counsel and all other amounts due the Lenders and the Agent under Section 9.03) 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, interim receiver, receiver and manager, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Section 9.03.

SECTION 8.11 Indemnity of the Agent. THE LENDERS SEVERALLY AGREE TO INDEMNIFY THE AGENT AND ITS AFFILIATES AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS (TO THE EXTENT NOT REIMBURSED BY THE BORROWER), RATABLY ACCORDING TO THE RESPECTIVE PRINCIPAL AMOUNTS OF THE ADVANCES THEN HELD BY EACH OF THEM (OR IF NO PRINCIPAL OF THE ADVANCES IS AT THE TIME OUTSTANDING, RATABLY ACCORDING TO THE RESPECTIVE COMMITMENTS HELD BY EACH OF THEM IMMEDIATELY PRIOR TO THE TERMINATION, EXPIRATION OR FULL REDUCTION OF EACH SUCH COMMITMENT), FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES, OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST SUCH INDEMNIFIED PERSON IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY ACTION TAKEN OR OMITTED BY THE AGENT UNDER THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF SUCH INDEMNIFIED PERSON), AND INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL CLAIMS, PROVIDED THAT NO LENDER SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES, OR DISBURSEMENTS RESULTING FROM SUCH INDEMNIFIED PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN EACH CASE, AS DETERMINED BY A FINAL NON-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION. WITHOUT LIMITATION OF THE FOREGOING, EACH LENDER AGREES TO REIMBURSE THE AGENT PROMPTLY UPON DEMAND FOR ITS RATABLE SHARE (DETERMINED AS SET FORTH ABOVE IN THIS PARAGRAPH) OF ANY OUT-OF-POCKET EXPENSES (INCLUDING COUNSEL FEES) INCURRED BY THE AGENT IN CONNECTION WITH THE PREPARATION, EXECUTION, DELIVERY, ADMINISTRATION, MODIFICATION, AMENDMENT, OR ENFORCEMENT (WHETHER THROUGH NEGOTIATIONS, LEGAL PROCEEDINGS, OR OTHERWISE) OF, OR LEGAL ADVICE IN RESPECT OF RIGHTS OR RESPONSIBILITIES UNDER, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, TO THE EXTENT THAT THE AGENT IS NOT REIMBURSED FOR SUCH BY THE BORROWER.

SECTION 8.12 Certain Rights of the Agent. If the Administrative Agent or Collateral Agent shall request instructions from the Required Lenders with respect to any action or actions (including the failure to act) in connection with this Agreement or the other Loan Documents, such Administrative Agent or Collateral Agent, as applicable, shall be entitled to refrain from such act or taking such act unless and until it shall have received instructions from such Lenders, and such Administrative Agent or Collateral Agent, as applicable, shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent or Collateral Agent as a result of the Administrative Agent or Collateral Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders where required by the terms of this Agreement or the other Loan Documents.

SECTION 8.13 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional 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 Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such "Qualified Professional Asset Manager" made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 8.14 Collateral and Guaranty Matters.

(a) The Agent (acting at the direction of the Required Lenders) is authorized on behalf of the Lenders, without the necessity of any notice to or further consent from such Lenders, from time to time, to take any actions with respect to any Collateral or security instruments which may be necessary to perfect and maintain the Liens upon the Collateral granted pursuant to the Pledge and Security Agreement. The Agent (acting at the direction of the Required Lenders) is further authorized (but not obligated) on behalf of the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time, to take any action in exigent circumstances as may be reasonably necessary to preserve any rights or privileges of the Lenders under the Loan Documents or Applicable Law. By accepting the benefit of the Liens granted pursuant to the Pledge and Security Agreement, each Lender hereby agrees to the terms of this clause (a).

(b) The Lenders hereby, and any other Lender by accepting the benefit of the Liens granted pursuant to the Pledge and Security Agreement, irrevocably authorize the Agent to, and the Agent shall, upon request of the Borrower release any Lien granted to or held by the Agent upon any Collateral (a) upon termination of this Agreement and the payment in full of all outstanding Loans and all other Obligations (other than contingent indemnity obligations for which no claims have been made); (b) constituting property sold or to be sold or Disposed of as part of or in connection with any Disposition permitted under this Agreement or any other Loan Document; (c) constituting property in which no Loan Party owned an interest at the time the Lien was granted or at any time thereafter other than as a result of a transaction prohibited hereunder; or (d) constituting property leased to any Loan Party under a lease which has expired or has been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by such Loan Party to be, renewed or extended. Upon the request of the Agent at any time, the Lenders will confirm in writing the Agent's authority to release particular types or items of Collateral pursuant to this Section 8.14. At the written request and sole expense of the Borrower, which written request shall also include a certification from a Responsible Officer certifying to the Lenders and the Agent that such release is permitted under this Section 8.14 and that such transaction is in compliance with this Agreement and the other Loan Documents (which certification the Agent may, but is not obligated to, rely on), the Collateral Agent shall promptly provide the releases of Collateral permitted to be released under this Section 8.14. Subject to evidence of such transaction and release documentation reasonably satisfactory to the Required Lenders, with the Required Lender's prior written consent, the Agent may, but shall not be obligated, to provide such releases for such property to be sold but not yet sold or such property subject to a lease that is about to expire but not yet expired. Upon any of the Collateral constituting personal property being Disposed of as permitted under this Agreement, then such Collateral shall be automatically released from the Liens created under the applicable security instrument; provided, that the Agent shall use commercially reasonable efforts to provide any evidence of such Lien release reasonably requested by the Borrower in accordance with this Section.

(c) Notwithstanding anything contained in any of the Loan Documents to the contrary, the Loan Parties, the Agent and each Lender hereby agree that no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty Agreement, it being understood and agreed that all powers, rights and remedies hereunder, under the Guaranty and under the Pledge and Security Agreement may be exercised solely by the Agent (acting at the direction of the Required Lenders), as applicable, on behalf of the Lenders in accordance with the terms hereof and the other Loan Documents. By accepting the benefit of the Liens granted pursuant to the Pledge and Security Agreement, each Lender not party hereto hereby agrees to the terms of this clause (c).

SECTION 8.15 Credit Bidding.

(a) The Agent, on behalf of itself and the Lenders, shall have the right, acting at the direction of the Required Lenders, to credit bid and purchase for the benefit of the Agent and the Lenders all or any portion of Collateral at any sale thereof conducted by the Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Agent (whether by judicial action or otherwise) in accordance with Applicable Law.

(b) Each Lender hereby agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar Dispositions of Collateral.

SECTION 8.16 Agent Actions. With respect to any term or provision of this Agreement or any other Loan Document that requires the consent, approval, satisfaction, discretion, determination, decision, action or inaction or any similar concept of or by the Agent, or that allows, permits, requires, empowers or otherwise provides that any matter, action, decision or similar may be taken, made or determined by the Agent (including any provision that refers to any document or other matter being satisfactory or acceptable to the Agent) without expressly referring to the requirement to obtain consent or input from any Lenders, or to otherwise notify any Lender, or without providing that such matter is required to be satisfactory or acceptable to the Required Lenders, such term or provision shall be interpreted to refer to the Agent exercising its discretion, it being understood and agreed that the Agent shall be entitled to confirm that any matter is satisfactory or acceptable to the Required Lenders to the extent that it deems such confirmation necessary or desirable.

SECTION 8.17 Force Majeure. The Agent shall not be (i) required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder or under any other Loan Document or (ii) responsible or liable for any failure or delay in the performance of its obligations hereunder or under any other Loan Document arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 Notices; Public Information.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by email as follows:

(i) if to the Borrower,

Ascend Wellness Holdings, Inc.
1411 Broadway, 16th Floor
New York, NY 10018
Attention: Chief Financial Officer
Email: [***]

with a copy to:

Foley Hoag LLP
155 Seaport Boulevard
Boston, Massachusetts 02210-2600
Attention: [***]
Telephone: [***]
Telecopier: [***]
Email: [***]

(ii) if to the Agent, to Acquiom Agency Services LLC at 150 South Fifth Street, Suite 2600, Minneapolis, MN 55402, Attention of [***] (Telephone No. [***] Email: [***]), with a copy (which shall not constitute notice) to: Stroock & Stroock & Lavan LLP at 180 Maiden Lane, New York, NY 10038, Attention of [***] (Telephone No. [***] Email: [***]) and

(iii) if to a Lender, to it at its address (or email address) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Agent and/or the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower 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 Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), 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 e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email 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.

(c) Change of Address, etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) The Borrower agrees that the Agent may, but shall not be obligated to, make the Communications (as defined below) available to 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 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 Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's or the Agent's transmission of communications through the Platform in the absence of gross negligence and willful misconduct by the Agent. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower pursuant to any Loan Document or the transactions contemplated therein that is distributed to the Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

(e) Public Information. The Borrower hereby acknowledges that certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the materials and information provided by or on behalf of the Borrower or any of its Affiliates hereunder and under the other Loan Documents (collectively, “Borrower Materials”) that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC,” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (ii) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its Affiliates or their respective securities for purposes of U.S. federal and other applicable securities Laws and as not containing material information that has not been generally disclosed with respect to the Borrower or its Affiliates or their respective securities (provided, that to the extent that such Borrower Materials constitute Information, they shall be subject to Section 9.12); (iii) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (iv) the Agent shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information”. Each Public Lender will designate one or more representatives that shall be permitted to receive information that is not designated as being available for Public Lenders.

SECTION 9.02 Waivers; Amendments.

(a) No Waiver; Remedies Cumulative; Enforcement. No failure or delay by the Agent or any Lender in exercising any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right remedy, power or privilege. The rights, remedies, powers and privileges of the Agent and the Lenders hereunder and under the Loan Documents are cumulative and are not exclusive of any rights, remedies, powers or privileges that any such Person would otherwise have.

(b) Amendments, Etc. Except as otherwise expressly set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing executed by the Borrower and the Required Lenders, and acknowledged by the Agent, or by the Borrower and the Agent with the consent of the Required Lenders, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(i) extend or increase any Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Article IV or the waiver of any Default shall not constitute an extension or increase of any Commitment of any Lender);

(ii) reduce the principal of, or rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby (provided that only the consent of the Required Lenders shall be necessary (x) to amend the definition of “Default Rate” or to waive the obligation of the Borrower to pay interest at the Default Rate or (y) to amend any financial covenant (or any defined term directly or indirectly used therein), even if the effect of such amendment would be to reduce the rate of interest on any Loan or other Obligation or to reduce any fee payable hereunder);

(iii) postpone any date scheduled for any payment of principal of, or interest on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender directly and adversely affected thereby;

(iv) change Section 2.11(b), Section 2.12, Section 7.02 or any other provision of the Loan Documents that requires ratable sharing of payments to the Lenders in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(v) (A) release all or substantially all of the value of (i) the Collateral from the Liens of the Collateral Documents or (ii) the value of the Guarantees provided under the Guaranty Agreement or (B) subordinate (x) the payment and priority of the Obligations to any other Indebtedness or (y) the priority of the Liens securing the obligations to the Liens securing any other Indebtedness, in each case, without the written consent of each Lender

(vi) change any provision of this Section or the percentage in the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, in each case, without the written consent of each Lender; or

(vii) require the consent of the Required Lenders if such amendment, waiver or consent is to a provision of either Fee Letter but such amendment, waiver or consent shall require the consent of the Placement Agent (with respect to the Placement Agent Fee Letter) or the Agent (with respect to the Administrative Agency Fee Letter);

provided, further, that (i) no such amendment, waiver or consent shall amend, modify or otherwise affect the rights or duties hereunder or under any other Loan Document of the Agent, unless in writing executed by the Agent, in each case in addition to the Borrower and the Lenders required above and (ii) no Lender shall receive an amendment or similar fee as consideration for, or in connection with, such amendment, waiver or consent unless the Borrower shall have sought consent from all Lenders holding outstanding Loans at such time and offered all such Lenders the same fee, provided that the Borrower shall only be obligated to pay such fee to those Lenders that actually consent to such amendment, waiver or consent.

In addition, notwithstanding anything in this Section to the contrary, if the Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Agent and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders to the Agent within ten Business Days following receipt of notice thereof.

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Placement Agent (including the reasonable fees, charges and disbursements of counsel for the Placement Agent), in connection with the diligence of the Loan Parties, their Subsidiaries and activities, and the preparation, negotiation, execution, delivery 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), provided, that the Borrower's obligation to make payment pursuant to this clause (i) with respect to expenses incurred by the Placement Agent shall be subject to, and without duplication of, any arrangements separately agreed to between the Placement Agent and the Borrower prior to the date hereof, (ii) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates (including the reasonable fees, charges and disbursements of outside counsel for the Agent), 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), (iii) all reasonable out-of-pocket expenses incurred by the Agent or any Lender (including the reasonable fees, charges and disbursements of any outside counsel for the Agent and a single counsel for all the Lenders together and, solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of similarly situated affected Lenders) 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 hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, and (iv) all reasonable and documented out-of-pocket costs and expenses, if any, of the Agent or any Lender if an Event of Default has occurred and is continuing, or otherwise in connection with any workout, restructuring, reorganization or debt modification or exchange transaction, any enforcement of, or exercise or protection of rights or remedies (whether through negotiations, legal proceedings, or otherwise) under, this Agreement and the other Loan Documents (including the reasonable and documented fees, charges and disbursements of any outside counsel for the Agent and a single counsel for all the Lenders together and, solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of similarly situated affected Lenders), as well as any financial or other professional advisors, consultants, and third party service providers retained, appointed or engaged by or on behalf of the Agent.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Agent (and any sub-agent thereof) and each 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 and documented fees, charges and disbursements of any outside counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower) 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 the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, (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, and regardless of whether any Indemnitee is a party thereto or (v) any claim (including, without limitation, any environmental claims), investigation, litigation or other proceeding (whether or not the Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with any Loan, any Loan Document, or any way connected with any Loan, any Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (and in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of such Indemnitee); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or its Related Parties, (y) result from a claim brought by the Borrower against an Indemnitee for material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from a claim not involving an act or omission of the Borrower and that is brought by an Indemnitee against another Indemnitee (other than against the Placement Agent or the Agent in their capacities as such). Paragraph (b) of this Section shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. No Loan Party shall, without the prior written consent of each Indemnitee affected thereby, settle any threatened or pending claim or action that would give rise to the right of any Indemnitee to claim indemnification hereunder unless such settlement (x) includes a full and unconditional release of all liabilities arising out of such claim or action against such Indemnitee at any time (including future, prospective and unmatured claims or actions), (y) does not include any statement as to or an admission of fault, culpability or failure to act by or on behalf of any Indemnitee and (z) does not require any payment to be made, and does not result in any obligation regarding any payment (including any payment of any costs or expenses) to be imposed or require such obligation to be incurred or assumed, and does not require any actions to be taken or refrained from being taken by any Indemnitee other than the execution of the related settlement agreement, if any.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clauses (a) or (b) of this Section to be paid by it to the Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent) 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 Applicable Percentage at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided 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 Agent (or any such sub-agent), or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.11(e).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower 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 the use of the proceeds thereof. No Indemnitee referred to in clause (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 or willful misconduct by such Indemnitee.

(e) Payments. All amounts due under this Section shall be payable promptly (and in no event, not later than thirty (30) days) after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

SECTION 9.04 Successors and Assigns.

(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, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender (and any other attempted assignment or transfer by any party hereto shall be null and void), 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 clause (b) of this Section, (ii) by way of participation in accordance with the provisions of clause (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (e) of this Section. 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 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 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 or contemporaneous assignments to and/or by related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (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 clause (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the 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 Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$2,500,000, unless each of the 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 or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) 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 Agent within five (5) Business Days after having received notice thereof and provided, further, that the Borrower's consent shall not be required during the primary syndication of any Facility; and

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the 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 Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to the Borrower or any of the Borrower's Subsidiaries.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person).

Subject to acceptance and recording thereof by the Agent pursuant to clause (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 Section 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. 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 clause (d) of this Section.

(c) Register. The Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and, to the extent the Borrower is disregarded for U.S. federal income tax purposes, the Borrower's regarded owner for purposes of U.S. federal income tax purposes), shall maintain at its address referred to in Section 9.01 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 and interest owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the 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 (but a Lender shall solely be permitted to inspect such portions of the Register that disclose information relating to such Lender's Loans and amounts owing to it, and not to any other Lender), at any reasonable time and from time to time upon reasonable prior notice. The Borrower hereby agrees that the Agent acting as its agent solely for the purposes set forth above in this clause (c), shall not subject the Agent to any fiduciary or other implied duties, all of which are hereby waived by the Borrower with respect to the Agent acting as its agent solely for the purpose set forth above in this clause (c).

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Agent, sell participations to any Person (other than a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, 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 Agent and 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 indemnity under Section 9.03(b) 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 described in Section 9.02(b)(i) through (v) that adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13 and 2.14 (subject to the requirements and limitations therein, including the requirements under Section 2.14(g) (it being understood that the documentation required under Section 2.14(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.15 as if it were an assignee under clause (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.13 or 2.14, 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 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 2.15(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.12 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 (and, to the extent the Borrower is disregarded for U.S. federal income tax purposes, the Borrower's regarded owner for U.S. federal income tax purposes), 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 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 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 Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register. The Borrower hereby agrees that each Lender acting as its agent solely for the purpose set forth above in this clause (d) shall not subject such Lender to any fiduciary or other implied duties, all of which are hereby waived by the Borrower with respect to such Lender acting as its agent solely for the purpose set forth above in this clause (d).

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

(g) Affiliated Lenders. Notwithstanding anything to the contrary contained in this Agreement, the aggregate Outstanding Amount of Loans that are held by Affiliated Lenders at any time may not exceed 25% of the aggregate Outstanding Amount of all Loans.

SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in any Loan Document or other documents delivered in connection herewith or therewith or pursuant hereto or thereto shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery hereof and thereof and the making of the Borrowings hereunder, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied and so long as the Commitments have not expired or been terminated. The provisions of Sections 2.13, 9.03, 9.15 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the payment in full of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

(b) Electronic Execution. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, electronic mail (e.g., "pdf" or "tif") or any other electronic means complying with the U.S. federal ESIGN Act of 2000 or the New York State Electronic Signatures and Records Act or other transmission method shall be effective as delivery of a manually executed counterpart of this Agreement and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by Applicable Law. For the avoidance of doubt, the foregoing also applies to any amendment, extension or renewal of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, the other Loan Documents and any document to be signed in connection with this Agreement, the other Loan Documents and the transactions contemplated hereby and thereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, 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. Each of the parties hereto represents and warrants to the other parties hereto that it has the corporate capacity and authority to execute this Agreement through electronic means and there are no restrictions for doing so in that party's constitutive documents.

SECTION 9.07 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender or any such Affiliate, to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or its respective 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 of the Borrower may be contingent or unmaturred 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. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have. Each Lender agrees to notify the Borrower and the Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 9.09 Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Jurisdiction. The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Agent, any Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in clause (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Waiver of Defense of Illegality. The Borrower irrevocably waives any defense based on federal law or that the transactions contemplated by this Agreement are void as against public policy or based on illegality under federal law, including without limitation, any Federal Marijuana Law.

(e) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Treatment of Certain Information; Confidentiality. Each of the Agent and the Lenders agree 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 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 (or no less restrictive than) 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 any Loan or 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) with the consent of the Borrower; or (h) 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 Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Borrower who did not acquire such information as a result of a breach of this Section. In addition, the Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agent or any Lender in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, "Information" means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries 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.

SECTION 9.13 PATRIOT Act. Each Lender subject to the PATRIOT Act hereby notifies the Borrower that, pursuant to the requirements of the PATRIOT Act, it may be required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower and each other Loan Party in accordance with the PATRIOT Act.

SECTION 9.14 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under Applicable Law (collectively, "charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with Applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

SECTION 9.15 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Agent or any Lender, or the 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 Agent or such Lender in its discretion) to be repaid to a trustee, receiver, interim receiver, receiver and manager, monitor or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the 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.

SECTION 9.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower and its Subsidiaries and the Placement Agent, the Agent or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the Placement Agent, the Agent, or any Lender has advised or is advising the Borrower or any Subsidiary on other matters, (ii) the arranging and other services regarding this Agreement provided by the Placement Agent, the Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Placement Agent, the Agent and the Lenders, on the other hand, (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the Placement Agent, the Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person; (ii) none of the Placement Agent, the Agent and the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Placement Agent, the Agent and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Placement Agent, the Agent and the Lenders has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against any of the Placement Agent, the Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.17 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.18, 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).

SECTION 9.18 Judgment Currency. 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 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 any Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the 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 Agent or any Lender from any Loan Party in the Agreement Currency, each Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the 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 Agent or any Lender in such currency, the Agent or such Lender, as the case may be, agrees to return the amount of any excess to the applicable Loan Party (or to any other Person who may be entitled thereto under applicable law).

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ASCEND WELLNESS HOLDINGS, INC.,
as Borrower

By /s/ Abner Kurtin
Name: Abner Kurtin
Title: Authorized Signatory

ADMINISTRATIVE AGENT

ACQUIOM AGENCY SERVICES LLC,
as Administrative Agent and Collateral Agent

By /s/ Jennifer Anderson
Name: Jennifer Anderson
Title: Director
