UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(MARK ONE)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended June 30, 2024

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission File Number: 001-39408

Lucid Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**85-0891392**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

7373 Gateway Boulevard, Newark, CA 94560
(Address of principal executive offices) (Zip code)

(510) 648-3553
(Registrant's telephone number, including area code)

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

Title of each class	**Trading symbol(s)**	**Name of each exchange on which registered**
Class A Common Stock, $0.0001 par value per share	LCID	The Nasdaq Stock Market LLC

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

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

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

Large Accelerated Filer	☒	Accelerated Filer	☐
Non-accelerated Filer	☐	Smaller Reporting Company	☐
		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). ☐

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

Number of shares of the registrant's common stock outstanding at July 30, 2024: 2,318,876,700

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains statements that express our opinions, expectations, beliefs, plans, objectives, assumptions or projections regarding future events or future results and therefore are, or may be deemed to be, "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 (the "Securities Act"), and Section 21E of the Securities and Exchange Act of 1934 (the "Exchange Act"). Forward-looking statements may be identified by the use of words such as "estimate," "plan," "project," "forecast," "intend," "will," "shall," "expect," "anticipate," "believe," "seek," "target," "continue," "could," "may," "might," "possible," "potential," "predict," "scheduled" or other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. They appear in a number of places throughout this Quarterly Report on Form 10-Q and include, but are not limited to, statements regarding our intentions, beliefs or current expectations concerning, among other things, results of operations, financial condition, liquidity, capital expenditures, prospects, growth, production volumes, strategies and the markets in which we operate, including expectations of financial and operational metrics, projections of market opportunity, market share and product sales, expectations and timing related to commercial product launches, future strategies and products, including with respect to energy storage systems and automotive partnerships, technology, manufacturing capabilities and facilities, studio openings, sales channels and strategies, future vehicle programs, expansion and the potential success of our direct-to-consumer strategy, our financial and operating outlook, future market launches and international expansion, including our manufacturing facility in Saudi Arabia and related timing and value to us, and our needs for additional financing. Such forward-looking statements are based on available current market material and our current expectations, beliefs and forecasts concerning future developments. Factors that may impact such forward-looking statements include:

- changes in domestic and foreign business, market, financial, political and legal conditions, including government closures of banks and liquidity concerns at other financial institutions, a potential global economic recession or other downturn and global conflicts or other geopolitical events;
- risks related to changes in overall demand for our products and services and cancellation of orders for our vehicles;
- risks related to prices and availability of commodities, our supply chain, logistics, inventory management and quality control, and our ability to complete the tooling of our manufacturing facilities over time and scale production of the Lucid Air and other vehicles;
- risks related to the uncertainty of our projected financial information;
- risks related to the timing of expected business milestones and commercial product launches;
- risks related to the expansion of our manufacturing facility, the construction of new manufacturing facilities and the increase of our production capacity;
- risks related to the issuance and sale of shares of our Redeemable Convertible Preferred Stock;
- our ability to manage expenses and control costs;
- risks related to future market adoption of our offerings;
- the effects of competition and the pace and depth of electric vehicle adoption generally on our business;
- changes in regulatory requirements, governmental incentives and fuel and energy prices;
- our ability to rapidly innovate;
- our ability to enter into or maintain partnerships with original equipment manufacturers, vendors and technology providers, including our ability to realize the anticipated benefits of our transaction with Aston Martin;
- our ability to effectively manage our growth and recruit and retain key employees, including our chief executive officer and executive team;
- risks related to potential vehicle recalls;
- our ability to establish and expand our brand, and capture additional market share, and the risks associated with negative press or reputational harm;
- our ability to effectively utilize zero emission vehicle credits and obtain and utilize certain tax and other incentives;
- our ability to conduct equity, equity-linked, or debt financing in the future;
- our ability to pay interest and principal on our indebtedness;
- future changes to vehicle specifications which may impact performance, pricing, and other expectations;
- the outcome of any potential litigation, government and regulatory proceedings, investigations and inquiries; and
- other factors disclosed in this Quarterly Report on Form 10-Q or our other filings with the Securities and Exchange Commission (the "SEC").

The forward-looking statements contained in this Quarterly Report on Form 10-Q are based on our current expectations and beliefs concerning future developments and their potential effects on our business. There can be no assurance that future developments affecting our business will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading "Risk Factors" in Part II, Item 1A. Should one or more of these risks or uncertainties materialize, or should any of the assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. There may be additional risks that Lucid currently does not know or that Lucid currently believes are immaterial that could also cause actual results to differ from those contained in the forward-looking statements. In addition, forward-looking statements reflect our expectations, plans or forecasts of future events and views as of the date of this Quarterly Report on Form 10-Q. We do not undertake any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. The forward-looking statements should not be relied upon as representing our assessments as of any date subsequent to the date of this Quarterly Report on Form 10-Q.

Frequently Used Terms

Unless otherwise stated in Item 1. Financial Statements and accompanying footnotes, or the context otherwise requires, references in this Quarterly Report on Form 10-Q to:

"2026 Notes" are to the 1.25% Convertible Senior Notes due 2026;

"AMP-1" are to our Advanced Manufacturing Plant-1 in Casa Grande, Arizona;

"AMP-2" are to our planned Advanced Manufacturing Plant-2 in Saudi Arabia, which consists of a semi knocked-down ("SKD") portion that has been completed and a completely-built-up ("CBU") portion that will be constructed;

"Ayar" are to Ayar Third Investment Company, an affiliate of PIF and the controlling stockholder of the Company;

"Board" or "Board of Directors" are to the board of directors of Lucid Group Inc., a Delaware corporation;

"Certificate of Designations" refers to Series A Certificate of Designations and Series B Certificate of Designations, together;

"Churchill" or "CCIV" are to Churchill Capital Corp IV, a Delaware corporation and our predecessor company prior to the consummation of the Transactions, which changed its name to Lucid Group, Inc. following the consummation of the Transactions, and its consolidated subsidiaries;

"Churchill IPO" are to the initial public offering by Churchill which closed on August 3, 2020;

"Closing" are to the consummation of the Transactions;

"Closing Date" are to July 23, 2021, the date on which the Transactions were consummated;

"common stock" are to the Class A common stock of Lucid Group, Inc., par value $0.0001 per share;

"ESG" are to Environmental, Social and Governance;

"EV" are to electric vehicle;

"Investor Rights Agreement" are to the Investor Rights Agreement, dated as of February 22, 2021 and as amended from time-to-time, by and among the Company, the Sponsor, Ayar and certain other parties thereto;

"Legacy Lucid" are to Atieva, Inc., d/b/a Lucid Motors, an exempted company incorporated with limited liability under the laws of the Cayman Islands, and its consolidated subsidiaries before the Closing Date;

"LPM-1" are to our Lucid Powertrain Manufacturing Plant-1 in Casa Grande, Arizona;

"Merger" are to the merger of a merger subsidiary of Churchill and Atieva, Inc., with Atieva, Inc. surviving such merger as a wholly owned subsidiary of Churchill;

"Merger Agreement" are to that certain Agreement and Plan of Merger, dated as of February 22, 2021, by and among Churchill, Legacy Lucid and Air Merger Sub, Inc., a Delaware corporation and a direct, wholly-owned subsidiary of Churchill, as the same has been or may be amended, modified, supplemented or waived from time-to-time;

"PIF" are to the Public Investment Fund, the sovereign wealth fund of Saudi Arabia;

"Private Placement Warrants" are to Churchill's warrants issued to the Sponsor in a private placement simultaneously with the closing of the Churchill IPO;

"Redeemable Convertible Preferred Stock" are to the Series A Convertible Preferred Stock and Series B Convertible Preferred Stock, together;

"Series A Redeemable Convertible Preferred Stock" are to the Series A Convertible Preferred Stock of Lucid Group, Inc., par value $0.0001 per share;

"Series A Subscription Agreement" refers to the subscription agreement entered into on March 24, 2024, by the Company and Ayar to purchase from the Company 100,000 shares of its Series A Convertible Preferred Stock;

"Series B Redeemable Convertible Preferred Stock" are to the Series B Convertible Preferred Stock of Lucid Group, Inc., par value $0.0001 per share;

"Series B Subscription Agreement" refers to the subscription agreement entered into on August 4, 2024, by the Company and Ayar to purchase from the Company 75,000 shares of its Series B Convertible Preferred Stock;

"Sponsor" are to Churchill Sponsor IV LLC, a Delaware limited liability company and an affiliate of M. Klein and Company;

"Transactions" are to the Merger, together with the other transactions consummated under the Merger Agreement and the related agreements; and

"Warrant Agreement" are to the Warrant Agreement, dated July 29, 2020, entered into in connection with the Churchill IPO by and between Continental Stock Transfer & Trust Company and Churchill.

Unless the context otherwise requires, all references in this section to "Lucid," the "Company," "we," "us," "our," and other similar terms refer to Legacy Lucid and its subsidiaries prior to the Closing, and Lucid Group, Inc., a Delaware corporation, and its subsidiaries after the Closing.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements.

LUCID GROUP, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(in thousands, except share and per share data)

	June 30, 2024	December 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,353,581	$ 1,369,947
Short-term investments	1,862,848	2,489,798
Accounts receivable, net (including $77,808 and $35,526 from a related party as of June 30, 2024 and December 31, 2023, respectively)	101,370	51,822
Inventory	509,888	696,236
Prepaid expenses	71,637	69,682
Other current assets	102,164	79,670
Total current assets	4,001,488	4,757,155
Property, plant and equipment, net	3,065,711	2,810,867
Right-of-use assets	212,877	221,508
Long-term investments	687,641	461,029
Other noncurrent assets	204,049	180,626
Investments in equity securities of a related party	51,502	81,533
TOTAL ASSETS	**$ 8,223,268**	**$ 8,512,718**
LIABILITIES		
Current liabilities:		
Accounts payable	$ 113,634	$ 108,724
Accrued compensation	137,374	92,494
Finance lease liabilities, current portion	7,099	8,202
Other current liabilities (including $79,735 and $92,258 associated with related parties as of June 30, 2024 and December 31, 2023, respectively)	752,779	798,990
Total current liabilities	1,010,886	1,008,410
Finance lease liabilities, net of current portion	76,533	77,653
Common stock warrant liability	19,071	53,664
Long-term debt	1,999,547	1,996,960
Other long-term liabilities (including $148,121 and $178,311 associated with related parties as of June 30, 2024 and December 31, 2023, respectively)	555,923	524,339
Derivative liability associated with Series A redeemable convertible preferred stock (related party)	394,100	—
Total liabilities	4,056,060	3,661,026
Commitments and contingencies (Note 12)		
REDEEMABLE CONVERTIBLE PREFERRED STOCK		
Series A redeemable convertible preferred stock, par value $0.0001; 10,000,000 shares authorized as of June 30, 2024 and December 31, 2023; 100,000 and 0 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively (related party)	651,311	—
STOCKHOLDERS' EQUITY		
Common stock, par value $0.0001; 15,000,000,000 shares authorized as of June 30, 2024 and December 31, 2023; 2,319,543,729 and 2,300,111,489 shares issued and 2,318,685,904 and 2,299,253,664 shares outstanding as of June 30, 2024 and December 31, 2023, respectively	232	230
Additional paid-in capital	15,063,541	15,066,080
Treasury stock, at cost, 857,825 shares at June 30, 2024 and December 31, 2023	(20,716)	(20,716)
Accumulated other comprehensive income (loss)	(4,159)	4,850
Accumulated deficit	(11,523,001)	(10,198,752)
Total stockholders' equity	3,515,897	4,851,692
TOTAL LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY	**$ 8,223,268**	**$ 8,512,718**

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

LUCID GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(Unaudited)
(in thousands, except share and per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenue (including revenue of $36,470 and $0 from a related party for the three months ended June 30, 2024 and 2023, and $87,836 and $0 for the six months ended June 30, 2024 and 2023, respectively)	$ 200,581	$ 150,874	$ 373,321	$ 300,306
Costs and expenses				
Cost of revenue	470,355	555,805	875,151	1,056,329
Research and development	287,170	233,474	571,797	463,277
Selling, general and administrative	210,245	197,748	423,477	366,518
Restructuring charges	20,228	1,532	20,228	24,028
Total cost and expenses	987,998	988,559	1,890,653	1,910,152
Loss from operations	(787,417)	(837,685)	(1,517,332)	(1,609,846)
Other income (expense), net				
Change in fair value of common stock warrant liability	7,539	42,133	34,593	1,331
Change in fair value of equity securities of a related party	(9,390)	—	(29,323)	—
Change in fair value of derivative liability associated with Series A redeemable convertible preferred stock (related party)	103,000	—	103,000	—
Interest income	54,553	39,525	105,184	79,530
Interest expense	(6,673)	(6,690)	(14,174)	(13,798)
Other expense, net	(5,067)	(928)	(6,074)	(261)
Total other income (expense), net	143,962	74,040	193,206	66,802
Loss before provision for (benefit from) income taxes	(643,455)	(763,645)	(1,324,126)	(1,543,044)
Provision for (benefit from) income taxes	(65)	587	123	716
Net loss	(643,390)	(764,232)	(1,324,249)	(1,543,760)
Accretion of Series A redeemable convertible preferred stock (related party)	(146,861)	—	(150,762)	—
Net loss attributable to common stockholders, basic and diluted	$ (790,251)	$ (764,232)	$ (1,475,011)	$ (1,543,760)
Weighted-average shares outstanding attributable to common stockholders, basic and diluted	2,310,360,525	1,912,459,833	2,306,209,050	1,871,884,313
Net loss per share attributable to common stockholders, basic and diluted	$ (0.34)	$ (0.40)	$ (0.64)	$ (0.82)
Other comprehensive income (loss)				
Net unrealized gains (losses) on investments, net of tax	$ (957)	$ (2,999)	$ (4,219)	$ 1,036
Foreign currency translation adjustments	(802)	586	(4,790)	586
Total other comprehensive income (loss)	(1,759)	(2,413)	(9,009)	1,622
Comprehensive loss	(645,149)	(766,645)	(1,333,258)	(1,542,138)
Accretion of Series A redeemable convertible preferred stock (related party)	(146,861)	—	(150,762)	—
Comprehensive loss attributable to common stockholders	$ (792,010)	$ (766,645)	$ (1,484,020)	$ (1,542,138)

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

LUCID GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY
(Unaudited)
(in thousands, except share data)

	Redeemable Convertible Preferred Stock		Common Stock						
Three Months Ended June 30, 2024	**Shares**	**Amount**	**Shares**	**Amount**	**Additional Paid-In Capital**	**Treasury Stock**	**Accumulated Other Comprehensive Income (Loss)**	**Accumulated Deficit**	**Total Stockholders' Equity**
Balance as of March 31, 2024	**100,000**	**$ 504,450**	**2,306,928,813**	**$ 231**	**$ 15,134,686**	**$ (20,716)**	**$ (2,400)**	**$ (10,879,611)**	**$ 4,232,190**
Net loss	—	—	—	—	—	—	—	(643,390)	(643,390)
Other comprehensive loss	—	—	—	—	—	—	(1,759)	—	(1,759)
Tax withholding payments for net settlement of employee awards	—	—	—	—	(2,070)	—	—	—	(2,070)
Issuance of common stock upon vesting of employee RSUs	—	—	6,472,275	1	(1)	—	—	—	—
Issuance of common stock under employee stock purchase plan	—	—	4,601,557	—	11,104	—	—	—	11,104
Issuance of common stock upon exercise of stock options	—	—	683,259	—	786	—	—	—	786
Accretion of Series A redeemable convertible preferred stock (related party)	—	146,861	—	—	(146,861)	—	—	—	(146,861)
Stock-based compensation	—	—	—	—	65,897	—	—	—	65,897
Balance as of June 30, 2024	**100,000**	**$ 651,311**	**2,318,685,904**	**$ 232**	**$ 15,063,541**	**$ (20,716)**	**$ (4,159)**	**$ (11,523,001)**	**$ 3,515,897**

	Common Stock						
Three Months Ended June 30, 2023	**Shares**	**Amount**	**Additional Paid-In Capital**	**Treasury Stock**	**Accumulated Other Comprehensive Income (Loss)**	**Accumulated Deficit**	**Total Stockholders' Equity**
Balance as of March 31, 2023	**1,833,385,174**	**$ 183**	**$ 11,809,781**	**$ (20,716)**	**$ (7,537)**	**$ (8,149,860)**	**$ 3,631,851**
Net loss	—	—	—	—	—	(764,232)	(764,232)
Other comprehensive loss	—	—	—	—	(2,413)	—	(2,413)
Tax withholding payments for net settlement of employee awards	—	—	(3,879)	—	—	—	(3,879)
Issuance of common stock upon vesting of employee RSUs	4,565,661	1	(1)	—	—	—	—
Issuance of common stock under employee stock purchase plan	2,287,592	—	15,089	—	—	—	15,089
Issuance of common stock upon exercise of stock options	2,801,737	—	2,926	—	—	—	2,926
Issuance of common stock under Underwriting Agreement, net of issuance costs	173,544,948	17	1,184,207	—	—	—	1,184,224
Issuance of common stock under 2023 Subscription Agreement to a related party, net of issuance costs	265,693,703	27	1,812,614	—	—	—	1,812,641
Stock-based compensation	—	—	83,633	—	—	—	83,633
Balance as of June 30, 2023	**2,282,278,815**	**$ 228**	**$ 14,904,370**	**$ (20,716)**	**$ (9,950)**	**$ (8,914,092)**	**$ 5,959,840**

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

LUCID GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY - continued
(Unaudited)
(in thousands, except share data)

Six Months Ended June 30, 2024	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount					
Balance as of January 1, 2024	—	—	**2,299,253,664**	**$ 230**	**$ 15,066,080**	**$ (20,716)**	**$ 4,850**	**$ (10,198,752)**	**$ 4,851,692**
Net loss	—	—	—	—	—	—		(1,324,249)	(1,324,249)
Other comprehensive loss	—	—	—	—	—	—	(9,009)		(9,009)
Tax withholding payments for net settlement of employee awards	—	—	—	—	(5,312)	—	—	—	(5,312)
Issuance of common stock upon vesting of employee RSUs	—	—	12,732,126	2	(2)	—	—	—	—
Issuance of common stock under employee stock purchase plan	—	—	4,601,557	—	11,104	—	—	—	11,104
Issuance of common stock upon exercise of stock options	—	—	2,098,557	—	2,311	—	—	—	2,311
Issuance of Series A redeemable convertible preferred stock, net of derivative liability and issuance costs (related party)	100,000	500,549	—	—	—	—	—	—	—
Accretion of Series A redeemable convertible preferred stock (related party)	—	150,762	—	—	(150,762)	—	—	—	(150,762)
Stock-based compensation	—	—	—	—	140,122	—	—	—	140,122
Balance as of June 30, 2024	**100,000**	**$ 651,311**	**2,318,685,904**	**$ 232**	**$ 15,063,541**	**$ (20,716)**	**$ (4,159)**	**$ (11,523,001)**	**$ 3,515,897**

Six Months Ended June 30, 2023	Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount					
Balance as of January 1, 2023	**1,829,314,736**	**$ 183**	**$ 11,752,138**	**$ (20,716)**	**$ (11,572)**	**$ (7,370,332)**	**$ 4,349,701**
Net loss	—	—	—	—	—	(1,543,760)	(1,543,760)
Other comprehensive income	—	—	—	—	1,622	—	1,622
Tax withholding payments for net settlement of employee awards	—	—	(10,378)	—	—	—	(10,378)
Issuance of common stock upon vesting of employee RSUs	6,435,734	1	(1)	—	—	—	—
Issuance of common stock under employee stock purchase plan	2,287,592	—	15,089	—	—	—	15,089
Issuance of common stock upon exercise of stock options	5,002,102	—	5,107	—	—	—	5,107
Issuance of common stock under Underwriting Agreement, net of issuance costs	173,544,948	17	1,184,207	—	—	—	1,184,224
Issuance of common stock under 2023 Subscription Agreement to a related party, net of issuance costs	265,693,703	27	1,812,614	—	—	—	1,812,641
Stock-based compensation	—	—	145,594	—	—	—	145,594
Balance as of June 30, 2023	**2,282,278,815**	**$ 228**	**$ 14,904,370**	**$ (20,716)**	**$ (9,950)**	**$ (8,914,092)**	**$ 5,959,840**

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

LUCID GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(in thousands)

	Six Months Ended June 30,	
	2024	**2023**
Cash flows from operating activities:		
Net loss	$ (1,324,249)	$ (1,543,760)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	135,021	105,201
Amortization of insurance premium	17,314	21,128
Non-cash operating lease cost	15,136	12,278
Stock-based compensation	120,709	125,195
Inventory and firm purchase commitments write-downs	277,541	503,679
Change in fair value of common stock warrant liability	(34,593)	(1,331)
Change in fair value of equity securities of a related party	29,323	—
Change in fair value of derivative liability associated with Series A redeemable convertible preferred stock (related party)	(103,000)	—
Net accretion of investment discounts/premiums	(44,308)	(39,162)
Other non-cash items	4,944	11,458
Changes in operating assets and liabilities:		
Accounts receivable (including $(42,282) and $0 from a related party for the six months ended June 30, 2024 and 2023, respectively)	(49,612)	(978)
Inventory	(83,410)	(447,962)
Prepaid expenses	(19,269)	(31,035)
Other current assets	(22,310)	18,488
Other noncurrent assets	(23,392)	(109,758)
Accounts payable	3,181	(95,999)
Accrued compensation	44,880	5,679
Other current liabilities	(39,360)	(55,092)
Other long-term liabilities	71,722	20,349
Net cash used in operating activities	(1,023,732)	(1,501,622)
Cash flows from investing activities:		
Purchases of property, plant and equipment (including $(34,068) and $(40,918) from a related party for the six months ended June 30, 2024 and 2023, respectively)	(432,512)	(445,485)
Purchases of investments	(1,854,127)	(2,147,253)
Proceeds from maturities of investments	2,287,894	1,982,489
Proceeds from sale of investments	5,000	148,388
Other investing activities	—	(4,827)
Net cash provided by (used in) investing activities	6,255	(466,688)
Cash flows from financing activities:		
Proceeds from issuance of common stock under Underwriting Agreement, net of issuance costs	—	1,184,224
Proceeds from issuance of common stock under 2023 Subscription Agreement to a related party, net of issuance costs	—	1,812,641
Proceeds from issuance of Series A redeemable convertible preferred stock to a related party	1,000,000	—
Payments of issuance costs for Series A redeemable convertible preferred stock	(2,343)	—
Payment for finance lease liabilities	(1,929)	(3,079)
Proceeds from borrowings from a related party	—	4,266
Repayment of borrowings from a related party	(4,266)	—
Proceeds from exercise of stock options	2,311	5,107
Proceeds from employee stock purchase plan	11,104	15,089
Tax withholding payments for net settlement of employee awards	(5,312)	(10,378)
Net cash provided by financing activities	999,565	3,007,870
Net (decrease) increase in cash, cash equivalents, and restricted cash	(17,912)	1,039,560
Beginning cash, cash equivalents, and restricted cash	1,371,507	1,737,320
Ending cash, cash equivalents, and restricted cash	$ 1,353,595	$ 2,776,880
Supplemental disclosure of cash flow information:		
Cash paid for interest, net of amounts capitalized	$ 11,587	$ 11,307
Cash paid for taxes	$ 42	$ 23
Supplemental disclosure of non-cash investing and financing activity:		
Increases (decreases) in purchases of property, plant and equipment included in accounts payable and other current liabilities	$ (14,310)	$ 13,689
Government grant (related party) reflected in property, plant and equipment	$ (32,640)	$ (50,415)
Property, plant and equipment and right-of-use assets obtained through leases	$ 7,392	$ 21,567

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

NOTE 1 – DESCRIPTION OF BUSINESS

Overview

Lucid Group, Inc. ("Lucid") is a technology company focused on designing, developing, manufacturing, and selling the next generation of electric vehicles ("EV"), EV powertrains and battery systems.

Throughout the notes to the condensed consolidated financial statements, unless otherwise noted, the "Company," "we," "us" or "our" and similar terms refer to Legacy Lucid and its subsidiaries prior to the consummation of the Merger, and Lucid and its subsidiaries after the consummation of the Merger.

Liquidity

The Company devotes its efforts to business planning, selling and servicing of vehicles, providing technology access, research and development, construction and expansion of manufacturing facilities, expansion of retail studios and service center capacities, recruiting of management and technical staff, acquiring operating assets, and raising capital.

From inception through June 30, 2024, the Company has incurred operating losses and negative cash flows from operating activities. For the six months ended June 30, 2024 and 2023, the Company has incurred net losses of $1,324.2 million and $1,543.8 million, respectively. The Company had an accumulated deficit of $11.5 billion as of June 30, 2024.

The Company completed the first phase of the construction of its Advanced Manufacturing Plant-1 in Casa Grande, Arizona ("AMP-1") in 2021, transitioned general assembly to the AMP-1 phase 2 manufacturing facility and completed the semi knocked-down ("SKD") portion of its Advanced Manufacturing Plant-2 in Saudi Arabia ("AMP-2") in September 2023. The Company began commercial production of its first vehicle, the Lucid Air, in September 2021 and delivered its first vehicles in late October 2021. The Company continues to expand AMP-1, construct the completely-built-up ("CBU") portion of AMP-2, and build a network of retail sales and service locations. The Company has plans for continued development of additional vehicle model types for future release. The aforementioned activities will require considerable capital, which is above and beyond the expected cash inflows from the initial sales of the Lucid Air. As such, the future operating plan involves considerable risk if secure funding sources are not identified and confirmed.

The Company's existing sources of liquidity include cash, cash equivalents, investments, credit facilities, and issuance of convertible preferred stock. Historically, the Company funded operations primarily with issuances of common stock and convertible notes.

In 2022, the Company entered into a loan agreement with the Saudi Industrial Development Fund ("SIDF") with an aggregate principal amount of up to approximately $1.4 billion, a five-year senior secured asset-based revolving credit facility ("ABL Credit Facility") with an initial aggregate principal commitment amount of up to $1.0 billion and revolving credit facilities (the "GIB Facility Agreement") with Gulf International Bank ("GIB") in an aggregate principal amount of approximately $266.1 million. The GIB Facility Agreement provided for two committed revolving credit facilities, of which $173.0 million was available as a bridge financing (the "Bridge Facility") and $93.1 million was for general corporate purposes (the "Working Capital Facility").

In March 2023, the Company amended the GIB Facility Agreement (together with the GIB Facility Agreement, the "Amended GIB Facility Agreement") to combine the Bridge Facility and the Working Capital Facility into a committed $266.6 million revolving credit facility (the "GIB Credit Facility"), which bears interest at a rate of 1.40% per annum over SAIBOR (based on the term of borrowing) and associated fees. See Note 6 "Debt" for more information.

On August 4, 2024, the Company entered into a $750 million five-year unsecured delayed draw term loan credit facility (the "DDTL Credit Facility") with Ayar, an affiliate of PIF. See Note 17 "Subsequent Events" for more information.

On November 8, 2022, the Company entered into an equity distribution agreement (the "Equity Distribution Agreement") with BofA Securities, Inc., Barclays Capital Inc. and Citigroup Global Markets Inc., under which the Company could offer and sell shares of its common stock having an aggregate offering price up to $600.0 million (the "At-the-Market Offering"). On November 8, 2022, the Company also entered into a subscription agreement (the "2022 Subscription Agreement") with Ayar Third Investment Company, the controlling stockholder of the Company ("Ayar"), pursuant to which Ayar agreed to purchase from the Company, up to $915.0 million of shares of its common stock in one or more private placements through March 31, 2023. In December 2022, the Company completed its At-the-Market Offering program pursuant to the Equity Distribution Agreement for net proceeds of $594.3 million after deducting commissions and other issuance costs and also consummated a private placement of shares to Ayar pursuant to the 2022 Subscription Agreement for $915.0 million. No shares remain available for sale under the Equity Distribution Agreement.

On May 31, 2023, the Company entered into an underwriting agreement (the "Underwriting Agreement") with BofA Securities, Inc. (the "Underwriter"), under which the Underwriter agreed to purchase from the Company shares of the Company's common stock in a public offering for aggregate net proceeds to the Company of $1.2 billion. On May 31, 2023, the Company also entered into a subscription agreement (the "2023 Subscription Agreement") with Ayar, pursuant to which Ayar agreed to purchase from the Company shares of the Company's common stock in a private placement for aggregate net proceeds of $1.8 billion. In June 2023, the Company completed the public offering pursuant to the Underwriting Agreement for aggregate net proceeds of $1.2 billion and also consummated the private placement to Ayar pursuant to the 2023 Subscription Agreement for aggregate net proceeds of $1.8 billion. See Note 16 "Related Party Transactions" for more information.

On March 24, 2024, the Company entered into a subscription agreement (the "Series A Subscription Agreement") with Ayar. Pursuant to the Series A Subscription Agreement, Ayar agreed to purchase from the Company 100,000 shares of its Series A convertible preferred stock, par value $0.0001 per share (the "Series A Redeemable Convertible Preferred Stock"), for an aggregate purchase price of $1.0 billion in a private placement. On March 29, 2024, the Company issued the shares to Ayar pursuant to the Series A Subscription Agreement and received aggregate gross proceeds of $1.0 billion. The Series A Redeemable Convertible Preferred Stock is convertible at the option of the holder (i) at any time the closing price per share of the common stock on the trading date immediately preceding the date on which the holder delivers the relevant notice of conversion is at least a certain price threshold as noted in the certificate of designations of Series A Redeemable Convertible Preferred Stock of the Company (the "Series A Certificate of Designations") or (ii) during specified periods preceding a fundamental change or optional redemption by the Company under the terms of the Series A Redeemable Convertible Preferred Stock. See Note 8 "Redeemable Convertible Preferred Stock" for more information.

On August 4, 2024, the Company entered into a subscription agreement (the "Series B Subscription Agreement") with Ayar. See Note 17 "Subsequent Events" for more information.

Certain Significant Risks and Uncertainties

The Company's current business activities consist of (i) generating sales from the deliveries and service of vehicles, (ii) research and development efforts to design, engineer and develop high-performance fully electric vehicles and advanced electric vehicle powertrain components, including battery pack systems, (iii) further construction of AMP-1 phase 2 in Casa Grande, Arizona, (iv) construction of the CBU portion of AMP-2 in Saudi Arabia, (v) expansion of its retail studios and service centers capabilities throughout North America and across the globe, and (vi) providing its technology access to third parties. The Company is subject to the risks associated with such activities, including the need to further develop its technology, its marketing, and distribution channels; the need to further develop its supply chain and manufacturing; and the need to hire additional management and other employees. Successful completion of the Company's development program and, ultimately, the attainment of profitable operations are dependent upon future events, including our ability to access potential markets, and secure long-term financing on commercially reasonable terms.

The Company participates in a dynamic high-technology industry. Changes in any of the following areas could have a material adverse impact on the Company's future financial position, results of operations, and/or cash flows: changes in the overall demand for its products and services; advances and trends in new technologies; competitive pressures; acceptance of the Company's products and services; litigation or claims against the Company based on intellectual property (including patents), regulatory, or other factors; and the Company's ability to attract and retain employees necessary to support its business operations.

A global economic recession or other downturn, whether due to inflation, global conflicts or other geopolitical events, public health crises, interest rate increases or other policy actions by major central banks, government closures of banks and liquidity concerns at other financial institutions, or other factors, may have an adverse impact on the Company's business, prospects, financial condition and results of operations. Adverse economic conditions as well as uncertainty about the current and future global economic conditions may cause the Company's customers to defer purchases or cancel their orders in response to higher interest rates, availability of consumer credit, decreased cash availability, fluctuations in foreign currency exchange rates, and weakened consumer confidence. Reduced demand for the Company's products may result in significant decreases in product sales, which in turn would have a material adverse impact on the Company's business, prospects, financial condition and results of operations. Because of the Company's premium brand positioning and pricing, an economic downturn is likely to have a heightened adverse effect on the Company compared to many of its electric vehicle and traditional automotive industry competitors, to the extent that consumer demand for luxury goods is reduced in favor of lower-priced alternatives. In addition, any economic recession or other downturn could also cause logistical challenges and other operational risks if any of the Company's suppliers, sub-suppliers or partners become insolvent or are otherwise unable to continue their operations, fulfill their obligations to the Company, or meet the Company's future demand. In addition, the deterioration of conditions in the broad financing markets may limit the Company's ability to obtain external financing to fund its operations and capital expenditures on terms favorable to the Company, if at all. See "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q (the "Quarterly Report") for more information regarding risks associated with a global economic recession, including under the caption "*A global economic recession, government closures of banks and liquidity concerns at other financial institutions, or other downturn may have a material adverse impact on our business, prospects, results of operations and financial condition.*"

In the current circumstances, any impact on the Company's financial condition, results of operations or cash flows in the future continues to be difficult to estimate and predict, as it depends on future events that are highly uncertain and cannot be predicted with accuracy.

NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements included herein have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP") and applicable rules and regulations of the U.S. Securities and Exchange Commission (the "SEC") regarding interim financial reporting. Certain information and disclosures normally included in the financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to such rules and regulations. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes included in the Company's Form 10-K filed with the SEC on February 27, 2024.

In management's opinion, these unaudited condensed consolidated financial statements have been prepared on the same basis as the annual financial statements and reflect all adjustments, which include normal recurring adjustments, necessary for the fair statement of the Company's financial position as of June 30, 2024 and the results of operations for the three and six months ended June 30, 2024 and 2023. The results of operations for the three and six months ended June 30, 2024 are not necessarily indicative of the results to be expected for the full year ending December 31, 2024 or any other future interim or annual period.

The condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates. Significant estimates, assumptions and judgments made by management include, among others, inventory valuation, warranty reserve, useful lives of property, plant and equipment, fair value of common stock warrants, fair value of derivative liability associated with the redeemable convertible preferred stock, estimates of residual value guarantee ("RVG") liability, deferred revenue related to technology access fees and over-the-air ("OTA") software updates, sales return reserves, assumptions used to measure stock-based compensation expense, and estimated incremental borrowing rates for assessing operating and finance leases. These estimates and assumptions are based on management's best estimates and judgment. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment, which management believes to be reasonable under the circumstances. The Company adjusts such estimates and assumptions when facts and circumstances dictate. Changes in those estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods.

Reclassifications

Certain prior-period amounts have been reclassified in the accompanying condensed consolidated financial statements and notes thereto in order to conform to the current period presentation.

Cash, Cash Equivalents and Restricted Cash

The Company considers all highly liquid investments with an original maturity at the date of purchase of three months or less to be cash equivalents.

Restricted cash in other current assets is primarily related to letters of credit issued to the landlords for certain of the Company's leased facilities.

The following table provides a reconciliation of cash, cash equivalents, and restricted cash to amounts shown in the statements of cash flows (in thousands):

	June 30, 2024	December 31, 2023
Cash and cash equivalents	$ 1,353,581	$ 1,369,947
Restricted cash included in other current assets	14	1,560
Total cash, cash equivalents, and restricted cash	$ 1,353,595	$ 1,371,507

Accounts Receivable, Net

Accounts receivable consists of receivables from our customers and from financial institutions offering financing products to our customers for the sale of vehicles, sales of powertrain kits, services, and regulatory credits. The Company provides an allowance against accounts receivable for any potential uncollectible amounts. The Company recorded immaterial allowance for uncollectible amounts as of June 30, 2024 and December 31, 2023.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist of cash, cash equivalents, investments and accounts receivable. The Company places its cash primarily with domestic financial institutions that are federally insured within statutory limits, but its deposits exceed federally insured limits. As of June 30, 2024 and December 31, 2023, accounts receivable from the EV purchase agreement with the Government of Saudi Arabia, a related party of PIF, which is an affiliate of Ayar, as represented by the Ministry of Finance (the "EV Purchase Agreement"), represented 76.8% and 68.5% of the total accounts receivable balance, respectively. See Note 16 "Related Party Transactions" for more information.

Concentration of Supply Risk

The Company is dependent on its suppliers, the majority of which are single-source suppliers, and the inability of these suppliers to deliver necessary components of its products according to the schedule and at prices, quality levels and volumes acceptable to the Company, or its inability to efficiently manage these components, could have a material adverse effect on the Company's results of operations and financial condition.

Revenue from Contracts with Customers

Vehicle Sales

Vehicle Sales without Residual Value Guarantee

Vehicle sales revenue is generated from the sale of electric vehicles to customers. There are two performance obligations identified in vehicle sale arrangements. These are the vehicle including an onboard advanced driver assistance system ("ADAS"), and the right to unspecified OTA software updates to be provided as and when available over the term of the basic vehicle warranty, which is generally 4 years. Payment is typically received at the time of delivery or shortly after delivery of the vehicle to the customer, except for vehicle sales under the EV Purchase Agreement. The Company recognizes revenue related to the vehicle when the customer obtains control of the vehicle which occurs at a point in time either upon completion of delivery to the agreed upon delivery location or upon pick up of the vehicle by the customer. As the unspecified OTA software updates are provided when-and-if they become available, revenue related to OTA software updates is recognized ratably over the basic vehicle warranty term, commencing when control of the vehicle is transferred to the customer.

At the time of revenue recognition, the Company reduces the transaction price and records a sales return reserve against revenue for estimated variable consideration related to future product returns. Return rate estimates are based on historical experience and sales return reserve balance was not material as of June 30, 2024 and December 31, 2023.

Vehicle Sales with Residual Value Guarantee

The Company provides an RVG to its commercial banking partner in connection with its vehicle leasing program. Vehicle sales with RVG totaled $118.7 million and $190.9 million during the three and six months ended June 30, 2024, respectively, and $36.8 million and $55.5 million for the same periods in the prior year. Under the vehicle leasing program, the Company generally receives payment for the vehicle sales price at the time of delivery or shortly after the delivery. The Company recognizes revenue when control transfers upon delivery when the consumer-lessee takes physical possession of the vehicle, and bifurcates the RVG at fair value and accounts for it as a guarantee liability. The remaining amount of the transaction price is allocated among the performance obligations, including the vehicle, the right to unspecified OTA software updates and remarketing activities, in proportion to the standalone selling price of the Company's performance obligations. The guarantee liability represents the estimated amount the Company expects to pay at the end of the lease term. The Company is released from residual risk upon either expiration or settlement of the RVG. The Company evaluates variables such as third-party residual value publications, risk of future price deterioration due to changes in market conditions and reconditioning costs to determine the estimated RVG liability. The RVG liabilities were not material as of June 30, 2024 and December 31, 2023.

As of June 30, 2024 and December 31, 2023, the Company recorded $38.9 million and $28.7 million of total deferred revenue primarily related to OTA and remarketing activities for vehicle sales, respectively. The Company recorded $10.9 million and $7.7 million of the total deferred revenue within other current liabilities and the remaining $28.0 million and $21.0 million within other long-term liabilities in the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023, respectively. Revenue recognized during the three and six months ended June 30, 2024 and 2023 from the prior period deferred revenue balances was not material.

Other

Other consists of revenue from non-warranty after-sales vehicle services, sales of battery pack systems, powertrain kits, retail merchandise, and regulatory credits.

The disaggregation of the Company's revenue by geographic area based on the sales location of vehicles was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
North America	$ 155,090	$ 137,522	$ 269,846	$ 286,284
Middle East	40,649	6,082	95,231	6,750
Other international	4,842	7,270	8,244	7,272
Total Revenue	$ 200,581	$ 150,874	$ 373,321	$ 300,306

Redeemable Convertible Preferred Stock

Accounting for the redeemable convertible preferred stock requires an evaluation to determine if liability classification is required under ASC 480-10. Liability classification is required for freestanding financial instruments that are (1) subject to an unconditional obligation requiring the issuer to redeem the instrument by transferring assets, such as those that are mandatorily redeemable, (2) instruments other than equity shares that embody an obligation of the issuer to repurchase its equity shares, or (3) certain types of instruments that obligate the issuer to issue a variable number of equity shares.

Securities that do not meet the scoping criteria to be classified as a liability under ASC 480 are subject to redeemable equity guidance, which prescribes securities that may be subject to redemption upon an event not solely within the Company's control to be classified as temporary equity. Securities classified in temporary equity are initially measured at the proceeds received, net of issuance costs and excluding the fair value of bifurcated embedded derivatives, if any. Subsequent measurement of the carrying value of the redeemable convertible preferred stock is required as the instrument is probable of becoming redeemable. The Company accretes the redeemable convertible preferred stock to its redemption value. In certain circumstances, the redemption price may vary based on changes in stock price, in which case the Company recognizes changes in the redemption value immediately as they occur and adjust the carrying value of the security to equal the then current maximum redemption value at the end of each reporting period.

Derivative Liability

The Company evaluates all of its financial instruments, including convertible notes and redeemable convertible preferred stock, to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. The Company applies significant judgment to identify and evaluate complex terms and conditions in these contracts and agreements to determine whether embedded derivatives exist. Embedded derivatives must be separately measured from the host contract if all the requirements for bifurcation are met. The assessment of the conditions surrounding the bifurcation of embedded derivatives depends on the nature of the host contract. Bifurcated embedded derivatives are recognized at fair value, with changes in fair value recognized in the condensed consolidated statements of operations and comprehensive loss at each reporting period end. Bifurcated embedded derivatives are classified as a separate asset or liability in the condensed consolidated balance sheet.

The Company's derivative liability is related to the conversion features embedded in the Series A Redeemable Convertible Preferred Stock. See Note 8 "Redeemable Convertible Preferred Stock" for more information.

Except for the policies described above, there have been no significant changes to accounting policies during the three and six months ended June 30, 2024.

Recently Issued Accounting Pronouncements Not Yet Adopted

In November 2023, the Financial Accounting Standards Board ("FASB") issued ASU No. 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures, which requires incremental segment information disclosure on an annual and interim basis. This amendment includes disclosure of significant segment expenses which are regularly provided to the CODM and included within each reported measure of segment profit or loss; other segment items by reportable segment and a description of its composition; reportable segment's profit or loss and assets; additional measures of segment profit or loss if the CODM uses more than one measure of a segment's profit or loss in assessing segment performance, and the title and position of the entity's CODM and how the CODM uses the reported measures of segment profit or loss in assessing segment performance and determining resource allocation. The Company with a single reportable segment is required to provide all the disclosures from this amendment. The guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted, and should be applied retrospectively. The Company is evaluating the impact of this amendment to the related financial statement disclosures and expects to adopt them for the year ended December 31, 2024.

In December 2023, the FASB issued ASU No. 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which requires incremental annual income tax disclosures. This amendment includes disclosures of specific categories in the rate reconciliation and additional information for reconciling items that meet a quantitative threshold; income taxes paid (net of refunds received) disaggregated by federal, state, and foreign taxes, and also disaggregated by individual jurisdictions that meet a quantitative threshold; income (or loss) from continuing operations before income tax expenses (or benefit) disaggregated between domestic and foreign; and income tax expense (or benefit) from continuing operations disaggregated by federal, state and foreign. The guidance is effective for annual periods beginning after December 15, 2024. Early adoption is permitted and should be applied prospectively (with retrospective application permitted). The Company is evaluating the impact of this amendment to the related financial statement disclosures.

In March 2024, the SEC issued its final rule that requires certain climate-related disclosures in annual reports, including governance, oversight, and risk management processes on material climate-related risks; material impact of climate risks on the Company's strategy, business model, and outlook; material climate targets and goals; and material financial statements impacts due to severe weather events and other natural conditions. This SEC rule provides phased effective dates, starting with fiscal years beginning on or after January 1, 2025. The SEC rule is currently stayed pending the outcome of litigation, and the Company is evaluating the impact of this rule on its annual reports.

The Company has considered all other recently issued accounting pronouncements and does not believe the adoption of such pronouncements will have a material impact on its financial statements or notes thereto.

NOTE 3 - RESTRUCTURING

On May 24, 2024, the Company announced a restructuring plan (the "2024 Restructuring Plan") intended to optimize operating expenses in response to evolving business needs and productivity improvement through a reduction in workforce. The Company expects to substantially complete the 2024 Restructuring Plan by the end of the third quarter of 2024, subject to local law and consultation requirements. As a result of the 2024 Restructuring Plan, the Company expects to record total restructuring charges of approximately $21 million to $25 million, primarily related to severance payments, employee benefits, employee transition and stock-based compensation. During the three and six months ended June 30, 2024, the Company recorded restructuring charges of $20.2 million related to the 2024 Restructuring Plan within restructuring charges in the condensed consolidated statements of operations and comprehensive loss. The restructuring charges were primarily related to severance payments, employee benefits, employee transition and stock-based compensation, net of a reversal of previously recognized stock-based compensation expense.

On March 28, 2023, the Company announced a restructuring plan (the "2023 Restructuring Plan") intended to reduce operating expenses in response to evolving business needs and productivity improvement through a reduction in workforce. The Company completed the 2023 Restructuring Plan during the first quarter of 2024. During the three and six months ended June 30, 2023, the Company recorded restructuring charges of $1.5 million and $24.0 million, respectively, and recorded no restructuring charges for the same periods in the current year related to the 2023 Restructuring Plan.

A summary of restructuring liabilities associated with the restructuring plans was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Restructuring liabilities - beginning of period	$ —	$ 23,939	$ 54	$ —
Restructuring charges excluding non-cash items[(1)(2)]	21,708	1,532	21,708	25,471
Cash payments	(4,141)	(23,766)	(4,195)	(23,766)
Restructuring liabilities - end of period	$ 17,567	$ 1,705	$ 17,567	$ 1,705

[(1)] Excluded non-cash items of $1.5 million for the three and six months ended June 30, 2024 related to the 2024 Restructuring Plan, which was net of accelerated stock-based compensation expense of $3.2 million and a reversal of $4.7 million related to previously recognized stock-based compensation expenses for unvested restricted stock awards.
[(2)] Excluded non-cash items of $1.4 million for the six months ended June 30, 2023 related to the 2023 Restructuring Plan, which was net of accelerated stock-based compensation expense of $3.4 million and a reversal of $4.8 million related to previously recognized stock-based compensation expenses for unvested restricted stock awards.

As of June 30, 2024, the restructuring liabilities of $17.6 million associated with the 2024 Restructuring Plan were included in accrued compensation in the condensed consolidated balance sheet. There were no restructuring liabilities associated with the 2023 Restructuring Plan as of June 30, 2024. Restructuring liabilities associated with the 2023 Restructuring Plan were immaterial as of December 31, 2023.

NOTE 4 – BALANCE SHEETS COMPONENTS

Inventory

Inventory as of June 30, 2024 and December 31, 2023 was as follows (in thousands):

	June 30, 2024	December 31, 2023
Raw materials	$ 157,605	$ 210,283
Work in progress	68,199	53,227
Finished goods	284,084	432,726
Total Inventory	$ 509,888	$ 696,236

Inventory as of June 30, 2024 and December 31, 2023 was comprised of raw materials, work in progress related to the production of vehicles for sale and SKD units for final assembly in Saudi Arabia, and finished goods inventory including new vehicles available for sale, vehicles in transit to fulfill customer orders, and internally used vehicles which the Company intends to sell. The Company recorded write-downs of $154.2 million and $292.0 million, respectively, for the three and six months ended June 30, 2024, and $295.0 million and $522.0 million, respectively, for the same periods in the prior year, to reduce its inventories to its net realizable values and for any excess or obsolete inventories, as well as losses from firm purchase commitments.

Property, plant and equipment, net

Property, plant and equipment, net as of June 30, 2024 and December 31, 2023 was as follows (in thousands):

	June 30, 2024	December 31, 2023
Land and land improvements	$ 69,718	$ 69,718
Building and improvements[1]	662,401	576,097
Machinery, tooling and vehicles[2]	1,101,630	1,045,485
Computer equipment and software	85,037	74,336
Leasehold improvements	242,297	221,619
Furniture and fixtures	47,018	45,315
Finance leases	90,499	94,285
Construction in progress	1,399,601	1,185,413
Total Property, plant and equipment	3,698,201	3,312,268
Less accumulated depreciation and amortization	(632,490)	(501,401)
Property, plant and equipment, net	$ 3,065,711	$ 2,810,867

[1] As of June 30, 2024 and December 31, 2023, $125.1 million and $120.2 million of capital expenditure support received from Ministry of Investment of Saudi Arabia ("MISA") was primarily recorded as a deduction to the AMP-2 building balance, respectively. See Note 16 "Related Party Transactions" for more information.
[2] Included $35.9 million and $32.5 million of service loaner vehicles as of June 30, 2024 and December 31, 2023, respectively.

Construction in progress represents the costs incurred in connection with the construction of buildings or new additions to the Company's plant facilities, including tooling with outside vendors. Costs classified as construction in progress include all costs of obtaining the asset, installation of the asset, and bringing it to the location and the condition necessary for its intended use. No depreciation is provided for construction in progress until such time as the asset is completed and is ready for its intended use. Construction in progress consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Machinery and tooling	$ 946,708	$ 728,751
Construction of AMP-1 and AMP-2[1]	434,655	430,878
Leasehold improvements	18,238	25,784
Total construction in progress	$ 1,399,601	$ 1,185,413

[1] As of June 30, 2024 and December 31, 2023, $39.9 million and $12.1 million, of capital expenditure support received from MISA was recorded primarily as a deduction to the AMP-2 facility construction in progress balance, respectively. See Note 16 "Related Party Transactions" for more information.

Depreciation and amortization expense was $66.2 million and $135.0 million, respectively, for the three and six months ended June 30, 2024, and $55.4 million and $105.2 million, respectively, for the same periods in the prior year. The amount of interest capitalized on construction in progress related to significant capital asset construction was immaterial for the three and six months ended June 30, 2024 and 2023.

Other current liabilities

Other current liabilities as of June 30, 2024 and December 31, 2023 were as follows (in thousands):

	June 30, 2024	December 31, 2023
Engineering, design, and testing accrual	$ 52,977	$ 42,176
Construction in progress	103,832	156,414
Accrued purchases[1]	38,210	44,957
Retail leasehold improvements accrual	4,190	6,005
Third-party services accrual	36,025	41,478
Tooling liability	86,075	49,925
Short-term borrowings	68,238	72,533
Operating lease liabilities, current portion	30,228	28,431
Reserve for loss on firm inventory purchase commitments	140,605	143,566
Accrued warranty	14,922	22,677
Other current liabilities	177,477	190,828
Total other current liabilities	$ 752,779	$ 798,990

[1] Primarily represent accruals for inventory related purchases and transportation charges that had not been invoiced.

Other long-term liabilities

Other long-term liabilities as of June 30, 2024 and December 31, 2023 were as follows (in thousands):

	June 30, 2024	December 31, 2023
Operating lease liabilities, net of current portion	$ 234,358	$ 244,122
Other long-term liabilities[1][2]	321,565	280,217
Total other long-term liabilities	$ 555,923	$ 524,339

[1] As of June 30, 2024 and December 31, 2023, $67.7 million and $62.5 million of capital expenditure support received from MISA was recorded as deferred liability within other long-term liabilities in the condensed consolidated balance sheets, respectively. See Note 16 “Related Party Transactions” for more information.

[2] As of June 30, 2024 and December 31, 2023, $109.9 million and $107.8 million of deferred revenue was recorded within other long-term liabilities in the condensed consolidated balance sheets, respectively, in connection with the strategic technology and supply arrangement, and integration and supply arrangements with Aston Martin Lagonda Global Holdings plc (together with its subsidiaries, “Aston Martin”). See Note 16 “Related Party Transactions” for more information.

Accrued warranty

Accrued warranty activities consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Accrued warranty - beginning of period[2]	$ 48,163	$ 25,875	$ 46,076	$ 22,949
Warranty costs incurred	(17,818)	(11,570)	(35,886)	(19,830)
Provision for warranty[1]	48,151	47,881	68,306	59,067
Accrued warranty - end of period[2]	$ 78,496	$ 62,186	$ 78,496	$ 62,186

[1] Provision for warranty for the three and six months ended June 30, 2024 and 2023 included estimated costs related to the recalls identified and/or special campaigns to repair or replace items under warranties. During the three and six months ended June 30, 2024, the Company recorded $30.7 million and $41.5 million provision associated with a special warranty campaign, respectively.

[2] Accrued warranty balance of $14.9 million and $22.7 million, respectively, was recorded within other current liabilities, and $63.6 million and $23.4 million, respectively, was recorded within other long-term liabilities, in the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023.

NOTE 5 - FAIR VALUE MEASUREMENTS AND FINANCIAL INSTRUMENTS

The accounting standard for fair value measurements provides a framework for measuring fair value and requires expanded disclosures regarding fair value measurements. Fair value is defined as the price that would be received for an asset or the "exit price" that would be paid to transfer a liability in the principal or most advantageous market in an orderly transaction between independent market participants on the measurement date. The Company measures financial assets and liabilities at fair value at each reporting period using a fair value hierarchy, which requires the Company to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument classification within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. This hierarchy prioritizes the inputs into three broad levels as follows:

- ***Level 1***—Quoted prices (unadjusted) in active markets for identical assets or liabilities.
- ***Level 2***—Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- ***Level 3***—Inputs that are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability. Factors used to develop the estimated fair value are unobservable inputs that are not supported by market activity. The sensitivity of the fair value measurement to changes in unobservable inputs may result in a significantly higher or lower measurement.

Cash, cash equivalents and investments are reported at their respective fair values on the Company's condensed consolidated balance sheets. The Company's short-term and long-term investments are classified as available-for-sale securities.

The following table sets forth the Company's financial assets subject to fair value measurements on a recurring basis by level within the fair value hierarchy as of June 30, 2024 and December 31, 2023 (in thousands):

	June 30, 2024						
					Reported As:		
	Amortized cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cash and cash equivalents	Short-Term Investments	Long-Term Investments
Cash	$ 495,575	$ —	$ —	$ 495,575	$ 495,575	$ —	$ —
Level 1:							
Money market funds	661,932	—	—	661,932	661,932	—	—
U.S. Treasury securities	2,110,009	214	(3,054)	2,107,169	162,832	1,411,255	533,082
Subtotal	2,771,941	214	(3,054)	2,769,101	824,764	1,411,255	533,082
Level 2:							
Certificates of deposit	23,313	6	—	23,319	—	23,319	—
Time deposits	100,000	—	—	100,000	—	100,000	—
Commercial paper	112,951	—	(41)	112,910	18,803	94,107	—
Corporate debt securities	403,412	211	(458)	403,165	14,439	234,167	154,559
Subtotal	639,676	217	(499)	639,394	33,242	451,593	154,559
Total	$ 3,907,192	$ 431	$ (3,553)	$ 3,904,070	$ 1,353,581	$ 1,862,848	$ 687,641

	December 31, 2023						
					Reported As:		
	Amortized cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cash and cash equivalents	Short-Term Investments	Long-Term Investments
Cash	$ 516,673	$ —	$ —	$ 516,673	$ 516,673	$ —	$ —
Level 1:							
Money market funds	698,702	—	—	698,702	698,702	—	—
U.S. Treasury securities	2,033,711	2,480	(2,073)	2,034,118	104,572	1,638,537	291,009
Subtotal	2,732,413	2,480	(2,073)	2,732,820	803,274	1,638,537	291,009
Level 2:							
Certificates of deposit	105,993	97	(22)	106,068	—	106,068	—
Time Deposits	50,000	—	—	50,000	50,000	—	—
Commercial paper	299,248	191	(8)	299,431	—	299,431	—
Corporate debt securities	615,350	1,101	(669)	615,782	—	445,762	170,020
Subtotal	1,070,591	1,389	(699)	1,071,281	50,000	851,261	170,020
Total	$ 4,319,677	$ 3,869	$ (2,772)	$ 4,320,774	$ 1,369,947	$ 2,489,798	$ 461,029

During the three and six months ended June 30, 2024 and 2023, there were immaterial realized gains or losses on the sale of available-for-sale securities. Accrued interest receivable excluded from both the fair value and amortized cost basis of the available-for-sale securities was $12.0 million and $11.1 million as of June 30, 2024 and December 31, 2023, respectively, and was recorded in other current assets on its condensed consolidated balance sheets. As of June 30, 2024 and December 31, 2023, no allowance for credit losses was recorded related to an impairment of available-for-sale securities.

The following table summarizes our available-for-sale securities by contractual maturity:

	June 30, 2024	
	Amortized cost	Estimated Fair Value
Within one year	$ 1,864,118	$ 1,862,848
After one year through three years	689,493	687,641
Total	$ 2,553,611	$ 2,550,489

On November 6, 2023, the Company received 28,352,273 ordinary shares of Aston Martin with an initial fair value of $73.2 million. The Company remeasured the shares and recorded fair values of $51.5 million and $81.5 million within investments in equity securities of a related party in the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023, respectively. These equity securities are publicly traded stocks (where shares are denominated in GBP) measured at fair value on a recurring basis and classified within level 1 in the fair value hierarchy. During the three and six months ended June 30, 2024, the Company recognized unrealized losses of $9.4 million and $29.3 million in change of fair value of equity securities of a related party in the condensed consolidated statement of operations and comprehensive loss, respectively. During the three and six months ended June 30, 2024, the Company also recognized an unrealized foreign currency gain of $0.1 million and an unrealized foreign currency loss of $0.7 million related to these equity securities in other expense, net in the condensed consolidated statement of operations and comprehensive loss, respectively. See Note 16 “Related Party Transactions” for more information.

Level 3 liabilities consist of the common stock warrant liability and the derivative liability associated with the Series A Redeemable Convertible Preferred Stock, of which the fair values were measured upon issuance of the Private Placement Warrants and the Series A Redeemable Convertible Preferred Stock, respectively, and are remeasured at each reporting period. The valuation methodology and underlying assumptions are discussed further in Note 7 “Common Stock Warrant Liability” and Note 8 “Redeemable Convertible Preferred Stock”, respectively. Level 3 liabilities also consist of residual value guarantee liabilities, of which the fair value is measured initially upon delivery of vehicles and assessed subsequently for any changes on a quarterly basis. Significant changes in the unobservable inputs used in determining the fair value would result in significant changes to the fair value measurement. The following table presents a reconciliation of the common stock warrant liability and derivative liability measured and recorded at fair value on a recurring basis (in thousands):

	Three Months Ended June 30,			Six Months Ended June 30		
	2024		2023	2024		2023
	Derivative Liability	Common Stock Warrant Liability	Common Stock Warrant Liability	Derivative Liability	Common Stock Warrant Liability	Common Stock Warrant Liability
Fair value-beginning of period	$ 497,100	$ 26,610	$ 181,392	$ —	$ 53,664	$ 140,590
Issuance	—	—	—	497,100	—	—
Change in fair value	(103,000)	(7,539)	(42,133)	(103,000)	(34,593)	(1,331)
Fair value-end of period	$ 394,100	$ 19,071	$ 139,259	$ 394,100	$ 19,071	$ 139,259

NOTE 6 – DEBT

2026 Notes

In December 2021, the Company issued an aggregate of $2,012.5 million principal amount of 1.25% convertible senior notes due in December 2026 (the "2026 Notes") in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended, at an issuance price equal to 99.5% of the principal amount of 2026 Notes. The Company has designated the 2026 Notes as green bonds, whose proceeds will be allocated in accordance with the Company's green bond framework. The 2026 Notes were issued pursuant to and are governed by an indenture dated December 14, 2021, between the Company and U.S. Bank National Association as the trustee. The proceeds from the issuance of the 2026 Notes were $1,986.6 million, net of the issuance discount and debt issuance costs.

The 2026 Notes are unsecured obligations which bear regular interest at 1.25% per annum and are payable semiannually in arrears on June 15 and December 15 of each year, beginning on June 15, 2022. The 2026 Notes will mature on December 15, 2026, unless repurchased, redeemed, or converted in accordance with their terms prior to such date. The 2026 Notes are convertible into cash, shares of our Class A common stock, or a combination of cash and shares of our Class A common stock, at the Company's election, at an initial conversion rate of 18.2548 shares of Class A common stock per $1,000 principal amount of 2026 Notes, which is equivalent to an initial conversion price of approximately $54.78 per share of our Class A common stock. The conversion rate is subject to customary adjustments for certain dilutive events. The Company may redeem for cash all or any portion of the 2026 Notes, at the Company's option, on or after December 20, 2024 if the last reported sale price of our Class A common stock has been at least 130% of the conversion price then in effect for at least 20 trading days at a redemption price equal to 100% of the principal amount of the 2026 Notes to be redeemed, plus accrued and unpaid interest up to the day before the redemption date. The holders may require the Company to repurchase the 2026 Notes upon the occurrence of certain fundamental change transactions at a redemption price equal to 100% of the principal amount of the 2026 Notes redeemed, plus accrued and unpaid interest up to the day before the redemption date.

Holders of the 2026 Notes may convert all or a portion of their 2026 Notes at their option prior to September 15, 2026, in multiples of $1,000 principal amounts, only under the following circumstances:

- during any calendar quarter commencing after the quarter ended on March 31, 2022 (and only during such calendar quarter), if the Company's common stock price exceeds 130% of the conversion price for at least 20 trading days during the 30 consecutive trading days at the end of the prior calendar quarter;
- during the five consecutive business days immediately after any 10 consecutive trading day period in which the trading price per $1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of our common stock on such trading day and the conversion rate on such trading day;
- upon the occurrence of specified corporate events; or
- if the Company calls any or all 2026 Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date, but only with respect to the notes called for redemption.

On or after September 15, 2026, the 2026 Notes are convertible at any time until the close of business on the second scheduled trading day immediately preceding the maturity date. Holders of the 2026 Notes who convert the 2026 Notes in connection with a make-whole fundamental change, as defined in the indenture governing the 2026 Notes, or in connection with a redemption may be entitled to an increase in the conversion rate.

The Company accounted for the issuance of the 2026 Notes as a single liability measured at its amortized cost, as no other embedded features require bifurcation and recognition as derivatives. The following table is a summary of the 2026 Notes as of June 30, 2024 and December 31, 2023 (in millions):

	June 30, 2024	December 31, 2023
Principal Amount	$ 2,012.5	$ 2,012.5
Unamortized Debt Discounts and Issuance Costs	(13.0)	(15.5)
Net Carrying Amount	$ 1,999.5	$ 1,997.0
Fair Value (Level 2)	$ 1,071.7	$ 1,061.6

The effective interest rate for the 2026 Notes is 1.5%. The components of interest expense related to the 2026 Notes were as follows (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Contractual interest	$ 6.3	$ 6.3	$ 12.6	$ 12.6
Amortization of debt discounts and debt issuance costs	1.2	1.3	2.5	2.6
Interest expense	$ 7.5	$ 7.6	$ 15.1	$ 15.2

The 2026 Notes were not eligible for conversion as of June 30, 2024 and December 31, 2023. No sinking fund is provided for the 2026 Notes, which means that the Company is not required to redeem or retire them periodically. As of June 30, 2024 and December 31, 2023, the Company was in compliance with applicable covenants under the indenture governing the 2026 Notes.

SIDF Loan Agreement

On February 27, 2022, Lucid, LLC, a limited liability company established in Saudi Arabia and a subsidiary of the Company ("Lucid LLC") entered into a loan agreement (as subsequently amended, the "SIDF Loan Agreement") with SIDF, a related party of Public Investment Fund ("PIF"), which is an affiliate of Ayar. Under the SIDF Loan Agreement, SIDF has committed to provide loans (the "SIDF Loans") to Lucid LLC in an aggregate principal amount of up to SAR 5.19 billion (approximately $1.4 billion); provided that SIDF may reduce the availability of SIDF Loans under the facility in certain circumstances. SIDF Loans will be subject to repayment in semi-annual installments in amounts ranging from SAR 25 million (approximately $6.7 million) to SAR 350 million (approximately $93.3 million), commencing on April 3, 2026 and ending on November 12, 2038. SIDF Loans are financing and will be used to finance certain costs in connection with the development and construction of AMP-2. Lucid LLC may repay SIDF Loans earlier than the maturity date without penalty. Obligations under the SIDF Loan Agreement do not extend to the Company or any of its other subsidiaries.

SIDF Loans will not bear interest. Instead, Lucid LLC will be required to pay SIDF service fees, consisting of follow-up and technical evaluation fees, ranging, in aggregate, from SAR 415 million (approximately $110.6 million) to SAR 1.77 billion (approximately $471.8 million), over the term of the SIDF Loans. SIDF Loans will be secured by security interests in the equipment, machines and assets funded thereby.

The SIDF Loan Agreement contains certain restrictive financial covenants and imposes annual caps on Lucid LLC's payment of dividends, distributions of paid-in capital, or certain capital expenditures. The SIDF Loan Agreement also defines customary events of default, including abandonment of or failure to commence operations at the plant in the King Abdullah Economic City ("KAEC"), and drawdowns under the SIDF Loan Agreement are subject to certain conditions precedent. As of June 30, 2024 and December 31, 2023, no amount was outstanding under the SIDF Loan Agreement.

GIB Facility Agreement

On April 29, 2022, Lucid LLC entered into the GIB Facility Agreement with GIB, maturing on February 28, 2025. GIB is a related party of PIF, which is an affiliate of Ayar. The GIB Facility Agreement provided for two committed revolving credit facilities in an aggregate principal amount of SAR 1 billion (approximately $266.1 million). SAR 650 million (approximately $173.0 million) under the GIB Facility Agreement was available as the Bridge Facility for the financing of Lucid LLC's capital expenditures in connection with AMP-2. The remaining SAR 350 million (approximately $93.1 million) was available as the Working Capital Facility and might be used for general corporate purposes. Loans under the Bridge Facility and the Working Capital Facility had a maturity of no more than 12 months. The Bridge Facility incurred interest at a rate of 1.25% per annum over 3-month SAIBOR and the Working Capital Facility incurred interest at a rate of 1.70% per annum over 1~3-month SAIBOR and associated fees.

On March 12, 2023, Lucid LLC entered into the Amended GIB Facility Agreement to combine the Bridge Facility and the Working Capital Facility into a committed SAR 1 billion (approximately $266.6 million) GIB Credit Facility which may be used for general corporate purposes. Loans under the Amended GIB Credit Facility Agreement have a maturity of no more than 12 months and bear interest at a rate of 1.40% per annum over SAIBOR (based on the term of borrowing) and associated fees.

The Company is required to pay a quarterly commitment fee of 0.15% per annum based on the unutilized portion of the GIB Credit Facility. Commitments under the Amended GIB Facility Agreement will terminate, and all amounts then outstanding thereunder would become payable, on the maturity date of the Amended GIB Facility Agreement. The Amended GIB Facility Agreement contains certain conditions precedent to drawdowns, representations and warranties and covenants of Lucid LLC and events of default.

As of June 30, 2024 and December 31, 2023, the Company had outstanding borrowings of SAR 256 million (approximately $68.2 million) and SAR 272 million (approximately $72.5 million), respectively. The weighted average interest rate on the outstanding borrowings was 7.67% and 7.49% as of June 30, 2024 and December 31, 2023, respectively. As of June 30, 2024 and December 31, 2023, availability under the GIB Credit Facility was SAR 742 million (approximately $197.8 million) and SAR 727 million (approximately $193.9 million), respectively, after giving effect to the outstanding letters of credit. The outstanding borrowings were recorded within other current liabilities in the condensed consolidated balance sheets. The Company recorded interest expense of $1.3 million and $2.7 million, respectively, during the three and six months ended June 30, 2024. The interest expense recorded for the same periods in the prior year was not material. As of June 30, 2024 and December 31, 2023, the Company was in compliance with applicable covenants under the Amended GIB Facility Agreement.

ABL Credit Facility

In June 2022, the Company entered into the ABL Credit Facility with a syndicate of banks that may be used for working capital and general corporate purposes. The ABL Credit Facility provides for an initial aggregate principal commitment amount of up to $1.0 billion (including a $350.0 million letter of credit subfacility and a $100.0 million swingline loan subfacility) and has a stated maturity date of June 9, 2027. Borrowings under the ABL Credit Facility bear interest at the applicable interest rates specified in the credit agreement governing the ABL Credit Facility. In June 2024, the Company amended the ABL Credit Facility to update the Canadian reference rate. Availability under the ABL Credit Facility is subject to the value of eligible assets in the borrowing base and is reduced by outstanding loan borrowings and issuances of letters of credit which bear customary letter of credit fees. Subject to certain terms and conditions, the Company may request one or more increases in the amount of credit commitments under the ABL Credit Facility in an aggregate amount up to the sum of $500.0 million plus certain other amounts. The Company is required to pay a quarterly commitment fee of 0.25% per annum based on the unutilized portion of the ABL Credit Facility.

The ABL Credit Facility contains customary covenants that limit the ability of the Company and its restricted subsidiaries to, among other activities, pay dividends, incur debt, create liens and encumbrances, redeem or repurchase stock, dispose of certain assets, consummate acquisitions or other investments, prepay certain debt, engage in transactions with affiliates, engage in sale and leaseback transactions or consummate mergers and other fundamental changes. The ABL Credit Facility also includes a minimum liquidity covenant which, at the Company's option following satisfaction of certain pre-conditions, may be replaced with a springing, minimum fixed charge coverage ratio ("FCCR") financial covenant, in each case on terms set forth in the credit agreement governing the ABL Credit Facility. As of June 30, 2024 and December 31, 2023, the Company was in compliance with applicable covenants under the ABL Credit Facility.

As of June 30, 2024 and December 31, 2023, the Company had no outstanding borrowings under the ABL Credit Facility. Outstanding letters of credit under the ABL Credit Facility were $48.4 million and $45.4 million as of June 30, 2024 and December 31, 2023, respectively. Availability under the ABL Credit Facility was $329.2 million (including $147.9 million cash and cash equivalents) and $413.4 million (including $144.0 million cash and cash equivalents) as of June 30, 2024 and December 31, 2023, respectively, after giving effect to the borrowing base and the outstanding letters of credit. The Company incurred issuance costs of $6.3 million to obtain the ABL Credit Facility, which was capitalized within other noncurrent assets in the condensed consolidated balance sheets and amortized over the facility term using the straight-line method. Amortization of the deferred issuance costs and commitment fee were $0.9 million and $1.8 million, respectively, for the three and six months ended June 30, 2024 and 2023.

NOTE 7 - COMMON STOCK WARRANT LIABILITY

On July 23, 2021, in connection with the reverse recapitalization treatment of the Merger, the Company effectively issued 44,350,000 Private Placement Warrants to purchase shares of Lucid's common stock at an exercise price of $11.50. The Private Placement Warrants were initially recognized as a liability with a fair value of $812.0 million and was remeasured to a fair value of $53.7 million as of December 31, 2023. The Private Placement Warrants remained unexercised and were remeasured to a fair value of $19.1 million as of June 30, 2024. The Company recognized gains of $7.5 million and $34.6 million, respectively, for the three and six months ended June 30, 2024, and gains of $42.1 million and $1.3 million, respectively, for the same periods in the prior year, in the condensed consolidated statements of operations and comprehensive loss.

The fair value of the Private Placement Warrants that are not subject to the contingent forfeiture provisions was estimated using a Black-Scholes option pricing model, and were as follows:

	June 30, 2024	December 31, 2023
Fair value of Private Placement Warrants per share	$ 0.43	$ 1.21

Assumptions used in the Black-Scholes option pricing model take into account the contract terms as well as the quoted price of the Company's common stock in an active market. The volatility is based on the actual market activity of the Company's peer group as well as the Company's historical volatility. The expected life is based on the remaining contractual term of the warrants, and the risk free interest rate is based on the implied yield available on U.S. Treasury securities with a maturity equivalent to the warrants' expected life. The level 3 fair value inputs used in the Black-Scholes option pricing models were as follows:

	June 30, 2024	December 31, 2023
Volatility	90.0 %	85.0 %
Expected term (in years)	2.1	2.6
Risk-free rate	4.6 %	4.1 %
Dividend yield	— %	— %

NOTE 8 – REDEEMABLE CONVERTIBLE PREFERRED STOCK

On March 24, 2024, the Company entered into the Series A Subscription Agreement with Ayar. Pursuant to the Series A Subscription Agreement, Ayar agreed to purchase from the Company 100,000 shares of the Series A Redeemable Convertible Preferred Stock for an aggregate purchase price of $1.0 billion in a private placement. On March 29, 2024, the Company issued the shares to Ayar pursuant to the Series A Subscription Agreement and received aggregate gross proceeds of $1.0 billion. The shares of the Series A Redeemable Convertible Preferred Stock were issued pursuant to the Series A Certificate of Designations. Pursuant to the Series A Subscription Agreement, Ayar has agreed, with certain exceptions, that without prior written consent of the Company, it will not sell or transfer the Series A Redeemable Convertible Preferred Stock for the twelve months after the date of the closing of the private placement.

Dividends: The Series A Redeemable Convertible Preferred Stock ranks senior to the common stock with respect to dividends and distributions of assets upon the Company's liquidation, dissolution or winding up. The Series A Redeemable Convertible Preferred Stock has an initial value of $10,000 per share (the "Initial Value" and the Initial Value plus compounded and accrued dividends, the "Accrued Value"). Dividends on the Series A Redeemable Convertible Preferred Stock are payable in the form of compounded cumulative dividends upon each share of the Series A Redeemable Convertible Preferred Stock (paid-in-kind). Dividends accrue daily on the Initial Value (as increased for any compounded dividends previously compounded thereon) of each share of the Series A Redeemable Convertible Preferred Stock at a rate of 9% per annum and compound on the basis of quarterly dividend payment dates on each March 31, June 30, September 30 and December 31 of each year, commencing June 30, 2024.

Liquidation Preference: Upon a liquidation, dissolution or winding up of the Company, each holder of shares of the Series A Redeemable Convertible Preferred Stock ("Holder") will be entitled to receive, with respect to each share of then-outstanding Series A Redeemable Convertible Preferred Stock, out of the assets of the Company available for distribution to its stockholders an amount in cash equal to the greater of (a) an amount per share of the Series A Redeemable Convertible Preferred Stock as of the date of such liquidation, dissolution or winding up equal to (i) the per share Accrued Value as of the relevant date multiplied by (ii) the relevant percentage (the product of (i) and (ii), the "Minimum Consideration"); and (b) the amount that such Holder would have received with respect to such share of the Series A Redeemable Convertible Preferred Stock if all shares of the Series A Redeemable Convertible Preferred Stock had been converted at their Accrued Value into shares of common stock on the business day immediately prior to the date of such liquidation, dissolution or winding up. As of June 30, 2024, the liquidation preference of the Series A Redeemable Convertible Preferred Stock was $1,045.4 million.

Voting Rights: Each Holder is entitled to the number of votes equal to the number of whole shares of common stock into which the aggregate shares of the Series A Redeemable Convertible Preferred Stock held by such Holder are convertible on the record date for determining stockholders entitled to vote on any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders and on which matter holders of the common stock shall be entitled to vote. Holders are entitled to notice of any meeting of stockholders and, except as otherwise provided in the Series A Certificate of Designations or otherwise required by law, to vote together as a single class with the holders of the common stock and any other class or series of stock entitled to vote thereon. The voting power of Holders is subject to a voting cap per share equal to the quotient of the $10,000 Initial Value and $2.77.

As long as at least 10% of the aggregate number of shares of the Series A Redeemable Convertible Preferred Stock issued on the initial issue date remain outstanding, and subject to certain other conditions, Holders are entitled to a separate class vote with respect to, among other things, amendments to the Company's organizational documents that have an adverse effect on the Series A Redeemable Convertible Preferred Stock, authorizations or issuances by the Company of capital stock of the Company that ranks senior or equal to the Series A Redeemable Convertible Preferred Stock with respect to dividends or distributions on liquidation or the terms of which provide for cash dividends (other than the common stock), winding-up and dissolution, and decreases in the number of authorized shares of the Series A Redeemable Convertible Preferred Stock. The Company also agreed that as long as Ayar owns at least 50% of the Series A Redeemable Convertible Preferred Stock issued on the initial issue date, the Company will comply with certain debt incurrence covenants in its Credit Agreement, dated as of June 9, 2022, by and among the Company, as the Borrower Representative, the other Borrowers party thereto from time to time, the Lenders and Issuing Banks from time to time party thereto and Bank of America, N.A., as Administrative Agent, as amended, which agreement may be waived with the sole consent of Ayar.

Conversion: Each share of the Series A Redeemable Convertible Preferred Stock is convertible, at the option of the respective Holder, from time-to-time after the initial issue date, and without the payment of additional consideration by the Holder, (a) at any time that the closing price per share of the common stock on the trading day immediately preceding the date on which the Holder delivers the relevant notice of conversion is at least $5.50 (subject to certain adjustments), unless the Company otherwise consents to such conversion in its sole discretion, or (b) in all events during certain specified periods relating to a fundamental change or optional redemption by the Company, into such number of fully paid and non-assessable shares of common stock as is determined by dividing (i) the applicable Accrued Value as of the conversion date by (ii) the applicable conversion price in effect as of such conversion date, which shall initially be $3.5952, subject to customary anti-dilution adjustments, including in the event of any stock split, stock dividend, recapitalization or similar events (the "Conversion Price").

Mandatory Conversion: On or after the third anniversary of the initial issue date, if at any time (i) the daily VWAP of the common stock has been at least 200% of the Conversion Price for at least twenty (20) trading days (whether or not consecutive) during any thirty (30) consecutive trading days (including the last day of such period) and (ii) certain common stock liquidity conditions are satisfied, the Company will have the right, exercisable at its election within fifteen (15) business days following completion of the applicable thirty (30) trading day period, to cause all or any portion of the Series A Redeemable Convertible Preferred Stock to convert into number of fully paid and non-assessable shares of common stock, as determined by dividing (i) the applicable Accrued Value as of the conversion date by (ii) the Conversion Price in effect as of such conversion date. The Company will be required to pay an additional amount per share of the Series A Redeemable Convertible Preferred Stock payable in cash, shares of common stock valued based on a five-day average daily VWAP or a combination thereof in respect of such conversion equal to the greater of (x) the difference between (i) the Minimum Consideration and (ii) the value of the shares of common stock delivered upon mandatory conversion thereof and (y) zero.

Fundamental Change: Upon a fundamental change, the Holders will be entitled, on the fundamental change repurchase date specified by the Company, to receive an amount equal to the greater of (a) the Minimum Consideration and (b) an amount equal to the value that such Holder would have received if it had converted its shares of the Series A Redeemable Convertible Preferred Stock into shares of common stock on the business day immediately before the fundamental change repurchase date. The fundamental change repurchase price may be paid in cash, shares of common stock (or other securities to be received by a holder of common stock in such fundamental change) valued based on a five-day average daily VWAP (with the number of shares of common stock rounded up to the nearest whole share), or a combination thereof, at the Company's election. The Company may not elect to deliver shares of its common stock (or other securities to be received by a holder of common stock in such fundamental change) in partial or full satisfaction of the fundamental change repurchase price, if certain common stock liquidity conditions are not satisfied.

Optional Redemption: On or after the fifth anniversary of the initial issue date, the Company may redeem all or any portion of the Series A Redeemable Convertible Preferred Stock at a redemption price per share equal to the greater of (a) the Minimum Consideration and (b) an amount equal to the value (calculated based on a twenty (20)-day average daily VWAP) of the number of shares of common stock if it had converted its shares of the Series A Redeemable Convertible Preferred Stock into shares of common stock as of the redemption date. Such redemption price may be paid in cash, shares of common stock valued based on a twenty (20)-day average daily VWAP, or a combination thereof, at the Company's election. The Company may not pay any portion of such redemption price in shares of common stock if the common stock liquidity conditions are not satisfied.

While the Series A Redeemable Convertible Preferred Stock is callable after five years at the Company's option, the Series A Redeemable Convertible Preferred Stock is considered redeemable at the option of Ayar because it is the majority shareholder of the Company. The Company classified the Series A Redeemable Convertible Preferred Stock as mezzanine equity and recorded initially at its issuance price, net of issuance costs of $2.4 million and net of the initial value of the bifurcated derivative liability of $497.1 million as discussed below. The Company accretes the Series A Redeemable Convertible Preferred Stock to its redemption value, which is greater of (a) the Minimum Consideration and of (b) an amount equal to the value that such Holder would have received if it had converted its shares of the Series A Redeemable Convertible Preferred Stock into shares of common stock as of the Redemption Date. The Company recorded accretion of $146.9 million and $150.8 million during the three and six months ended June 30, 2024, respectively, as a reduction to additional paid-in capital in the condensed consolidated balance sheet as of June 30, 2024. The carrying value of the Series A Redeemable Convertible Preferred Stock was $651.3 million as of June 30, 2024.

The Company assessed the above features to determine whether any features are required to be bifurcated and separately accounted for as an embedded feature. The Company concluded that the conversion features, inclusive of all settlement outcomes where the pay-off is indexed to the if-converted value, meets all the requirements to be separately accounted for as a bifurcated derivative. As a result, the Company bifurcated the Series A Redeemable Convertible Preferred Stock between (i) the host contract which is accounted for within mezzanine equity as described above, and (ii) the bifurcated derivative liability related to the conversion features. The proceeds from issuance were first allocated to the fair value of the bifurcated derivative with the residual being allocated to the host contract. The bifurcated derivative is remeasured to fair value at each reporting period with changes in fair value recorded in the condensed consolidated statement of operations and comprehensive loss. The derivative liability was remeasured to a fair value of $394.1 million as of June 30, 2024. During the three and six months ended June 30, 2024, the Company recognized a gain of $103.0 million in change in fair value of derivative liability associated with Series A redeemable convertible preferred stock (related party) in the condensed consolidated statements of operations and comprehensive loss.

The Company estimated the fair value of the derivative liability using a binomial lattice model with the volatility, credit spread, and term as significant unobservable inputs. Assumptions used in the valuation also take into account the contractual terms as well as the quoted price of the Company's common stock in an active market. Significant changes in any of those inputs in isolation would result in significant changes to the fair value measurement.

The level 3 fair value inputs used in the valuation of the derivative liability were as follows:

	June 30, 2024
Volatility	40 %
Credit spread	31.5 %
Stock price	$ 2.61
Term (in years)	4.75
Risk-free rate	4.4 %

NOTE 9 – STOCKHOLDERS' EQUITY

Treasury Stock

During the year ended December 31, 2021, the Company repurchased an aggregate of 857,825 shares of its common stock, including 712,742 shares from certain employees and 145,083 shares from Board of Directors of the Company's predecessor, Atieva, Inc. at $24.15 per share. No common stock was repurchased during the three and six months ended June 30, 2024 and 2023.

Common Stock Reserved for Issuance

The Company's common stock reserved for future issuances as of June 30, 2024 was as follows:

	June 30, 2024
Private Placement Warrants to purchase common stock	44,350,000
Stock options outstanding	30,287,248
Restricted stock units outstanding	126,404,947
Shares available for future grants under equity plans	58,064,464
If-converted common shares from convertible note	36,737,785
If-converted common shares from Series A redeemable convertible preferred stock	284,615,599
Total shares of common stock reserved	580,460,043

NOTE 10 – STOCK-BASED AWARDS

Stock Options

A summary of stock option activity for the six months ended June 30, 2024 was as follows:

	Outstanding Options			
	Number of Options	Weighted Average Exercise Price	Weighted-Average Remaining Contractual Term	Intrinsic Value (in thousands)
Balance as of December 31, 2023	32,911,135	$ 1.99	5.5	$ 91,785
Options granted	232,177	3.99		
Options exercised	(2,098,557)	1.10		
Options canceled	(757,507)	7.29		
Balance as of June 30, 2024	30,287,248	$ 1.94	4.91	$ 43,217
Options vested and exercisable as of June 30, 2024	26,461,672	$ 1.28	4.71	$ 42,821

As of June 30, 2024, unrecognized stock-based compensation cost related to outstanding unvested stock options that are expected to vest was $10.5 million, which is expected to be recognized over a weighted-average period of 2.8 years.

Restricted Stock Units ("RSUs")

A summary of RSUs activity for the six months ended June 30, 2024 was as follows:

	Restricted Stock Units			
	Time-Based Shares	Performance-Based Shares	Total Shares	Weighted-Average Grant-Date Fair Value
Balance as of December 31, 2023	54,699,739	9,305,825	64,005,564	$ 10.90
Granted	77,029,707	7,728,436	84,758,143	2.69
Vested	(13,155,545)	(1,263,684)	(14,419,229)	11.83
Cancelled/Forfeited	(4,220,018)	(3,719,513)	(7,939,531)	8.08
Balance as of June 30, 2024	114,353,883	12,051,064	126,404,947	$ 5.47

As of June 30, 2024, unrecognized stock-based compensation cost related to outstanding unvested time-based RSUs that are expected to vest was $471.2 million, which is expected to be recognized over a weighted-average period of 1.8 years.

In 2021, the Company granted performance-based RSUs to the CEO and they are subject to performance and market conditions. The performance condition was satisfied upon the closing of the Merger. The fair value of these performance-based RSUs was measured on the grant date, March 27, 2021, using a Monte Carlo simulation model, with the following assumptions:

Weighted average volatility	60.0 %
Expected term (in years)	5.0
Risk-free interest rate	0.9 %
Expected dividends	— %

The Company recognizes compensation expense using a graded vesting attribution method over the derived service period for the CEO performance-based awards. Stock-based compensation expense is recognized when the relevant performance condition is considered probable of achievement for the performance-based award. During the year ended December 31, 2022, the market condition was met for the CEO performance-based awards for four of the five tranches and certified by the Board of Directors, representing an aggregate of 13,934,271 performance RSUs. The unamortized expense of $8.2 million as of December 31, 2022 for the fifth tranche, representing 2,090,140 RSUs, was fully recognized during the year ended December 31, 2023. The Company withheld approximately 0.5 million and 1.0 million shares of common stock, respectively, for the three and six months ended June 30, 2024, and 0.4 million and 0.9 million shares of common stock, respectively, for the same periods in the prior year, by net settlement to meet the related tax withholding requirements related to the CEO time-based and performance-based RSUs.

The Company granted performance-based RSUs to certain employees and they are subject to (i) corporate performance conditions and/or individual performance and (ii) a service condition which will be met generally over 3 years. The number of awards granted represents 100% of the target goal. Under the terms of the awards, the recipient may earn between 0% to 150% of the original number of grants based on actual achievement of corporate performance goals and/or individual performance. Stock-based compensation expense is recognized when the relevant performance condition is considered probable of achievement for the performance-based award. The Company recorded stock-based compensation expenses of $3.3 million and $8.0 million, respectively, during the three and six months ended June 30, 2024, and $0.7 million for the same periods in the prior year, related to these performance-based RSUs. As of June 30, 2024, the unamortized expense for the performance-based RSUs was $24.7 million, which will be recognized over a weighted-average period of 1.4 years contingent upon realization of the corporate performance conditions.

Employee Stock Purchase Plan ("ESPP")

The ESPP authorizes the issuance of shares of common stock pursuant to purchase rights granted to employees. The plan provides for 24-month offering periods beginning in December and June of each year, and each offering period will consist of four six-month purchase periods. The purchase price for each share purchased during an offering period will be the lesser of 85% of the fair market value of the share on the purchase date or 85% of the fair market value of the share on the offering date. As of June 30, 2024, unrecognized stock-based compensation cost related to the ESPP was $32.4 million which is expected to be recognized over a weighted-average period of 1.9 years.

Stock-based Compensation Expense

Total employee and nonemployee stock-based compensation expense for the three and six months ended June 30, 2024 and 2023, was classified in the condensed consolidated statements of operations and comprehensive loss as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Cost of revenue	$ 899	$ 765	$ 1,811	$ 1,339
Research and development	33,526	37,410	71,059	65,393
Selling, general and administrative	24,068	33,201	49,319	59,906
Restructuring charges	(1,480)	—	(1,480)	(1,443)
Total	$ 57,013	$ 71,376	$ 120,709	$ 125,195

The Company capitalized stock-based compensation expenses of $8.9 million and $19.4 million, respectively, for the three and six months ended June 30, 2024, and $12.3 million and $20.4 million, respectively, for the same periods in the prior year, primarily as part of the cost of inventory.

NOTE 11 – LEASES

The Company has entered into various non-cancellable operating and finance lease agreements for certain of the Company's offices, manufacturing and warehouse facilities, retail and service locations, equipment and vehicles, worldwide.

In August 2022, the Company entered into a four-year agreement ("Lease Agreement") to lease land in Casa Grande, Arizona adjacent to our manufacturing facility. The Company classifies this lease as a finance lease because the Lease Agreement contains a purchase option which the Company is reasonably certain to exercise. As of June 30, 2024 and December 31, 2023, assets associated with the finance lease were $79.3 million. As of June 30, 2024 and December 31, 2023, liabilities associated with the finance lease were $80.3 million and $80.6 million, respectively.

Contemporaneously with the execution of the Lease Agreement, the Company entered into a sale agreement, pursuant to which the Company sold certain parcels of land for $31.7 million to the lessor and leased back these parcels of land under the Lease Agreement. The sale of the land and subsequent lease did not result in change in the transfer of control of the land; therefore, the sale-leaseback transaction is accounted for as a failed sale and leaseback financing obligation. The Company recorded $31.7 million of sales proceeds received as a financial liability within other long-term liabilities in the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023.

The balances for the operating and finance leases where the Company is the lessee are presented as follows within the Company's condensed consolidated balance sheets (in thousands):

	June 30, 2024	December 31, 2023
Operating leases:		
Right-of-use assets	$ 212,877	$ 221,508
Other current liabilities	$ 30,228	$ 28,431
Other long-term liabilities	234,358	244,122
Total operating lease liabilities	$ 264,586	$ 272,553
Finance leases:		
Property, plant and equipment, net	$ 83,213	$ 85,055
Total finance lease assets	$ 83,213	$ 85,055
Finance lease liabilities, current portion	$ 7,099	$ 8,202
Finance lease liabilities, net of current portion	76,533	77,653
Total finance lease liabilities	$ 83,632	$ 85,855

The components of lease expense were as follows within the Company's condensed consolidated statements of operations and comprehensive loss (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Operating lease expense:				
Operating lease expense [(1)]	$ 15,419	$ 13,763	$ 30,429	$ 26,578
Variable lease expense	463	423	910	868
Finance lease expense:				
Amortization of leased assets	$ 808	$ 1,402	$ 1,827	$ 2,807
Interest on lease liabilities	1,165	1,229	2,334	2,473
Total finance lease expense	$ 1,973	$ 2,631	$ 4,161	$ 5,280
Total lease expense	$ 17,855	$ 16,817	$ 35,500	$ 32,726

[(1)] Excluded short-term leases, which were not material.

Other information related to leases where the Company is the lessee was as follows:

	June 30, 2024	December 31, 2023
Weighted-average remaining lease term (in years):		
Operating leases	6.4	6.8
Finance leases	2.1	2.6
Weighted-average discount rate:		
Operating leases	11.58 %	11.01 %
Finance leases	5.63 %	5.59 %

As of June 30, 2024, the maturities of the Company's operating and finance lease liabilities (excluding short-term leases) were as follows (in thousands):

	Operating Leases	Finance Leases
2024 (remainder of the year)	$ 27,340	$ 3,779
2025	64,355	6,617
2026	62,222	82,486
2027	53,884	138
2028	50,126	68
Thereafter	124,958	8
Total minimum lease payments	382,885	93,096
Less: Interest	(118,299)	(9,464)
Present value of lease obligations	264,586	83,632
Less: Current portion	(30,228)	(7,099)
Long-term portion of lease obligations	$ 234,358	$ 76,533

As of June 30, 2024, the Company entered into additional leases for facilities and equipment that have not yet commenced with undiscounted future lease payments of $11.1 million. The leases are expected to commence over the next twelve months.

NOTE 12 - COMMITMENTS AND CONTINGENCIES

Contractual Obligations

As of June 30, 2024 and December 31, 2023, the Company had $275.8 million and $270.2 million, respectively, in commitments related to AMP-1 and AMP-2 plant and equipment. These commitments represent future expected payments on open purchase orders entered into as of June 30, 2024 and December 31, 2023.

The Company's non-cancellable long-term commitments primarily related to certain inventory component purchases. The estimated future payments having a remaining term in excess of one year as of June 30, 2024 were as follows (in thousands):

Years ended December 31,	Minimum Purchase Commitment[1]
2024 (remainder of the year)	$ 308,794
2025	491,249
2026	730,005
2027	714,515
2028	698,364
Thereafter	2,016,409
Total	$ 4,959,336

[1] Included minimum purchase commitment of approximately $4.8 billion of battery cells from Panasonic Energy Co., Ltd. and certain of its affiliates, using the base prices per the agreements.

Legal Matters

From time-to-time, the Company may become subject to legal proceedings, claims and litigation arising in the ordinary course of business. Some of these claims, lawsuits and other proceedings may involve highly complex issues that are subject to substantial uncertainties, and could result in damages, fines, penalties, non-monetary sanctions or relief.

Beginning on April 18, 2021, two individual actions and two putative class actions were filed in federal courts in Alabama, California, New Jersey and Indiana, asserting claims under the federal securities laws against the Company (f/k/a Churchill Capital Corp IV), its wholly owned subsidiary, Atieva, Inc. ("Lucid Motors"), and certain current and former officers and directors of the Company, generally relating to the Merger. On September 16, 2021, the plaintiff in the New Jersey action voluntarily dismissed that lawsuit. The remaining actions were ultimately transferred to the Northern District of California and consolidated under the caption, In re CCIV / Lucid Motors Securities Litigation, Case No. 4:21-cv-09323-YGR (the "Consolidated Class Action"). On December 30, 2021, lead plaintiffs in the Consolidated Class Action filed a revised amended consolidated complaint (the "Complaint"), which asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 on behalf of a putative class of shareholders who purchased stock in CCIV between February 5, 2021 and February 22, 2021. The Complaint names as defendants Lucid Motors and the Company's chief executive officer, and generally alleges that, prior to the public announcement of the Merger, defendants purportedly made false or misleading statements regarding the expected start of production for the Lucid Air and related matters. The Complaint seeks certification of the action as a class action as well as compensatory damages, interest thereon, and attorneys' fees and expenses. The District Court granted defendants' motion to dismiss on January 11, 2023, with plaintiffs being provided the ability to seek leave to amend. On June 29, 2023, the District Court denied plaintiff's motion for leave to amend, dismissed the lawsuit and terminated the case. On July 28, 2023, plaintiffs appealed the District Court's decisions to the Ninth Circuit Court of Appeals. Currently, the parties are litigating the case on appeal.

In addition, two separate purported shareholders of the Company filed shareholder derivative actions, purportedly on behalf of the Company, against certain of the Company's officers and directors in California federal court, captioned Sahr Lebbie v. Peter Rawlinson, et al., Case No. 4:22-cv-00531-YGR (N.D. Cal.) (filed on January 26, 2022) and *Zsata Williams-Spinks v. Peter Rawlinson, et al.*, Case No. 4:22-cv-01115-YGR (N.D. Cal.) (filed on February 23, 2022). The complaint also names the Company as a nominal defendant. Based on allegations that are similar to those in the Consolidated Class Action, the Lebbie complaint asserts claims for unjust enrichment, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, abuse of control, gross mismanagement and waste of corporate assets and a claim for contribution under Sections 10(b) and 21D of the Exchange Act in connection with the Consolidated Class Action and the Williams-Spinks complaint asserts claims for breach of fiduciary duty, gross mismanagement, abuse of control, unjust enrichment, contribution under Sections 10(b) and 21D of the Exchange Act, and aiding and abetting breach of fiduciary duty in connection with the Consolidated Class Action. The complaints seek compensatory damages, interest thereon, certain corporate governance reforms, and attorneys' fees and expenses. On April 29, 2022, the District Court consolidated the two actions into In re Lucid Group, Inc. (f/k/a Churchill Capital Corp IV) Derivative Litigation, Case No. 4:22-cv-00531-YGR (N.D. Cal.) (the "Consolidated Derivative Action"). On May 25, 2022, the District Court then stayed the Consolidated Derivative Action pending developments in the Consolidated Class Action. On December 12, 2023, given that the Consolidated Class Action was dismissed by the trial court and appealed to the Ninth Circuit Court of Appeals, the District Court administratively closed the Consolidated Derivative Action for statistical purposes but reminded the parties of their obligations under the stay.

On April 1, 2022 and May 31, 2022, two alleged shareholders filed putative class actions under the federal securities laws against Lucid Group, Inc. and certain officers of the Company relating to alleged statements, updated projections and guidance provided in the late 2021 to early 2022 timeframe. The complaints, which were filed in the Northern District of California, are captioned *Victor W. Mangino v. Lucid Group, Inc., et al.*, Case No. 3:22-cv-02094-JD, and *Anant Goel v. Lucid Group, Inc., et al.*, Case No. 3:22-cv-03176-JD. The two matters were consolidated into one action, entitled *In re Lucid Group, Inc. Securities Litigation*, Case No. 22-cv-02094-JD. The consolidated complaint names as defendants Lucid Group, Inc. and the Company's chief executive officer and former chief financial officer, and generally allege that defendants purportedly made false or misleading statements regarding delivery and revenue projections and related matters between November 15, 2021 and August 3, 2022. The consolidated complaint seeks certification of the action as a class action, as well as compensatory damages, interest thereon, and attorneys' fees and expenses. Defendants filed a Motion to Dismiss on February 23, 2023, which is pending before the court. Defendants believe that the plaintiffs' claims are without merit and intends to defend themselves vigorously, but they cannot ensure that their efforts to dismiss the consolidated complaint will be successful or that they will avoid liability in this matter.

In addition, on July 11, 2022, a purported shareholder of the Company filed a shareholder derivative action, purportedly on behalf of the Company, against certain of the Company's officers and directors in California state court, captioned *Floyd Taylor v. Glenn August, et al.*, Superior Court, Alameda County, Case No. 22CV014130. The complaint also names the Company as a nominal defendant. Based on allegations that are similar to those in the *In re Lucid Group, Inc. Securities Litigation* action, the *Taylor* complaint asserts claims for breach of fiduciary duty, unjust enrichment, waste of corporate assets and aiding and abetting breach of fiduciary duty. The complaint seeks compensatory damages, punitive damages, interest, and attorneys' fees and expenses. The Company is advancing defendants' fees and expenses incurred in their defense of the action.

Moreover, on March 25, 2021, the Illinois Automobile Dealers Association, Chicago Automobile Trade Association, Peoria Metro New Car Dealers Association, Illinois Motorcycle Dealers Association, and 241 individual motor vehicle dealers filed an action against the Office of the Illinois Secretary of State ("SOS"), Jesse White, in his official capacity as the Illinois Secretary of State; Lucid USA, Inc. ("Lucid USA"); and other defendants, in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, Case No. 2021CH01438. The suit generally alleges that Illinois law does not permit manufacturers to obtain licenses as motor vehicle dealers. Plaintiffs seek to prevent Lucid from engaging in the sale of motor vehicles directly to consumers. The SOS granted Lucid USA a dealer's license on June 3, 2021. In December 2022, the Court granted Defendants' Motion to Dismiss. Plaintiffs subsequently appealed to the Illinois First District Appellate Court and the parties are currently litigating the case on appeal.

Furthermore, while we have registered and applied for trademarks in an effort to protect our brand and goodwill with customers, competitors or other third parties are, have in the past, and may in the future, oppose our trademark applications or otherwise challenge our use of the trademarks and other brand names in which we have invested. Such oppositions and challenges can be expensive and may adversely affect our ability to maintain the goodwill gained in connection with a particular trademark. In addition, we may lose our trademark or are unable to submit specimens of use by the applicable deadline to perfect such trademark rights. For instance, in June 2024, we reached an agreement with Gravity, Inc. to settle a claim before the United States Patent and Trademark Office ("USPTO") that opposed and requested cancellation of our trademark application and registration for the use of "Gravity."

At this time, the Company does not consider any such claims, lawsuits or proceedings that are currently pending, individually or in the aggregate, including the matters referenced above, to be material to the Company's business or likely to result in a material adverse effect on its future operating results, financial condition or cash flows should such proceedings be resolved unfavorably.

Indemnification

In the ordinary course of business, the Company may provide indemnification of varying scope and terms to customers, vendors, investors, directors, officers, and certain key employees with respect to certain matters, including, but not limited to, losses arising out of our breach of such agreements, services to be provided by the Company, or from intellectual property infringement claims made by third parties. These indemnification provisions may survive termination of the underlying agreement and the maximum potential amount of future payments the Company could be required to make under these indemnification provisions may not be subject to maximum loss clauses. The maximum potential amount of future payments the Company could be required to make under these indemnification provisions is indeterminable. The Company has never paid a material claim, nor has it been sued in connection with these indemnification arrangements. The Company has indemnification obligations with respect to letters of credit and surety bond primarily used as security against facility leases, utilities infrastructure and other agreements that require securitization. The indemnification obligations were $64.1 million and $56.3 million as of June 30, 2024 and December 31, 2023, respectively, for which no liabilities are recorded in the condensed consolidated balance sheets.

NOTE 13 - INCOME TAXES

The Company's provision from income taxes for interim periods is determined using its effective tax rate that arise during the period. The Company's quarterly tax provision is subject to variation due to several factors, including variability in pre-tax income (or loss), the mix of jurisdictions to which such income relates, changes in how the Company does business, the valuation allowance against deferred tax assets, and tax law developments.

The Company's effective tax rate was 0.0% for the three and six months ended June 30, 2024, and (0.1)% and 0.0%, respectively, for the same periods in the prior year, due to minimal profits in foreign jurisdictions and U.S. losses for which no benefit will be realized.

NOTE 14 - NET LOSS PER SHARE

Basic and diluted net loss per share attributable to common stockholders are calculated as follows (in thousands, except share and per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net loss	$ (643,390)	$ (764,232)	$ (1,324,249)	$ (1,543,760)
Accretion of Series A redeemable convertible preferred stock (related party)	(146,861)	—	(150,762)	—
Net loss attributable to common stockholders, basic and diluted	$ (790,251)	$ (764,232)	$ (1,475,011)	$ (1,543,760)
Weighted-average shares outstanding attributable to common stockholders, basic and diluted	2,310,360,525	1,912,459,833	2,306,209,050	1,871,884,313
Net loss per share attributable to common stockholders, basic and diluted	$ (0.34)	$ (0.40)	$ (0.64)	$ (0.82)

The following outstanding shares of potentially dilutive securities were excluded from the computation of diluted net loss per share attributable to common stockholders because including them would have had an anti-dilutive effect:

	June 30,	
Excluded Securities	2024	2023
Private Placement Warrants to purchase common stock	44,350,000	44,350,000
Options outstanding to purchase common stock	30,287,248	34,849,933
RSUs outstanding	116,586,371	54,716,422
Employee stock purchase plan	19,681,061	8,764,624
If-converted common shares from convertible note	36,737,785	36,737,785
If-converted common shares from Series A redeemable convertible preferred stock	284,615,599	—
Total	532,258,064	179,418,764

The 9,818,576 and 5,786,834 shares of common stock equivalents subject to RSUs are excluded from the anti-dilutive table above as the underlying shares remain contingently issuable since the respective performance conditions have not been satisfied as of June 30, 2024 and 2023, respectively.

NOTE 15 - EMPLOYEE BENEFIT PLAN

The Company has a 401(k) savings plan (the "401(k) Plan") that qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the 401(k) Plan, participating employees may elect to contribute up to 100% of their eligible compensation, subject to certain limitations. The 401(k) Plan provides for a discretionary employer-matching contribution. The matching contribution expense under the Company's 401(k) Plan was not material for the three and six months ended June 30, 2024, and nil for the same periods in the prior year.

NOTE 16 - RELATED PARTY TRANSACTIONS

Leases

In February 2022, the Company entered into a lease agreement with KAEC, a related party of PIF, which is an affiliate of Ayar, for its first international manufacturing plant in Saudi Arabia. The lease has an initial term of 25 years expiring in 2047. The right-of-use asset related to this lease was $4.4 million and $4.5 million as of June 30, 2024 and December 31, 2023, respectively. The lease liability was $5.9 million and $5.7 million as of June 30, 2024 and December 31, 2023, respectively. The right-of-use asset and lease liability were recorded in right-of-use assets and other long-term liabilities in the condensed consolidated balance sheets, respectively. The lease expense recorded for the three and six months ended June 30, 2024 and 2023 was immaterial.

In July 2023, the Company entered into a lease agreement with King Abdullah Financial District Development and Management Company, a subsidiary of PIF, which is an affiliate of Ayar, for its corporate office in Saudi Arabia. The lease has an initial term of six years expiring in 2029. The right-of-use asset related to this lease was $2.2 million and $2.3 million as of June 30, 2024 and December 31, 2023, respectively. The lease liability was $2.5 million and $2.3 million as of June 30, 2024 and December 31, 2023, respectively. The right-of-use asset and lease liability were recorded in right-of-use assets and other long-term liabilities in the condensed consolidated balance sheets, respectively. The lease expense recorded for the three and six months ended June 30, 2024 was immaterial.

SIDF Loan Agreement

In February 2022, Lucid LLC entered into the SIDF Loan Agreement with the SIDF, a related party of PIF, which is an affiliate of Ayar. Under the SIDF Loan Agreement, SIDF has committed to provide the SIDF Loans to Lucid LLC in an aggregate principal amount of up to SAR 5.19 billion (approximately $1.4 billion); provided that SIDF may reduce the availability of SIDF Loans under the facility in certain circumstances. See Note 6 “Debt” for more information.

MISA Agreements

In February 2022, Lucid LLC entered into agreements with MISA, a related party of PIF, which is an affiliate of Ayar, pursuant to which MISA has agreed to provide economic support for certain capital expenditures in connection with Lucid LLC’s on-going design and construction of AMP-2. The support by MISA is subject to Lucid LLC’s completion of certain milestones related to the construction and operation of AMP-2. Following the commencement of construction, if operations at the plant do not commence within 30 months, or if the agreed scope of operations is not attained within 55 months, MISA may suspend availability of subsequent support.

Pursuant to the agreements, MISA has the right to require Lucid LLC to transfer the ownership of AMP-2 to MISA, at the fair market value thereof, minus an amortized value of the support provided in the event of customary events of default including abandonment or material and chronically low utilization of AMP-2. Alternatively, Lucid LLC is entitled to avoid the transfer of the ownership of AMP-2 by electing to pay such amortized value. The agreements will terminate on the fifteenth anniversary of the commencement of CBU operations at AMP-2 at the latest.

During the year ended December 31, 2022, the Company received support of SAR 366 million (approximately $97.3 million) in cash, of which $64.0 million was recorded as deferred liability within other long-term liabilities and $33.3 million was recorded as a deduction in calculating the carrying amount of the related assets in the consolidated balance sheet as of December 31, 2022. Subsequently, the Company recorded $64.0 million as a deduction in calculating the carrying amount of the related assets in the consolidated balance sheet as of December 31, 2023.

During the year ended December 31, 2023, the Company received support of SAR 366 million (approximately $97.5 million) in cash, of which $62.5 million was recorded as deferred liability within other long-term liabilities and $35.0 million was recorded as a deduction in calculating the carrying amount of the related assets in the consolidated balance sheet as of December 31, 2023. As of June 30, 2024, the Company recorded $29.8 million as deferred liability within other long-term liabilities and $67.7 million as a deduction in calculating the carrying amount of the related assets in the condensed consolidated balance sheet. There were no unfulfilled conditions and contingencies attached to the payments received.

GIB Facility Agreement

In April 2022, Lucid LLC entered into the GIB Facility Agreement with GIB. GIB is a related party of PIF, which is an affiliate of Ayar. The GIB Facility Agreement provided for two committed revolving credit facilities in an aggregate principal amount of SAR 1 billion (approximately $266.1 million).

On March 12, 2023, Lucid LLC entered into an amendment of the GIB Facility Agreement to combine the Bridge Facility and the Working Capital Facility into a committed SAR 1 billion (approximately $266.6 million) GIB Credit Facility which may be used for general corporate purposes. See Note 6 “Debt” for more information.

Construction Service Contract

Lucid LLC entered into agreements with Al Bawani Company Limited (“Al Bawani”), an affiliate of PIF, which is an affiliate of Ayar, for certain design and construction services in connection with the development of AMP-2. The capital expenditures incurred to date under these agreements were SAR 559.6 million (approximately $149.2 million) and SAR 444.6 million (approximately $118.6 million) as of June 30, 2024 and December 31, 2023, respectively. Amounts due to Al Bawani under these agreements were SAR 58.5 million (approximately $15.6 million) and SAR 74.0 million (approximately $19.7 million) as of June 30, 2024 and December 31, 2023, respectively, and were primarily recorded within accounts payable and other current liabilities in the condensed consolidated balance sheets.

Subscription Agreements

On May 31, 2023, the Company entered into the 2023 Subscription Agreement with Ayar, pursuant to which Ayar agreed to purchase from the Company 265,693,703 shares of the Company's common stock at a price per share of $6.83 in a private placement for aggregate net proceeds of $1.8 billion. In June 2023, the Company issued the shares to Ayar pursuant to the 2023 Subscription Agreement and received aggregate net proceeds of $1.8 billion after deducting issuance costs of $2.0 million.

On March 24, 2024, the Company entered into the Series A Subscription Agreement with Ayar, pursuant to which Ayar agreed to purchase from the Company 100,000 shares of its Series A Redeemable Convertible Preferred Stock for an aggregate purchase price of $1.0 billion in a private placement. On March 29, 2024, the Company issued the shares to Ayar pursuant to the Series A Subscription Agreement and received aggregate gross proceeds of $1.0 billion. See Note 8 "Redeemable Convertible Preferred Stock" for more information.

Common stock acquired by Ayar under the 2023 Subscription Agreement, the Series A Redeemable Convertible Preferred Stock acquired by Ayar under the Series A Subscription Agreement and the common stock issuable upon conversion thereof are subject to the Investor Rights Agreement dated February 22, 2021 (as amended from time-to-time, the "Investor Rights Agreement"), which governs the registration for resale of such common stock and the Series A Redeemable Convertible Preferred Stock.

Human Resources Development Fund ("HRDF") Joint Cooperation Agreement

In March 2023, Lucid LLC entered into a joint cooperation agreement with HRDF, a related party of PIF, which is an affiliate of Ayar. Pursuant to the agreement, Lucid LLC will train and develop local personnel in Saudi Arabia, and HRDF agreed to reimburse the Company training related costs in an aggregate of SAR 29.3 million (approximately $7.8 million) during the program.

During the year ended December 31, 2023, the Company received a payment of SAR 8.8 million (approximately $2.3 million) in cash. No payment was received during the three and six months ended June 30, 2024. The Company recorded $1.0 million and $1.8 million as deferred liability within other current liabilities in the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023, respectively. The deduction recorded to operating expenses in the condensed consolidated statement of operations and comprehensive loss was immaterial for the three and six months ended June 30, 2024 and 2023.

EV Purchase Agreement

In August 2023, Lucid LLC entered into the EV Purchase Agreement with the Government of Saudi Arabia, a related party of PIF, which is an affiliate of Ayar, as represented by the Ministry of Finance. The EV Purchase Agreement supersedes the letter of undertaking that Lucid LLC entered into in April 2022. Pursuant to the terms of the EV Purchase Agreement, the Government of Saudi Arabia and its entities and corporate subsidiaries and other beneficiaries (collectively, the "Purchaser") may purchase up to 100,000 vehicles, with a minimum purchase quantity of 50,000 vehicles and an option to purchase up to an additional 50,000 vehicles during a ten-year period. Under the EV Purchase Agreement, the Purchaser may reduce the minimum vehicle purchase quantity by the number of vehicles set out in any purchase order not accepted by us or by the number of any vehicles that Lucid LLC fails to deliver within six months from the date of the applicable purchase order. The Purchaser also has sole and absolute discretion to decide whether to exercise the option to purchase the additional 50,000 vehicles. The Company recognized net vehicle sales amount of SAR 136.9 million (approximately $36.5 million) and SAR 329.5 million (approximately $87.8 million) during the three and six months ended June 30, 2024. The Company recorded amounts due from the Purchaser of SAR 291.9 million (approximately $77.8 million) and SAR 133.2 million (approximately $35.5 million) in accounts receivable, net in the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023, respectively. See "Vehicle Sales without Residual Value Guarantee" section under Note 2 "Significant Accounting Policies" for the revenue recognition policies.

Implementation Agreement with Aston Martin

In June 2023, the Company entered into an agreement (the "Implementation Agreement") with Aston Martin, a related party of PIF, which is an affiliate of Ayar, under which the Company and Aston Martin have established a long-term strategic technology and supply arrangement. On November 6, 2023, pursuant to the terms of the Implementation Agreement, integration and supply arrangements became effective, under which the Company will provide Aston Martin access to its powertrain, battery system, and software technologies, work with Aston Martin to integrate its powertrain and battery components with Aston Martin's battery electric vehicle chassis, and supply powertrain and battery components to Aston Martin (collectively, the "Strategic Technology Arrangement"). In connection with the commencement of the Strategic Technology Arrangement, the Company received technology access fees in 28,352,273 ordinary shares of Aston Martin (subject to a lock-up provision of 365 days from its issuance) and the first cash installment of $33.0 million. These shares were initially measured at a fair value of $73.2 million. As of June 30, 2024 and December 31, 2023, the Company remeasured the shares and recorded fair values of $51.5 million and $81.5 million within investments in equity securities of a related party in the condensed consolidated balance sheets, respectively. The Company will receive the remaining cash payments of $99 million phased over a period of three years. In connection with the Strategic Technology Arrangement, the Company will also receive an aggregate of $10 million for integration service fees phased over a period of three years, of which the Company received $2.1 million during the three and six months ended June 30, 2024 and $1.6 million during the year ended December 31, 2023. The Company accounts for technology access, integration service, and supply arrangement as a single performance obligation and recognizes revenue related to technology access and integration service based on estimated units of delivery under the supply arrangement. As of June 30, 2024 and December 31, 2023, the Company recorded $109.9 million and $107.8 million as deferred revenue primarily within other long-term liabilities in the condensed consolidated balance sheets, respectively. Aston Martin has also committed to an effective minimum spend with the Company on powertrain components of $225 million.

NOTE 17 – SUBSEQUENT EVENTS

In connection with the preparation of the condensed consolidated financial statements for the three and six months ended June 30, 2024, the Company evaluated subsequent events and concluded there were no subsequent events that required recognition in the condensed consolidated financial statements.

Delayed Draw Term Loan Credit Facility

On August 4, 2024, the Company entered into the DDTL Credit Facility with Ayar, that may be used for working capital and general corporate purposes. The DDTL Credit Facility provides for a delayed draw term loan credit facility in an aggregate principal amount of $750 million and has a stated maturity date of August 4, 2029. Borrowings under the DDTL Credit Facility bear interest at the applicable interest rates specified in the credit agreement governing the DDTL Credit Facility. The Company is required to pay a quarterly undrawn fee of 0.50% per annum based on the unutilized portion of the DDTL Credit Facility.

The DDTL Credit Facility contains customary covenants that limit the ability of the Company and its restricted subsidiaries to, among other activities, pay dividends, incur debt, create liens and encumbrances, redeem or repurchase stock, dispose of certain assets, consummate acquisitions or other investments, prepay certain debt, engage in sale and leaseback transactions or consummate mergers and other fundamental changes. The DDTL Credit Facility also includes a minimum liquidity covenant.

As of August 5, 2024, the Company had no outstanding borrowings under the DDTL Credit Facility.

Series B Subscription Agreement

On August 4, 2024, the Company entered into the Series B Subscription Agreement with Ayar. Pursuant to the Series B Subscription Agreement, Ayar agreed to purchase from the Company 75,000 shares of its Series B convertible preferred stock, par value $0.0001 per share (the "Series B Redeemable Convertible Preferred Stock"), for an aggregate purchase price of $750 million in a private placement. The Company will issue the shares to Ayar pursuant to the Series B Subscription Agreement and expects to receive aggregate gross proceeds of $750 million on or about August 16, 2024. The Series B Redeemable Convertible Preferred Stock is convertible at the option of the holder (i) at any time the closing price per share of the common stock on the trading date immediately preceding the date on which the holder delivers the relevant notice of conversion is at least a certain price threshold as noted in the certificate of designations of Series B Redeemable Convertible Preferred Stock of the Company or (ii) during specified periods preceding a fundamental change or optional redemption by the Company under the terms of the Series B Redeemable Convertible Preferred Stock.

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

Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q (the "Quarterly Report") and our Annual Report on Form 10-K for the year ended December 31, 2023, filed with the SEC on February 27, 2024. This discussion may contain forward-looking statements based upon Lucid's current expectation, estimates and projections that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors", in Part II, Item 1A of this Quarterly Report.

Overview

We are a technology company with a mission to create exceptional experiences to drive the world forward. Our focus on in-house hardware and software innovation, vertical integration, and a "clean sheet" approach to engineering and design led to the development of the award-winning Lucid Air.

We sell vehicles directly to consumers through our retail sales network and through direct online sales, including through Lucid Financial Services. We believe that owning our sales network provides an opportunity to closely manage the customer experience, gather direct customer feedback, and ensure that customer interactions are tailored to our customers' needs. We own and operate a vehicle service network comprised of service centers in major metropolitan areas and a fleet of mobile service vehicles. In addition to our in-house service capabilities, we established and continue to grow an approved list of specially trained collision repair shops which also serve as repair hubs for our mobile service offerings in some cases.

We began delivering the Lucid Air to customers in October 2021 and we expect to launch additional vehicles over the coming decade. We have leveraged and expanded the technological advancements from the Lucid Air to the Lucid Gravity sport utility vehicle ("SUV"), which is scheduled for start of production in late 2024. After the Lucid Air and the Lucid Gravity SUV, start of production of our Midsize platform is scheduled for late 2026.

Recent Development

Series B Subscription Agreement

On August 4, 2024, we entered into a subscription agreement (the "Series B Subscription Agreement") with Ayar. Pursuant to the Series B Subscription Agreement, Ayar agreed to purchase from us 75,000 shares of our Series B convertible preferred stock, par value $0.0001 per share (the "Series B Redeemable Convertible Preferred Stock"), for an aggregate purchase price of $750 million in a private placement. We intend to issue on or about August 16, 2024, the shares to Ayar pursuant to the Series B Subscription Agreement and receive aggregate gross proceeds of $750 million.

The Series B Redeemable Convertible Preferred Stock sold to Ayar pursuant to the Series B Subscription Agreement will be issued pursuant to our certificate of designations of the Series B Redeemable Convertible Preferred Stock (the "Series B Certificate of Designations") to be filed with the Secretary of State of the State of Delaware on or about August 16, 2024 and will be sold in reliance on the exemption from registration provided in Section 4(a)(2) of the Securities Act.

Potential Impact of an Economic Downturn on our Business

A global economic recession or other downturn, whether due to inflation, global conflicts or other geopolitical events, public health crises, interest rate increases or other policy actions by major central banks, government closures of banks and liquidity concerns at other financial institutions, or other factors, may have an adverse impact on our business, prospects, financial condition and results of operations. Adverse economic conditions as well as uncertainty about the current and future global economic conditions may cause our customers to defer purchases or cancel their orders in response to higher interest rates, availability of consumer credit, decreased cash availability, fluctuations in foreign currency exchange rates, and weakened consumer confidence. Reduced demand for our products may result in significant decreases in our product sales, which in turn would have a material adverse impact on our business, prospects, financial condition and results of operations. Because of our premium brand positioning and pricing, an economic downturn is likely to have a heightened adverse effect on us compared to many of our electric vehicle and traditional automotive industry competitors, to the extent that consumer demand for luxury goods is reduced in favor of lower-priced alternatives. In addition, an economic recession or other downturn could also cause logistical challenges and other operational risks if any of our suppliers, sub-suppliers or partners become insolvent or are otherwise unable to continue their operations, fulfill their obligations to us, or meet our future demand. In addition, the deterioration of conditions in global credit markets may limit our ability to obtain external financing to fund our operations and capital expenditures on terms favorable to us, if at all. See "Risk Factors" in Part II, Item 1A of this Quarterly Report for more information regarding risks associated with a global economic recession, including under the caption *"A global economic recession, government closures of banks and liquidity concerns at other financial institutions, or other downturn may have a material adverse impact on our business, prospects, results of operations and financial condition."*

Key Factors Affecting Our Performance

We believe that our future success and financial performance depend on a number of factors that present significant opportunities for our business, but also pose risks and challenges, including those discussed below and in the section entitled "Risk Factors" in Part II, Item 1A of this Quarterly Report.

Design and Technology Leadership

We believe that we are positioned to be a leader in the electric vehicle market by unlocking the potential for advanced, high-performance, and long-range electric vehicles to co-exist. The Lucid Air is designed with race-proven battery and powertrain technologies and robust performance together with a sleek exterior design and expansive interior space given our miniaturized key drivetrain components. We anticipate continued consumer demand for the Lucid Air based on its luxurious design, high-performance technology and sustainability leadership, and the growing acceptance of and demand for electric vehicles as a substitute for gasoline-fueled vehicles. We continue to receive significant interest in the Lucid Air from potential customers.

Direct-to-Consumer Model

We operate a direct-to-consumer sales and service model, which we believe allows us to offer a personalized experience for our customers based on their purchase and ownership preferences. We expect to continue to incur significant expenses in our sales, service and marketing operations for sale of the Lucid Air, including to open studios, hire a sales force, invest in marketing and brand awareness, and establish a robust service center operation. As of June 30, 2024, we have opened 53 studios and service centers (excluding temporary and satellite service centers): 37 in the United States (12 in California, four in each of Florida and New York, two in each of Arizona, Illinois, Massachusetts, Texas, Virginia and Washington, and one in each of Colorado, Georgia, Michigan, New Jersey and Pennsylvania), five in Canada, four in Germany, two in Switzerland, one in Netherlands, one in Norway, two in Saudi Arabia, and one in the United Arab Emirates. We also expect to hire additional sales, customer service, and service center personnel. We believe that investing in our direct-to-consumer sales and service model will be critical to delivering and servicing the Lucid electric vehicles we manufacture and sell.

Establishing Manufacturing Capacity

Achieving commercialization and growth for each generation of our electric vehicles requires us to make significant capital expenditures to scale our production capacity and improve our supply chain processes in the United States and internationally. We expect our capital expenditures to increase as we continue our expansion of AMP-1 and construction of the completely-built-up ("CBU") portion of AMP-2. The amount and timing of our future manufacturing capacity requirements, and resulting capital expenditures, will depend on many factors, including the pace and results of our research and development efforts to meet technological development milestones, our ability to develop and launch new electric vehicles, our ability to achieve sales and experience customer demand for our vehicles at the levels we anticipate, our ability to utilize planned capacity in our existing facilities and our ability to enter new markets.

Technology Innovation

We develop in-house battery and powertrain technology, which requires us to invest a significant amount of capital in research and development. The electric vehicle market is highly competitive and includes both established automotive manufacturers and new entrants. To establish market share and attract customers from competitors, we plan to continue to make substantial investments in research and development for the commercialization and continued enhancements of the Lucid Air, the development of the Lucid Gravity SUV and our Midsize platform, and future generations of our electric vehicles and other products.

Inflationary Pressure

The U.S. and Saudi Arabia economies have experienced increased inflation. Our cost to manufacture vehicles is heavily influenced by the cost of the key components and materials used in the vehicle, cost of labor, as well as cost of equipment used in our manufacturing facilities. As we continue our phased construction of our AMP-1 and AMP-2 facilities, any further increases in material and infrastructure equipment prices and cost of construction labor could lead to higher capital expenditures.

Results of Operations

Revenue

The following table presents our revenue for the periods presented (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	$ Change	% Change	2024	2023	$ Change	% Change
Revenue	$ 200,581	$ 150,874	$ 49,707	33 %	$ 373,321	$ 300,306	$ 73,015	24 %

We recognize revenue from vehicle sales when the customer obtains control of the vehicle, which is upon delivery. We also generate revenue from non-warranty after-sales vehicle services and parts, powertrain kits, retail merchandise, and regulatory credits.

Revenue increased by $49.7 million or 33% and $73.0 million or 24%, respectively, for the three and six months ended June 30, 2024, as compared to the same periods in the prior year. The increases were primarily driven by higher deliveries of the Lucid Air vehicles and increases of $12.1 million and $17.5 million of regulatory credit sales for the three and six months ended June 30, 2024, respectively, as compared to the same periods in the prior year. The increases were partially offset by a lower average selling price of vehicles for the three and six months ended June 30, 2024, as compared to the same periods in the prior year.

Cost of Revenue

The following table presents our cost of revenue for the periods presented (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	$ Change	% Change	2024	2023	$ Change	% Change
Cost of revenue	$ 470,355	$ 555,805	$ (85,450)	(15)%	$ 875,151	$ 1,056,329	$ (181,178)	(17)%

Cost of vehicle sales includes direct parts, materials, shipping and handling costs, allocable overhead costs such as depreciation of manufacturing related equipment and facilities, information technology costs, personnel costs, including wages and stock-based compensation, estimated warranty costs, charges to reduce inventories to their net realizable value, charges for any excess or obsolete inventories, and losses from firm purchase commitments.

Cost of other revenue includes direct parts, material and labor costs, manufacturing overhead, including depreciation of tooling costs, shipping and logistic costs. Cost of other revenue also includes costs associated with providing non-warranty after-sales services and costs for retail merchandise.

Cost of revenue decreased by $85.5 million or 15% and $181.2 million or 17%, respectively, for the three and six months ended June 30, 2024, as compared to the same periods in the prior year, primarily due to the decreases in inventory write-downs and losses from firm purchase commitments, partially offset by higher deliveries of the Lucid Air vehicles and provision associated with a special warranty campaign. We continue to incur significant personnel and overhead costs to operate our large-scale manufacturing facilities while ramping up production. In the near term, we expect our production volume of vehicles to continue to be significantly less than our manufacturing capacity.

We recorded write-downs of $154.2 million and $292.0 million, respectively, for the three and six months ended June 30, 2024, and $295.0 million and $522.0 million, respectively, for the same periods in the prior year, to reduce our inventories to their net realizable values, for any excess or obsolete inventories, and losses from firm purchase commitments. The decreases in the inventory write-downs and losses from firm purchase commitments were primarily due to decreases in overall inventory balances and obsolescence. The decreases in overall inventory balances and obsolescence were driven by lower purchases of raw materials in the three and six months ended June 30, 2024, compared to the same period in the prior year. We expect inventory write-downs could negatively affect our costs of vehicle sales in upcoming periods in the near term as we ramp production volumes up toward our manufacturing capacity.

On August 16, 2022, the Inflation Reduction Act of 2022 (the “IRA”) was enacted with clean energy incentives. For the three and six months ended June 30, 2024, the impact of the IRA on our results of operations was not material. We will continue to evaluate the expected future impact of the IRA on our business and financial statements as additional regulatory guidance is issued.

Operating Expenses

The following table presents our operating expenses for the periods presented (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	$ Change	% Change	2024	2023	$ Change	% Change
Research and development	$ 287,170	$ 233,474	$ 53,696	23 %	$ 571,797	$ 463,277	$ 108,520	23 %
Selling, general and administrative	210,245	197,748	12,497	6 %	423,477	366,518	56,959	16 %
Restructuring charges	20,228	1,532	18,696	*nm	20,228	24,028	(3,800)	(16)%
Total operating expenses	$ 517,643	$ 432,754	$ 84,889	20 %	$ 1,015,502	$ 853,823	$ 161,679	19 %

**nm* - not meaningful

Research and Development

Our research and development efforts have primarily focused on the development of our battery and powertrain technology, the Lucid Air, the Lucid Gravity SUV, and future generations of our electric vehicles. Research and development expenses consist primarily of materials, supplies and personnel-related expenses for employees involved in the engineering, designing, and testing of electric vehicles. Personnel-related expenses primarily include salaries, benefits and stock-based compensation. Research and development expenses also include prototype material, engineering, design and testing services, and allocated facilities costs, such as office and rent expense and depreciation expense, and other engineering, designing and testing expenses.

Research and development expense increased by $53.7 million, or 23% for the three months ended June 30, 2024, as compared to the same period in the prior year. The increase was primarily attributable to higher personnel-related expenses of $34.9 million ($38.8 million increase due to our growth in headcount, partially offset by $3.9 million lower stock-based compensation expenses) and an increase of $32.0 million for prototype material, engineering, design and testing services, partially offset by a decrease of $15.3 million in other expenses.

Research and development expense increased by $108.5 million, or 23% for the six months ended June 30, 2024, as compared to the same period in the prior year. The increase was primarily attributable to higher personnel-related expenses of $79.2 million ($73.5 million increase due to our growth in headcount and $5.7 million higher stock-based compensation expenses) and an increase of $44.8 million for prototype material, engineering, design and testing services, partially offset by lower utilization of contractors and professional fees of $12.8 million and a decrease of $12.5 million in other expenses.

Selling, General, and Administrative

Selling, general, and administrative expense consists primarily of personnel-related expenses for employees involved in general corporate, selling and marketing functions, including executive management and administration, legal, human resources, facilities and real estate, accounting, finance, tax, and information technology. Personnel-related expenses primarily include salaries, benefits and stock-based compensation. Selling, general, and administrative expenses also include allocated facilities costs, such as office, rent and depreciation expenses, professional services fees and other general corporate expenses. As we continue to grow as a company, build out our sales force, and commercialize the Lucid Air, the development of the Lucid Gravity SUV and our Midsize platform, and future generations of our electric vehicles, we expect that our selling, general and administrative costs will increase.

Selling, general, and administrative expense increased by $12.5 million, or 6% for the three months ended June 30, 2024, as compared to the same period in the prior year. The increase was primarily attributable to higher personnel-related expenses of $13.6 million ($22.7 million increase due to our growth in headcount, partially offset by $9.1 million lower stock-based compensation expense), and an increase in sales and marketing expenses of $10.0 million, partially offset by lower utilization of contractors and professional fees of $8.0 million, and a decrease of $2.8 million in other expenses.

Selling, general, and administrative expense increased by $57.0 million, or 16% for the six months ended June 30, 2024, as compared to the same period in the prior year. The increase was primarily attributable to higher personnel-related expenses of $34.2 million ($44.8 million increase due to our growth in headcount, partially offset by $10.6 million from lower stock-based compensation), an increase in sales and marketing expenses of $26.0 million, partially offset by lower utilization of contractors and professional fees of $3.7 million.

Restructuring Charges

On May 24, 2024, we announced a restructuring plan (the "2024 Restructuring Plan") intended to optimize operating expenses in response to evolving business needs and productivity improvement through a reduction in workforce. We expect to substantially complete the 2024 Restructuring Plan by the end of the third quarter of 2024, subject to local law and consultation requirements. As a result of the 2024 Restructuring Plan, we expect to record total restructuring charges of approximately $21 million to $25 million, primarily related to severance payments, employee benefits, employee transition and stock-based compensation. During the three and six months ended June 30, 2024, we recorded restructuring charges of $20.2 million related to the 2024 Restructuring Plan within restructuring charges in the condensed consolidated statements of operations and comprehensive loss. The restructuring charges were primarily related to severance payments, employee benefits, employee transition and stock-based compensation, net of a reversal of previously recognized stock-based compensation expense.

On March 28, 2023, we announced a restructuring plan (the "2023 Restructuring Plan") intended to reduce operating expenses in response to evolving business needs and productivity improvement through a reduction in workforce. We completed the 2023 Restructuring Plan during the first quarter of 2024. During the three and six months ended June 30, 2023, we recorded restructuring charges of $1.5 million and $24.0 million, respectively, and recorded no restructuring charges for the same periods in the current year related to the 2023 Restructuring Plan.

Other Income (Expense), net

The following table presents our other income (expense), net for the periods presented (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	$ Change	% Change	2024	2023	$ Change	% Change
Other income (expense), net:								
Change in fair value of common stock warrant liability	$ 7,539	$ 42,133	$ (34,594)	(82)%	$ 34,593	$ 1,331	$ 33,262	*nm
Change in fair value of equity securities of a related party	(9,390)	—	(9,390)	*nm	(29,323)	—	(29,323)	*nm
Change in fair value of derivative liability associated with Series A redeemable convertible preferred stock (related party)	103,000	—	103,000	*nm	103,000	—	103,000	*nm
Interest income	54,553	39,525	15,028	38 %	105,184	79,530	25,654	32 %
Interest expense	(6,673)	(6,690)	17	— %	(14,174)	(13,798)	(376)	3 %
Other expense, net	(5,067)	(928)	(4,139)	446 %	(6,074)	(261)	(5,813)	*nm
Total other income (expense), net	$ 143,962	$ 74,040	$ 69,922	94 %	$ 193,206	$ 66,802	$ 126,404	189 %

*nm - not meaningful

Change in Fair Value of Common Stock Warrant Liability

Our common stock warrant liability relates to the privately placed common stock warrants (the "Private Placement Warrants") to purchase shares of Lucid Group common stock that were effectively issued upon the Closing in connection with the reverse recapitalization treatment of the Merger. Our common stock warrant liability is subject to remeasurement to fair value at each reporting period. Changes in the fair value of our common stock warrant liability were recognized in the condensed consolidated statements of operations and comprehensive loss.

The Private Placement Warrants remained unexercised as of June 30, 2024. The liability was remeasured to fair value, resulting in gains of $7.5 million and $34.6 million, respectively, for the three and six months ended June 30, 2024, and gains of $42.1 million and $1.3 million, respectively, for the same periods in the prior year. The change in fair value was classified within change in fair value of common stock warrant liability in the condensed consolidated statements of operations and comprehensive loss. See Note 7 "Common Stock Warrant Liability" to our condensed consolidated financial statements included elsewhere in this Quarterly Report for more information.

Change in Fair Value of Equity Securities of a Related Party

On November 6, 2023, pursuant to the terms of the Implementation Agreement, integration and supply arrangements became effective, under which we will provide Aston Martin access to our powertrain, battery system, and software technologies, work with Aston Martin to integrate our powertrain and battery components with Aston Martin's battery electric vehicle chassis, and supply powertrain and battery components to Aston Martin (collectively, the "Strategic Technology Arrangement"). In connection with the commencement of the Strategic Technology Arrangement with Aston Martin, we received 28,352,273 ordinary shares of Aston Martin (subject to a lock-up provision of 365 days from its issuance). The ordinary shares of Aston Martin are subject to remeasurement to fair value at each reporting period. Such shares were initially measured at a fair value of $73.2 million and were remeasured to a fair value of $51.5 million and $81.5 million as of June 30, 2024 and December 31, 2023, respectively. The change in fair value resulted in an unrealized loss of $9.4 million and $29.3 million, respectively, for the three and six months ended June 30, 2024, and was classified within change in fair value of equity securities of a related party in the condensed consolidated statements of operations and comprehensive loss. See Note 5 "Fair Value Measurements and Financial Instruments" and Note 16 "Related Party Transactions" to our condensed consolidated financial statements included elsewhere in this Quarterly Report for more information.

Change in Fair Value of Derivative Liability Associated with Series A Redeemable Convertible Preferred Stock (Related Party)

On March 24, 2024, we entered into a subscription agreement (the "Series A Subscription Agreement") with Ayar. Pursuant to the Series A Subscription Agreement, Ayar agreed to purchase from us 100,000 shares of our Series A Convertible Preferred Stock, par value $0.0001 per share (the "Series A Redeemable Convertible Preferred Stock") for an aggregate purchase price of $1.0 billion in a private placement. On March 29, 2024, we issued the shares to Ayar pursuant to the Series A Subscription Agreement and received aggregate gross proceeds of $1.0 billion.

We concluded that the conversion features, inclusive of all settlement outcomes where the pay-off is indexed to the if-converted value, meets all the requirements to be separately accounted for as a bifurcated derivative. As a result, we bifurcated the Series A Redeemable Convertible Preferred Stock between (i) the host contract which is accounted for within mezzanine equity, and (ii) the bifurcated derivative liability related to the conversion features. The bifurcated derivative is remeasured to fair value at each reporting period with changes in fair value recorded in the condensed consolidated statement of operations and comprehensive loss. The derivative liability was initially measured at a fair value of $497.1 million and was remeasured to a fair value of $394.1 million as of June 30, 2024. We recognized a gain of $103.0 million for the three and six months ended June 30, 2024, primarily driven by a reduction in our stock price, in change in fair value of derivative liability associated with Series A redeemable convertible preferred stock (related party) in the condensed consolidated statements of operations and comprehensive loss. See Note 8 "Redeemable Convertible Preferred Stock" to our condensed consolidated financial statements included elsewhere in this Quarterly Report for more information.

Interest Income

Interest income increased by $15.0 million, or 38%, and $25.7 million, or 32%, respectively, for the three and six months ended June 30, 2024, as compared to the same periods in the prior year, primarily due to higher average balances and higher book yield from cash on hand and our investments of available-for-sale securities.

Interest Expense

Interest expense primarily consists of contractual interest and amortization of debt discounts and debt issuance costs incurred related to the 2026 Notes issued in December 2021, commitment fees and amortization of deferred issuance costs from the five-year senior secured asset-based revolving credit facility ("ABL Credit Facility"), interest on Gulf International Bank revolving credit facility and on our finance leases, and capitalized interest on construction in progress related to significant capital asset construction.

Interest expense remained flat for the three and six months ended June 30, 2024, as compared to the same periods in the prior year.

Other Expense, net

Other expense, net primarily consists of foreign currency gains and losses. Our foreign currency exchange gains and losses relate to transactions and monetary asset and liability balances denominated in currencies other than the U.S. dollar. We expect our foreign currency gains and losses to continue to fluctuate in the future due to changes in foreign currency exchange rates.

Other expense, net increased by $4.1 million and $5.8 million, respectively, for the three and six months ended June 30, 2024, as compared to the same periods in the prior year, primarily due to changes in foreign currency exchange rates.

Provision for (Benefit from) Income Taxes

The following table presents our provision for income taxes for the periods presented (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	$ Change	% Change	2024	2023	$ Change	% Change
Provision for (benefit from) income taxes	$ (65)	$ 587	$ (652)	(111)%	$ 123	$ 716	$ (593)	(83)%

Our provision for (benefit from) income taxes consists primarily of U.S., state and foreign income taxes in jurisdictions in which we operate. We maintain a valuation allowance against the full value of our U.S. and state net deferred tax assets because we believe it is more likely than not that the recoverability of these deferred tax assets will not be realized.

Liquidity and Capital Resources

Sources of Liquidity

As of June 30, 2024, Lucid had $3.9 billion of cash, cash equivalents and investments. Since inception, our sources of cash are predominantly from proceeds received upon the completion of the Merger, the issuance of convertible debt and preferred stock and proceeds from equity offerings.

We expect that our current sources of liquidity together with our projection of cash flows from operating activities will provide us with adequate liquidity for at least the next 12 months, including investment in funding (i) ongoing operations, (ii) research and development projects for new products/ technologies, (iii) further construction of AMP-1 phase 2 in Casa Grande, Arizona, (iv) construction of the CBU portion of AMP-2 in Saudi Arabia, (v) expansion of retail studios and service centers, and (vi) other initiatives related to the sale of vehicles and/ or technology.

We anticipate our cumulative spending on capital expenditures to be approximately $1.3 billion for the fiscal year 2024 to support our continued commercialization and growth objectives as we strategically invest in manufacturing capacity and capabilities, our retail studios and service center capabilities throughout North America and across the globe, development of different products and technologies, and other areas supporting the growth of Lucid's business. Our future capital expenditures may vary and will depend on many factors including the timing and extent of spending and other growth initiatives. In addition, we expect our operating expenses to increase in order to grow and support the operations of a global automotive company targeting volumes in line with Lucid's aspirations.

As of June 30, 2024, our total minimum lease payments are $476.0 million, of which $31.1 million is due in fiscal year 2024. We also have non-cancellable long-term commitments of $5.0 billion, primarily relating to certain inventory component purchases. For details regarding these obligations, refer to Note 11 "Leases" and Note 12 "Commitments and Contingencies" to the condensed consolidated financial statements included elsewhere in this Quarterly Report for more information.

2026 Notes

In December 2021, we issued $2,012.5 million of the 2026 Notes. The 2026 Notes accrue interest at a rate of 1.25% per annum, payable semi-annually in arrears on June 15 and December 15 of each year, beginning on June 15, 2022. The 2026 Notes will mature on December 15, 2026, unless earlier repurchased, redeemed or converted. Before the close of business on the business day immediately before September 15, 2026, noteholders will have the right to convert their Notes only upon the occurrence of certain events. From and after September 15, 2026, noteholders may convert their Notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. We will settle conversions by paying or delivering, as applicable, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election. The initial conversion rate is 18.2548 shares of common stock per $1,000 principal amount of Notes, which represents an initial conversion price of approximately $54.78 per share of common stock. The conversion rate and conversion price will be subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a "Make-Whole Fundamental Change" (as defined in the indenture) occur, then the conversion rate will, in certain circumstances, be increased for a specified period of time. As of June 30, 2024 and December 31, 2023, we were in compliance with applicable covenants under the indenture governing the 2026 Notes.

International Manufacturing Expansion

On February 27, 2022, we announced that we had selected King Abdullah Economic City ("KAEC") in Saudi Arabia as the location of our first international manufacturing plant and signed related agreements with the Ministry of Investment of Saudi Arabia, the Saudi Industrial Development Fund, and the Economic City at KAEC. The operations at the new plant initially consist of re-assembly of the Lucid Air vehicle "kits" pre-manufactured in the U.S. and, over time, will consist of production of complete vehicles.

Saudi Industrial Development Fund ("SIDF") Loan Agreement

On February 27, 2022, Lucid, LLC, a limited liability company established in Saudi Arabia and our subsidiary ("Lucid LLC") entered into a loan agreement (as subsequently amended, the "SIDF Loan Agreement") with SIDF, a related party of Public Investment Fund ("PIF"), which is an affiliate of Ayar. Under the SIDF Loan Agreement, SIDF has committed to provide loans (the "SIDF Loans") to Lucid LLC in an aggregate principal amount of up to SAR 5.19 billion (approximately $1.4 billion); provided that SIDF may reduce the availability of SIDF Loans under the facility in certain circumstances. SIDF Loans will be subject to repayment in semi-annual installments in amounts ranging from SAR 25 million (approximately $6.7 million) to SAR 350 million (approximately $93.3 million), commencing on April 3, 2026 and ending on November 12, 2038. SIDF Loans are financing and will be used to finance certain costs in connection with the development and construction of AMP-2. Lucid LLC may repay SIDF Loans earlier than the maturity date without penalty. Obligations under the SIDF Loan Agreement do not extend to us or any of our other subsidiaries.

SIDF Loans will not bear interest. Instead, Lucid LLC will be required to pay SIDF service fees, consisting of follow-up and technical evaluation fees, ranging, in aggregate, from SAR 415 million (approximately $110.6 million) to SAR 1.77 billion (approximately $471.8 million), over the term of the SIDF Loans. SIDF Loans will be secured by security interests in the equipment, machines and assets funded thereby.

The SIDF Loan Agreement contains certain restrictive financial covenants and imposes annual caps on Lucid LLC's payment of dividends, distributions of paid-in capital, or certain capital expenditures. The SIDF Loan Agreement also defines customary events of default, including abandonment of or failure to commence operations at the plant in KAEC, and drawdowns under the SIDF Loan Agreement are subject to certain conditions precedent. As of June 30, 2024 and December 31, 2023, no amount was outstanding under the SIDF Loan Agreement.

Ministry of Investment of Saudi Arabia ("*MISA") Agreements*

In February 2022, Lucid LLC entered into agreements with MISA, a related party of PIF, which is an affiliate of Ayar, pursuant to which MISA has agreed to provide economic support for certain capital expenditures in connection with Lucid LLC's on-going design and construction of AMP-2. The support by MISA is subject to Lucid LLC's completion of certain milestones related to the construction and operation of AMP-2. Following the commencement of construction, if operations at the plant do not commence within 30 months, or if the agreed-upon scope of operations is not attained within 55 months, MISA may suspend availability of subsequent support.

Pursuant to the agreements, MISA has the right to require Lucid LLC to transfer the ownership of AMP-2 to MISA, at the fair market value thereof, minus an amortized value of the support provided in the event of customary events of default including abandonment or material and chronically low utilization of AMP-2. Alternatively, Lucid LLC is entitled to avoid the transfer of the ownership of AMP-2 by electing to pay such amortized value. The agreements will terminate on the fifteenth anniversary of the commencement of CBU operations at AMP-2 at the latest.

During the year ended December 31, 2022, we received support of SAR 366 million (approximately $97.3 million) in cash, of which $64.0 million was recorded as deferred liability within other long-term liabilities and $33.3 million was recorded as a deduction in calculating the carrying amount of the related assets in the consolidated balance sheet as of December 31, 2022. Subsequently, we recorded $64.0 million as a deduction in calculating the carrying amount of the related assets in the consolidated balance sheet as of December 31, 2023.

During the year ended December 31, 2023, we received support of SAR 366 million (approximately $97.5 million) in cash, of which $62.5 million was recorded as deferred liability within other long-term liabilities and $35.0 million was recorded as a deduction in calculating the carrying amount of the related assets in the consolidated balance sheet as of December 31, 2023. As of June 30, 2024, we recorded $29.8 million as deferred liability within other long-term liabilities and $67.7 million as a deduction in calculating the carrying amount of the related assets in the condensed consolidated balance sheet. There were no unfulfilled conditions and contingencies attached to the payments received.

Gulf International Bank ("GIB") Facility Agreement

On April 29, 2022, Lucid LLC entered into a revolving credit facility agreement (the "GIB Facility Agreement") with GIB, maturing on February 28, 2025. GIB is a related party of PIF, which is an affiliate of Ayar. The GIB Facility Agreement provided for two committed revolving credit facilities in an aggregate principal amount of SAR 1 billion (approximately $266.1 million). SAR 650 million (approximately $173.0 million) under the GIB Facility Agreement was available as bridge financing (the "Bridge Facility") of Lucid LLC's capital expenditures in connection with AMP-2. The remaining SAR 350 million (approximately $93.1 million) might be used for general corporate purposes (the "Working Capital Facility"). Loans under the Bridge Facility and the Working Capital Facility had a maturity of no more than 12 months. The Bridge Facility incurred interest at a rate of 1.25% per annum over 3-month SAIBOR and the Working Capital Facility incurred interest at a rate of 1.70% per annum over 1~3-month SAIBOR and associated fees.

On March 12, 2023, Lucid LLC entered into an amendment of the GIB Facility Agreement (together with the GIB Facility Agreement, the "Amended GIB Facility Agreement") to combine the Bridge Facility and the Working Capital Facility into a committed SAR 1 billion (approximately $266.6 million) revolving credit facility (the "GIB Credit Facility") which may be used for general corporate purposes. Loans under the Amended GIB Credit Facility Agreement have a maturity of no more than 12 months and bear interest at a rate of 1.40% per annum over SAIBOR (based on the term of borrowing) and associated fees.

We are required to pay a quarterly commitment fee of 0.15% per annum based on the unutilized portion of the GIB Credit Facility. Commitments under the Amended GIB Facility Agreement will terminate, and all amounts then outstanding thereunder would become payable, on the maturity date of the Amended GIB Facility Agreement. The Amended GIB Facility Agreement contains certain conditions precedent to drawdowns, representations and warranties and covenants of Lucid LLC and events of default.

As of June 30, 2024 and December 31, 2023, we had outstanding borrowings of SAR 256 million (approximately $68.2 million) and SAR 272 million (approximately $72.5 million), respectively. The weighted average interest rate on the outstanding borrowings was 7.67% and 7.49% as of June 30, 2024 and December 31, 2023, respectively. As of June 30, 2024 and December 31, 2023, availability under the GIB Credit Facility was SAR 742 million (approximately $197.8 million) and SAR 727 million (approximately $193.9 million), respectively, after giving effect to the outstanding letters of credit. The outstanding borrowings were recorded within other current liabilities in the condensed consolidated balance sheets. As of June 30, 2024 and December 31, 2023, we were in compliance with applicable covenants under the Amended GIB Facility Agreement.

ABL Credit Facility

In June 2022, we entered into the ABL Credit Facility with a syndicate of banks that may be used for working capital and general corporate purposes. The ABL Credit Facility provides for an initial aggregate principal commitment amount of up to $1.0 billion (including a $350.0 million letter of credit subfacility and a $100.0 million swingline loan subfacility) and has a stated maturity date of June 9, 2027. Borrowings under the ABL Credit Facility bear interest at the applicable interest rates specified in the credit agreement governing the ABL Credit Facility. In June 2024, we amended the ABL Credit Facility to update the Canadian reference rate. Availability under the ABL Credit Facility is subject to the value of eligible assets in the borrowing base and is reduced by outstanding loan borrowings and issuances of letters of credit which bear customary letter of credit fees. Subject to certain terms and conditions, we may request one or more increases in the amount of credit commitments under the ABL Credit Facility in an aggregate amount up to the sum of $500.0 million plus certain other amounts. We are required to pay a quarterly commitment fee of 0.25% per annum based on the unutilized portion of the ABL Credit Facility.

The ABL Credit Facility contains customary covenants that limit our ability and our restricted subsidiaries to, among other activities, pay dividends, incur debt, create liens and encumbrances, redeem or repurchase stock, dispose of certain assets, consummate acquisitions or other investments, prepay certain debt, engage in transactions with affiliates, engage in sale and leaseback transactions or consummate mergers and other fundamental changes. The ABL Credit Facility also includes a minimum liquidity covenant which, at our option following satisfaction of certain pre-conditions, may be replaced with a springing, minimum fixed charge coverage ratio financial covenant, in each case on terms set forth in the credit agreement governing the ABL Credit Facility. As of June 30, 2024 and December 31, 2023, we were in compliance with applicable covenants under the ABL Credit Facility.

As of June 30, 2024 and December 31, 2023, we had no outstanding borrowings under the ABL Credit Facility. Outstanding letters of credit under the ABL Credit Facility were $48.4 million and $45.4 million as of June 30, 2024 and December 31, 2023, respectively. Availability under the ABL Credit Facility was $329.2 million (including $147.9 million cash and cash equivalents) and $413.4 million (including $144.0 million cash and cash equivalents) as of June 30, 2024 and December 31, 2023, respectively, after giving effect to the borrowing base and the outstanding letters of credit.

Delayed Draw Term Loan Credit Facility ("DDTL Credit Facility")

In August 2024, we entered into the DDTL Credit Facility with Ayar that may be used for working capital and general corporate purposes. The DDTL Credit Facility provides for a delayed draw term loan credit facility in an aggregate principal amount of $750 million and has a stated maturity date of August 4, 2029. Borrowings under the DDTL Credit Facility bear interest at the applicable interest rates specified in the credit agreement governing the DDTL Credit Facility. We are required to pay a quarterly undrawn fee of 0.50% per annum based on the unutilized portion of the DDTL Credit Facility.

The DDTL Credit Facility contains customary covenants that limit our ability and our restricted subsidiaries to, among other activities, pay dividends, incur debt, create liens and encumbrances, redeem or repurchase stock, dispose of certain assets, consummate acquisitions or other investments, prepay certain debt, engage in sale and leaseback transactions or consummate mergers and other fundamental changes. The DDTL Credit Facility also includes a minimum liquidity covenant.

As of August 5, 2024, we had no outstanding borrowings under the DDTL Credit Facility.

At-the-Market Offering, Subscription Agreements and Underwriting Agreement

In December 2022, we completed our at-the-market offering program (the "At-the-Market Offering") pursuant to the equity distribution agreement for net proceeds of $594.3 million after deducting commissions and other issuance costs and also consummated a private placement of shares to Ayar (the "Subscription Agreement") pursuant to the Subscription Agreement for $915.0 million.

In June 2023, we completed the public offering pursuant to the Underwriting Agreement for aggregate net proceeds of $1.2 billion and also consummated a private placement of shares to Ayar pursuant to the 2023 Subscription Agreement for aggregate net proceeds of $1.8 billion after deducting issuance costs. See Note 9 "Stockholders' Equity" to the condensed consolidated financial statements included elsewhere in this Quarterly Report, for more information.

In March 2024, we issued 100,000 shares of our Series A Redeemable Convertible Preferred Stock, par value $0.0001 per share to Ayar pursuant to the Series A Subscription Agreement and received aggregate gross proceeds of $1.0 billion. See Note 8 "Redeemable Convertible Preferred Stock" to the condensed consolidated financial statements included elsewhere in this Quarterly Report, for more information.

In August 2024, we entered into the Series B Subscription Agreement with Ayar. Pursuant to the Series B Subscription Agreement, Ayar agreed to purchase from us 75,000 shares of our Series B Redeemable Convertible Preferred Stock, for an aggregate purchase price of $750 million in a private placement. We will issue the shares to Ayar pursuant to the Series B Subscription Agreement and expect to receive aggregate gross proceeds of $750 million on or about August 16, 2024. See Note 17 "Subsequent Events" to the condensed consolidated financial statements included elsewhere in this Quarterly Report, for more information.

We have generated significant losses from our operations as reflected in our accumulated deficit of $11.5 billion and $10.2 billion as of June 30, 2024 and December 31, 2023, respectively. Additionally, we have generated significant negative cash flows from operations and investing activities as we continue to support the growth of our business.

The expenditures associated with the development and commercial launch of our vehicles, the anticipated increase in manufacturing capacity, and the international expansion of our business operations are subject to significant risks and uncertainties, many of which are beyond our control, which may affect the timing and magnitude of these anticipated expenditures. These risk and uncertainties are described in more detail in the section entitled "Risk Factors" in Part II, Item 1A of this Quarterly Report.

Cash Flows

The following table summarizes our cash flows for the periods presented (in thousands):

	Six Months Ended June 30,	
	2024	**2023**
Cash used in operating activities	$ (1,023,732)	$ (1,501,622)
Cash provided by (used in) investing activities	6,255	(466,688)
Cash provided by financing activities	999,565	3,007,870
Net (decrease) increase in cash, cash equivalents, and restricted cash	$ (17,912)	$ 1,039,560

Cash Used in Operating Activities

Our cash flows used in operating activities to date have been primarily comprised of cash outlays to support overall growth of the business, especially the costs related to inventory and sale of our vehicles, costs related to research and development, payroll and other general and administrative activities. As we continue to ramp up hiring after starting commercial operations, we expect our cash used in operating activities to increase significantly before it starts to generate any material cash flows from our business.

Net cash used in operating activities decreased by $477.9 million to $1,023.7 million during the six months ended June 30, 2024, as compared to the same period in the prior year. The decrease was primarily due to an overall decrease in net operating assets and liabilities of $578.7 million, partially offset by an increase in net loss excluding non-cash expenses and gains of $100.8 million. The change in net operating assets and liabilities was mainly attributable to a decrease in inventory of $364.6 million due to lower purchases of raw materials and a decrease in accounts payable of $99.2 million due to timing of payments, partially offset by an increase in accounts receivable of $48.6 million during the six months ended June 30, 2024, as compared to the same period in the prior year. We had $101.4 million accounts receivable, net as of June 30, 2024, compared to $51.8 million as of December 31, 2023. The increase in the accounts receivable, net primarily resulted from higher vehicle sales during the six months ended June 30, 2024, and payment term associated with the EV purchase agreement with the Government of Saudi Arabia, a related party of PIF, which is an affiliate of Ayar, as represented by the Ministry of Finance (the "EV Purchase Agreement").

Cash Provided by (Used in) Investing Activities

Our cash flows provided by (used in) investing activities primarily relate to purchases of investments and capital expenditures to support our growth.

Net cash provided by investing activities was $6.3 million during the six months ended June 30, 2024, compared to $466.7 million of net cash used in investing activities for the same period in the prior year. The change was primarily attributable to $305.4 million higher proceeds from maturities of investments and $293.1 million lower purchases of investments, partially offset by $143.4 million lower proceeds from sale of investments during the six months ended June 30, 2024 compared to the same period in the prior year.

Cash Provided by Financing Activities

Since inception, we have financed our operations primarily from the issuances of equity securities, including the At-the-Market Offering, the private placements to Ayar, convertible preferred stock, the proceeds of the Merger, and the 2026 Notes.

Net cash provided by financing activities decreased by $2,008.3 million to $999.6 million during the six months ended June 30, 2024, as compared to the same period in the prior year. We received net proceeds of $997.7 million from the issuance of Series A Redeemable Convertible Preferred Stock during the six months ended June 30, 2024, and net proceeds of $2,996.9 million from the issuance of common stock under the 2023 Subscription Agreement and the Underwriting Agreement during the six months ended June 30, 2023.

Critical Accounting Estimates

The condensed consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report are prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP"). The preparation of our condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts and related disclosures in our financial statements and accompanying notes. We base our estimates on historical experience and on various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions due to the inherent uncertainty involved in making those estimates and any such differences may be material.

We believe that the following accounting policies involve a high degree of judgment and complexity. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our condensed consolidated financial condition and results of our operations.

Revenue Recognition

We follow a five-step process in which we identify the contract, identify the related performance obligations, determine the transaction price, allocate the transaction price to the identified performance obligations, and recognize revenue when (or as) the performance obligations are satisfied.

Vehicle Sales

Vehicle Sales without Residual Value Guarantee

Vehicle sales revenue is generated from the sale of electric vehicles to customers. There are two performance obligations identified in vehicle sale arrangements. These are the vehicle including an onboard advanced driver assistance system ("ADAS"), and the right to unspecified over-the-air ("OTA") software updates to be provided as and when available over the term of the basic vehicle warranty, which is generally 4 years. Shipping and handling provided by us is considered a fulfillment activity.

Payment is typically received at the time of delivery or shortly after delivery of the vehicle to the customer, except for vehicle sales under the EV Purchase Agreement. Generally, control transfers to the customer at the time of delivery when the customer takes physical possession of the vehicle, which may be at a Lucid studio or other destination chosen by the customer. Our vehicle contracts do not contain a significant financing component. We have elected to exclude sales taxes from the measurement of the transaction price. We estimate the standalone selling price of all performance obligations by considering costs used to develop and deliver the good or service, third-party pricing of similar goods or services and other information that may be available. The transaction price is allocated among the performance obligations in proportion to the standalone selling price of our performance obligations.

We recognize revenue related to the vehicle when the customer obtains control of the vehicle which occurs at a point in time either upon completion of delivery to the agreed upon delivery location or upon pick up of the vehicle by the customer. As the unspecified OTA software updates are provided when-and-if they become available, revenue related to OTA software updates is recognized ratably over the basic vehicle warranty term, commencing when control of the vehicle is transferred to the customer.

At the time of revenue recognition, we reduce the transaction price and record a sales return reserve against revenue for estimated variable consideration related to future product returns. Such return rate estimates are based on historical experience.

We provide a manufacturer's warranty on all vehicles sold. The warranty covers the rectification of reported defects via repair, replacement, or adjustment of faulty parts or components. The warranty does not cover any item where failure is due to normal wear and tear. This assurance-type warranty does not create a performance obligation separate from the vehicle. The estimated cost of the assurance-type warranty is accrued at the time of vehicle sale.

Vehicle Sales with Residual Value Guarantee

We provide a residual value guarantee ("RVG") to our commercial banking partner in connection with its vehicle leasing program. Under the vehicle leasing program, we generally receive payment for the vehicle sales price at the time of delivery or shortly after delivery, do not bear casualty and credit risks during the lease term, and are contractually obligated (or entitled) to share a portion of the shortfall (or excess) between the resale value realized by the commercial banking partner and a predetermined resale value. At the lease inception, we are required to deposit cash collateral equal to a contractual percentage of the residual value of the leased vehicles with the commercial banking partner. The cash collateral is held in a restricted bank account owned by the commercial banking partner until it is used, as applicable, in settlement of the RVG at the end of the lease term. Cash collateral is recorded in other noncurrent assets, subject to asset impairment review at each reporting period.

We account for the vehicle leasing program in accordance with ASC 842, *Leases,* ASC 460, *Guarantees* and ASC 606, *Revenue from Contracts with Customers*. We are the lessor at inception of a lease and immediately transfer the lease as well as the underlying vehicle to our commercial banking partner, with the transaction being accounted for as a sale under ASC 606. We recognize revenue when control transfers upon delivery when the consumer-lessee takes physical possession of the vehicle, and bifurcate the RVG at fair value and account for it as a guarantee liability. The remaining amount of the transaction price is allocated among the performance obligations, including the vehicle, the right to unspecified OTA software updates and remarketing activities, in proportion to the standalone selling price of our performance obligations.

The guarantee liability represents the estimated amount we expect to pay at the end of the lease term. We are released from residual risk upon either expiration or settlement of the RVG. We evaluate variables such as third-party residual value publications, risk of future price deterioration due to changes in market conditions and reconditioning costs to determine the estimated residual value guarantee liability. As we accumulate more data related to the resale value of our vehicles or as market conditions change, there could be material changes to the estimated guarantee liabilities.

Inventory Valuation

Inventories are stated at the lower of cost or net realizable value. Cost is computed using standard cost for vehicles, which approximates actual cost on a first-in, first-out basis. We record inventory write-downs for excess or obsolete inventories based upon assumptions about current and future demand forecasts.

Inventory is also reviewed to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires us to determine the selling price of our vehicles less the estimated cost to convert the inventory on-hand into a finished product.

In the event there are changes in our estimates of future selling prices or production costs, we might be required to record additional and potentially material write-downs. A small change in our estimates may result in a material change in our reported financial results.

We periodically review and record write-downs for excess or obsolete inventories based upon assumptions about current and future demand forecasts, considering shelf-life and technological obsolescence of certain inventories. Our current and future demand forecasts are based on our historical sales, market share performance, macroeconomic factors and trends in quantities or prices of orders for our products. We evaluate whether raw materials are approaching the end of their shelf-lives or becoming technologically obsolete, and the likelihood that we will be able to use the raw materials in production. If our inventory on-hand is in excess of future demand forecast and market conditions, the excess amounts are provisioned or written-down.

Once inventory is written-down, a new lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

Redeemable Convertible Preferred Stock

Accounting for the redeemable convertible preferred stock requires an evaluation to determine if liability classification is required under ASC 480-10. Liability classification is required for freestanding financial instruments that are (1) subject to an unconditional obligation requiring the issuer to redeem the instrument by transferring assets, such as those that are mandatorily redeemable, (2) instruments other than equity shares that embody an obligation of the issuer to repurchase its equity shares, or (3) certain types of instruments that obligate the issuer to issue a variable number of equity shares.

Securities that do not meet the scoping criteria to be classified as a liability under ASC 480 are subject to redeemable equity guidance, which prescribes securities that may be subject to redemption upon an event not solely within the control of the issuer to be classified as temporary equity. Securities classified in temporary equity are initially measured at the proceeds received, net of issuance costs and excluding the fair value of bifurcated embedded derivatives, if any. Subsequent measurement of the carrying value of the redeemable convertible preferred stock is required as the instrument is probable of becoming redeemable. We accrete the redeemable convertible preferred Stock to its redemption value at each reporting period end. In certain circumstances, the redemption price may vary based on changes in stock price, in which case we will recognize changes in the redemption value immediately as they occur and adjust the carrying value of the security to equal the then current maximum redemption value at each reporting period end.

Derivative Liability

In connection with the issuance of the redeemable convertible preferred stock, we evaluated the instruments for any features that must be bifurcated and separately accounted for as embedded derivatives. We concluded that the conversion features, inclusive of all settlement outcomes where the pay-off is indexed to the if-converted value, meets all the requirements to be separately accounted for as a bifurcated derivative. As a result, we bifurcated the redeemable convertible preferred Stock between (i) the host contract which is accounted for within mezzanine equity, and (ii) the bifurcated derivative liability. The proceeds from issuance are first allocated to the fair value of the bifurcated derivative with the residual being allocated to the host contract. The bifurcated derivative is remeasured to fair value each reporting period with changes in fair value recorded in earnings. We estimated the fair value of the derivative liability using a binomial lattice model. Inherent in a binomial lattice model are unobservable inputs and assumptions. The inputs for the valuation of the derivative liability included the volatility, credit spread, and term. Assumptions used in the valuation also take into account the contractual terms as well as the quoted price of our common stock in an active market. Significant changes in any of those inputs in isolation would result in significant changes to the fair value measurement. We remeasure the derivative liability at each reporting period and recognize the changes in fair value in the condensed consolidated statement of operations and comprehensive loss.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates, equity price and inflationary pressure.

Interest Rate Risk

We are exposed to market risk for changes in interest rates applicable to our cash and cash equivalents, restricted cash, and investments. We had cash, cash equivalents, restricted cash, and investments totaling $3.9 billion as of June 30, 2024. Our investment policy is focused on the preservation of capital and supporting our liquidity needs. Under the policy, we invest in highly rated securities, primarily issued by the U.S. government or liquid money market funds. We do not invest in financial instruments for trading or speculative purposes. We utilize external investment managers who adhere to the guidelines of our investment policy. Based on investment positions as of June 30, 2024, a hypothetical 100 basis point increase in interest rates would result in $15.1 million incremental decline in the fair market value of our portfolio.

Equity Price Risk

We hold equity securities of Aston Martin Lagonda Global Holdings plc. The fair value of these equity securities was $51.5 million as of June 30, 2024. Changes in fair value of these equity securities are impacted by the volatility of the stock market and changes in general economic conditions, among other factors. A hypothetical 10% decrease in the stock price of these equity securities would decrease the fair value as of June 30, 2024 by $5.2 million.

Inflationary Pressure

The U.S. and Saudi Arabia economies have experienced increased inflation. Our cost to manufacture a vehicle is heavily influenced by the cost of the key components and materials used in the vehicle, cost of labor, as well as cost of equipment used in our manufacturing facilities. As we continue our phased construction of our AMP-1 and AMP-2 facilities, any further increases in material and infrastructure equipment prices and cost of construction labor could lead to higher capital expenditures.

Supply Risk

We are dependent on our suppliers, the majority of which are single-source suppliers, and the inability of these suppliers to deliver necessary components of its products according to the schedule and at prices, quality levels and volumes acceptable to us, or its inability to efficiently manage these components, could have a material adverse effect on our results of operations and financial condition.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this Quarterly Report on Form 10-Q.

Based on their evaluation, our principal executive officer and principal financial officer concluded that as of June 30, 2024, our disclosure controls and procedures are designed to, and are effective to, provide reasonable assurance that the information we are required to disclose in reports we file or submit under the Exchange Act is (i) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the fiscal quarter ended June 30, 2024, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.

For a description of our legal proceedings, please see the description set forth in the "Legal Matters" section in Note 12 "Commitments and Contingencies" to the condensed consolidated financial statements in Item 1 of Part I of this Quarterly Report, which is incorporated herein by reference.

Item 1A. Risk Factors.

A description of the risks and uncertainties associated with our business is set forth below. Investors should carefully consider the risks and uncertainties described below, as well as the other information in this Quarterly Report, including our condensed consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The occurrence of any of the events or developments described below, or of additional risks and uncertainties not presently known to us or that we currently deem immaterial, could materially and adversely affect our business, results of operations, financial condition and growth prospects. In such an event, the market price of our common stock could decline, and our stockholders could lose all or part of their investment.

Risk Factor Summary

Our business is subject to numerous risks and uncertainties, including those highlighted in this section titled Item 1A. "Risk Factors," that represent challenges that we face in connection with the successful implementation of our strategy and growth of our business. The occurrence of one or more of the events or circumstances described in this section titled Item 1A. "Risk Factors," alone or in combination with other events or circumstances, may have an adverse effect on our business, cash flows, financial condition and results of operations. Such risks include, but are not limited to:

- Our limited operating history makes evaluating our business and future prospects difficult and may increase the risk of stockholders' investment.
- We have incurred net losses each year since our inception and expect to incur increasing expenses and substantial losses for the foreseeable future.
- We may be unable to adequately control the substantial costs associated with our operations.
- Failure to attract customers, failure to complete the purchase process with customers, and customer cancellation of orders may have a material adverse impact on our business, prospects, results of operations and financial condition.
- A global economic recession, government closures of banks and liquidity concerns at other financial institutions, or other downturn may have a material adverse impact on our business, prospects, results of operation and financial condition.
- We currently depend primarily on revenue generated from a single model and in the foreseeable future will be significantly dependent on a limited number of models.
- Our business and prospects depend significantly on our brand.
- We will not have a third-party retail product distribution and full-service network.
- If we fail to manage our future growth effectively, we may not be able to develop, manufacture, distribute, market and sell our vehicles successfully.
- We face risks associated with international operations, including unfavorable regulatory, political, tax and labor conditions, which could harm our business.
- The automotive industry has significant barriers to entry that we must overcome in order to manufacture and sell EVs at scale.
- The automotive market is highly competitive, and we may not be successful in competing in this industry.
- We have experienced and may in the future experience significant delays in the design, manufacture, launch and financing of our vehicles, including the Lucid Air, the Lucid Gravity SUV and our Midsize platform, which could harm our business and prospects.
- Our ability to continue production and our future growth depends upon our ability to maintain relationships with our existing suppliers and source suppliers for our critical components, and to complete building out our supply chain, while effectively managing the risks due to such relationships.
- We are dependent on our suppliers, the majority of which are single-source suppliers, and the inability of these suppliers to deliver necessary components of our products according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components or to implement or maintain effective inventory management and other systems, processes and personnel to support ongoing and increased production, could have a material adverse effect on our results of operations and financial condition.

- Changes in costs, changes of supply or shortage of materials, in particular for lithium-ion battery cells or semiconductors, could harm our business.
- If we fail to successfully construct or tool our manufacturing facilities or if our manufacturing facilities become inoperable, we will be unable to produce our vehicles and our business will be harmed.
- We have limited experience in high volume manufacture of our vehicles.
- If our vehicles fail to perform as expected, our ability to develop, market and sell or lease our products could be harmed.
- We face challenges providing charging solutions for our vehicles, both domestically and internationally.
- We have limited experience servicing our vehicles and their integrated software. If we or our partners are unable to adequately service our vehicles, our business, prospects, financial condition and results of operations may be materially and adversely affected.
- Insufficient reserves to cover future warranty or part replacement needs or other vehicle repair requirements, including any potential software upgrades, could materially adversely affect our business, prospects, financial condition and results of operations.
- We may not be able to accurately estimate the supply and demand for our vehicles, which could result in a variety of inefficiencies in our business and hinder our ability to generate revenue. If we fail to accurately predict our manufacturing requirements, we could incur additional costs or experience delays.
- Any unauthorized control, manipulation, interruption or compromise of or access to our products or information technology systems or networks could result in loss of confidence in us and our products, harm our business and materially adversely affect our financial performance, results of operations or prospects.
- We are subject to evolving laws, regulations, standards, policies, and contractual obligations related to data privacy and cybersecurity, and any actual or perceived failure to comply with such obligations could harm our reputation and brand, subject us to significant fines and liability, or otherwise adversely affect our business.
- The loss of key employees or an inability to attract, retain and motivate qualified personnel may impair our ability to expand our business.
- We are highly dependent on the services of Peter Rawlinson, our Chief Executive Officer and Chief Technology Officer.
- We are subject to substantial laws and regulations that could impose substantial costs, legal prohibitions or unfavorable changes upon our operations or products, and any failure to comply with these laws and regulations, including as they evolve, could substantially harm our business and results of operations.
- We may face regulatory limitations on our ability to sell vehicles directly, which could materially and adversely affect its ability to sell our vehicles.
- We may fail to adequately obtain, maintain, enforce, defend and protect our intellectual property and may not be able to prevent third parties from unauthorized use of our intellectual property and proprietary technology. If we are unsuccessful in any of the foregoing, our competitive position could be harmed and we could be required to incur significant expenses to enforce our rights.
- We will require additional capital to support business growth, and this capital might not be available on commercially reasonable terms, or at all.
- We may not be able to realize the anticipated benefits of our agreement with Aston Martin.
- If we identify material weaknesses or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect investor confidence in us and the value of our common stock.
- The issuance of additional shares of our common stock or other equity or equity-linked securities, including our Redeemable Convertible Preferred Stock, or sales of a significant portion of our common stock, could depress the market price of our common stock.
- We are a “controlled company” within the meaning of the applicable rules of Nasdaq and, as a result, qualify for exemptions from certain corporate governance requirements. Our stockholders do not have the same protections afforded to stockholders of companies that are not controlled companies.
- PIF and Ayar beneficially own a significant equity interest in us and have significant influence over us, which could decrease the relative ownership interest and voting power other holders of our common stock have over us.
- The holders of our Redeemable Convertible Preferred Stock are entitled to vote their shares of the Redeemable Convertible Preferred Stock on an as-converted to common stock basis and have rights to approve certain actions, which reduces the relative voting power of the holders of our common stock. The settlement of our obligations upon conversion, redemption, or repurchase of our Redeemable Convertible Preferred Stock is expected to dilute the ownership of common stockholders and may adversely affect the market price of our common stock.

- Our Redeemable Convertible Preferred Stock has rights, preferences and privileges that are not held by, and are senior to the rights of, our common stockholders.

Risks Related to Our Business and Operations

Our limited operating history makes evaluating our business and future prospects difficult and may increase the risk of stockholders' investment.

We are an early-stage company with a limited operating history, operating in a rapidly evolving and highly regulated market. Furthermore, we have only released one commercially available vehicle, and we have limited experience manufacturing or selling a commercial product at scale. Because we have yet to generate significant revenue from the sale of electric vehicles, and as a result of the capital-intensive nature of our business, we expect to continue to incur substantial operating losses for the foreseeable future.

We have encountered and expect to continue to encounter risks and uncertainties frequently experienced by early-stage companies in rapidly changing markets, including risks relating to our ability to, among other things:

- hire, integrate and retain professional and technical talent, including key members of management;
- continue to make significant investments in research, development, manufacturing, marketing and sales;
- successfully design, build, manufacture and market new variants and models of electric vehicles, such as the Lucid Gravity SUV and our Midsize platform;
- build a well-recognized and respected brand;
- establish, implement, refine and scale our commercial manufacturing capabilities and distribution infrastructure;
- establish and maintain satisfactory arrangements with third-party suppliers;
- establish and expand a customer base;
- anticipate and adapt to changing market conditions, including consumer demand for certain vehicle types, models or trim levels, technological developments and changes in competitive landscape;
- navigate an evolving and complex regulatory environment;
- successfully obtain, maintain, protect, defend and enforce our intellectual property and defend against claims of intellectual property infringement, misappropriation or other violation.

We have incurred net losses each year since our inception and expect to incur increasing expenses and substantial losses for the foreseeable future.

We have incurred net losses each year since our inception, including net loss of $643.4 million and $1,324.2 million for the three and six months ended June 30, 2024, respectively. As of June 30, 2024, our accumulated deficit was $11.5 billion. We expect to continue to incur substantial losses and increasing expenses in the foreseeable future as we:

- continue to design, develop and manufacture our vehicles;
- equip and expand our research, service, battery, powertrain, and manufacturing facilities to produce our vehicles in Arizona and in international locations such as Saudi Arabia;
- build up inventories of parts and components for our vehicles;
- manufacture and store an available inventory of our vehicles;
- develop and deploy geographically dispersed vehicle charging partnerships;
- expand our design, research, development, maintenance and repair capabilities and facilities;
- increase our sales, service and marketing activities and develop our distribution infrastructure; and
- expand our general and administrative functions to support our growing operations and status as a public company.

If our product development or commercialization of future vehicles is delayed, our costs and expenses may be significantly higher than we currently expect. Because we will incur the costs and expenses from these efforts before we receive any incremental revenues with respect thereto, we expect our losses in future periods will be significant.

We may be unable to adequately control the substantial costs associated with our operations.

We will require significant capital to develop and grow our business. We have incurred and expect to continue to incur significant expenses, including leases, sales and distribution expenses as we build our brand and market our vehicles; expenses relating to developing and manufacturing our vehicles, constructing, tooling and expanding our manufacturing facilities; research and development expenses (including expenses related to the development of the Lucid Air, the Lucid Gravity SUV, our Midsize platform and other future products); raw material procurement costs; and general and administrative expenses as we scale our operations and continue to incur the costs of being a public company. Increased competition and adverse economic conditions have in the past and may continue in the future to require us to spend additional resources to attract customers, which in turn may result in higher marketing and incentive expenses. Furthermore, lower production and sales volumes have in the past and may further result in an inability to fully utilize our purchase commitments with suppliers which could result in increased costs and excess inventory as well as potential inventory write-offs. In addition, we have incurred and expect to continue to incur significant costs servicing and maintaining customers' vehicles, including establishing our service operations and facilities and undertaking product recalls. As a company, we have limited historical experience forecasting and budgeting for any of these expenses, and these expenses could be significantly higher than we currently anticipate. In addition, any disruption to our manufacturing operations, obtaining necessary equipment or supplies, expansion of our manufacturing facilities, or the procurement of permits and licenses relating to our expected manufacturing, sales and distribution model could significantly increase our expenses. In such event, we could be required to seek additional financing earlier than we expect, and such financing may not be available on commercially reasonable terms, or at all.

In the longer term, our ability to become profitable in the future will depend on our ability not only to effectively manage our capital expenditures and control costs on a timely basis, but also to sell in quantities and at prices sufficient to achieve our expected margins. If we are unable to appropriately price and cost-efficiently design, manufacture, market, sell, distribute and service our vehicles, our margins, profitability and prospects will be materially and adversely affected.

Failure to attract customers, failure to complete the purchase process with customers, and customer cancellation of orders may have a material adverse impact on our business, prospects, results of operations and financial condition.

Delays in customer deliveries, delays in the availability of options, potential changes in customer preferences, competitive developments, increased interest rates, negative publicity, decreased demand for electric vehicles, and other factors could result in failure to attract customers, failure to complete the purchase process with customers, and customer cancellation. Increases in interest rates could make financing unaffordable for segments of our customer base and any event or incident which generates negative media coverage about us or the safety or quality of our vehicles could result in failure to attract customers, failure to complete the purchase process, and customer cancellations. In addition, if we encounter delays in customer deliveries of the Lucid Air that further lengthen wait times or in the event of negative media coverage, a significant number of orders may be cancelled. As such, no assurance can be given that the purchase process will be completed, orders will not be cancelled, and orders will ultimately result in the final purchase, delivery and sale or lease of vehicles.

A global economic recession, government closures of banks and liquidity concerns at other financial institutions, or other downturn may have a material adverse impact on our business, prospects, results of operations and financial condition.

A global economic recession or other downturn, whether due to inflation, global conflicts or other geopolitical events including the evolving conflicts in the Middle East, public health crises, interest rate increases or other policy actions by major central banks, government closures of banks and liquidity concerns at other financial institutions, or other factors, may have an adverse impact on our business, prospects, financial condition and results of operations. Adverse economic conditions as well as uncertainty about the current and future global economic conditions may cause our customers to defer purchases or cancel their orders in response to higher interest rates, availability of consumer credit, decreased cash availability, fluctuations in foreign currency exchange rates, and weakened consumer confidence. Reduced demand for our products may result in significant decreases in our product sales, which in turn would have a material adverse impact on our business, prospects, financial condition and results of operations. Because of our premium brand positioning and pricing, an economic downturn is likely to have a heightened adverse effect on us compared to many of our electric vehicle and traditional automotive industry competitors, to the extent that consumer demand for luxury goods is reduced in favor of lower-priced alternatives. In addition, any economic recession or other downturn could also cause logistical challenges and other operational risks if any of our suppliers, sub-suppliers or partners become insolvent or are otherwise unable to continue their operations, fulfill their obligations to us, or meet our future demand.

In addition, the deterioration of conditions in global credit markets may limit our ability to obtain external financing to fund our operations and capital expenditures on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, we will have to significantly reduce our spending, delay or cancel our planned activities or substantially change our corporate structure, and we might not have sufficient resources to conduct or support our business as projected, which would have a material adverse effect on our business, prospects, results of operations, and financial condition. See "—Risks Related to Financing and Strategic Transactions — *We will require additional capital to support business growth, and this capital might not be available on commercially reasonable terms, or at all*."

We currently depend primarily on revenue generated from a single model and in the foreseeable future will be significantly dependent on a limited number of models.

We currently depend primarily on revenue generated from a single vehicle model, the Lucid Air, and in the foreseeable future will be significantly dependent on a single or limited number of models. Although we have other vehicle models on our product roadmap, we are not scheduled to introduce another vehicle model for sale, the Lucid Gravity SUV, until late 2024. We expect to rely on sales from the Lucid Air, among other sources of financing, for the capital that will be required to develop and commercialize those subsequent models. To the extent that production of the Lucid Air or future models is delayed or reduced, or if the Lucid Air or future models are not well-received by the market for any reason, our revenue and cash flow would be adversely affected, we may need to seek additional financing earlier than we expect, and such financing may not be available to us on commercially reasonable terms, or at all.

If we are unable to fulfill the orders from the Government of Saudi Arabia or if the Government of Saudi Arabia purchases significantly fewer vehicles than we anticipate for any reason, our business, prospects, results of operations and financial condition could be materially and adversely affected.

In August 2023, we entered into an EV purchase agreement with the Government of Saudi Arabia as represented by the Ministry of Finance (the "EV Purchase Agreement"), which supersedes the letter of undertaking that we entered into in April 2022. Pursuant to the terms of the EV Purchase Agreement, the Government of Saudi Arabia and its entities and corporate subsidiaries and other beneficiaries (collectively, the "Purchaser") may purchase up to 100,000 vehicles, with a minimum purchase quantity of 50,000 vehicles and an option to purchase up to an additional 50,000 vehicles during a ten-year period. Under the EV Purchase Agreement, the Purchaser may reduce the minimum vehicle purchase quantity by the number of vehicles set out in any purchase order not accepted by us or by the number of vehicles that we fail to deliver within six months from the date of the applicable purchase order. The Purchaser also has the absolute discretion to decide whether to exercise the option to purchase the additional 50,000 vehicles. See Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations for more information.

If we experience delays in manufacturing and delivering vehicles ordered by the Purchaser, fail to or experience delays in complying with Saudi Arabian regulations or the requirements of the EV Purchase Agreement, fail to provide adequate service or support for the vehicles, or fail to set the appropriate purchase price for such vehicles, our revenue, cash flow and results of operations and financial condition could be adversely affected. Furthermore, if the Purchaser reduces the minimum vehicle purchase quantity, delays the purchase of vehicles, does not exercise its option to purchase additional vehicles, or purchases significantly fewer vehicles than we currently anticipate for any reason, including for reasons beyond our control, our business, prospects, results of operations and financial condition could be materially and adversely affected.

Our business and prospects depend significantly on our brand.

Our business and prospects will heavily depend on our ability to develop, maintain, protect and strengthen the "Lucid" brand association with luxury and technological excellence. Promoting and positioning our brand will likely depend significantly on our ability to provide a consistently high-quality customer experience, an area in which we have limited experience. To promote our brand, we will be required to invest in, and over time change our customer development and branding practices, which could result in substantially increased expenses, including the need to use public relations and advertising firms. Our ability to successfully position our brand could also be adversely affected by perceptions about the quality of our competitors' vehicles or our competitors' success. For example, certain of our competitors have been subject to significant scrutiny for incidents involving their self-driving technology and battery fires, which could result in similar scrutiny of us.

In particular, any negative publicity, whether or not true, can quickly proliferate on social media and harm consumer perception and confidence in our brand. The growing use of social media increases the speed with which information and opinions can be shared and, thus, the speed with which a company's reputation can be affected. If we fail to correct or mitigate misinformation or negative information, including information spread through social media or traditional media channels, about us, the products we offer, our customer experience, or any aspect of our brand, our business, sales and results of operations could be adversely impacted. From time-to-time, our vehicles or those of our competitors may be evaluated and reviewed by third parties. Perceptions of our offerings in the marketplace may be significantly influenced by these reviews, which are disseminated via various media, including the internet. Any negative reviews or reviews which compare us unfavorably to competitors could adversely affect consumer perception about our vehicles and reduce demand for our vehicles, which could have a material adverse effect on our business, results of operations, prospects and financial condition.

Our sales will depend in part on our ability to establish and maintain confidence in our long-term business prospects among consumers, the investment community and others within our industry.

Consumers may be less likely to purchase our products if they do not believe that our business will succeed or that our operations, including service and customer support operations, will continue for many years. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed. Accordingly, to build, maintain and grow our business, we must establish and maintain confidence among customers, suppliers, the investment community and other parties with respect to our liquidity and long-term business prospects.

Maintaining such confidence may be particularly difficult as a result of many factors, including our limited operating history, others' unfamiliarity with our products, uncertainty regarding the future of electric vehicles, any delays in scaling production, delivery and service operations to meet demand, competition and our production and sales performance compared with market expectations. Many of these factors are largely outside of our control, and any negative perceptions about our long-term business prospects, even if exaggerated or unfounded, would likely harm our business and make it more difficult to raise additional capital in the future. In addition, as discussed above, a significant number of new electric vehicle companies have recently entered the automotive industry, which is an industry that has historically been associated with significant barriers to entry and a high rate of failure. Certain of these new entrants or other traditional automotive manufacturers now producing electric vehicles have become insolvent, and if additional manufacturers producing electric vehicles become insolvent or are perceived to likely become insolvent, discontinue production of electric vehicles, produce vehicles that do not perform as expected or otherwise fail to meet expectations, such failures may have the effect of increasing scrutiny of others in the industry, including us, and further challenging customer, supplier and the investment community's confidence in our long-term prospects.

We will not have a third-party retail product distribution and full-service network.

Third-party dealer networks are the traditional method of vehicle sales distribution and service. Because we sell directly to consumers, we do not have a traditional dealer product distribution and service network. We have limited experience distributing directly to consumers, and we expect that continuing to build a national and global in-house sales and marketing function, including an expanded physical sales, marketing and service footprint via our Lucid studios and service centers, will be expensive and time consuming. We have experienced delays in the construction and opening of our Lucid studios and service centers and any significant delays to establish Lucid studios and service centers in key markets in the future could have an adverse effect on our business, results of operations, prospects and financial condition. In addition, if our lack of a traditional dealer distribution and service network results in lost opportunities to generate sales, it could limit our ability to grow. Moreover, our business model of selling directly to consumers and directly servicing all vehicles may be limited by regulatory constraints. To the extent we are unable to successfully execute on such plans in all markets, we may be required to develop a third-party dealer distribution and service network, including developing and implementing the necessary information technology infrastructure to support them, which may prove costly, time-consuming or ineffective. If our use of an in-house sales, marketing and service team is not effective, our results of operations and financial conditions could be adversely affected.

Our ability to generate meaningful product revenue will depend on consumer adoption of electric vehicles.

We are developing and producing only electric vehicles and, accordingly, our ability to generate meaningful product revenue will highly depend on sustained consumer demand for alternative fuel vehicles in general and electric vehicles in particular. If the market for electric vehicles does not develop as we expect or develops more slowly than we expect, or if there is a decrease in consumer demand for electric vehicles, our business, prospects, financial condition and results of operations will be harmed. The market for electric and other alternative fuel vehicles is relatively new, rapidly evolving, characterized by rapidly changing technologies, price competition, additional competitors, evolving government regulation (including government incentives and subsidies) and industry standards, frequent new vehicle announcements and changing consumer demands and behaviors. Any number of changes in the industry could negatively affect consumer demand for electric vehicles in general and our electric vehicles in particular.

In addition, demand for electric vehicles may be affected by factors directly impacting automobile prices or the cost of purchasing and operating automobiles such as sales and financing incentives such as tax credits, prices of raw materials and parts and components, cost of fuel, availability of consumer credit, interest rates, and governmental regulations, including tariffs, import regulation and other taxes. Volatility in demand may lead to lower vehicle unit sales, which may result in downward price pressure and adversely affect our business, prospects, financial condition and results of operations. Further, sales of vehicles in the automotive industry tend to be cyclical in many markets, which may expose us to increased volatility, especially as we expand and adjust our operations and retail strategies. Specifically, it is uncertain how such macroeconomic factors will impact us as a new entrant in an industry that has globally been experiencing a recent decline in sales.

Other factors that may influence the adoption of electric vehicles include:

- perceptions about electric vehicle quality, safety, design, performance and cost;
- perceptions about the limited range over which electric vehicles may be driven on a single battery charge;

- perceptions about the total cost of ownership of electric vehicles, including the initial purchase price and operating and maintenance costs, both including and excluding the effect of government and other subsidies and incentives designed to promote the purchase of electric vehicles;
- concerns about electric grid capacity and reliability;
- perceptions about the sustainability and environmental impact of electric vehicles, including with respect to both the sourcing and disposal of materials for electric vehicle batteries and the generation of electricity provided in the electric grid;
- the availability of other alternative fuel vehicles, including plug-in hybrid electric vehicles;
- improvements in the fuel economy of the internal combustion engine;
- the quality and availability of service for electric vehicles, especially in international markets;
- volatility in the cost of oil and gasoline;
- government regulations and economic incentives promoting fuel efficiency and alternate forms of energy;
- access to charging stations compatible with our vehicles and cost to charge an electric vehicle, especially in international markets, and related infrastructure costs and standardization;
- the availability of tax and other governmental incentives to purchase and operate electric vehicles or future regulation requiring increased use of nonpolluting vehicles; and
- macroeconomic factors.

The influence of any of the factors described above or any other factors may cause a general reduction in consumer demand for electric vehicles or our electric vehicles in particular, either of which would materially and adversely affect our business, results of operations, financial condition and prospects.

If we fail to manage our future growth effectively, we may not be able to develop, manufacture, distribute, market and sell our vehicles successfully.

Any failure to manage our growth effectively could materially and adversely affect our business, prospects, results of operations and financial condition. We are expanding our operations significantly and our current and future expansion plans include:

- expanding our management team;
- hiring and training new personnel;
- establishing or expanding design, manufacturing, distribution, sales and service facilities;
- implementing and enhancing administrative and business infrastructure, governance, systems and processes, including in connection with our maturation as a public company; and
- expanding into new markets and establishing sales, service, administrative, distribution, and/or manufacturing operations in many of those markets.

We require qualified personnel, including design and manufacturing personnel and service technicians for our vehicles. Because our vehicles are based on a different technology platform than traditional internal combustion engines, individuals with sufficient training in electric vehicles may not be available to hire, and as a result, we will need to expend significant time and expense training the employees we do hire. Competition for individuals with experience in supply chain management and logistics as well as designing, engineering, manufacturing, producing, selling, and servicing electric vehicles is intense, and we may not be able to identify, attract, integrate, train, motivate or retain sufficient highly qualified personnel in the future. Furthermore, we recently announced a restructuring plan, which involves the reduction of our employee workforce and may adversely affect our internal programs and initiatives as well as our ability to recruit and retain skilled and motivated personnel. Any such restructuring plan may also be distracting to employees and management and may negatively impact our business operations, reputation, or ability to serve customers. We cannot provide any assurances that we will not have to undertake additional workforce reductions in the future. The failure to identify, attract, integrate, train, motivate and retain these employees could seriously harm our business and prospects. In addition, our employee equity program is a key factor in our ability to attract and retain talent and continue to support the growth of the company. If we are unable to grant equity awards, or if we are forced to reduce the value of equity awards to be received by the employees for any reason, we may not be able to attract, hire and retain the personnel necessary for our business, which would have a material adverse effect on our business, prospects financial condition and results of operations. In addition, our success is substantially dependent upon the continued service and performance of our senior management team and key technical and vehicle management personnel. If any key employees were to separate their employment with us, such separation would likely increase the difficulty of managing our current operations and future growth and heighten the foregoing risks.

We also have limited experience to date in high volume manufacturing of our vehicles. We cannot assure our investors that we will be able to develop and implement efficient, automated, low-cost manufacturing capabilities and processes, and reliable sources of component supply that will enable us to meet the quality, price, engineering, design and production standards, as well as the production volumes, required to successfully market our vehicles. We have also experienced, and may continue to experience, internal and external logistics challenges with respect to our manufacturing and warehousing facilities, including disruption to manufacturing operations due to the consolidation of our logistics operations with our manufacturing operations at AMP-1. Any failure to develop and implement such manufacturing processes and capabilities within our projected costs and timelines could stunt our future growth and impair our ability to produce, market, service and sell or lease our vehicles successfully. In addition, our rapid growth, competitive real estate markets, and increasing rental rates, may impact our ability to obtain suitable space to accommodate our growing operations or to renew existing leases on terms favorable to us, if at all. Any failure to obtain or renew leases for real property on terms favorable to us when we need them may limit our growth, impact our operations and have an adverse impact on our financial condition. If we fail to manage our growth effectively, such failure could result in negative publicity and damage to our brand and have a material adverse effect on our business, prospects, financial condition and results of operations.

We face risks associated with international operations, including unfavorable regulatory, political, tax and labor conditions, which could harm our business.

As we expand our international presence and operations, we will be increasingly subject to the legal, political, regulatory and social requirements and economic conditions in these jurisdictions. Additionally, as part of our growth strategy, we have been expanding and may continue to expand our sales, maintenance and repair services outside of the United States. We are also continuing the construction of AMP-2 in Saudi Arabia and may continue to further expand our manufacturing activities outside the United States. However, we have limited experience to date manufacturing our vehicles outside of the United States, and such expansion has and will continue to require us to make significant expenditures, including the hiring of local employees and establishing facilities and related systems and processes, in advance of generating any significant revenue. We are subject to a number of risks associated with international business activities that may increase our costs, impact our ability to sell, service and manufacture our vehicles, and require significant management attention. These risks include:

- conforming our vehicles to various international regulatory and homologation requirements where our vehicles are sold;
- establishing localized supply chains and managing international supply chain and logistics costs, including the shipping and delivery of kits for the SKD facility;
- establishing sufficient charging points for our customers in those jurisdictions, via partnerships or, if necessary, via development of our own charging networks or accessing those of third parties;
- difficulties staffing and managing foreign operations, especially in jurisdictions where no EV ecosystem exists and qualified personnel must be hired and relocated;
- difficulties attracting customers in new jurisdictions;
- difficulties establishing international manufacturing operations, including difficulties establishing relationships with or establishing localized supplier bases and developing cost-effective and reliable supply chains for such manufacturing operations and financing such manufacturing operations;
- difficulties controlling costs and potential loss of funding, including as a result of delays in the construction or ramp-up of operations at AMP-2;
- foreign government taxes, regulations and permit requirements, including foreign taxes that we may not be able to offset against taxes imposed upon us in the United States, and foreign tax and other laws limiting our ability to repatriate funds to the United States;
- inflation as well as fluctuations in foreign currency exchange rates and interest rates, including risks related to any forward currency contracts, interest rate swaps or other hedging activities we may undertake;
- currency fluctuations or localized inflationary pressure;
- United States and foreign government trade restrictions, tariffs and price or exchange controls;
- foreign laws, regulations and restrictions, including in the areas of supply chain, labor, sales, service, environment and health and safety, and related compliance costs;
- increasingly restrictive and complex foreign data privacy and cybersecurity laws, regulations and obligations;
- changes in diplomatic and trade relationships, including political risk and customer perceptions based on such changes and risks;
- political instability, natural disasters, pandemics, wars, global conflicts or other geopolitical events (including the conflict in the Middle East, which is affecting shipping routes in that region directly and consequently globally), or events of terrorism; and
- the strength of international economies.

If we fail to successfully address these risks, our business, prospects, results of operations and financial condition could be materially harmed.

The automotive industry has significant barriers to entry that we must overcome in order to manufacture and sell electric vehicles at scale.

The automobile industry is characterized by significant barriers to entry, including large capital requirements, investment costs of designing, manufacturing, and distributing vehicles, long lead times to bring vehicles to market from the concept and design stage, the need for specialized design and development expertise, regulatory requirements, establishing a brand name and image, and the need to establish sales and service locations. Since we are focused on the design of electric vehicles, we face a variety of added challenges to entry that a traditional automobile manufacturer would not encounter, including additional costs of developing and producing an electric powertrain that has comparable performance to a traditional gasoline engine in terms of range and power, inexperience with servicing electric vehicles, regulations associated with the transport of batteries, the need to establish or provide access to sufficient charging locations and unproven high-volume customer demand for fully electric vehicles. While we have developed and started producing our first electric sedan and have completed the first phase of construction of AMP-1, we have not finished tooling all production lines at AMP-1. If we are not able to overcome these barriers, our business, prospects, results of operations and financial condition will be negatively impacted, and our ability to grow our business will be harmed.

The automotive market is highly competitive, and we may not be successful in competing in this industry.

The global automotive market, particularly for electric and alternative fuel vehicles, is highly competitive, and we expect it will become even more so in the future. In recent years, the electric vehicle industry has grown, with the emergence of several companies that focus completely or partially on the electric vehicle market. In addition, traditional automotive manufacturers are also producing and selling electric and alternative fuel vehicles. We expect additional companies to enter this market within the next several years. Electric vehicle manufacturers with which we compete include Tesla, an increasing number of U.S.-based and international entrants and traditional automotive manufacturers, many of which have begun, or announced plans to begin, selling their own electric vehicles in the near-term. We also compete with established automobile manufacturers in the luxury vehicle segment, many of which have entered or have announced plans to enter the alternative fuel and electric vehicle market with either fully electric or plug-in hybrid versions of their vehicles. We compete for sales with luxury vehicles with internal combustion engines from established manufacturers. Many of our current and potential competitors have significantly greater financial, technical, manufacturing, marketing and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale, servicing, and support of their products, including the ability to significantly reduce prices of their products. In addition, many of these companies have longer operating histories, greater name recognition, larger and more established sales forces, broader customer and industry relationships and other resources than we do. Our competitors may be in a stronger position to respond quickly to changing market conditions and new technologies and may be able to design, develop, market and sell their products more effectively than we do. For example, some of our competitors have recently announced vehicle price reductions, which may result in downward price pressure and reduced demand for our vehicles. However, we may not be able to adjust our pricing strategies effectively, and there can be no assurance that such adjustments will allow us to successfully compete against our competitors, which may have a material adverse effect on our brand, business, prospects, inventory levels, results of operations and financial conditions. In addition, increased competition has in the past and may continue to require us to increase marketing and incentive expenses, which may have a material adverse effect on our operating results and financial condition. We expect competition in our industry to significantly intensify in the future in light of increased demand for alternative fuel vehicles, continuing globalization, favorable governmental policies, macroeconomic uncertainty, and consolidation in the worldwide automotive industry. Our ability to successfully compete in our industry will be fundamental to our future success in existing and new markets. There can be no assurance that we will be able to compete successfully in our markets.

Developments in electric vehicle or alternative fuel technology or improvements in the internal combustion engine may adversely affect the demand for our vehicles.

We may be unable to keep up with changes in electric vehicle technology or alternatives to electricity as a fuel source and, as a result, our competitiveness may suffer. Significant developments in alternative technologies, such as alternative battery cell technologies, hydrogen fuel cell technology, advanced gasoline, ethanol or natural gas, or improvements in the fuel economy of the internal combustion engine, may materially and adversely affect our business and prospects in ways we do not currently anticipate. Existing and other battery cell technologies, fuels or sources of energy may emerge as customers' preferred alternative to the technologies in our electric vehicles. Any failure by us to develop new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay our development and introduction of new and enhanced electric vehicles, which could result in the loss of competitiveness of our vehicles, decreased revenue and a loss of market share to competitors. In addition, we expect to compete in part on the basis of our vehicles' range, efficiency, charging speeds, performance and software, and improvements in the technology offered by competitors could reduce demand for the Lucid Air or other future vehicles. As technologies change, we plan to upgrade or adapt our vehicles and introduce new models that reflect such technological developments, but our vehicles may become obsolete, and our research and development efforts may not be sufficient to adapt to changes in alternative fuel and electric vehicle technology. Additionally, as new companies and larger, existing vehicle manufacturers continue to enter the electric vehicle space, we may lose any technological advantage we may have and suffer a decline in our competitive position. Any failure by us to successfully react to changes in existing technologies or the development of new technologies could materially harm our competitive position and growth prospects.

The unavailability, reduction or elimination of certain government and economic programs could have a material adverse effect on our business, prospects, financial condition and results of operations.

We expect to benefit from government and economic programs that encourage the development, manufacture or purchase of electric vehicles, such as zero emission vehicle credits, production tax credits, greenhouse gas credits and similar regulatory credits, the loss of which could harm our ability to generate revenue from the sale of such credits to other manufacturers; tax credits and other incentives to consumers, without which the net cost to consumers of our vehicles could increase, potentially reducing demand for our products; and investment tax credits for equipment, tooling and other capital needs, without which we may be unable to procure the necessary infrastructure for production to support our business and timeline; and certain other benefits, including a California sales and use tax exclusion and certain other hiring and job training credits in California and Arizona. We may also benefit from government loan programs. Any reduction, elimination or selective application of tax and other governmental programs and incentives because of policy changes, the reduced need for such programs due to the perceived success of the electric vehicle, fiscal tightening or other reasons may result in the diminished competitiveness of the electric vehicle industry generally or our electric vehicles in particular, which would adversely affect our business, prospects, financial condition and results of operations. Further, we cannot guarantee that the current governmental incentives and subsidies available for purchasers of electric vehicles will remain available. For example, beginning in 2023, the Inflation Reduction Act of 2022 eliminated the $7,500 federal sales tax credit for sedans that have a manufacturer's suggested retail price over $55,000, although a tax credit remains available for vehicles that are leased rather than purchased. See "— *Failure to attract customers and complete the purchase process, and cancellation of orders."*

While certain U.S. federal and state tax credits and other incentives for alternative energy production and alternative fuel and electric vehicles have been available in the past, there is no guarantee these programs will be available in the future. If current tax incentives are not available in the future, our financial position could be harmed.

We may be unable to offer attractive leasing and financing options for the Lucid Air and future vehicles, which would adversely affect consumer demand for the Lucid Air and our future vehicles. In addition, offering leasing and financing options to customers could expose us to credit and residual value risk.

We offer leasing and financing of our vehicles to potential customers through third-party financing partners and intend to do the same in new markets, but we cannot provide any assurance that such third-party financing partners will continue, or would be able or willing, to provide such services on terms acceptable to us or our customers. Furthermore, because we have only sold a limited number of vehicles and only a limited secondary market for our vehicles exists, the future resale value of our vehicles is difficult to predict, and, if the actual resale value of our vehicles is lower than anticipated, it would make providing leasing terms that appeal to potential customers through such third-party financing partners more difficult. We believe that the ability to offer attractive leasing and financing options is particularly relevant to customers in the luxury vehicle segments in which we compete, and if we are unable to offer our customers an attractive option to finance the purchase of or lease the Lucid Air or planned future vehicles, such failure could substantially reduce the population of potential customers and decrease demand for our vehicles.

Furthermore, offering leasing and financing alternatives to customers could expose us to regulatory risks commonly associated with the extension of consumer credit. Competitive pressure and challenging markets could increase credit risk through leases and loans to financially weak customers, extended payment terms, and leases and loans into new and immature markets, and any such credit risk could be further heightened in light of the economic uncertainty and any economic recession or other downturn, whether due to inflation, global conflicts or other geopolitical events, or public crises. If we are unable to provide leasing and financing arrangements that appeal to potential customers in a timely manner, or if the provision of such arrangements exposes us to excessive consumer credit risk or regulatory risk, our business, competitive position, results of operations and financial condition could be adversely affected.

In addition, we provide a residual value guarantee to our commercial banking partner in connection with our vehicle leasing program, under which we are contractually obligated to share a portion of the shortfall between the resale value realized by the commercial banking partner and a predetermined resale value. However, actual resale values are subject to fluctuations from various factors such as the condition of the leased vehicle, market price of new vehicles, and general economic conditions. If the resale values of leased vehicles pursuant to the vehicle leasing program are materially lower than our estimates, we may be required to cover some or all of such difference and our results of operations could be negatively impacted.

We may not be able to obtain or agree on acceptable terms and conditions for all or a significant portion of the government grants, loans and other incentives for which we may apply. As a result, our business and prospects may be adversely affected.

We may apply for federal and state grants, loans and tax incentives under government programs designed to stimulate the economy and support the production of alternative fuel and electric vehicles and related technologies. We anticipate that in the future there will be new opportunities for us to apply for grants, loans and other incentives from the United States federal and state governments, as well as foreign governments. Our ability to obtain funds or incentives from government sources is subject to the availability of funds under applicable government programs and approval of our applications to participate in such programs. The application process for these funds and other incentives will likely be highly competitive. We cannot guarantee that we will be successful in obtaining any of these additional grants, loans and other incentives. If we are not successful in obtaining any of these additional incentives and we are unable to find alternative sources of funding to meet our planned capital needs, our business and prospects could be materially adversely affected.

We are subject to risks associated with autonomous driving and advanced driver assistance system technology, and we cannot guarantee that our vehicles will achieve our targeted assisted or autonomous driving functionality within our projected timeframe, if ever.

Our vehicles are designed with advanced driver assistance system ("ADAS") hardware and software. The Lucid Air is equipped with Level 2 (partial automation) ADAS functionality, and we expect to launch the Lucid Gravity SUV with Level 2 functionality as well. We plan to upgrade our vehicles with additional capabilities over time. ADAS technologies are emerging and subject to known and unknown risks, and there have been accidents and fatalities associated with such technologies. The safety of such technologies depends in part on user interaction, and users, as well as other drivers on the roadways, may not be accustomed to using or adapting to such technologies. In addition, self-driving technologies are the subject of intense public scrutiny and interest, and previous accidents involving autonomous driving features in other non-Lucid vehicles, including alleged failures or misuse of such features, have generated significant negative media attention and government investigations. We and others in our industry are subject to a Standing General Order issued by the National Highway Traffic Safety Administration ("NHTSA") that requires us to report any crashes in which certain ADAS features were active, and these crash reports will become publicly available. To the extent accidents associated with our ADAS technologies occur, we could be subject to significant liability, negative publicity, government scrutiny and further regulation. Any of the foregoing could materially and adversely affect our results of operations, financial condition and growth prospects.

In addition, we face substantial competition in the development and deployment of ADAS technologies. Many of our competitors, including established automakers and technology companies, have devoted significant time and resources to developing self-driving technologies. If we are unable to develop competitive Level 2 or more advanced ADAS technologies in-house or acquire access to such technologies via partnerships or investments in other companies or assets, we may be unable to equip our vehicles with competitive ADAS features, which could damage our brand, reduce consumer demand for our vehicles and could have a material adverse effect on our business, results of operations, prospects and financial condition.

ADAS technology is also subject to regulatory uncertainty, which exposes us to additional risks. See "— Risks Related to Litigation and Regulation — *ADAS technology is subject to uncertain and evolving regulations.*"

Uninsured or underinsured losses could result in payment of substantial damages, which would decrease our cash reserves and could harm our cash flow and financial condition.

In the ordinary course of business, we may be subject to losses resulting from claims such as product liability, significant accidents, acts of God or other claims brought against us, for which we may have no or insufficient insurance coverage. While we currently carry insurance that is customary for a company of our size and operations, we may not maintain as much insurance coverage as other original equipment manufacturers, and in some cases, we may not maintain any at all. Additionally, the policies that we have in place may include significant deductibles or exclusions, and we cannot be certain that our insurance coverage will be sufficient to cover all or any future claims. A loss that is uninsured or exceeds existing policy limits may require us to pay unexpected and substantial amounts, which could adversely affect our financial condition and results of operations. Further, insurance coverage may not continue to be available to us or, if available, may be at a significantly higher cost based on insurance market conditions or changes in our risk profile. This may require a change in our insurance purchasing philosophy and strategy which can result in the assumption of greater risks to offset insurance market fluctuations.

Extended periods of low gasoline or other petroleum-based fuel prices could adversely affect demand for our vehicles, which would adversely affect our business, prospects, results of operations and financial condition.

A portion of the current and expected demand for electric vehicles results from concerns about volatility in the cost of gasoline and other petroleum-based fuel, the dependency of the United States on oil from unstable or hostile countries, government regulations and economic incentives promoting fuel efficiency and alternative forms of energy, as well as concerns about climate change resulting in part from the burning of fossil fuels. If the cost of gasoline and other petroleum-based fuel decreases significantly, the outlook for the long-term supply of oil to the United States improves, the government eliminates or modifies its regulations or economic incentives related to fuel efficiency and alternative forms of energy or there is a change in the perception that the burning of fossil fuels negatively impacts the environment, the demand for electric vehicles, including our vehicles, could be reduced, and our business and revenue may be harmed.

Gasoline and other petroleum-based fuel prices have historically been extremely volatile and it is difficult to ascertain whether such volatility will continue to persist. Lower gasoline or other petroleum-based fuel prices over extended periods of time may lower the perception in government and the private sector that cheaper, more readily available energy alternatives should be developed and produced. If gasoline or other petroleum-based fuel prices remain at deflated levels for extended periods of time, the demand for electric vehicles, including our vehicles, may decrease, which would have an adverse effect on our business, prospects, financial condition and results of operations.

Increasing scrutiny and changing expectations from global regulations, our investors, customers and employees with respect to our ESG practices may impose additional costs on us or expose us to new or additional risks.

There is increased focus, including from governmental organizations and our investors, customers and employees, on ESG issues such as environmental stewardship, climate change, diversity and inclusion, racial justice, workplace conduct, recyclability, sourcing and ESG disclosure. There can be no certainty that we will manage such issues successfully, or that we will successfully meet society's expectations as to our proper role. Negative public perception, adverse publicity or negative comments in social media could damage our reputation if we do not, or are not perceived to, adequately address these issues. Any harm to our reputation could impact our employees' engagement and retention and the willingness of our customers and partners to do business with us.

It is possible that our stakeholders may not be satisfied with our ESG disclosures, practices, or the speed of their adoption, and our systems may not be adequate to comply with increasing global regulations on ESG topics, such as human rights and sustainability reporting. Actual or perceived shortcomings with respect to our ESG initiatives and reporting may subject us to litigation and could negatively impact our business. We could also incur additional costs and require additional resources to monitor, report, and comply with various ESG practices. In addition, a variety of organizations have developed ratings to measure the performance of companies on ESG topics, and the results of these assessments are widely publicized. Investment in funds that specialize in companies that perform well in such assessments are increasingly popular, and major institutional investors have publicly emphasized the importance of such ESG measures to their investment decisions. Unfavorable or downgraded ratings of our company or our industries, as well as non-inclusion or removal of our stock on ESG-oriented investment funds or indexes, may lead to negative investor sentiment and the diversion of investment to other companies or industries, which could have a negative impact on our stock price.

In addition, due to the impacts of climate change, there are increasing risks to our business, including physical risks such as wildfires, floods, tornadoes or other events, that could cause disruptions to our supply chain, manufacturing, and corporate functions. We may incur additional costs and resources preparing for and addressing such risks.

Risks Related to Manufacturing and Supply Chain

We have experienced and may in the future experience significant delays in the design, manufacture, launch and financing of our vehicles, including the Lucid Air, the Lucid Gravity SUV and our Midsize platform, which could harm our business and prospects.

Our plan to scale our manufacturing capacity and increase sales is dependent upon the timely availability of funds, upon our finalizing of the related design, engineering, component procurement, testing, build-out and manufacturing plans in a timely manner and also upon our ability to execute these plans within the planned timeline. Automobile manufacturers often experience delays in the design, manufacture and commercial release of new vehicle models, and we have experienced in the past, and may experience in the future, such delays with regard to additional variants of the Lucid Air or our other vehicles. For example, we have experienced delays in the engineering of certain of our vehicle systems, including as a result of design changes to components. Any future delays in the financing, design, manufacture and launch of the Lucid Air, including planned future variants, and any future electric vehicles could materially damage our business, prospects, financial condition and results of operations.

Many of our vehicles, including the Lucid Gravity SUV and our Midsize platform, are still in the development and/or testing phase, and may occur later than expected or not at all. Additionally, prior to mass production of our electric vehicles, we will also need the vehicles to be fully approved for sale according to differing requirements, including but not limited to regulatory requirements, in the different geographies where we intend to launch our vehicles. Likewise, we have encountered and may continue to encounter delays with the design, construction, and regulatory or other approvals necessary to bring online our future expansions of our Arizona and Saudi Arabia manufacturing facilities, or other future manufacturing facilities.

Furthermore, we rely on third party suppliers for the development, manufacture, and/or provision and development of many of the key components and materials used in our vehicles, as well as provisioning and servicing equipment in our manufacturing facilities. We have been affected by ongoing, industry-wide challenges in logistics and supply chains, such as increased supplier lead times. These challenges have affected our ability, and the ability of our suppliers, to obtain parts, components and manufacturing equipment on a timely basis, and in some instances have resulted in increased costs and delays to the construction and expansion of our facilities. We expect that the risk of unexpected disruptions will continue for the foreseeable future. To the extent our suppliers experience any delays in providing us with or developing necessary components, we could experience delays in delivering on our timelines.

Any significant delay or other complication in the production of the Lucid Air or the development, manufacture, launch and production ramp of our future products, features and services, including complications associated with expanding our production capacity and supply chain or obtaining or maintaining related regulatory approvals, or inability to manage such ramps cost-effectively, could materially damage our brand, business, prospects, financial condition and results of operations.

The continued development of and the ability to manufacture our vehicles, including the Lucid Air, the Lucid Gravity SUV and our Midsize platform, are and will be subject to risks, including with respect to:

- our ability to ensure ongoing readiness of firmware features and functions to be integrated into the Lucid Air as planned and on the desired timeline;
- our ability to finalize release candidate specifications for the Lucid Gravity SUV and our Midsize platform as planned and on the desired timeline;
- any delays by us in delivering final component designs to our suppliers or any changes to such component designs;
- our or our suppliers' ability to successfully tool manufacturing facilities as planned and on the desired timeline;
- our ability to ensure a working supply chain and desired supplier part quality and quantity as planned and on the desired timeline;
- our ability to accurately manufacture vehicles within specified design tolerances;
- our ability to establish, implement, refine and scale, as well as make significant investments in manufacturing, supply chain management and logistics functions, including the related information technology systems and software applications;
- our ability to adequately reduce and control the costs of key parts and materials;
- our ability to significantly reduce freight costs, including in-bound freight costs;
- our ability to manage any transitions or changes in our production process, planned or unplanned;
- the occurrence of product defects that cannot be remedied without adversely affecting the production;
- our ability to secure necessary funding;
- our ability to negotiate and execute definitive agreements with various suppliers for hardware, software, or services necessary to engineer or manufacture our vehicles;
- our ability to obtain required regulatory approvals and certifications;

- our ability to comply with environmental, safety, and similar regulations and in a timely manner;
- our ability to secure necessary components, services, or licenses on acceptable terms and in a timely manner;
- our ability to attract, recruit, hire, retain and train skilled employees including supply chain management, supplier quality, manufacturing and logistics personnel;
- our ability to design and implement effective and efficient quality control and inventory management processes;
- delays or disruptions in our supply chain including raw material supplies and international shipping;
- our ability to maintain arrangements on commercially reasonable terms with our suppliers, delivery and other partners, after sales service providers, and other operationally significant third parties;
- other delays, backlog in manufacturing and research and development of new models, and cost overruns; and
- any other risks identified herein.

We expect that we will require additional financing to fund our planned operations and expansion plans. If we are unable to arrange for required funds under the terms and on the timeline that we anticipate, our plans for tooling and building out our manufacturing facilities and for commercial production of our electric vehicles could be significantly delayed, which would materially adversely affect our business, prospects, financial condition and results of operations. See "—Risks Related to Financing and Strategic Transactions — *We will require additional capital to support business growth, and this capital might not be available on commercially reasonable terms, or at all."*

Our ability to continue production and our future growth depends upon our ability to maintain relationships with our existing suppliers and source suppliers for our critical components, and to complete building out our supply chain, while effectively managing the risks due to such relationships.

Our success, including our ability to continue production of the Lucid Air, will depend on our ability to enter into supplier agreements and maintain our relationships with hundreds of suppliers that are critical to the output and production of our vehicles. To date, we have not secured long-term supply agreements for all of our components and for some components, our supply agreements do not guarantee sufficient quantities of components for our vehicle production ramp curve. We plan to seek opportunities to secure long-term committed supply agreements for certain of these components. The supplier agreements we have or may enter into with key suppliers in the future may not be renewed or may contain provisions under which suppliers may refuse to supply. To the extent that we do not have long-term supply agreements with guaranteed pricing for our parts or components, we will be exposed to fluctuations in prices of components, materials and equipment. In addition, our agreements for the purchase of battery cells and other components often contain pricing provisions that are subject to adjustment based on changes in market prices of key commodities and/or currency values. Substantial increases in the prices for such components, materials and equipment, whether due to supply chain or logistics issues or due to inflation, or increased energy or natural gas costs, would increase our operating costs and could reduce our margins if we cannot recoup the increased costs. Any attempts to increase the announced or expected prices of our vehicles in response to increased costs could be viewed negatively by our potential customers and could adversely affect our business, prospects, financial condition or results of operations.

We may also be at a disadvantage in negotiating supply agreements for the production of our vehicles as well as for the design and construction of our manufacturing facilities due to our limited operating history. In addition, given that in many cases we are an aggregator of automotive parts produced by third-party manufacturers, there is the possibility that supply agreements for the parts and components for our vehicles could be at costs that make it difficult for us to operate profitably.

We are dependent on our suppliers, the majority of which are single-source suppliers, and the inability of these suppliers to deliver necessary components of our products according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components or to implement or maintain effective inventory management and other systems, processes and personnel to support ongoing and increased production, could have a material adverse effect on our results of operations and financial condition.

We rely on hundreds of third-party suppliers for the provision and development of many of the key components and materials used in our vehicles. While we plan to obtain components from multiple sources whenever possible, many of the components used in our vehicles will be custom and purchased by us from a single source. Our limited, and in many cases single-source, supply chain exposes us to multiple potential sources of delivery failure or component shortages for our production. Our third-party suppliers may not be able to meet our required product specifications and performance characteristics, which would impact our ability to achieve our product specifications and performance characteristics as well. Additionally, our third-party suppliers may be unable to obtain required certifications or provide necessary warranties for their products that are necessary for use in our vehicles.

We have been affected by ongoing, industry-wide challenges in logistics and supply chains, such as increased supplier lead times. We expect that these industry-wide trends may continue to affect the ability of us and our suppliers to obtain parts, components and manufacturing equipment, including electrical and mechanical equipment for AMP-2 and the phase 2 expansion of AMP-1, on a timely basis for the foreseeable future, and may result in increased costs. Changes in our supply chain or production needs in order to meet our quality targets and development timelines as well as due to design changes have resulted in cost increases from our suppliers.

Any significant increases in our production may in the future require us to procure additional components in a short amount of time and our suppliers may not ultimately be able to sustainably and timely meet our cost, quality and volume needs, requiring us to replace them with other sources. In many cases, our suppliers provide us with custom-designed parts that would require significant lead time to obtain from alternative suppliers, or may not be available from alternative suppliers at all. If we are unable to obtain suitable components and materials used in our vehicles from our suppliers or if our suppliers decide to create or supply a competing product, our business could be adversely affected. Further, if we are unsuccessful in our efforts to control and reduce supplier costs, our results of operations will suffer. Alternatively, if our production decreases significantly below our projections for any reason, we may not meet all of our purchase commitments with suppliers with whom we have non-cancelable long-term purchase commitments. In cases where we are unable to fully utilize our purchase commitments, we have in the past and may continue to face fees, penalties, increased prices, excess inventory or inventory write-offs, and there could be a material adverse effect on our results of operations.

In addition, we have experienced, and in the future could continue to experience, delays if our suppliers do not meet agreed-upon timelines, experience capacity constraints, or deliver components that do not meet our quality standards or other requirements. Any disruption in the supply of components, including battery cells and semiconductors, whether or not from a single source supplier, could temporarily disrupt production of our vehicles until an alternative supplier is able to supply the required material. Any such delay, even if caused by a delay or shortage in only one part, could significantly affect our ability to meet our planned vehicle production targets. Even in cases where we may be able to establish alternate supply relationships and obtain or engineer replacement components for our single source components, we may be unable to do so quickly, or at all, at prices or quality levels that are acceptable to us. This risk is heightened by the fact that we have less negotiating leverage with suppliers than larger and more established automobile manufacturers, which could adversely affect our ability to obtain necessary components and materials on a timely basis, on favorable pricing and other terms, or at all. The industry in which we operate has recently experienced severe supply chain disruptions, and we expect these conditions to continue for the foreseeable future. Any such supply disruption could materially and adversely affect our results of operations, financial condition and prospects.

Furthermore, as the scale of our vehicle production increases, we will need to accurately forecast, purchase, warehouse and transport components to our manufacturing facilities and servicing locations internationally and at much higher volumes. We are only beginning to scale production in our manufacturing facilities and in the process we have experienced challenges associated with such activities. If our production decreases significantly below our projections for any reason, we may incur loss due to inventory write-downs or assets impairment. In addition, we have not yet begun servicing vehicles at significant volumes. Accordingly, we have not thoroughly tested our ability to scale production and vehicle servicing and mitigate risks associated with these activities. In addition, our current systems and processes are not mature, which may affect our ability to timely initiate critical and time sensitive projects and increase project costs. If we continue to experience logistics challenges, are unable to accurately match the timing and quantities of component purchases to our actual needs, successfully recruit and retain personnel with relevant experience, timely comply with applicable regulations, or successfully implement automation, inventory management and other systems or processes to accommodate the increased complexity in our supply chain and manufacturing operations, we may incur unexpected production disruption, storage, transportation and write-off costs, which could have a material adverse effect on our results of operations and financial condition.

Furthermore, unexpected changes in business conditions, materials pricing, labor issues, wars, global conflicts or other geopolitical events, governmental changes, tariffs, natural disasters, health epidemics, and other factors beyond our and our suppliers' control could also affect these suppliers' ability to deliver components to us on a timely basis. For example, some of the shipping routes in the Red Sea have been affected by the ongoing conflict in the Middle East resulting in delays in delivery of components and an increase in shipping costs globally. Such disruptions or increase in costs could have a material adverse impact on our business, including our ability to timely manufacture and distribute our products in a cost-effective manner and adversely affect our results of operations and financial condition.

In addition, we have identified certain of our suppliers, including certain suppliers we deem critical, as having poor financial health or being at risk of bankruptcy. Although we routinely review our suppliers' financial health and attempt to identify alternate suppliers where possible, the loss of any supplier, particularly a single- or limited-source supplier, or the disruption in the supply of components from our suppliers, could lead to vehicle design changes, production delays, idle manufacturing facilities and potential loss of access to important technology and parts for producing, servicing and supporting our vehicles, any of which could result in negative publicity, damage to our brand and a material and adverse effect on our business, prospects, results of operations and financial condition. In addition, if our suppliers experience substantial financial difficulties, cease operations or otherwise face business disruptions, we may be required to provide substantial financial support to ensure supply continuity, which could have an additional adverse effect on our liquidity and financial condition.

Changes in costs, changes of supply or shortage of materials, in particular for lithium-ion battery cells or semiconductors, could harm our business.

As we scale commercial production of our vehicles or any future energy storage systems, we have experienced and may continue to experience increases in the cost of or a sustained interruption in the supply or shortage of materials. Any such increase, supply interruption or shortage could materially and adversely impact our business, results of operations, prospects and financial condition. For example, as we continue our phased construction of our AMP-1 facility, we have experienced increases in material and infrastructure equipment prices and cost of construction labor. In addition, we use various materials in our business, including aluminum, steel, lithium, nickel, copper, cobalt, neodymium, terbium, praseodymium and manganese, as well as lithium-ion battery cells and semiconductors from suppliers. The prices for these materials fluctuate, and their available supply may be unstable, depending on market conditions, inflationary pressure and global demand for these materials, including as a result of increased production of electric vehicles, energy storage products by our competitors and the global supply chain crisis, and could adversely affect our business and results of operations. For instance, we are exposed to multiple risks relating to lithium-ion battery cells. These risks include:

- a change in the cost, or changes in the available supply, of materials, such as cobalt, used in lithium-ion battery cells;
- disruption in the supply of lithium-ion battery cells due to quality issues or recalls by manufacturers;
- our ability to manage our supply and inventory of lithium-ion battery cells; and
- fluctuations in the value of any foreign currencies, in which lithium-ion battery cells and related raw material purchases are or may be denominated against the U.S. dollar.

Our ability to manufacture our vehicles or any future energy storage systems will depend on the continued supply of battery cells for the battery packs used in our products. We have limited flexibility in changing battery cell suppliers, and any disruption in the supply of battery cells from such suppliers could disrupt production of our vehicles until a different supplier is fully qualified. In addition, we have entered into agreements with Panasonic Energy Co., Ltd. and certain of its affiliates for the supply of lithium-ion battery cells, pursuant to which we have made certain non-cancelable long-term purchase commitments. If our production decreases significantly below our projections for any reason, we may not meet all of our purchase commitments. In cases where we are unable to fully utilize our purchase commitments, we have in the past and may continue to face fees, penalties, increased prices, excess inventory or inventory write-offs, and there could be a material adverse effect on our results of operations.

Furthermore, our ability to manufacture our vehicles depends on continuing access to semiconductors and components that incorporate semiconductors. We have experienced in the past and may experience an impact on our operations as a result of another semiconductor supply shortage, and such shortage could in the future have a material impact on us or our suppliers, which could delay or reduce planned production levels of the Lucid Air or planned future vehicles, impair our ability to continue production once started or force us or our suppliers to pay exorbitant rates for continued access to semiconductors, any of which could have a material adverse effect on our business, prospects and results of operations. In addition, prices and transportation expenses for these materials fluctuate depending on many factors beyond our control, including fluctuations in supply and demand, foreign currency fluctuations, tariffs and taxes, fluctuations in energy prices and shortages in petroleum or natural gas supply, freight charges and other economic and political factors. These risks could be further magnified by geographical developments, global conflicts or other geopolitical events, including the conflict in the Middle East, which is affecting shipping routes in that region directly and consequently globally. Substantial increases in the prices for our materials or prices charged to us, such as those charged by battery cell or semiconductor suppliers, would increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased prices. Any attempts to increase product prices in response to increased material costs could result in lower demand for our vehicles and materially and adversely affect our brand, image, business, results of operations, prospects and financial condition.

Furthermore, foreign currency fluctuations, tariffs or shortages in petroleum or natural gas and other economic or political conditions have contributed to and may continue to result in significant increases in freight charges and raw material costs. Substantial increases in the prices for our raw materials or components would increase our operating costs and could reduce our margins. In addition, a growth in popularity of electric vehicles without a significant expansion in battery cell production capacity could result in shortages which would result in increased materials costs to us, and would impact our expected manufacturing and delivery timelines, and adversely affect our business, prospects, financial condition, results of operations, and cash flows.

We must develop complex software and technology systems, including in coordination with vendors and suppliers, in order to produce our electric vehicles, and there can be no assurance such systems will be successfully developed.

Our vehicles, including the Lucid Air, use a substantial amount of third-party and proprietary software and complex technological hardware to operate, some of which is still subject to further development and testing. The development and implementation of such advanced technologies is inherently complex and requires coordination with our vendors and suppliers in order to integrate such technology into our electric vehicles and ensure it interoperates with other complex technology as designed and as expected.

We may fail to detect defects and errors that are subsequently revealed, and our control over the performance of third-party services and systems may be limited. Any defects or errors in, or which are attributed to, our technology, could result in, among other things:

- delayed production and delivery of our vehicles, including the Lucid Air;
- delayed market acceptance of our vehicles;
- loss of customers or inability to attract new customers;
- diversion of engineering or other resources for remedying the defect or error;
- damage to our brand or reputation;
- increased service and warranty costs;
- legal action by customers or third parties, including product liability claims; and
- penalties imposed by regulatory authorities.

In addition, if we are unable to develop the software and technology systems necessary to operate our vehicles, our competitive position will be harmed. We rely on third-party suppliers to develop a number of technologies for use in our products. There can be no assurances that our suppliers will be able to meet the technological requirements, production timing and volume requirements to support our business plan. In addition, such technology may not satisfy the cost, performance useful life and warranty characteristics we anticipate in our business plan, which could materially adversely affect our business, prospects and results of operations.

If we fail to successfully construct or tool our manufacturing facilities or if our manufacturing facilities become inoperable, we will be unable to produce our vehicles and our business will be harmed.

While we have completed the initial phase and portions of the second phase of construction at AMP-1, and the SKD portion of AMP-2, tooling our facilities for production of our vehicles and our future expansion plans are complicated and present significant challenges and may require us to take vehicle production offline. In addition, certain of our suppliers may be unable to complete tooling with respect to finalized components of our vehicles in the planned timeframe after we deliver final component specifications, which could adversely affect our ability to continue commercial production of the Lucid Air on the expected timing and at the quality levels we require. As with any large-scale capital project, these efforts could be subject to delays, cost overruns or other complications. In addition, we may encounter problems or disputes with our vendors for a variety of reasons, including for reasons beyond our control, and such disputes, with or without merit, could also cause significant delays and cost overruns. These risks could be increased because we are building our facilities from the ground up to support our electric vehicle production processes, which differ substantially from traditional automobile production processes for which expertise is more readily available. In connection with the commencement of commercial production at AMP-1 and SKD production at AMP-2, we have hired and trained and continue to hire, retain, and train a significant number of employees and integrate a yet-to-be-fully-developed supply chain. Any failure to continue commercial or SKD production on schedule would lead to additional costs and would delay our ability to generate meaningful revenues. In addition, it could prevent us from gaining the confidence of potential customers, spur cancellations of orders for the Lucid Air and open the door to increased competition. All of the foregoing could hinder our ability to successfully launch and grow our business and achieve a competitive position in the market.

In addition, if any of our manufacturing facilities are not constructed in conformity with our requirements, repair or remediation may be required to support our planned phased manufacturing build-out and could require us to take vehicle production offline, delay implementation of our planned phased manufacturing build-out, or construct alternate facilities, which could materially limit our manufacturing capacity, delay planned increases in manufacturing volumes, delay the start of production of the Lucid Gravity SUV or other future vehicles, or adversely affect our ability to timely sell and deliver our electric vehicles to customers. Any repair or remediation efforts could also require us to bear substantial additional costs, including both the direct costs of such activities and potentially costly litigation or other legal proceedings related to any identified defect, and there can be no assurance that our insurance policies or other recoveries would be sufficient to cover all or any of such costs. Any of the foregoing consequences could have a material adverse effect on our business, prospects, results of operations and financial condition and could cause our results of operations to differ materially from our current expectations. Although we do not currently expect that we will be required to take vehicle production offline or reduce our planned manufacturing volumes, the repairs or remediation are expected to entail significant costs, and we may be unable to recover some or all of such costs from the applicable contractor(s).

The construction of our facilities and our operations are also subject to review and inspection by officials in the jurisdictions where our facilities are located, including without limitation, fire officials and building construction officials. We have received in the past, and could in the future receive, results from inspections by local officials at our facilities, both existing and currently under construction, in Casa Grande, Arizona, citing failing marks. We have actively engaged with the local authorities to address all of the specific issues identified by those officials as well as to devise means and methods that ensure an ongoing safe and compliant work environment. Any future results will be addressed in a similar manner. Failure to address issues raised by local authorities may result in government-ordered temporary cessation of our construction and/or production operations, which could require us to take vehicle production offline or reduce our planned manufacturing volumes, all of which could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects.

We rely on complex machinery for our operations, and production involves a significant degree of risk and uncertainty in terms of operational performance, safety, security and costs.

We utilize a number of new manufacturing technologies, techniques and processes for our vehicles, such as motor winding equipment, and we may utilize additional new technologies, techniques and processes in the future. Certain design features in our vehicles present additional manufacturing challenges, such as large display screens and ADAS hardware. There is no guarantee that we will be able to successfully and timely introduce and scale any such new processes or features.

We also rely heavily on complex machinery for our operations, and our production involves a significant degree of uncertainty and risk in terms of operational performance and costs. Our manufacturing plant employs large-scale, complex machinery combining many components, which may suffer unexpected malfunctions from time-to-time and will depend on repairs and spare parts that may not be available when needed. Furthermore, AMP-1 and the equipment we use to manufacture our vehicles will be costly to repair or replace and could require substantial lead-time to repair or replace and qualify for use.

Unexpected malfunctions of the manufacturing plant components may significantly decrease our operational efficiency, including by forcing manufacturing shutdowns in order to conduct repairs or troubleshoot manufacturing problems. Our facilities may also be harmed or rendered inoperable by natural or man-made disasters, including but not limited to earthquakes, tornadoes, flooding, fire, power outages, sandstorms, environmental hazards and remediation, costs associated with decommissioning of equipment, labor disputes and strikes, lack of availability of qualified construction labor, difficulty or delays in obtaining governmental permits and licenses, damages or defects in electronic systems, industrial accidents or health epidemics, which may render it difficult or impossible for us to manufacture our vehicles for some period of time. The inability to produce our vehicles or the backlog that could develop if our manufacturing plant is inoperable for even a short period of time may result in the loss of customers or harm our reputation. Although we maintain insurance for damage to our property, this insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, if at all, based on insurance market conditions or our evolving risk profile. Should operational risks materialize, they may result in the personal injury to or death of our workers, the loss of production equipment, damage to manufacturing facilities, monetary losses, delays and unanticipated fluctuations in production, environmental damage, administrative fines, increased insurance costs and potential legal liabilities, all of which could have a material adverse effect on our business, results of operations, cash flows, financial condition or prospects.

If we update or discontinue the use of our manufacturing equipment more quickly than expected, we may have to shorten the useful lives of any equipment to be retired as a result of any such update, and the resulting acceleration in our depreciation could negatively affect our financial results.

We have invested and expect to continue to invest significantly in what we believe is state of the art tooling, machinery and other manufacturing equipment, and we depreciate the cost of such equipment over their expected useful lives. However, manufacturing technology may evolve rapidly, and we may decide to update our manufacturing processes more quickly than expected. Moreover, as we ramp the commercial production of our vehicles, our experience may cause us to discontinue the use of already installed equipment in favor of different or additional equipment. The useful life of any equipment that would be retired early as a result would be shortened, causing the depreciation on such equipment to be accelerated, and our results of operations could be negatively impacted.

We have limited experience in high volume manufacture of our vehicles.

We cannot provide any assurance as to whether we will be able to develop and implement efficient, automated, low-cost logistics and production capabilities and processes and reliable sources of component supply that will enable us to meet the quality, price, engineering, design and production standards, as well as the production volumes, required to successfully mass market our vehicles. Even if we are successful in developing our high volume production capability and processes and reliably source our component supply, no assurance can be given as to whether we will be able to do so in a manner that avoids significant delays and cost overruns, including as a result of factors beyond our control such as problems with suppliers and vendors, global conflicts or other geopolitical events or force majeure events, or in time to meet our commercialization schedules, or to store and deliver parts in sufficient quantities to the manufacturing lines in a manner that enables us to maintain our production ramp curve and rates, satisfy the requirements of customers and potential customers or fully utilize our purchase commitments with suppliers. For example, as result of the ongoing conflict in the Middle East, we have experienced an impact on our shipping routes in the Red Sea, which has resulted in shipping delays and increased shipping costs globally. Any failure to develop, implement and maintain such logistics, production, quality control, and inventory management processes and capabilities within our projected costs and timelines could have a material adverse effect on our business, results of operations, prospects and financial condition. Moreover, we have experienced logistics challenges as we continue to refine our manufacturing, logistics and inventory management processes, and efforts to implement or improve such processes may cause halts or delays in production and result in additional costs. Bottlenecks and other unexpected challenges have and may continue to arise as we ramp production of the Lucid Air and begin production of the Lucid Gravity SUV, and it will be important that we address them promptly while continuing to control our logistics and manufacturing costs. If we are not successful in doing so, or if we experience issues with our logistics and manufacturing process improvements, we could face further delays in establishing and/or sustaining our production ramps or be unable to meet our related cost and profitability targets.

If our vehicles fail to perform as expected, our ability to develop, market and sell or lease our products could be harmed.

Our vehicles or the components installed therein have in the past and may in the future contain defects in design or manufacture that may cause them not to perform as expected or that may require repairs, recalls, or design changes, any of which would require significant financial and other resources to successfully navigate and resolve. Our vehicles use a substantial amount of software code to operate, and software products are inherently complex and may when first introduced contain defects and errors. If our vehicles contain defects in design or manufacture that cause them not to perform as expected or that require repair, or certain features of our vehicles such as bi-directional charging or ADAS features take longer than expected to become available, are legally restricted or become subject to additional regulation, our ability to develop, market and sell our products and services could be harmed. In addition, our over-the-air software updates may fail to achieve its intended repair and performance goals, expose our customers' vehicles to vulnerabilities, or have unintended consequences, and may require our customers to bring their vehicles to our service centers. Although we will attempt to remedy any issues we observe in our products as effectively and rapidly as possible, such efforts could significantly distract management's attention from other important business objectives, may not be timely, may hamper production or may not be to the satisfaction of our customers. Further, our limited operating history and limited field data reduce our ability to evaluate and predict the long-term quality, reliability, durability and performance characteristics of our battery packs, powertrains and vehicles. There can be no assurance that we will be able to detect and fix any defects in our products prior to their sale or lease to customers.

Any defects, delays or legal restrictions on vehicle features, failed over-the-air software updates, or other failure of our vehicles to perform as expected, could harm our brand and reputation and result in delivery delays, product recalls, product liability claims, breach of warranty claims or significant warranty and other expenses, and could have a material adverse impact on our business, results of operations, prospects and financial condition. Any such defects or noncompliance with legal requirements could also result in safety recalls. See "— Risks Related to Litigation and Regulation — *We have in the past and may choose in the future, or we may be compelled, to undertake product recalls or take other actions, which could adversely affect our business, prospects, results of operations, reputation and financial condition."* As a new entrant to the industry attempting to build customer relationships and earn trust, these effects could be significantly detrimental to us. Additionally, problems and defects experienced by other electric consumer vehicles could by association have a negative impact on perception and customer demand for our vehicles.

In addition, even if our vehicles function as designed, we expect that the battery efficiency, and hence the range, of our electric vehicles, like other electric vehicles that use current battery technology, will decline over time. Other factors, such as usage, time and stress patterns, may also impact the battery's ability to hold a charge, or could require us to limit vehicles' battery charging capacity, including via over-the-air or other software updates, for safety reasons or to protect battery capacity, which could further decrease our vehicles' range between charges. Such decreases in or limitations of battery capacity and therefore range, whether imposed by deterioration, software limitations or otherwise, could also lead to consumer complaints or warranty claims, including claims that prior knowledge of such decreases or limitations would have affected consumers' purchasing decisions. Further, there can be no assurance that we will be able to improve the performance of our battery packs, or increase our vehicles' range, in the future. Any such battery deterioration or capacity limitations and related decreases in range may negatively influence potential customers' willingness to purchase our vehicles and negatively impact our brand and reputation, which could adversely affect our business, prospects, results of operations and financial condition.

We face challenges providing charging solutions for our vehicles, both domestically and internationally.

Demand for our vehicles will depend in part on the availability of charging infrastructure both domestically and internationally. While the prevalence of charging stations has been increasing, charging station locations are significantly less widespread than gas stations. Although we have partnered with third-party electric vehicle charging providers to offer charging stations to our customers, the charging infrastructure available to our customers may be insufficient to meet their needs or expectations, especially in certain international markets. Some potential customers may choose not to purchase our vehicles because of the lack of more widespread charging infrastructure. In addition, although we have agreed to join Tesla's Supercharger network, there may be delays in making changes to our vehicles or the network necessary for Lucid vehicles to charge at Tesla Superchargers. In addition, although the current U.S. presidential administration has proposed a plan to deploy 500,000 additional public charging stations across the United States by 2030, the deployment may not occur at planned levels, which could serve to limit the development of public charging infrastructure and increase the relative attractiveness to potential customers of a proprietary charging solution.

If we were to pursue development of a proprietary charging solution, we would face significant challenges and barriers, including successfully navigating the complex logistics of rolling out a network and teams in appropriate areas, resolving issues related to inadequate capacity or overcapacity in certain areas, addressing security risks and risks of damage to vehicles, securing agreements with third-party providers to roll out and support a network of charging solutions in appropriate areas, obtaining any required permits and land use rights and filings, and providing sufficient financial resources to successfully roll out the proprietary charging solution, which could require diverting such resources from our other important business initiatives. In addition, our limited experience in providing charging solutions could contribute to additional unanticipated challenges that would hinder our ability to provide such solutions or make the provision of such solutions costlier than anticipated. To the extent we are unable to meet user expectations or experience difficulties in providing charging solutions, demand for our vehicles may suffer, and our reputation and business may be materially and adversely affected.

We have limited experience servicing our vehicles and their integrated software. If we or our partners are unable to adequately service our vehicles, our business, prospects, financial condition and results of operations may be materially and adversely affected.

We have limited experience servicing or repairing our vehicles and their integrated software. Servicing electric vehicles is different than servicing vehicles with internal combustion engines and requires specialized skills, including high voltage training and servicing techniques. Furthermore, some vehicle repairs may be done via over-the-air software updates, which poses additional risks to the vehicles' software if any issues arise during an update. In addition, we may partner with certain third parties to perform some of the service on our vehicles, and there can be no assurance that we will be able to enter into acceptable arrangements with any such third-party providers or develop and implement the necessary information technology infrastructure to support them. Further, although such servicing partners may have experience in servicing other electric vehicles, they will initially have no experience in servicing our vehicles. We also have a limited network of locations to perform service and will also rely upon mobile service vans with Lucid technicians to provide service to customers. There can be no assurance that our service arrangements will adequately address the service requirements of our customers to their satisfaction, or that we and our servicing partners will have sufficient resources, experience or inventory to meet these service requirements in a timely manner as the volume of vehicles we deliver increases. This risk is enhanced by our limited operating history and our limited data regarding our vehicles' real-world reliability and service requirements. In addition, if we are unable to roll out and establish a widespread service network that provides satisfactory customer service, our customer loyalty, brand and reputation could be adversely affected, which in turn could materially and adversely affect our sales, results of operations, prospects and financial condition.

Further, the motor vehicle industry laws in some states require that service facilities be available to service vehicles physically sold from locations in the state. In addition, the motor vehicle franchise laws in some states may preclude us from providing direct warranty service to consumers in that state. While we anticipate developing a service program that would satisfy regulatory requirements in these circumstances, the specifics of our service program are still being refined, and at some point may need to be restructured to comply with state law, which may impact our business, financial condition, results of operations and prospects.

Our customers also depend on our customer support team to resolve technical and operational issues relating to the integrated software underlying our vehicles, a large portion of which we have developed in-house. As we grow, additional pressure may be placed on our customer support team or partners, and we may be unable to respond quickly enough to accommodate short-term increases in customer demand for technical support or service. We also may be unable to modify the future scope and delivery of our technical support to compete with changes in the technical support provided by our competitors. Increased customer demand for support, without corresponding revenue, could increase costs and negatively affect our results of operations. If we are unable to successfully address the service requirements of our customers, or if we establish a market perception that we do not maintain high-quality support, our brand and reputation could be adversely affected, and we may be subject to claims from our customers, which could result in loss of revenue or damages, and our business, results of operations, prospects and financial condition could be materially and adversely affected.

Insufficient reserves to cover future warranty or part replacement needs or other vehicle repair requirements, including any potential software upgrades, could materially adversely affect our business, prospects, financial condition and results of operations.

We provide a new vehicle limited warranty on all new vehicles and a genuine spare parts and accessories limited warranty on Lucid genuine spare parts and accessories we sell. We maintain warranty reserves to cover part replacement and other vehicle repair needs, including any potential software upgrades or warranty claims. In addition, we expect to provide a manufacturer's warranty on any future products, including energy storage systems we sell and may provide additional warranties on installation workmanship or performance guarantees. Warranty reserves include our management team's best estimate of the projected costs to repair or to replace items under warranty. Such estimates are inherently uncertain, particularly in light of our limited operating history and the limited field data available to us, and changes to such estimates based on real-world observations may cause material changes to our warranty reserves in the future. If our reserves are inadequate to cover future maintenance requirements on our vehicles, our business, prospects, financial condition and results of operations could be materially and adversely affected. We may become subject to significant and unexpected expenses as well as claims from our customers, including loss of revenue or damages. There can be no assurances that then-existing reserves will be sufficient to cover all claims. In addition, if future laws or regulations impose additional warranty obligations on us that go beyond our manufacturer's warranty we may be exposed to materially higher warranty, parts replacement and repair expenses than we expect, and our reserves may be insufficient to cover such expenses.

We may not be able to accurately estimate the supply and demand for our vehicles, which could result in a variety of inefficiencies in our business and hinder our ability to generate revenue. If we fail to accurately predict our manufacturing requirements, we could incur additional costs or experience delays.

It is difficult to predict our future revenues and appropriately budget for our expenses, and we have limited insight into trends that may emerge and affect our business. We will be required to provide forecasts of our demand to our suppliers several months prior to the scheduled delivery of vehicles to our prospective customers. Currently, there is limited historical basis for making judgments about the demand for our vehicles or our ability to develop, manufacture, and deliver vehicles, or our profitability in the future. If we overestimate our requirements, our suppliers may have excess inventory, which has in the past and may continue to indirectly increase our costs. If we underestimate our requirements, our suppliers may have inadequate inventory, which could interrupt manufacturing of our products and result in delays in shipments and revenues. In addition, lead times for materials and components that our suppliers order may vary significantly and depend on factors such as the specific supplier, contract terms and demand for each component at a given time. If we fail to order sufficient quantities of product components in a timely manner or fail to establish the delivery processes and infrastructure to make deliveries, the delivery of vehicles to our customers could be delayed, which would harm our business, financial condition and results of operations.

Our facilities or operations could be adversely affected by events outside of our control, such as natural disasters, wars, global conflicts or other geopolitical events, health epidemics or pandemics, or security incidents.

We and our suppliers may be impacted by weather events, natural disasters, wars, global conflicts or other geopolitical events, health epidemics or pandemics, security incidents or other events outside of our control. For example, our corporate headquarters are located in seismically active regions in Northern California, and our manufacturing facilities in Arizona and Saudi Arabia are located in sandstorm-, flood- and/or tornado-prone areas. If major disasters such as earthquakes, wildfires, floods, tornadoes or other events occur, or our information technology systems or communication networks break down or operate improperly, our headquarters and manufacturing facilities may be seriously damaged, or we may have to stop or delay production and shipment of our products. Furthermore, we could be impacted by physical security incidents at our facilities, which could result in significant damage to such facilities that could require us to delay or discontinue production of our vehicles. In addition, we have established a foreign trade zone with respect to certain of our facilities in Casa Grande, Arizona. To the extent any such physical security incidents are determined to result from insufficient security measures, we could face the risk of loss of our foreign trade zone approval, as well as financial penalties or fines, which could increase the cost of our duties and tariffs. See "— Risks Related to Litigation and Regulation — *A failure to properly comply with foreign trade zone laws and regulations could increase the cost of our duties and tariffs.*" In addition, global conflicts or other geopolitical events may increase the likelihood of supply chain interruptions and may impair our ability to compete in current or future markets, or otherwise subject us to potential liability. See "—Risks Related to Manufacturing and Supply Chain — *if we fail to successfully tool our manufacturing facilities or if our manufacturing facilities become inoperable, we will be unable to produce our vehicles and our business will be harmed."* and "— Risks Related to Litigation and Regulation — *Changes in U.S. trade policy, including the imposition of tariffs or revocation of normal trade relations and the resulting consequences, could adversely affect our business, prospects, results of operations and financial condition*." We may incur significant expenses or delays relating to such events outside of our control, which could have a material adverse impact on our business, results of operations and financial condition.

Our vehicles make use of lithium-ion battery cells, which have been observed to catch fire or vent smoke and flame.

The battery packs within our vehicles make use of, and any future energy storage systems may make use of lithium-ion cells. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. While we have designed our battery packs to passively contain a single cell's release of energy without spreading to neighboring cells, a field or testing failure of our vehicles or other battery packs that we produce could occur. In addition, although we equip our vehicles with systems designed to detect and warn vehicle occupants of such thermal events, there can be no assurance that such systems will function as designed or will provide vehicle occupants with sufficient, or any, warning in all crashes. Any such events or failures of our vehicles, battery packs or warning systems could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. Also, negative public perceptions regarding the suitability of lithium-ion battery cells for automotive applications, disposal and recycling of lithium-ion battery cells, or any future incident involving lithium-ion battery cells, such as a vehicle or other fire, even if such incident does not involve our vehicles, could seriously harm our business and reputation.

In addition, as we expand our service network, increase our recycling practices and scale the manufacturing of our vehicles and any future energy storage products, we will need to store lithium-ion battery cells at our facilities and we have, and may in the future, experience thermal events. Any mishandling of battery cells or safety issue or fire related to the cells could disrupt our operations. Such damage or injury could also lead to adverse publicity and potentially a safety recall. In addition, the transportation and effective storage of lithium-ion batteries is also tightly regulated by the U.S. Department of Transportation and other regulatory bodies, and any failure to comply with such regulation could result in fines, loss of permits and licenses or other regulatory consequences, which could limit our ability to manufacture and deliver our vehicles and negatively affect our results of operations and financial condition. Moreover, any failure of a competitor's electric vehicle or energy storage product may cause indirect adverse publicity for us and our products. Such adverse publicity could negatively affect our brand and harm our business, prospects, results of operations and financial condition.

Risks Related to Cybersecurity and Data Privacy

Any unauthorized control, manipulation, interruption or compromise of or access to our products or information technology systems or networks could result in loss of confidence in us and our products, harm our business and materially adversely affect our financial performance, results of operations or prospects.

Our products contain complex information technology systems. For example, our vehicles are designed with built-in data connectivity to accept and install periodic remote updates to improve their functionality.

In addition, we collect, store, transmit and otherwise process data from vehicles, customers, employees and other third parties as part of our business operations, some of which includes personal, or confidential or proprietary information. We also work with third-party service providers and vendors that collect, store and process such data and information on our behalf. We have taken certain measures designed to prevent unauthorized access to our information technology systems, networks and information (including personal data) and plan to continue to deploy additional measures as we grow. Our third-party service providers and vendors also take steps designed to protect the security and integrity of our and their information technology systems and networks and our and their customers' information (including personal data). However, there can be no assurance that such systems, networks and measures will not be compromised, including as a result of intentional misconduct by employees, contractors, vendors, or other third parties as well as a result of software bugs, human error, or technical malfunctions.

Furthermore, cyber threat actors may in the future attempt to gain unauthorized access to, modify, alter and/or use our vehicles, products, systems and networks to (i) gain control of, (ii) change the functionality, user interface or performance characteristics of and/or (iii) gain access to data stored in or generated by, our vehicles, products, systems and networks. Advances in technology, such as artificial intelligence, new vulnerability discoveries, an increased level of sophistication and diversity of our products and services, an increased level of expertise of cyber threat actors and new discoveries in the field of cryptography could lead to a compromise or breach of the measures that we or our third-party service providers use. Some of our products and information technology systems contain or use open-source software, which can create additional risks, including potential security vulnerabilities. We and our third-party service providers' systems have in the past and may in the future be affected by security incidents. Our systems and networks are also vulnerable to damage or interruption from, among other things, software bugs, server malfunctions, software or hardware failure, computer viruses, malware, ransomware, killware, wiperware, computer denial or degradation of service attacks, telecommunications failures, social engineering schemes (such as vishing, phishing or smishing), domain name spoofing, insider theft, physical theft, fire, terrorist attacks, natural disasters, power loss, war, misuse, mistake, fraud, misconduct or other events that may harm our vehicles, products, systems and networks. Our data center and our third-party service providers' or vendors' data centers could be subject to break-ins, sabotage and intentional acts of vandalism causing potential disruptions. We may also be subject to certain laws and regulations, such as "right to repair" laws, that could require us to provide third-party access to certain vehicle and vehicle-connected systems. Some of our systems will not be fully redundant, and our disaster recovery planning cannot account for all eventualities. Any problems at our or our third-party service providers' or vendors' data centers or cloud infrastructure could result in lengthy interruptions in our service and our business operations. There can be no assurance that any security or other operational measures that we or our third-party service providers or vendors have implemented will be effective against any of the foregoing threats or issues.

These risks have been heightened in connection with ongoing global conflicts and other geopolitical events and we cannot be certain how this new risk landscape will impact our operations. When geopolitical conflicts develop, government systems as well as critical infrastructures such as financial services and utilities may be targeted by state-sponsored cyberattacks even if they are not directly involved in the conflict. There can be no assurance that our business will not become a potential target as adversaries may attack networks and systems indiscriminately. Such cyberattacks may potentially cause unauthorized access to our personal, confidential or proprietary information (including our proprietary software code), products, systems and networks, resulting in a data breach, or disruption, modification or destruction to our systems and networks. As a result, we may suffer monetary losses, business interruption, and long-lasting operational issues, damage to our reputation and brand or loss of our intellectual property (including trade secrets).

If we are unable to protect our personal, confidential or proprietary information (including our proprietary software code), products, systems and networks from unauthorized access, use, disclosure, disruption, modification, destruction or other breach, such threats or security breaches could have negative consequences for our business and future prospects, including compromise of vehicle integrity and physical safety, causing monetary losses, giving rise to liabilities under our contracts or to the owners of the applicable information, subjecting us to substantial fines, penalties, damages and other liabilities under applicable laws and regulations, incurring substantial costs to respond to, investigate and remedy such incidents, reducing customer demand for our products, harming our reputation and brand and compromising or leading to a loss of protection of our intellectual property (including trade secrets). In addition, regardless of their veracity, reports of unauthorized access to our vehicles, products, systems and networks, as well as other factors that may result in the perception that our vehicles, products, systems and networks are vulnerable to being "hacked," could negatively affect our brand.

Furthermore, we are continuously expanding and improving our information technology systems. In particular, our volume production of the Lucid Air and planned future vehicles will necessitate continued development, maintenance and improvement of our information technology and communication systems and networks in the United States and abroad, such as systems and networks for product data management, vehicle management tools, vehicle security systems, vehicle security management processes, procurement of bill of material items, supply chain management, inventory management, production planning and execution, lean manufacturing, sales, service and logistics, dealer management and financial, tax and regulatory compliance. Our ability to operate our business will depend on the availability and effectiveness of these systems and networks and could be impacted by system outages or similar events. The implementation, maintenance, segregation, and improvement of these systems and networks require significant management time, support and cost. Moreover, there are inherent risks associated with developing, improving and expanding our core systems and networks as well as implementing new systems and networks, including the disruption of our data management, procurement, manufacturing execution, finance, supply chain, inventory management, and sales and service processes. We cannot be certain that these systems and networks or their required functionality will be effectively and timely developed, implemented, maintained or expanded as planned. If we are unsuccessful in any of the foregoing, our operations may be disrupted, our ability to accurately or timely report our financial results could be impaired, and deficiencies may arise in our internal control over financial reporting, which may impact our ability to certify our financial results. If these systems and networks or their functionality do not operate as we expect them to, we may be required to expend significant resources to make corrections or find alternative sources for performing these functions. Any of the foregoing could materially adversely affect our business, prospects, results of operations and financial condition.

In addition, our vehicles depend on the ability of software and hardware to store, retrieve, process and manage immense amounts of data. Our software and hardware, including any over-the-air or other updates, may contain, errors, bugs, design defects or other vulnerabilities, and our systems may be subject to technical limitations that may compromise our ability to meet our objectives. Some errors, bugs, design defects or other vulnerabilities may reside in third-party intellectual property or open-source software and/or be inherently difficult to detect and may only be discovered after code has been released for external or internal use. Although we will attempt to remedy any issues we observe in our vehicles as effectively and rapidly as possible, such efforts may not be timely, may hamper production or may not be to the satisfaction of our customers. Additionally, if we are able to deploy updates to the software addressing any issues but our over-the-air update procedures fail to properly update the software, our customers will then be responsible for working with our service personnel to install such updates to the software, and their vehicle will be subject to these vulnerabilities until they do so. Any compromise of our personal, confidential or proprietary information (including our proprietary software code), products, systems or networks or inability to prevent or effectively remedy errors, bugs, design defects or other vulnerabilities may cause us to suffer lengthy interruptions to our ability to operate our business and our customers' ability to operate their vehicles, compromise of vehicle integrity and physical safety, damage to our reputation, loss of customers, loss of revenue, governmental fines, investigations or litigation or liability for damages, any of which could materially adversely affect our business, prospects, results of operations and financial condition.

We may not have adequate insurance coverage, if any, to cover losses associated with any of the foregoing. The costs of investing and remediating a large data breach, or the successful assertion of one or more large claims against us that exceeds our available insurance coverage, or results in changes to our insurance policies (including premium increases, imposition of large deductible, exclusions or co-insurance requirements), could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage will continue to be available on acceptable terms or at all or that our insurers will not deny coverage as to any future claim.

We are subject to evolving laws, regulations, standards, policies, and contractual obligations related to data privacy and cybersecurity, and any actual or perceived failure to comply with such obligations could harm our reputation and brand, subject us to significant fines and liability, or otherwise adversely affect our business.

In the course of our operations, we collect, use, store, disclose, transfer and otherwise process personal information from our customers, employees and third parties with whom we conduct business, including names, accounts, driver license information, user IDs and passwords, and payment or transaction-related information. Additionally, we use our vehicles' electronic systems to log information about each vehicle's use, such as charge time, battery usage, geolocation, mileage and driving behavior, in order to aid it in vehicle diagnostics, repair and maintenance, as well as to help us customize and improve the driving and riding experience.

Accordingly, we are subject to or affected by a number of federal, state, local and international laws and regulations, as well as contractual obligations and industry standards, that impose certain obligations and restrictions with respect to data privacy and cybersecurity and govern our collection, storage, retention, protection, use, transmission, sharing, disclosure and other processing of personal information including that of our employees, customers and other third parties with whom we conduct business. These laws, regulations and standards may be interpreted and applied differently over time and from jurisdiction to jurisdiction, and it is possible that they will be interpreted and applied in ways that may have a material and adverse impact on our business, financial condition and results of operations. The global data protection landscape is rapidly evolving, and implementation standards and enforcement practices are likely to remain uncertain for the foreseeable future. We may not be able to monitor and react to all developments in a timely manner. For example, at the international level, the EU adopted the General Data Protection Regulation ("GDPR"), which became effective in May 2018, Canada adopted and continued to amend the Personal Information Protection and Electronic Documents Act ("PIPEDA") in addition to applicable provincial laws, the United Arab Emirates adopted the Data Protection Law ("DPL"), which became effective in January 2022, and Saudi Arabia enacted the Personal Data Protection Law ("PDPL") which recently received finalized implementing regulations and came into effect in September 2023, followed by a 12 month compliance grace period. Similarly, China's Data Security Law ("DSL") and Personal Information Protection Law ("PIPL") have been effective since 2021. Additionally, following the withdrawal of the United Kingdom ("UK") from the EU, we are also subject to the UK General Data Protection Regulation ("UK GDPR") (i.e., a version of the GDPR as implemented into UK law). Each of the GDPR, the UK GDPR, the DSL, the PIPL, the PIPEDA, the DPL and the PDPL impose additional obligations on companies regarding the handling of personal data and provide certain individual privacy rights to persons whose data is collected. Compliance with existing, proposed and recently enacted laws and regulations (including implementation of the privacy and process enhancements called for under applicable laws and regulations) can be costly, and any failure to comply with these regulatory standards could subject us to legal and reputational risks.

For example, failure to comply with the GDPR and the UK GDPR can result in significant fines and other liability, including fines of up to EUR 20 million (or GBP 17.5 million under the UK GDPR) or four percent (4%) of global revenue, whichever is greater. European data protection authorities have already imposed fines for GDPR violations up to, in some cases, hundreds of millions of Euros. The cost of compliance, and the potential for fines and penalties for non-compliance, with the GDPR and the UK GDPR may have a significant adverse effect on our business and operations. While the UK GDPR currently imposes substantially the same obligations as the GDPR, the UK GDPR will not automatically incorporate changes to the GDPR going forward (which would need to be specifically incorporated by the UK government). Moreover, the UK government has publicly announced plans to reform the UK GDPR in ways that, if formalized, are likely to deviate from the GDPR, all of which creates a risk of divergent parallel regimes and related uncertainty, along with the potential for increased compliance costs and risks for affected businesses. Legal developments in the European Economic Area ("EEA"), including rulings from the Court of Justice of the European Union and from various EU member state data protection authorities, have also created complexity and uncertainty regarding transfers of personal data from the EEA to the United States and other so-called third countries outside the EEA. Similar complexities and uncertainties also apply to transfers from the UK to third countries. While we have taken steps to mitigate the impact on us, the efficacy and longevity of these mechanisms remains uncertain.

At the U.S. federal level, we are subject to, among other laws and regulations, the rules and regulations promulgated under the authority of the Federal Trade Commission (which has the authority to regulate and enforce against unfair or deceptive acts or practices in or affecting commerce, including with respect to data privacy and cybersecurity) ("FTC") and the Gramm Leach Bliley Act (which regulates the confidentiality and security of customer information obtained by financial institutions, including non-banking financial institutions such as mortgage brokers, motor vehicle dealers, and payday lenders). Our financial services program, for example, will be subject to, among other applicable laws and regulations, the Safeguards Rule, as recently amended by the FTC (the "FTC Safeguards Rule"), which, among other things, requires non-banking financial institutions to design and implement safeguards to protect customer information, and the financial data collected as part of the financial services program consequently requires additional security and administrative controls. Additionally, there has been increasing regulatory scrutiny from the SEC with respect to adequately disclosing risks concerning cybersecurity and data privacy, which increases the risk of investigations into the cybersecurity practices, and related disclosures, of companies within its jurisdiction, which at a minimum can result in distraction of management and diversion of resources for targeted businesses. On July 26, 2023, the SEC adopted new cybersecurity disclosure rules (the "SEC Cybersecurity Disclosure Rules") for public companies that require disclosure regarding cybersecurity risk management (including the corporate board's role in overseeing cybersecurity risks, management's role and expertise in assessing and managing cybersecurity risks, and processes for assessing, identifying and managing cybersecurity risks) in annual reports.

At the U.S. state level, we are subject to laws and regulations such as the California Consumer Privacy Act of 2018 (as amended by the California Privacy Rights Act of 2020, collectively, the "CCPA"). The CCPA establishes a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California residents, including expanded rights with respect to certain sensitive personal information. The CCPA includes a framework with potentially severe statutory damages for violations and a private right of action for certain data breaches. The CCPA requires covered businesses to provide California residents with certain privacy-related disclosures and rights related to their personal information. As we expand our operations, the CCPA may increase our compliance costs and potential liability. The California Privacy Rights Act also established a state agency, the California Privacy Protection Agency, vested with the authority to implement and enforce the CCPA. Some observers have noted that the CCPA marked the beginning of a trend toward more stringent privacy legislation in the United States, and a number of other states have enacted or are in the process of enacting, or considering similar laws. Compliance with these state statutes, other similar state or federal laws that may be enacted in the future, and other applicable data privacy and cybersecurity laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms to comply with such laws and regulations, which could cause us to incur substantial costs or require us to change our business practices, including our data practices, in a manner adverse to our business.

We post public privacy policies and other documentation regarding our collection, use, disclosure, and other processing of personal information. Although we endeavor to comply with our published policies and other documentation, we may at times fail to do so or may be perceived to have failed to do so. Moreover, despite our efforts, we may not be successful in achieving compliance if our employees, contractors, service providers, vendors or other third parties fail to comply with our published policies and documentation. Such failures could carry similar consequences or subject us to potential local, state and federal action if they are found to be deceptive, unfair or misrepresentative of our actual practices. Claims that we have violated individuals' privacy rights or failed to comply with applicable privacy notices or applicable data privacy laws, regulations, standards, policies, or contractual obligations could, even if we are not found liable, be expensive and time-consuming to defend and could result in adverse publicity that could harm our business.

Most jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities and other third parties of security breaches involving certain types of data. For example, laws in all 50 U.S. states generally require businesses to provide notice under certain circumstances to consumers whose personal information has been disclosed as a result of a breach. Such laws may be inconsistent or may change or additional laws may be adopted. In addition, our agreements with certain customers may require us to notify them in the event of a security breach. Furthermore, the SEC Cybersecurity Disclosure Rules require the disclosure of material cybersecurity incidents in a Form 8-K, generally within four business days of determining an incident is material. Additionally, upon discovery of an incident in which the unencrypted customer information of at least 500 consumers is acquired without authorization by the consumers to whom the information pertains, the FTC Safeguards Rule requires notifying the FTC as soon as possible, and no later than 30 days after discovery of such incident. Such mandatory disclosures are costly, could lead to negative publicity, penalties or fines, litigation and our customers losing confidence in the effectiveness of our security measures and could require us to expend significant capital and other resources to respond to or alleviate problems caused by the actual or perceived security breach.

We are also impacted by regulations obligating us to share vehicle repair-related information, including location information, with third parties, including repair shops and repair tool hardware developers, under what are commonly called "right-to-repair" laws, including Massachusetts. Other state, federal, and foreign jurisdictions are exploring expanding right-to-repair obligations in this area as well. Furthermore, some entities within the U.S. federal government, including certain members of Congress and the NHTSA, have recently focused attention on automotive cybersecurity issues and may in the future propose or implement regulations specific to automotive cybersecurity. In addition, the United Nations Economic Commission for Europe ("UNECE") has introduced regulations governing connected vehicle cybersecurity in the European Union ("EU") which are mandatory for all new vehicle types from July 2022 and all new vehicles produced from July 2024. Similar regulations are also in effect, or expected to come into effect, in certain other international jurisdictions. These and other regulations could adversely affect our business in European or other markets, and if such regulations or other future regulations are inconsistent with our approach to automotive cybersecurity, we would be required to modify our systems to comply with such regulations, which would impose additional costs and delays and could expose us to potential liability to the extent our automotive cybersecurity systems and practices are inconsistent with such regulations.

New products, services and business lines may face scrutiny from regulators as well. Certain emerging data privacy and cybersecurity laws and regulations are still subject to a high degree of uncertainty as to their interpretation and application. If such laws and regulations are implemented, interpreted or applied in a manner inconsistent with our current or future practices or policies, or if we fail to comply with applicable laws or regulations, as well as contractual obligations, policies and industry standards, or to secure personal information, we could be subject to investigations, enforcement actions and other proceedings, which could result in substantial fines, damages, injunctions, orders to change our business practices, and other liability as well as damage to our reputation and credibility, which could have a negative impact on revenues and profits. Any of the foregoing could materially adversely affect our business, prospects, results of operations and financial condition.

Risks Related to Our Employees and Human Resources

The loss of key employees or an inability to attract, retain and motivate qualified personnel may impair our ability to expand our business.

Our success is substantially dependent upon the continued service and performance of our senior management team. Our employees, including our senior management team, are generally at-will employees, and therefore may terminate employment with us at any time with no advance notice. It is always possible that we could lose some key employees, especially if we are unable to grant sufficient or competitive compensation, including equity awards and bonuses, or if the volatility of our stock price increases. In addition, we recently announced a restructuring plan, which involves the reduction of our employee workforce. Such plan may adversely affect our internal programs and initiatives as well as our ability to recruit and retain skilled and motivated personnel. Any such restructuring plan may also be distracting to employees and management and may negatively impact our business operations, reputation, or ability to serve customers. We cannot provide any assurances that we will not have to undertake additional workforce reductions in the future. The replacement of any members of our senior management team or other key employees likely would involve significant time and costs and may significantly delay or prevent the achievement of our business objectives. Our future success also depends, in part, on our ability to continue to attract, integrate and retain highly skilled personnel. Competition for personnel is frequently intense, especially in the San Francisco Bay Area, where we have a substantial presence and need for highly skilled personnel, including, but not limited to, in particular, engineers, and Arizona, where we have a substantial presence and a need for, among others, a large skilled repair, logistics, supply chain, and manufacturing workforce. As with any company with finite resources, there can be no guarantee that we will be able to attract such individuals or that the presence of such individuals will necessarily translate into our profitability. Because we operate in a newly emerging industry, there may also be limited personnel available with relevant expertise or business experience, and such individuals may be subject to non-competition and other agreements that restrict their ability to work for us. This challenge may be exacerbated for us as we attempt to transition from start-up to full-scale commercial vehicle manufacturing and sales in a very short period of time under the unforeseeable business conditions which continue to evolve as a result of the impact of global conflicts and other geopolitical events. Our inability to attract and retain key employees may materially and adversely affect our business operations. Any failure by our management to effectively anticipate, implement and manage the changes required to sustain our growth would have a material adverse effect on our business, financial condition and results of operations.

We are highly dependent on the services of Peter Rawlinson, our Chief Executive Officer and Chief Technology Officer.

We are highly dependent on the services of Peter Rawlinson, our Chief Executive Officer and Chief Technology Officer. Mr. Rawlinson is a significant influence on and driver of our technology development and business plan. If Mr. Rawlinson were to discontinue his service with us due to death, disability or any other reason, we would be significantly disadvantaged.

We will need to hire, retain, and train a significant number of employees for our business operations, and our business could be adversely affected by labor and union activities.

We will need to hire, retain, and train a significant number of employees to engage in full capacity commercial manufacturing operations and for us to scale commercial production and sales and service operations. There are various risks and challenges associated with hiring, retaining, training and managing a large workforce, such as establishing and maintaining efficient communication channels, procedures and rules of conduct, hiring an adequate number of experienced manufacturing, supply chain management and logistics managerial personnel and creating and maintaining an effective company culture. Although the area surrounding our AMP-1 facility in Casa Grande, Arizona and the area surrounding our AMP-2 facility in King Abdullah Economic City ("KAEC") are home to highly trained workforces with experience in engineering and manufacturing, these workforces do not have significant experience with electric vehicle manufacturing, and related processes such as inventory management, logistics and quality. Many jobs will require significant training and we may need to spend significant resources to ensure employees obtain and adhere to such training. Further, competition for employees in the Casa Grande, Arizona area has increased and may continue to increase in the future, which may impact the ability or cost to hire in the area; this same competition for talent may eventually intensify in KAEC as well. In addition, as we progress in constructing our AMP-2 facility in Saudi Arabia, we will need to hire, retain, and train a significantly larger number of employees in the local region to fully support the facility's manufacturing operations. We cannot guarantee that we will be able to operate in compliance with local labor laws and regulations as well as with differing local customs, in order to operate the manufacturing facility. If we are unsuccessful in hiring, retaining and training a workforce in a timely and cost-effective manner, our business, financial condition and results of operations could be adversely affected.

Furthermore, although none of our United States based employees are currently represented by a labor union and none of our international employees are currently represented by a labor union that we are aware of at this time, it is common throughout the automobile industry generally for many employees at automobile companies to belong to a union, which can result in higher employee costs and increased risk of work stoppages. Some unions may attempt and have announced to attempt to organize non-union automakers in the U.S., including us. Moreover, regulations in some jurisdictions outside of the U.S. mandate employee participation in industrial collective bargaining agreements, work councils, or similar activities with certain consultation rights with respect to the relevant companies' operations, or companies are required to apply collective bargaining agreements, implement works councils or similar bodies with certain consultation rights related to the activities of the companies involved. In the event our employees seek to join or form a labor union, we could be subject to risks as we engage in an attempt to address such organizing and/or to finalize negotiations with any such union, including potential work slowdowns or stoppages, delays, and increased costs. Furthermore, we may be directly or indirectly dependent upon companies with unionized work forces, such as parts suppliers, construction contractors, and trucking and freight companies, and work stoppages or strikes organized by such unions could have a material adverse impact on our business, financial condition, ability to expand our facilities, or results of operations. If a work stoppage occurs, it could delay the manufacture and sale of our products and have a material adverse effect on our business, prospects, results of operations, or financial condition.

Misconduct by our employees and independent contractors during and before their employment with us could expose us to potentially significant legal liabilities, reputational harm and/or other damages to our business.

Many of our employees play critical roles in ensuring the safety and reliability of our vehicles and/or our compliance with relevant laws and regulations. Certain of our employees have access to sensitive information and/or proprietary technologies and know-how. While we have adopted codes of conduct for all of our employees and implemented detailed policies and procedures relating to intellectual property, proprietary information, and trade secrets, we cannot guarantee that our employees will always abide by these codes, policies, and procedures nor that the precautions we take to detect and prevent employee misconduct will always be effective. If any of our employees engage in any misconduct, illegal or suspicious activities, including but not limited to misappropriation or leakage of sensitive information, proprietary information, know-how or trade secrets, we and such employees could be subject to legal claims and liabilities and our reputation and business could be adversely affected as a result.

In addition, while we have screening procedures during the recruitment process, we cannot guarantee that we will be able to uncover misconduct of job applicants that occurred before we offered them employment, or that we will not be affected by legal proceedings against our existing or former employees as a result of their actual or alleged misconduct. Any negative publicity surrounding such cases, especially in the event that any of our employees is found to have committed any wrongdoing, could negatively affect our reputation and may have an adverse impact on our business.

Furthermore, we face the risk that our employees and independent contractors may engage in other types of misconduct or other illegal activity, such as intentional, reckless or negligent conduct that violates production standards, workplace health and safety regulations, fraud, abuse or consumer protection laws, other similar non-U.S. laws or laws that require the true, complete, and accurate reporting of financial information or data. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. In addition, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, prospects, financial condition, and results of operations, including, without limitation, the imposition of significant civil, criminal, and administrative penalties, damages, monetary fines, disgorgement, integrity oversight and reporting obligations to resolve allegations of non-compliance, imprisonment, other sanctions, contractual damages, reputational harm, diminished profits and future earnings and curtailment of our operations, any of which could adversely affect our business, prospects, financial condition and results of operations.

Risks Related to Litigation and Regulation

We are subject to substantial laws and regulations that could impose substantial costs, legal prohibitions or unfavorable changes upon our operations or products, and any failure to comply with these laws and regulations, including as they evolve, could substantially harm our business and results of operations.

At various jurisdictional levels, we are or will be subject to complex and evolving environmental, manufacturing, health and safety laws and regulations, including laws relating to the use, handling, storage, recycling, disposal and human exposure to lithium-ion batteries and hazardous materials and with respect to constructing, expanding and maintaining our facilities. The costs of compliance, including remediating contamination, if any, for our properties and any changes to our operations mandated by new or amended laws, may be significant. We may also face unexpected delays in obtaining permits and approvals required by such laws in connection with our facilities, which could affect our ability to continue our operations. Such costs and delays may adversely impact our business prospects and operations. Furthermore, any violations of these laws may result in substantial fines and penalties, remediation costs, third party damages, or a suspension or cessation of our operations.

In addition, motor vehicles and associated service activities are subject to substantial regulation under international, federal, state and local laws. We have incurred, and expect to continue to incur, significant costs in complying with these regulations. Any failures to comply could result in significant expenses, delays or fines. In the United States, vehicles must meet or exceed all federally mandated motor vehicle safety standards to be certified under the federal regulations. Rigorous testing and the use of approved materials and equipment are among the requirements for achieving federal certification. The Lucid Air, Lucid Gravity SUV and any future vehicle programs will be subject to such regulation under federal, state and local laws and standards. These regulations include those promulgated by the U.S. Environmental Protection Agency, NHTSA, other federal agencies, various state agencies and various state boards; and compliance certification is required for each individual vehicle we manufacture for sale. These laws and standards are subject to change from time-to-time, and we could become subject to additional regulations in the future, which could increase the effort and expense of compliance. Laws and industrial standards for electric vehicles continue to evolve, and we face risks associated with changes to these regulations, which could have an impact on the adoption of electric vehicles. In addition, increased sensitivity by regulators to the needs of established automobile manufacturers with large employment bases, high fixed costs and business models based on the internal combustion engine could lead them to adopt regulations that could reduce the compliance costs of such established manufacturers or mitigate the effects of government efforts to promote electric vehicles. If compliance results in delays or substantial expenses, our business could be adversely affected.

We currently are, and expect to become, subject to laws and regulations applicable to the supply chain, manufacture, import, sale and service of automobiles in an increasing number of international jurisdictions. Applicable regulations in countries outside of the U.S., such as standards relating to vehicle safety, transportation of dangerous goods, fuel economy and emissions, battery recycling, among other things, are often materially different from requirements in the United States and also evolving. For example, the European Union has enacted a Battery Regulation that substantively goes into effect for Lucid vehicles and batteries delivered in Europe beginning August 2024, with increasing requirements for the durability, marking and recycled content of the high-voltage batteries in our vehicles in subsequent years, among other things. Compliance with such regulations will require additional time and resources to ensure regulatory compliance in those countries. This process may include official review and certification of our vehicles by foreign regulatory agencies prior to market entry, as well as compliance with foreign reporting and recall management systems requirements. There can be no assurance that we will be able to achieve foreign regulatory compliance in a timely manner and at our expected cost, or at all, and the costs of achieving international regulatory compliance or the failure to achieve international regulatory compliance could harm our business, prospects, results of operations and financial condition.

We may face regulatory limitations on our ability to sell vehicles directly, which could materially and adversely affect our ability to sell our vehicles.

Our business plan includes the direct sale of vehicles to retail consumers, both at retail locations and over the internet. The laws governing licensing of dealers and sales of motor vehicles vary from state to state. Most states require a dealer license to sell new motor vehicles within the state, and many states prohibit manufacturers or their affiliates from becoming licensed dealers and directly selling new motor vehicles to retail consumers from within that state. In addition, most states require that we have a physical dealership location in the state before we can be licensed as a dealer. Currently, we are licensed as a motor vehicle dealer in several states. In some states, we have also opened or expect to open Lucid studios to educate and inform customers about our vehicles, but those Lucid studios will not actually transact in the sale of vehicles. The application of these state laws to our operations continues to be difficult to predict. Laws in some states have limited our ability to obtain dealer licenses from state motor vehicle regulators and may continue to do so.

We may face legal challenges to this distribution model. For example, in states where direct sales are not permitted, dealers and their lobbying organizations may complain to the government or regulatory agencies that we are acting in the capacity of a dealer without a license. Alternatively, we have and may continue to initiate legal action against such states that prohibit direct sales, which may be protracted and expensive, and the results are difficult to predict. See "— Risks Related to Litigation and Regulation — *We are subject to legal proceedings, regulatory disputes and governmental inquiries that could cause us to incur significant expenses, divert our management's attention, and adversely affect our business, results of operations, cash flows and financial condition*." In some states, regulators may restrict or prohibit us from directly providing warranty repair service, or from contracting with third parties who are not licensed dealers to provide warranty repair service. Even if regulators decide to permit us to sell vehicles, such decisions may be challenged by dealer associations and others as to whether such decisions comply with applicable state motor vehicle industry laws. Further, even in jurisdictions where we believe applicable laws and regulations do not currently prohibit our direct sales model or where we have reached agreements with regulators, legislatures may impose additional limitations. Because the laws vary from state-to-state, our distribution model must be carefully established, and our sales and service processes must be continually monitored for compliance with the various state requirements, which change from time-to-time. Regulatory compliance and likely challenges to the distribution model may add to the cost of our business.

We have in the past and may choose in the future, or we may be compelled, to undertake product recalls or take other actions, which could adversely affect our business, prospects, results of operations, reputation and financial condition.

Product recalls may result in adverse publicity, damage our reputation and adversely affect our business, prospects, results of operations and financial condition. For example, we have conducted several vehicle recalls due to a number of potential issues in the past and we may in the future voluntarily or involuntarily initiate additional recalls if any of our electric vehicles or components (including our batteries) prove to be defective or noncompliant with applicable federal motor vehicle safety standards. If a large number of vehicles are the subject of a recall or if needed replacement parts are not in adequate supply, we may be unable to service and repair recalled vehicles for a significant period of time. These types of disruptions could jeopardize our ability to fulfill existing contractual commitments or satisfy demand for our electric vehicles and could also result in the loss of business to our competitors. Such recalls, whether caused by systems or components engineered or manufactured by us or our suppliers, would involve significant expense and diversion of management's attention and other resources, which could adversely affect our brand image in our target market and our business, prospects, results of operations and financial condition.

We are subject to legal proceedings, regulatory disputes and governmental inquiries that could cause us to incur significant expenses, divert our management's attention, and adversely affect our business, results of operations, cash flows and financial condition.

From time-to-time, we may be subject to claims, lawsuits, government investigations and other proceedings involving product liability, consumer protection, competition and antitrust, intellectual property, data privacy, cybersecurity, securities, tax, labor and employment, health and safety, our direct distribution model, motor vehicle dealership licenses and state licensing laws, environmental claims, commercial disputes and other matters that could adversely affect our business, results of operations, cash flows and financial condition. In the ordinary course of business, we have been the subject of complaints or litigation, including claims related to shareholders, business disputes, and employment matters.

For example, beginning on April 18, 2021, two individual actions and two putative class actions were filed in federal courts in Alabama, California, New Jersey and Indiana, asserting claims under the federal securities laws against the Company (f/k/a Churchill Capital Corp IV), its wholly-owned subsidiary, Atieva, Inc. ("Lucid Motors"), and certain current and former officers and directors of the Company, generally relating to the Merger. On September 16, 2021, the plaintiff in the New Jersey action voluntarily dismissed that lawsuit. The remaining actions were ultimately transferred to the Northern District of California and consolidated under the caption, In re CCIV / Lucid Motors Securities Litigation, Case No. 4:21-cv-09323-YGR (the "Consolidated Class Action"). On December 30, 2021, lead plaintiffs in the Consolidated Class Action filed a revised amended consolidated complaint (the "Complaint"), which asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 on behalf of a putative class of shareholders who purchased stock in CCIV between February 5, 2021 and February 22, 2021. The Complaint named as defendants Lucid Motors and the Company's chief executive officer, and generally alleged that, prior to the public announcement of the Merger, defendants purportedly made false or misleading statements regarding the expected start of production for the Lucid Air and related matters. The Complaint sought certification of the action as a class action as well as compensatory damages, interest thereon, and attorneys' fees and expenses. The District Court granted defendants' motion to dismiss on January 11, 2023, with plaintiffs being provided the ability to seek leave to amend. On June 29, 2023, the District Court denied plaintiffs' motion for leave to amend, dismissed the lawsuit and terminated the case. On July 28, 2023, plaintiffs appealed the District Court's decisions to the Ninth Circuit Court of Appeals. Currently, the parties are litigating the case on appeal.

In addition, two separate purported shareholders of the Company filed shareholder derivative actions, purportedly on behalf of the Company, against certain of the Company's officers and directors in California federal court, captioned Sahr Lebbie v. Peter Rawlinson, et al., Case No. 4:22-cv-00531-YGR (N.D. Cal.) (filed on January 26, 2022) and Zsata Williams-Spinks v. Peter Rawlinson, et al., Case No. 4:22-cv-01115-YGR (N.D. Cal.) (filed on February 23, 2022). The complaint also named the Company as a nominal defendant. Based on allegations that are similar to those in the Consolidated Class Action, the Lebbie complaint asserted claims for unjust enrichment, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, abuse of control, gross mismanagement and waste of corporate assets and a claim for contribution under Sections 10(b) and 21D of the Exchange Act in connection with the Consolidated Class Action and the Williams-Spinks complaint asserted claims for breach of fiduciary duty, gross mismanagement, abuse of control, unjust enrichment, contribution under Sections 10(b) and 21D of the Exchange Act, and aiding and abetting breach of fiduciary duty in connection with the Consolidated Class Action. The complaints sought compensatory damages, interest thereon, certain corporate governance reforms, and attorneys' fees and expenses. On April 29, 2022, the District Court consolidated the two actions into In re Lucid Group, Inc. (f/k/a Churchill Capital Corp IV) Derivative Litigation, Case No. 4:22-cv-00531-YGR (N.D. Cal.) (the "Consolidated Derivative Action"). On May 25, 2022, the District Court then stayed the Consolidated Derivative Action pending developments in the Consolidated Class Action. On December 12, 2023, given that the Consolidated Class Action was dismissed by the trial court and appealed to the Ninth Circuit Court of Appeals, the District Court administratively closed the Consolidated Derivative Action for statistical purposes but reminded the parties of their obligations under the stay.

On April 1, 2022 and May 31, 2022, two alleged shareholders filed putative class actions under the federal securities laws against Lucid Group, Inc. and certain officers of the Company relating to alleged statements, updated projections and guidance provided in the late 2021 to early 2022 timeframe. The complaints, which were filed in the Northern District of California, are captioned *Victor W. Mangino v. Lucid Group, Inc., et al.*, Case No. 3:22-cv-02094-JD, and *Anant Goel v. Lucid Group, Inc., et al.*, Case No. 3:22-cv-03176-JD. The two matters were consolidated into one action, entitled *In re Lucid Group, Inc. Securities Litigation*, Case No. 22-cv-02094-JD. The consolidated complaint names as defendants Lucid Group, Inc. and the Company's chief executive officer and former chief financial officer, and generally allege that defendants purportedly made false or misleading statements regarding delivery and revenue projections and related matters between November 15, 2021 and August 3, 2022. The consolidated complaint seeks certification of the action as a class action, as well as compensatory damages, interest thereon, and attorneys' fees and expenses. Defendants filed a Motion to Dismiss on February 23, 2023, which is pending before the court. Defendants believe that the plaintiffs' claims are without merit and intend to defend themselves vigorously, but they cannot ensure that their efforts to dismiss the consolidated complaint will be successful or that they will avoid liability in this matter.

In addition, on July 11, 2022, a purported shareholder of the Company filed a shareholder derivative action, purportedly on behalf of the Company, against certain of the Company's officers and directors in California state court, captioned Floyd Taylor v. Glenn August, et al., Superior Court, Alameda County, Case No. 22CV014130. The complaint also names the Company as a nominal defendant. Based on allegations that are similar to those in the In re Lucid Group, Inc. Securities Litigation action, the Taylor complaint asserts claims for breach of fiduciary duty, unjust enrichment, waste of corporate assets, and aiding and abetting a breach of fiduciary duty. The complaint seeks compensatory damages, punitive damages, interest, and attorneys' fees and expenses. On September 12, 2022, the Superior Court stayed the action until the earliest occurrence of certain events, including, among other things, a resolution on the Motion to Dismiss in the In re Lucid Group, Inc. Securities Litigation case. The Taylor action remains stayed, and the Company is advancing defendants' fees and expenses incurred in their defense of the action.

Moreover, on March 25, 2021, the Illinois Automobile Dealers Association, Chicago Automobile Trade Association, Peoria Metro New Car Dealers Association, Illinois Motorcycle Dealers Association, and 241 individual motor vehicle dealers filed an action against the Office of the Illinois Secretary of State ("SOS"), Jesse White, in his official capacity as the Illinois Secretary of State; Lucid USA, Inc. ("Lucid USA"); and other defendants, in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, Case No. 2021CH01438. The suit generally alleges that Illinois law does not permit manufacturers to obtain licenses as motor vehicle dealers. Plaintiffs seek to prevent Lucid from engaging in the sale of motor vehicles directly to consumers. The SOS granted Lucid USA a dealer's license on June 3, 2021. In December 2022, the Court granted Defendants' Motion to Dismiss. Plaintiffs subsequently appealed to the Illinois First District Appellate Court. and the parties continue to litigate the case on appeal.

Furthermore, while we have registered and applied for trademarks in an effort to protect our brand and goodwill with customers, competitors or other third parties are, have in the past, and may in the future, oppose our trademark applications or otherwise challenge our use of the trademarks and other brand names in which we have invested. Such oppositions and challenges can be expensive and may adversely affect our ability to maintain the goodwill gained in connection with a particular trademark. In addition, we may lose our trademark or may be unable to submit specimens of use by the applicable deadline to perfect such trademark rights. For instance, in June 2024, we reached an agreement with Gravity, Inc. to settle a claim before the United States Patent and Trademark Office ("USPTO") that opposed and requested cancellation of our trademark application and registration for the use of "Gravity."

Litigation and regulatory proceedings may be protracted and expensive, and the results are difficult to predict. Additionally, our litigation costs could be significant, even if we achieve favorable outcomes. Adverse outcomes with respect to litigation or any of these legal proceedings may result in significant settlement costs or judgments, penalties and fines, or require us to modify, make temporarily unavailable or stop manufacturing or selling our vehicles in some or all markets, all of which could negatively affect our sales and revenue growth and adversely affect our business, prospects, results of operations, cash flows and financial condition.

The results of litigation, investigations, claims and regulatory proceedings cannot be predicted with certainty, and determining reserves for pending litigation and other legal and regulatory matters requires significant judgment. There can be no assurance that our expectations will prove correct, and even if these matters are resolved in our favor or without significant cash settlements, these matters, and the time and resources necessary to litigate or resolve them, could harm our business, results of operations, cash flows and financial condition. In addition, the threat or announcement of litigation or investigations by governmental authorities or other parties, irrespective of the merits of the underlying claims, may itself have an adverse impact on the trading price of our common stock.

We may become subject to product liability and warranty-related claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims.

We may become subject to product liability and warranty-related claims, which could harm our business, prospects, results of operations and financial condition. The automotive industry experiences significant product liability claims, and we face inherent risks of exposure to claims in the event our production vehicles do not perform or are claimed not to perform as expected or malfunction, resulting in property damage, personal injury or death. We also expect that, as is true for other automakers, our vehicles will be involved in crashes resulting in death or personal injury, and even if not caused by the failure of our vehicles, we may face product liability claims and adverse publicity in connection with such incidents. In addition, we may face claims arising from or related to failures, claimed failures or misuse of new technologies that we expect to offer, including *ADAS* features in our vehicles. See "— Risks Related to Litigation and Regulation — *ADAS technology is subject to uncertain and evolving regulations*." In addition, the battery packs that we produce make use of lithium-ion cells. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. While we have designed our battery packs to passively contain a single cell's release of energy without spreading to neighboring modules, there can be no assurance that a field or testing failure of our vehicles or other battery packs that we produce will not occur, in particular due to a high-speed crash. In addition, although we equip our vehicles with systems designed to detect and warn vehicle occupants of such thermal events, there can be no assurance that such systems will function as designed or will provide vehicle occupants with sufficient, or any, warning in all circumstances. Any such events or failures of our vehicles, battery packs or warning systems could subject us to lawsuits, product recalls or redesign efforts, all of which would be time consuming and expensive. Furthermore, if our products contain design defects, manufacturing defects, or other defects in materials or workmanship that cause them to not conform to applicable express or implied warranties, and/or we are unable to service or repair nonconforming vehicles within a reasonable period of time or number of repair attempts, we may be subject to breach of warranty, lemon law, and other consumer protection claims.

A successful product liability or warranty-related claim against us could result in a substantial monetary loss. Our risks in this area are particularly pronounced in light of the limited field experience of our vehicles. Moreover, a product liability or warranty-related claim against us or our competitors could generate substantial negative publicity about our vehicles and business and inhibit or prevent commercialization of our future vehicles, which would have material adverse effect on our brand, business, prospects and results of operations. Our insurance coverage might not be sufficient to cover all potential product liability and warranty-related claims, and insurance coverage may not continue to be available to us or, if available, may be at a significantly higher cost. Any lawsuit seeking significant monetary damages or other product liability or warranty-related claims may have a material adverse effect on our reputation, business and financial condition.

We may be exposed to delays, limitations and risks related to the environmental permits and other operating permits required to operate our manufacturing facilities.

Operation of an automobile manufacturing facility requires land use and environmental permits and other operating permits from federal, state and local government entities. While we believe that we have the permits necessary to carry out and perform our current plans and operations at our Casa Grande, Arizona and Saudi Arabia manufacturing facilities based on our current target production capacity, we plan to expand our manufacturing facilities and construct additional manufacturing facilities over time to achieve a future target production capacity and will be required to apply for and secure various environmental, wastewater, hazardous materials, and land use permits and certificates of occupancy necessary for the commercial operation of such expanded and additional facilities. Delays, denials or restrictions on any of the applications for or assignment of the permits to operate our manufacturing facilities could adversely affect our ability to execute on our business plans and objectives based on our current target production capacity or our future target production capacity. See "— Risks Related to Manufacturing and Supply Chain — *We have experienced and may in the future experience significant delays in the design, manufacture, launch and financing of our vehicles, including the Lucid Air, the Lucid Gravity SUV and our Midsize platform, which could harm our business and prospects.*"

We are subject to various environmental, health and safety laws and regulations that could impose substantial costs on us and cause delays in expanding our production facilities.

Our operations are subject to international, federal, state and local environmental laws and regulations relating to the use, handling, storage, disposal of and exposure to hazardous materials and batteries. Environmental, health and safety laws and regulations are complex and evolving. For example, regulations regarding battery storage, recycling, disposal and processing are relatively new and the current lack of consistent standards may increase our cost of compliance. Moreover, we may be affected by future amendments to such laws or other new environmental, health and safety laws and regulations which may require a change in our operations, potentially resulting in a material adverse effect on our business, prospects, results of operations and financial condition. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury, fines and penalties. Capital and operating expenses needed to comply with environmental laws and regulations can be significant, and violations could result in substantial fines and penalties, third-party damages, suspension of production or a cessation of our operations.

If contamination is discovered at properties we own or operate, properties we formerly owned or operated or properties to which we sent hazardous substances, we may be subject to liability under environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, which can impose liability for the full amount of remediation-related costs without regard to fault, for the investigation and cleanup of contaminated soil and ground water, for building contamination and impacts to human health and for damages to natural resources. The costs of complying with environmental laws and regulations and any claims concerning noncompliance, or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or results of operations.

Our operations are also subject to federal, state, and local workplace safety laws and regulations, including, but not limited to, the Occupational Safety and Health Act and the rules promulgated by the Occupational Safety and Health Administration, which require compliance with various workplace safety requirements. These laws and regulations can give rise to liability for oversight costs, compliance costs, bodily injury (including workers' compensation), fines, and penalties. Additionally, non-compliance could result in delay or suspension of production or cessation of operations. The costs required to comply with workplace safety laws can be significant, and non-compliance could adversely affect our production or other operations, including with respect to the production of the Lucid Air, which could have a material adverse effect on our business, prospects and results of operations.

ADAS technology is subject to uncertain and evolving regulations.

We expect to introduce certain ADAS technologies into our vehicles over time. ADAS technology is subject to regulatory uncertainty as the law evolves to catch up with the rapidly evolving nature of the technology itself, all of which is beyond our control. There is a variety of international, federal and state regulations that may apply to self-driving and driver-assisted vehicles, which include many existing vehicle standards that assume a human driver will be controlling the vehicle at all times. Currently, there are no federal U.S. regulations pertaining to the safety of self-driving vehicles; however, NHTSA has established recommended guidelines. Certain states have legal restrictions on self-driving vehicles, and many other states are considering them. In Europe, certain vehicle safety regulations apply to self-driving braking and steering systems, and certain treaties also restrict the legality of certain higher levels of self-driving vehicles. Self-driving laws and regulations are expected to continue to evolve in numerous jurisdictions in the United States and foreign countries, which increases the likelihood of a patchwork of complex or conflicting regulations or may delay products or restrict self-driving features and availability, which could adversely affect our business. Our vehicles may not achieve compliance with the regulatory requirements in some countries or jurisdictions for certification and rollout to consumers or satisfy changing regulatory requirements which could require us to redesign, modify or update our ADAS hardware and related software systems. Any such requirements or limitations could impose significant expense or delays and could harm our competitive position, which could adversely affect our business, prospects, results of operations and financial condition.

We are subject to U.S. and foreign anti-corruption, anti-money laundering and anti-boycott laws and regulations. We can face criminal liability and other serious consequences for violations, which can harm our business.

We are subject to the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, the USA PATRIOT Act and possibly other anti-bribery and anti-money laundering laws in countries in which we expect to conduct activities, as well as the antiboycott regulations of the U.S. Export Administration regulations. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, contractors and other collaborators from authorizing, promising, offering or providing, directly or indirectly, improper payments or anything else of value to recipients in the public or private sector. We can be held liable for the corrupt or other illegal activities of our employees, agents, contractors and other collaborators, even if we do not explicitly authorize or have actual knowledge of such activities. Anti-money laundering laws and regulations of the U.S. and other countries may require additional due diligence of counterparties and for us to provide ownership and financial information to counterparties. The antiboycott regulations of the U.S. Export Administration require us to refuse to comply with the Arab League boycott of Israel and report any requests to do so. Any violations of the laws and regulations described above may result in substantial civil and criminal fines and penalties, imprisonment, the loss of export or import privileges, debarment, tax reassessments, breach of contract and fraud litigation, reputational harm and other consequences.

We are subject to governmental export and import controls and laws that could subject us to liability if we are not in compliance with such laws.

Our vehicles and the equipment we use are subject to export control, import and economic sanctions laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations and various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control. Exports of our vehicles and technology must be made in compliance with these laws and regulations. If we fail to comply with these laws and regulations, we and certain of our employees could be subject to substantial civil or criminal penalties, including the possible loss of export or import privileges; fines, which may be imposed on us and responsible employees or managers; and, in extreme cases, the incarceration of responsible employees or managers. In addition, our existing and future international operations for the reassembly or manufacture of our vehicles may subject us to additional constraints under applicable export and import controls and laws.

In addition, changes to our vehicles, or changes in applicable export control, import or economic sanctions laws and regulations, may create delays in the introduction and sale of our vehicles and solutions or, in some cases, prevent the export or import of our vehicles to certain countries, governments, or persons altogether. Any change in export, import, or economic sanctions laws and regulations, shift in the enforcement or scope of existing laws and regulations or change in the countries, governments, persons or technologies targeted by such laws and regulations could also result in decreased use of our vehicles, as well decreasing our ability to export or market our vehicles to potential customers. Any decreased use of our vehicles or limitation on our ability to export or market our vehicles could adversely affect our business, prospects, results of operations and financial condition.

Changes in U.S. trade policy, including the imposition of tariffs or revocation of normal trade relations and the resulting consequences, could adversely affect our business, prospects, results of operations and financial condition.

The U.S. government has adopted an evolving approach to trade policy and in some cases has attempted to renegotiate or terminate certain existing bilateral or multi-lateral trade agreements. It has also imposed tariffs on certain foreign goods, including steel and certain vehicle parts, which have resulted in increased costs for goods imported into the United States. In response to these tariffs, a number of U.S. trading partners have imposed retaliatory tariffs on a wide range of U.S. products, which could make it costlier for us to export our vehicles to those countries. If we are unable to pass the costs of such tariffs on to our customer base or otherwise mitigate such costs, or if demand for our exported vehicles decreases due to the higher cost, our results of operations could be materially adversely affected. In addition, further tariffs have been proposed by the United States and its trading partners, and additional trade restrictions could be implemented on a broad range of products or raw materials. The resulting environment of retaliatory trade or other practices could harm our ability to obtain necessary inputs or sell our vehicles at prices customers are willing to pay, which could have a material adverse effect on our business, prospects, results of operations and financial condition.

In December 2021, the United States adopted the Uyghur Forced Labor Prevention Act ("UFLPA") which creates a rebuttable presumption that any goods, wares, articles, and merchandise mined, produced, or manufactured in whole or in part in the Xinjiang Uyghur Administrative Region of China or that are produced by certain entities are prohibited from importation into the United States and are not entitled to entry. These import restrictions came into effect on June 21, 2022. While we are not presently aware of any direct impacts these restrictions will have on its supply chain, the UFLPA may materially and negatively impact our ability to import the goods and products we rely on to manufacture our products and operate our business. The UFLPA may further impact our supply chain and costs of goods as it may restrict the available supply of goods and products eligible for importation into the United States, including among other things, electronics assemblies, extractives (including coal, copper, hydrocarbons, oil, uranium, and zinc), textiles and fabrics (in particular, cotton) and renewable energy products (including polysilicon, ingots, wafers, crystalline silicon solar cells, and crystalline silicon solar photovoltaic modules). The full potential impact to us of the UFLPA remains uncertain and could have an adverse effect on our business and results of operations.

In 2022, in response to actions taken by Russia against Ukraine, the United States and other countries around the world undertook rapidly evolving and escalating campaigns targeting Russia and Belarus, and Russian and Belarussian entities and persons, with significant new economic sanctions designations and embargoes, financial restrictions, trade controls and other government restrictions.

Although we are not aware of any company-related operations or activities in these jurisdictions, these economic sanctions and other laws and regulations could disrupt our supply chains, impair our ability to compete in current or future markets, or otherwise subject us to potential liability. While we have implemented certain procedures to facilitate compliance with applicable laws and regulations in connection with the growing sanctions and trade control programs around the globe related to Russia and Belarus, we cannot be assured that these procedures are always effective or that we, or third parties, many of whom we do not control, have complied with all laws or regulations in this regard. Failure by our employees, representatives, contractors, agents, intermediaries, or other third parties to comply with applicable laws and regulations could also have negative consequences for us, including reputational harm, government investigations, loss of export privileges, and penalties or fines. These economic sanctions and other restrictions continue to evolve, and the long-term potential impact on our operations and business is still unclear.

In addition, the United States enacted federal regulations that significantly constrain trade relations with Russia and Belarus. As a result of this and executive action increasing import duty rates on certain Russia-origin products, imports of merchandise that is of Russian- or Belarussian-origin are subject to potentially higher import duty rates. To the extent such merchandise is found in our cross-border supply chains and subject to higher duties, the suspension of normal trade relations with Russian and Belarus could increase our input costs, which could have adverse impacts on our business and financial condition.

A failure to properly comply with foreign trade zone laws and regulations could increase the cost of our duties and tariffs.

We have established a foreign trade zone with respect to certain of our facilities in Casa Grande, Arizona, through qualification with U.S. Customs and Border Protection. Materials received in a foreign trade zone are not subject to certain U.S. duties or tariffs until the material enters U.S. commerce. We expect to benefit from the adoption of a foreign trade zone by reduced duties, deferral of certain duties and tariffs, and reduced processing fees, which we expect to help us realize a reduction in duty and tariff costs. However, the operation of our foreign trade zone requires compliance with applicable regulations, including with respect to the physical security of the foreign trade zone, and continued support of U.S. Customs and Border Protection with respect to the foreign trade zone program. If we are unable to maintain the qualification of our foreign trade zone, or if foreign trade zones are limited or unavailable to us in the future, our duty and tariff costs could increase, which could have an adverse effect on our business and results of operations.

Risks Related to Intellectual Property

We may fail to adequately obtain, maintain, enforce, defend and protect our intellectual property and may not be able to prevent third parties from unauthorized use of our intellectual property and proprietary technology. If we are unsuccessful in any of the foregoing, our competitive position could be harmed and we could be required to incur significant expenses to enforce our rights.

Our ability to compete effectively is dependent in part upon our ability to obtain, maintain, enforce, defend and protect our intellectual property and proprietary technology. We may not be able to prevent third parties from unauthorized use of our intellectual property and proprietary technology, which could harm our business and competitive position. We establish and protect our intellectual property and proprietary technology through a combination of licensing agreements, third-party nondisclosure and confidentiality agreements and other contractual rights, as well as through patent, trademark, copyright and trade secret laws in the United States and other jurisdictions. Monitoring unauthorized use of our intellectual property is costly and challenging, and the steps we have taken or will take to prevent infringement, misappropriation and other violations may not be successful. Despite our efforts to obtain and protect intellectual property rights, there can be no assurance that these protections will be available in all cases or will be adequate to prevent our competitors or other third parties from copying, reverse engineering or otherwise obtaining and using our technology or products or seeking court declarations that they do not infringe, misappropriate or otherwise violate our intellectual property. Failure to adequately obtain, maintain, enforce, defend and protect our intellectual property could result in our competitors offering identical or similar products, potentially resulting in the loss of our competitive advantage and a decrease in our revenue which would adversely affect our business, prospects, financial condition and results of operations.

The measures we take to obtain, maintain, protect, defend and enforce our intellectual property, including preventing unauthorized use by third parties, may not be effective for various reasons, including the following:

- any trademark or patent applications we file may not result in the issuance of trademarks or patents;
- we may not be the first inventor of the subject matter to which we have filed a particular patent application, and we may not be the first party to file such a patent application;
- the claims under any of our issued patents may not be broad enough to (i) protect our inventions and proprietary technology nor (ii) prevent third parties from creating, developing, or implementing technologies that are similar to ours or offer similar performance;
- our issued patents may be challenged or invalidated by our competitors or other third parties;
- patents have a finite term, and competitors and other third parties may offer identical or similar products after the expiration of our patents that cover such products;
- our employees, contractors or business partners may breach their confidentiality, non-disclosure and non-use obligations;
- competitors and other third parties may independently develop technologies that are the same or similar to ours;
- the intellectual property rights of others could also bar us from licensing and exploiting any patents that issue from our pending applications;
- the costs associated with enforcing patents or other intellectual property rights, or confidentiality and invention assignment agreements may make enforcement impracticable; and
- competitors and other third parties may circumvent or otherwise design around our patents or other intellectual property.

Patent, trademark, copyright and trade secret laws vary significantly throughout the world. The laws of some foreign countries, including countries in which our products are sold, may not be as protective of intellectual property rights as those in the United States, and mechanisms for obtaining and enforcing intellectual property rights may be inadequate. Therefore, our intellectual property may not be as strong or as easily obtained or enforced outside of the United States. Further, policing the unauthorized use of our intellectual property in foreign jurisdictions may be difficult. In addition, third parties may seek to challenge, invalidate or circumvent our patents, trademarks, copyrights, trade secrets or other intellectual property, or applications for any of the foregoing, which could permit our competitors or other third parties to develop and commercialize products and technologies that are the same or similar to ours.

While we have registered and applied for trademarks in an effort to protect our brand and goodwill with customers, competitors or other third parties have in the past and may in the future oppose our trademark applications or otherwise challenge our use of the trademarks and other brand names in which we have invested. Such oppositions and challenges can be expensive and may adversely affect our ability to maintain the goodwill gained in connection with a particular trademark. In addition, we may lose our trademark rights if we are unable to submit specimens of use by the applicable deadline to perfect such trademark rights. For example, in June 2024, we reached an agreement with Gravity, Inc. to settle a claim before the USPTO that opposed and requested cancellation of our trademark application and registration for the use of "Gravity."

It is our policy to enter into confidentiality and invention assignment agreements with our employees and contractors that have developed material intellectual property for us, but these agreements may not be self-executing and may not otherwise adequately protect our intellectual property, particularly with respect to conflicts of ownership relating to work product generated by the employees and contractors. Furthermore, we cannot be certain that we have entered into these agreements with every such employee and contractor, that these agreements will not be breached or that third parties will not gain access to our trade secrets, know-how or other proprietary technology. Third parties may also independently develop the same or substantially similar proprietary technology. Monitoring unauthorized use of our intellectual property is difficult and costly, as are the steps we have taken or will take to prevent misappropriation.

We have licensed and plan to further license patents and other intellectual property from third parties, including, but not limited to, suppliers and service providers, and we may face claims that our use of this in-licensed intellectual property infringes, misappropriates or otherwise violates the intellectual property rights of third parties. In such cases, we will seek indemnification from our licensors. However, our rights to indemnification may be unavailable or insufficient to cover our costs and losses. Furthermore, disputes may arise with our licensors regarding the intellectual property subject to, and any of our rights and obligations under, any license or other commercial agreement. The resolution of such disputes could narrow what we believe to be the scope of our rights to the relevant intellectual property or increase what we believe to be our financial or other obligations under the relevant agreement. If we are unable to renew our key license or other intellectual property-related agreements on acceptable terms, or our current and future licensors conclude that we have materially breached our obligations under our license agreements and terminate such license agreements, we may lose the legal right to use some of the intellectual property we employ to manufacture certain products or only be able to maintain such right at a substantially higher cost. In some circumstances, we may not have the right to control the maintenance, prosecution, preparation, filing, enforcement, defense or litigation of patents and patent applications that we license from third parties and are reliant on our licensors to do so. We cannot be certain that activities such as patent maintenance and prosecution by our licensors have been or will be conducted consistent with our best interests or in compliance with applicable laws and regulations, or will result in valid and enforceable patents and other intellectual property rights. It is possible that our licensors' infringement proceedings or defense activities may be less vigorous than had we conducted them ourselves or may not be conducted in accordance with our best interests.

To prevent unauthorized use of our intellectual property, it may be necessary to prosecute actions for infringement, misappropriation or other violation of our intellectual property against third parties. Any such action may be time-consuming and could result in significant costs and diversion of our resources and management's attention, and there can be no assurance that we will be successful in any such action. Furthermore, many of our current and potential competitors have the ability to dedicate substantially greater resources to enforce their intellectual property rights than we do. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing, misappropriating or otherwise violating our intellectual property. Any of the foregoing could adversely affect our business, prospects, financial condition and results of operations.

We may be sued by third parties for alleged infringement, misappropriation or other violation of their intellectual property, which could be time-consuming and costly and result in significant legal liability.

There are considerable issued patents, pending patent applications, and other intellectual property development, ownership, and activity in our industry. Companies, organizations and individuals, including our competitors, may hold or obtain patents, trademarks or other intellectual property that would prevent, limit or interfere with our ability to make, use, develop, sell, lease, market or otherwise exploit our vehicles, components or other technology, which could make it more difficult for us to operate our business. Our success depends in part on not infringing, misappropriating or otherwise violating the intellectual property of third parties. From time-to-time, we may receive communications from third parties, including our competitors, alleging that we are infringing, misappropriating or otherwise violating their intellectual property or otherwise asserting their rights and urging us to take licenses, and we may be found to be infringing, misappropriating or otherwise violating such rights. There can be no assurance that we can adequately mitigate the risk of potential suits or other legal demands by our competitors or other third parties. Patent and other types of intellectual property litigation can involve complex factual and legal questions, and their outcome is uncertain. Even if we believe such claims are without merit, a court of competent jurisdiction could hold that such third-party intellectual property is valid, enforceable and infringed, which could adversely affect our ability to commercialize our products or technologies. Accordingly, we may consider entering into license agreements with respect to such rights, although no assurance can be given that such licenses can be obtained on acceptable terms or at all or that litigation will not occur, and such licenses and associated litigation could significantly increase our operating expenses. We may be unaware of the intellectual property and other proprietary rights of third parties that may cover some or all of our products or technologies. Any claims or litigation could cause us to incur significant expenses and, if successfully asserted against it, could have adverse effects on our business, including requiring that it:

- pay substantial damages, including treble damages for willful infringement, or ongoing royalty payments;
- cease developing, selling, leasing, using or incorporating certain components into vehicles or offering goods or services that incorporate or use the asserted intellectual property;
- seek a license from the owner of the asserted intellectual property, which license may not be available on reasonable terms, or at all;
- comply with other unfavorable terms; or
- establish and maintain alternative branding for our products and services.

If any of our customers or indemnitees are alleged to have infringed, misappropriated or otherwise violated any third-party intellectual property, we would in general be required to defend or settle the litigation on their behalf. In addition, if we are unable to obtain licenses or modify our products or technologies to make them non-infringing, we might have to refund a portion of license fees paid to us and terminate those agreements, which could further exhaust our resources. In addition, we may pay substantial settlement amounts or royalties on future product sales to resolve claims or litigation, whether or not legitimately or successfully asserted against us. Even if we were to prevail in the actual or potential claims or litigation against us, any claim or litigation regarding our intellectual property could be costly and time-consuming and divert the attention and resources of our management and key employees from our business operations. Such disputes, with or without merit, could also cause potential customers to refrain from purchasing our products or otherwise cause us reputational harm and negative publicity.

Furthermore, many of our employees were previously employed by other automotive companies or by suppliers to automotive companies, or related industries. We may be subject to claims that we or our employees have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of these employees' former employers. Litigation may be necessary to defend against these claims. If we fail in defending such claims, in addition to paying monetary damages, we may be enjoined from using certain technology, product, services, or knowledge or, we may lose valuable intellectual property or employees. A loss of key employees, our trade secrets, or our other work product could hamper or prevent our ability to commercialize our products, which could severely harm our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and demand on management resources. Any of the foregoing could materially adversely affect our business, prospects, results of operations and financial condition.

Some of our products contain open-source software, which may pose particular risks to our proprietary software, products and services in a manner that could harm our business.

We use open-source software, available from third parties, in our products and anticipate using open-source software in the future. Some open-source software licenses require those who distribute open-source software as part of their own software product to publicly disclose all or part of the source code to such software product or to make available any derivative works of the open-source code on unfavorable terms or at no cost, and we may be subject to such terms. The terms of many open-source licenses to which we are subject have not been interpreted by U.S. or foreign courts, and there is a risk that open-source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide or distribute our products or services. Any actual or claimed requirement to disclose our proprietary source code or pay damages for breach of contract could harm our business and could help third parties, including our competitors, develop products and services that are similar to or better than ours. While we monitor our as well as our third-party software suppliers' use of open-source software and compliance with open-source licenses and try to ensure that none is used in a manner that would require us to disclose our proprietary source code or that would otherwise breach the terms of an open-source license, such use could inadvertently occur or be claimed to have occurred. Additionally, we could face claims from third parties claiming ownership of, or demanding release of, the open-source software or derivative works that we developed using such software, which could include our proprietary source code, or otherwise seeking to enforce, or alleging non-compliance with the terms of the applicable open-source license. These claims could result in litigation and could require us to make our proprietary source code freely available, purchase a costly license or cease offering the implicated products or services unless and until we can re-engineer them to avoid infringement, which may be a costly and time-consuming process, and we may not be able to complete the re-engineering process successfully.

Additionally, the use of certain open-source software can lead to greater risks than use of third-party commercial software, as open-source licensors generally do not provide warranties or controls on the origin of software or other contractual protections regarding infringement claims or the quality of the code, including with respect to security vulnerabilities. Moreover, some open-source projects have known security and other vulnerabilities and architectural instabilities, or are otherwise subject to security attacks due to their wide availability, and are provided on an "as-is" basis. There is typically no support available for open-source software, and we cannot ensure that the authors of such open-source software will implement or push updates to address security risks or will not abandon further development and maintenance. Many of the risks associated with the use of open-source software, such as the lack of warranties or assurances of title or performance, cannot be eliminated, and could, if not properly addressed, negatively affect our business. Any of these risks could be difficult to eliminate or manage and, if not addressed, could have a material adverse effect on our business, prospects, results of operations and financial condition.

Risks Related to Financing and Strategic Transactions

We will require additional capital to support business growth, and this capital might not be available on commercially reasonable terms, or at all.

We have funded our operations since inception primarily through equity and debt financings. For example, we issued $2.0 billion of 1.25% convertible senior notes due 2026 in December 2021 (the "2026 Notes"), entered into a credit agreement that provides for a $1.0 billion senior secured asset-based revolving credit facility in June 2022 (the "ABL Credit Facility"), completed an "at-the-market" equity offering program for aggregate net proceeds of $594.3 million after deducting commissions and other issuance costs and consummated a private placement of common stock to Ayar for aggregate proceeds of $915.0 million in December 2022. In addition, we have, through our subsidiary, entered into a loan agreement with the Saudi Industrial Development Fund for an aggregate principal amount of up to SAR 5.19 billion in February 2022 (the "SIDF Loan Agreement"), entered into a revolving credit facility agreement with Gulf International Bank for an aggregate principal amount of SAR 1 billion in April 2022, which was amended in March 2023 (as amended, the "Amended GIB Facility Agreement"), and also entered into $750 million unsecured delayed draw term loan credit facility (the "DDTL Credit Facility") in August 2024. In June 2023, we completed an underwritten public offering of common stock for aggregate net proceeds of $1.2 billion and consummated a private placement to Ayar for aggregate net proceeds of $1.8 billion, after deducting issuance costs. We also consummated private placements of Redeemable Convertible Preferred Stock to Ayar for aggregate gross proceeds of $1.0 billion in March 2024 and $750 million in August 2024. We anticipate that we will continue to need to raise additional funds through equity, equity-linked or debt financings. Our business is capital-intensive, and we expect the costs and expenses associated with our planned operations will continue to increase in the near term. We do not expect to achieve positive cash flow from operations for several years, if at all. In addition, we have and we expect to settle tax withholding obligations in connection with vesting of the restricted stock units granted to certain employees through "net settlement," i.e., by remitting the Company's cash to satisfy the tax withholding obligation and simultaneously withholding a number of the vested shares on each vesting date with a value equal to that remitted cash. The amount of the tax withholding due on each vesting date will be based on the fair value of our common stock on such vesting date. Depending on the fair value of our common stock and the number of restricted stock units vesting on any applicable vesting date, such net settlement could require us to expend substantial funds to satisfy tax withholding.

Our plan to continue the commercial production of our vehicles and grow our business is dependent upon the timely availability of funds and further investment in design, engineering, component procurement, testing, and the build-out of manufacturing capabilities. For example, we have entered into agreements with Panasonic Energy Co., Ltd. and certain of its affiliates to purchase an aggregate of approximately $5 billion of lithium-ion battery cells, subject to certain conditions and adjustments, beginning in 2023 through 2031. In addition, the fact that we have a limited operating history means that we have limited historical data on the demand for our vehicles. As a result, our future capital requirements are uncertain, and actual capital requirements may be greater than what we currently anticipate.

If we raise additional funds through further issuances of equity or equity-linked securities, our stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing in the future could involve additional restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions.

We may not be able to obtain additional financing on terms favorable to us, if at all. Our ability to obtain such financing could be adversely affected by a number of factors, including general conditions in the global economy and in the global financial markets, including recent volatility and disruptions in the capital and credit markets, including as a result of inflation, government closures of banks and liquidity concerns at other financial institutions, interest rate changes, global conflicts or other geopolitical events, or investor acceptance of our business model. These factors may make the timing, amount, terms and conditions of such financing unattractive or unavailable to us. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, we will have to significantly reduce our spending, delay or cancel our planned activities or substantially change our corporate structure, and we might not have sufficient resources to conduct or support our business as projected, which would have a material adverse effect on our business, prospects, results of operations and financial condition.

We may not be able to realize the anticipated benefits of our agreement with Aston Martin.

In June 2023, we entered into an agreement (the "Implementation Agreement") with Aston Martin Lagonda Global Holdings plc (together with its subsidiaries, "Aston Martin") under which we and Aston Martin have established a long-term strategic technology arrangement. On November 6, 2023, pursuant to the terms of the Implementation Agreement, integration and supply arrangements became effective, under which we will provide Aston Martin access to our powertrain, battery system, and software technologies, work with Aston Martin to integrate our powertrain and battery components with Aston Martin's battery electric vehicle chassis, and supply powertrain and battery components to Aston Martin (collectively, the "Strategic Technology Arrangement"). See Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations for more information.

We may not be able to realize the anticipated benefits of the Strategic Technology Arrangement if we experience delays, fail to successfully integrate our powertrain and battery components with Aston Martin's vehicles, or fail to enter into a long form supply agreement on terms acceptable to us, or if we experience delays or fail to deliver the components ordered by Aston Martin. Any such delay or failure for any reason, including for reasons beyond our control, may have an adverse effect on our brand and reputation, and our business, prospects, results of operations and financial condition.

The accounting method for reflecting the 2026 Notes on our consolidated balance sheet, accruing interest expense for the 2026 Notes and reflecting the underlying shares of our common stock in our reported diluted earnings per share may adversely affect our reported earnings and financial condition.

In August 2020, the Financial Accounting Standards Board published an Accounting Standards Update, which we refer to as ASU 2020-06, which simplifies certain of the accounting standards that apply to convertible debt such as the 2026 Notes. ASU 2020-06 will be effective for SEC-reporting entities for fiscal years beginning after December 15, 2021 (or, in the case of smaller reporting companies, December 15, 2023), including interim periods within those fiscal years. However, early adoption is permitted in certain circumstances for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. We adopted ASU 2020-06 for the year ended December 31, 2021, including interim periods within that fiscal year.

In accordance with ASU 2020-06, we accounted for the issuance of the 2026 Notes as a liability on our balance sheets, with the initial carrying amount equal to the principal amount of the 2026 Notes, net of issuance costs. The issuance costs will be treated as a debt discount for accounting purposes, which will be amortized into interest expense over the term of the 2026 Notes. As a result of this amortization, the interest expense that we expect to recognize for the 2026 Notes for accounting purposes will be greater than the cash interest payments we will pay on the 2026 Notes, which will result in higher reported loss.

In addition, the shares underlying the 2026 Notes will be reflected in our diluted earnings per share using the "if converted" method, in accordance with ASU 2020-06. Under that method, diluted earnings per share would generally be calculated assuming that all the 2026 Notes were converted solely into shares of common stock at the beginning of the reporting period, unless the result would be anti-dilutive. The application of the if-converted method may reduce our reported diluted earnings per share, and accounting standards may change in the future in a manner that may adversely affect our diluted earnings per share.

Furthermore, if any of the conditions to the convertibility of the 2026 Notes is satisfied, then we may be required under applicable accounting standards to reclassify the liability carrying value of the 2026 Notes as a current, rather than a long-term liability. This reclassification could be required even if no noteholders convert their 2026 Notes and could materially reduce our reported working capital.

Servicing our current and future debt and potential payment obligations in certain circumstances under the terms of our Redeemable Convertible Preferred Stock may require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our indebtedness or satisfy our payment obligations. Our payment obligations under such indebtedness and, if applicable, our Redeemable Convertible Preferred Stock may limit the funds available to us, and the terms of our debt agreements may restrict our flexibility in operating our business or otherwise adversely affect our results of operations.

In December 2021, we issued $2.0 billion principal amount of 2026 Notes and have entered into several credit facilities in 2022. See Note 6 "Debt" to the condensed consolidated financial statements included elsewhere in this Quarterly Report for further information on our outstanding debt obligations. Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness from time-to-time depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt, our obligations under the Redeemable Convertible Preferred Stock and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or preferred stock or obtaining additional debt financing or equity capital on terms that may be onerous or highly dilutive. Our ability to refinance any current or future indebtedness or preferred stock will depend on the capital markets and our financial condition at such time. Our obligations to the holders of our Redeemable Convertible Preferred Stock could also limit our ability to obtain additional financing, which could have an adverse effect on our financial condition. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations. In addition, our existing debt agreements contain, and any of our future debt agreements may contain restrictive covenants that may prohibit us from adopting any of these alternatives. Our failure to comply with these covenants could result in an event of default which, if not cured or waived, could result in the acceleration of our debt.

In addition, our indebtedness and our obligations under our Redeemable Convertible Preferred Stock, combined with our other existing and future financial obligations and contractual commitments, could have other important consequences. For example, it could:

- make us more vulnerable to adverse changes in general U.S. and worldwide economic, industry and competitive conditions and adverse changes in government regulation;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry;
- place us at a disadvantage compared to our competitors who have less debt or other obligations;
- limit our ability to borrow or raise additional amounts to fund acquisitions, for working capital and for other general corporate purposes; and
- make an acquisition of our company less attractive or more difficult.

In addition, under the SIDF Loan Agreement, the Amended GIB Facility Agreement, the ABL Credit Facility, and the DDTL Credit Facility, we are subject to customary affirmative and negative covenants regarding our business and operations, including limitations on our ability to, among other things, pay dividends, incur debt, create liens and encumbrances, redeem or repurchase stock, dispose of assets (including dispositions of material intellectual property), consummate acquisitions or other investments, prepay certain debt, engage in transactions with affiliates, engage in sale and leaseback transactions, consummate mergers and other fundamental changes, enter in to restrictive agreements or modify their organizational documents. Any debt financing secured by us in the future could also involve such covenants as well as additional restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital to pursue business opportunities, including potential acquisitions or divestitures. Any default under our debt arrangements could require that we repay our indebtedness immediately, and may limit our ability to obtain additional financing, which in turn may have an adverse effect on our cash flows and liquidity.

Further, shares of our common stock are subordinate in right of payment to all of our current and future debt and Redeemable Convertible Preferred Stock. We cannot assure that there would be any remaining funds for any distribution to our stockholders after the payment of all of our debt or, in the case of our Redeemable Convertible Preferred Stock, payment of all of our obligations upon liquidation or, in certain limited circumstances where cash settlement is required, our obligations upon mandatory conversion, optional redemption or a fundamental change. See "*—We may be unable to raise the funds necessary to pay the cash amounts due upon mandatory conversion, redeem our Redeemable Convertible Preferred Stock or repurchase the Redeemable Convertible Preferred Stock upon a fundamental change*."

Any of these factors could harm our business, results of operations and financial condition. In addition, if we incur additional indebtedness or issue additional Redeemable Convertible Preferred Stock, the risks related to our business and our ability to service or repay our indebtedness would increase.

We have incurred and may still incur substantially more debt.

We and our subsidiaries have incurred and may be able to incur substantial additional debt in the future, subject to the restrictions contained in our debt instruments, some of which may be secured debt. The ABL Credit Facility and Certificate of Designations imposes certain restrictions on our ability to incur additional debt, but we are not restricted under the terms of the indenture governing our 2026 Notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that are not limited by the terms of such indenture governing our 2026 Notes that could have the effect of diminishing our ability to make payments on our 2026 Notes when due.

The conditional conversion feature of the 2026 Notes, if triggered, may adversely affect our financial condition and operating results.

From and after September 15, 2026, noteholders may convert their 2026 Notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. In the event the conditional conversion feature of the 2026 Notes is triggered, holders of such 2026 Notes will be entitled under the indenture governing such 2026 Notes to convert their 2026 Notes at any time during specified periods at their option. If one or more holders of 2026 Notes elect to convert such 2026 Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock, we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, in certain circumstances, such as conversion by holders or redemption, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the 2026 Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

We may be unable to raise the funds necessary to repurchase the 2026 Notes for cash following a fundamental change, or to pay any cash amounts due upon conversion, and our other indebtedness may limit our ability to repurchase the 2026 Notes or pay cash upon their conversion.

Noteholders may, subject to a limited exception, require us to repurchase their 2026 Notes following a fundamental change at a cash repurchase price generally equal to the principal amount of the 2026 Notes to be repurchased, plus accrued and unpaid interest, if any. In addition, upon conversion, we will satisfy part or all of our conversion obligation in cash unless we elect to settle conversions solely in shares of our common stock. We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the 2026 Notes or pay any cash amounts due upon conversion. In addition, applicable law, regulatory authorities and the agreements governing our other indebtedness, such as the covenants in the ABL Credit Facility and Certificate of Designations, may restrict our ability to repurchase the 2026 Notes or pay any cash amounts due upon conversion. Our failure to repurchase 2026 Notes or pay any cash amounts due upon conversion when required will constitute a default under the indenture. A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our other indebtedness, which may result in that other indebtedness becoming immediately payable in full. We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the 2026 Notes.

We may be unable to raise the funds necessary should any cash amounts become payable upon mandatory conversion or in connection with a fundamental change or optional redemption in relation to our Redeemable Convertible Preferred Stock.

In March 2024, we issued 100,000 shares of our Series A Redeemable Convertible Preferred Stock and in August 2024, we entered into a subscription agreement for the issuance of 75,000 shares of our Series B Redeemable Convertible Preferred Stock. The holders of our Redeemable Convertible Preferred Stock have the right to receive payment in cash upon a mandatory conversion or redemption at our option, or upon the occurrence of a fundamental change (as defined in the Certificate of Designations), if certain liquidity conditions are not satisfied. In general, we are entitled to exercise a mandatory conversion right regarding the Redeemable Convertible Preferred Stock to convert into shares of common stock after the third anniversary of the date of original issuance if the daily VWAP (as defined in the Certificate of Designations) has been at least 200% of the Conversion Price (as defined above) for at least twenty (20) trading days (whether or not consecutive) during any thirty (30) consecutive trading day period (including the last day of such period), and we are entitled to redeem all or any portion of the Redeemable Convertible Preferred Stock on or after the fifth anniversary of the date of original issuance at a redemption price specified in the Certificate of Designations.

The holders of our Redeemable Convertible Preferred Stock also have the right to receive certain Minimum Consideration (as defined below) upon a mandatory conversion, optional redemption, fundamental change or liquidation event. While we largely can control the occurrence of such events, if we are required to cash settle any of these obligations as a result of the liquidity conditions not being met, the amount of such cash settlement is subject to factors beyond our control and we cannot presently predict the amount of such cash settlement, which increases over time is not subject to any cap or limitation. A requirement to cash settle any obligations in relation to the Redeemable Convertible Preferred Stock may have a material adverse effect on our business, prospects, results of operations and financial condition. See "*—The settlement of our obligations upon conversion, optional redemption or required repurchase of our Redeemable Convertible Preferred Stock is expected to dilute the ownership of common stockholders and the number of shares of common stock issuable upon mandatory conversion, optional redemption or fundamental change is presently indeterminable*."

The settlement of our obligations upon conversion, optional redemption or required repurchase of our Series A or Series B Redeemable Convertible Preferred Stock is expected to dilute the ownership of common stockholders and the number of shares of common stock issuable upon mandatory conversion, optional redemption or fundamental change is presently indeterminable.

The Series A Redeemable Convertible Preferred Stock and the Series B Redeemable Convertible Preferred Stock are convertible into our common stock at an initial conversion price of $3.5952 per share and $4.3799 per share, respectively (the "Conversion Price"). The Conversion Price is subject to customary anti-dilution adjustments, including in the event of any stock split, stock dividend, recapitalization or similar event. Dividends on the Redeemable Convertible Preferred Stock are payable at an initial rate of 9% per annum in the form of dividends compounding on a quarterly basis. Such compounded dividends are not subject to any cap or sunset provisions and can accrue into perpetuity. At issuance, the Series A Redeemable Convertible Preferred Stock was initially convertible into 278.15 million shares of common stock, representing approximately 12% of our then issued and outstanding common stock. Upon entry into the Series B Subscription Agreement, the Series B Redeemable Convertible Preferred Stock is expected to be initially convertible into 171.24 million shares of common stock, representing approximately 7% of our then issued and outstanding common stock. Holders of the Redeemable Convertible Preferred Stock may convert their shares (a) at any time that the closing price per share of our common stock on the trading day immediately preceding the date of the relevant notice of conversion is at least $5.50 (subject to certain adjustments), unless we otherwise consent to such conversion in our sole discretion, or (b) in all events during certain specified periods relating to a fundamental change or optional redemption by us. The number of shares of common stock issuable upon conversion (other than a mandatory conversion) in the future, subject to certain exceptions, is determined by dividing (i) the applicable Accrued Value (as defined in the Certificate of Designations) as of the conversion date by (ii) the applicable Conversion Price in effect as of such conversion date. As such, the number of shares of common stock issuable upon conversion may continue to increase in perpetuity as each of the compounded dividends increases the Accrued Value. Meeting these conversion obligations could impact our financial condition, liquidity, ability to obtain additional financing, or ability to allocate resources to addressing other aspects of our business including addressing the interests of the holders of our common stock. Except in the case of a mandatory conversion for which we elect (or are required) to satisfy our conversion obligation in cash (as further described under "*—We may be unable to raise the funds necessary should any cash amounts become payable upon mandatory conversion or in connection with a fundamental change in relation to our Redeemable Convertible Preferred Stock, or to optionally redeem our Redeemable Convertible Preferred Stock*"), any conversion of the Redeemable Convertible Preferred Stock will also increase the number of shares of our common stock available for public trading, which could adversely affect prevailing market prices of our common stock.

In addition, the holders of the Redeemable Convertible Preferred Stock may also be entitled to receive "Minimum Consideration" in certain situations in the case the Company exercises its rights in respect of a mandatory conversion or optional redemption or in the case of a fundamental change (as defined in the Certificate of Designations). Such Minimum Consideration is determined by multiplying the Accrued Value by the relevant percentage set forth in the Certificate of Designations based on the number of months that have elapsed since the initial issuance of the Redeemable Convertible Preferred Stock. In the event that the Minimum Consideration exceeds the Accrued Value, we would be required to pay or deliver, as the case may be, consideration having a value in excess of Accrued Value in order to redeem or refinance the Redeemable Convertible Preferred Stock. If an event occurs that requires us to deliver Minimum Consideration, the number of shares of common stock issuable to satisfy such obligation is presently indeterminable and, in particular if our stock price is substantially below the initial conversion price, meeting such common stock issuance obligation may result in significant dilution to the common stockholders which could have a material adverse effect on the market prices of our common stock and on our financial condition, liquidity, and ability to obtain additional financing. In addition, the holders of the Redeemable Convertible Preferred Stock may also be entitled to receive Minimum Consideration in the event of our liquidation, dissolution or winding up, which may reduce or eliminate the value of any remaining assets for distribution to common stockholders in such an event.

The holders of our Redeemable Convertible Preferred Stock are entitled to vote on an as-converted to common stock basis and have rights to approve certain actions, which reduces the relative voting power of the holders of our common stock.

The holders of our Redeemable Convertible Preferred Stock are entitled to vote, on an as-converted basis together with holders of our common stock, the number of votes (subject to a voting cap in accordance with Nasdaq listing rules) equal to the number of whole shares of common stock into which the shares of the Redeemable Convertible Preferred Stock held by such holder are convertible on the record date for determining stockholders entitled to vote on such matter, which reduces the relative voting power of our common stockholders.

In addition, as long as at least 10% of the aggregate number of shares of the Series A and Series B Redeemable Convertible Preferred Stock originally issued remain outstanding, respectively, and subject to certain other conditions, holders of such Redeemable Convertible Preferred Stock are entitled to a separate class vote with respect to, among other things, amendments to our organizational documents that have an adverse effect on the respective Redeemable Convertible Preferred Stock, authorizations or issuances by us of capital stock that ranks senior or equal to the respective Redeemable Convertible Preferred Stock with respect to dividends or distributions on liquidation or the terms of which provide for cash dividends (other than the common stock), winding-up or dissolution, and decreases in the number of authorized shares of the Redeemable Convertible Preferred Stock.

As a result of these consent and voting rights of the Redeemable Convertible Preferred Stock, holders of the Redeemable Convertible Preferred Stock have significant power to influence the outcome over any matter submitted for the vote of the holders of our common stock and to influence certain matters affecting our governance and capitalization.

Our Redeemable Convertible Preferred Stock has rights, preferences and privileges that are not held by, and are senior to the rights of, our common stockholders.

The Redeemable Convertible Preferred Stock ranks senior to the common stock with respect to dividends and distributions of assets upon the Company's liquidation, dissolution or winding up. In addition, the Redeemable Convertible Preferred Stock creates substantial obligations upon us in the case of a conversion, mandatory conversion, optional redemption, fundamental change or liquidation event that may have an adverse effect upon our financial condition and the interests of the holders of our common stock. The Redeemable Convertible Preferred Stock ranks senior to the common stock with respect to dividends substantially limits our ability to issue parity securities, junior securities or cash dividend securities, and may in some circumstances limit our ability to pay dividends on our common stock. Furthermore, the Certificate of Designations also provides that as long as Ayar owns at least 50% of the Redeemable Convertible Preferred Stock, we will comply with certain debt incurrence covenants in our ABL Credit Facility.

Holders of the Redeemable Convertible Preferred Stock also have rights to a guaranteed Minimum Consideration in the event that the Company exercises its right to mandatory conversion or optional redemption of the Redeemable Convertible Preferred Stock, and in the event of a fundamental change or liquidation event. See "*—The settlement of our obligations upon conversion, optional redemption or required repurchase of our Redeemable Convertible Preferred Stock is expected to dilute the ownership of common stockholders and the number of shares of common stock issuable upon mandatory conversion, optional redemption or fundamental change is presently indeterminable*." In addition, holders of our Redeemable Convertible Preferred Stock have the right to receive payment in cash upon a mandatory conversion, optional redemption or a fundamental change if certain liquidity conditions are not satisfied. See "*—Servicing our current and future debt and potential payment obligations in certain circumstances under our Redeemable Convertible Preferred Stock may require a significant amount of cash, and we may not have sufficient cash flow from our business to pay our indebtedness. Our payment obligations under such indebtedness and, if applicable, our Redeemable Convertible Preferred Stock may limit the funds available to us, and the terms of our debt agreements may restrict our flexibility in operating our business or otherwise adversely affect our results of operations*" and "*—We may be unable to raise the funds necessary should any cash amounts become payable upon mandatory conversion or in connection with a fundamental change or optional redemption in relation to our Redeemable Convertible Preferred Stock*."

We may be unable to draw down the full amounts available under the ABL Credit Facility, the SIDF Loan Agreement and the Amended GIB Facility Agreement.

The ABL Credit Facility has an initial aggregate principal commitment amount of up to $1.0 billion. However, availability of the committed amounts under the ABL Credit Facility is subject to the value of the eligible borrowing base and certain debt compliance covenants in the Certificate of Designations. We are currently able to draw down only a portion of the full amount available under the ABL Credit Facility. In addition, there is no guarantee that we will have sufficient eligible borrowing base in the future to be able to draw down the full amount available under the ABL Credit Facility. In addition, amounts committed under the SIDF Loan Agreement and the Amended GIB Facility Agreement are only available for certain specific purposes and subject to conditions on drawdowns. Any inability to draw down the full amounts committed under these facilities, should the need arise, may have an adverse effect on our cash flows and liquidity.

We may not be able to identify adequate strategic relationship opportunities or form strategic relationships, in the future.

Strategic business relationships are and will continue to be an important factor in the growth and success of our business. From time-to-time, we explore opportunities to enter into strategic relationships, including partnerships with original equipment manufacturers. However, there are no assurances that we will be able to identify or secure suitable business relationship opportunities in the future or that we will be able to maintain such relationships. In addition, our competitors may capitalize on such opportunities before we do and we may not be able to offer similar benefits to other companies with which we would like to establish and maintain strategic relationships, which could impair our ability to establish such relationships. For example, we have partnered with third-party electric vehicle charging providers to provide our customers with access to charging infrastructure, and we will rely on ongoing access to such infrastructure to provide our customers with charging solutions. If third-party electric vehicle charging providers terminate their partnerships or otherwise fail to deliver the anticipated benefits of their partnerships, our ability to provide a satisfactory customer experience will be harmed. In addition, although we have agreed to join Tesla's Supercharger network, there may be delays in making changes to our vehicles or the network necessary for Lucid vehicles to charge at Tesla Superchargers. Our current and future alliances could subject us to a number of risks, including risks associated with sharing proprietary information, non-performance by the third party and increased expenses in establishing new strategic alliances, any of which may materially and adversely affect our business. We may have limited ability to monitor or control the actions of these third parties and, to the extent any of these strategic third parties suffer negative publicity or harm to their reputation from events relating to their business, we may also suffer negative publicity or harm to our reputation by virtue of our association with any such third party.

Moreover, identifying and executing on such opportunities could demand substantial management time and resources, and negotiating and financing relationships involves significant costs and uncertainties. If we are unable to successfully source and execute on strategic relationship opportunities in the future, our overall growth could be impaired, and our business, prospects and results of operations could be materially adversely affected.

We may acquire other businesses, which could require significant management attention, disrupt our business, dilute stockholder value and adversely affect our results of operations.

As part of our business strategy, we may make investments in complementary companies, solutions or technologies. We may not be able to find suitable acquisition candidates, and we may not be able to complete such acquisitions on favorable terms, if at all. In addition to possible stockholder approval, we may need approvals and licenses from relevant government authorities for the acquisitions and to comply with any applicable laws and regulations, which could result in increased delay and costs, and may disrupt our business strategy if we fail to do so. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals. In addition, if we are unsuccessful at integrating such acquisitions or developing the acquired technologies, the revenue and results of operations of the combined company could be adversely affected. Further, the integration of acquired businesses or assets typically requires significant time and resources, which could result in a diversion of resources from our existing business, which could have an adverse effect on our operations, and we may not be able to manage the process successfully. We may not successfully evaluate or utilize the acquired technology or personnel or accurately forecast the financial impact of an acquisition transaction, including accounting charges. We may have to pay cash, incur debt or issue equity securities to pay for any such acquisition, each of which could adversely affect our financial condition or the value of our common stock. The sale of equity or issuance of debt to finance any such acquisitions could result in dilution to our stockholders. The incurrence of indebtedness could result in increased fixed obligations and exposure to potential unknown liabilities of the acquired business and could also include covenants or other restrictions that could impede our ability to manage our operations.

Our financial results may vary significantly from period-to-period due to fluctuations in our production levels, operating costs, product demand and other factors.

We expect our period-to-period financial results to vary based on our production levels, operating costs and product demand, which we anticipate will fluctuate as we continue to design, develop and manufacture new vehicles, increase production capacity and establish or expand design, research and development, production, sales and service facilities. Our revenues from period-to-period may fluctuate as we identify and investigate areas of demand, adjust volumes and add new incentives or product derivatives based on market demand and margin opportunities, develop and introduce new vehicles or introduce existing vehicles to new markets for the first time. Our production levels also depend on our ability to obtain vehicle components from our suppliers, the effective operation of our manufacturing facilities, our ability to expand our production capacity, and our ability to timely deliver finished vehicles to customers. Lower production and sales volumes and an inability to fully utilize our purchase commitments with suppliers may result in increased costs and excess inventory as well as potential inventory write-offs. In addition, automotive manufacturers typically experience significant seasonality, with comparatively low sales in the first quarter and comparatively high sales in the fourth quarter, and we expect to experience similar seasonality as we scale commercial production and sale of the Lucid Air and future vehicles. Our period-to-period results of operations may also fluctuate because of other factors including labor availability and costs for hourly and management personnel; profitability of our vehicles in all of our markets, including price adjustments and/or incentives; changes in interest rates; impairment of long-lived assets; macroeconomic conditions, both nationally and locally; negative publicity relating to our vehicles; changes in consumer preferences and competitive conditions; or investment in expansion to new markets. As a result of these factors, we believe that quarter-to-quarter comparisons of our financial results, especially in the short term, may have limited utility as an indicator of future performance. Significant variation in our quarterly performance could significantly and adversely affect the trading price of our common stock.

Risks Related to Tax

Our ability to use net operating loss carryforwards and certain other tax attributes may be limited.

We have accumulated U.S. federal and state net operating loss ("NOL") carryforwards and research and development credits which may be available to offset and reduce future taxable income. While our U.S. federal NOL carryforwards arising in taxable years beginning after December 31, 2017, will not be subject to expiration, some of our U.S. federal and state NOL carryforwards from taxable years prior to 2018 will begin to expire in 2028. As of June 30, 2024, we also had U.S. federal research and development credit carryforwards which will begin to expire in 2036 and state research and development credit carryforwards with no expiration. As of June 30, 2024, we maintain a full valuation allowance for our net deferred tax assets.

Our U.S. federal and state NOL carryforwards and certain tax credits may be subject to significant limitations under Section 382 and Section 383 of the U.S. tax code, respectively, and similar provisions of state law. Under those sections of the U.S. tax code, if a corporation undergoes an "ownership change," the corporation's ability to use its pre-change NOL carryforwards and other pre-change attributes, such as research tax credits, to offset its post-change income or tax may be limited.

In general, an "ownership change" will occur if there is a cumulative change in our ownership by "5-percent shareholders" that exceeds 50 percentage points over a rolling three-year period. Similar rules may apply under state tax laws. We have completed a formal Section 382 study of our equity transactions through December 31, 2020. The study determined that we experienced an "ownership change" in 2016, and we will not be able to utilize $12 million of our U.S. federal NOL and $3 million of U.S. federal research and development tax credit carryforwards. Similar provisions of state law may also apply to limit our use of accumulated state tax attributes from the same period.

We have not yet completed an analysis of whether the business combination between the Company and Legacy Lucid also caused an "ownership change." In addition, future changes in our stock ownership may be outside of our control. If we undergo an ownership change, we may be prevented from fully utilizing the NOL carryforwards and tax credits existing at the time of the ownership change prior to their expiration. Future regulatory changes could also limit our ability to utilize NOL carryforwards and tax credits. To the extent we are not able to offset future taxable income with our NOL carryforwards and tax credits, our net income and cash flows may be adversely affected.

It is possible that we will not generate taxable income in time to use any of our NOL carryforwards and research and development credits before their expiration.

Unanticipated tax laws or any change in the application of existing tax laws to us or our customers or any change to our corporate structure may adversely impact our profitability and business.

We are subject to income and other taxes in the United States and a growing number of foreign jurisdictions. Existing domestic and foreign tax laws, statutes, rules, regulations, or ordinances could be interpreted, changed, modified, or applied adversely to us (possibly with retroactive effect), which could require us to change our transfer pricing policies and pay additional tax amounts, fines or penalties, surcharges, and interest charges for past amounts due, the amounts and timing of which are difficult to discern. Existing tax laws, statutes, rules, regulations, or ordinances could also be interpreted, changed, modified, or applied adversely to our customers (possibly with retroactive effect) and, if our customers are required to pay additional surcharges, it could adversely affect demand for our vehicles.

Furthermore, changes to federal, state, local, or international tax laws on income, sales, use, import/export, indirect, or other tax laws, statutes, rules, regulations, or ordinances on multinational corporations continue to be considered by the United States and other countries where we currently operate or plan to operate. For example, the Tax Cuts and Jobs Act of 2017 introduced a Base Erosion and Anti-Abuse Tax which imposes a minimum tax on adjusted income of corporations with average applicable gross receipt of at least $500 million for prior three tax years and that make certain payments to related foreign persons. While these rules do not impact our results of operations in the current year, these could impact our financial results in future periods. In addition, the Organization for Economic Cooperation and Development has issued model rules in connection with the Base Erosion and Profit Shifting integrated framework that determine multi-jurisdictional taxing rights and the rate of tax applicable to certain types of income.

These contemplated tax initiatives, if finalized and adopted by the United States or other countries where we do business, and the other tax issues described above may materially and adversely impact our operating activities, transfer pricing policies, effective tax rate, deferred tax assets, operating income, and cash flows.

We may change our corporate structure, our business operations or certain agreements that we have entered into relating to taxes in a particular jurisdiction. These changes may materially and adversely impact our consolidated financial statements.

Our warrants are accounted for as liabilities and the changes in value of our warrants could have a material effect on our financial results.

On April 12, 2021, the Acting Director of the Division of Corporation Finance and Acting Chief Accountant of the SEC together issued a public statement (the "SEC Warrant Accounting Statement") on accounting and reporting considerations for warrants issued by special purpose acquisition companies ("SPACs"). The SEC Warrant Accounting Statement discussed "certain features of warrants issued in SPAC transactions" that "may be common across many entities." The SEC Warrant Accounting Statement indicated that when one or more of such features is included in a warrant, the warrant "should be classified as a liability measured at fair value, with changes in fair value each period reported in earnings." In light of the SEC Warrant Accounting Statement and guidance in Accounting Standards Codification ("ASC") 815-40, "Derivatives and Hedging — Contracts in Entity's Own Equity," Churchill's management evaluated the terms of the Warrant Agreement entered into in connection with the Churchill IPO and concluded that the warrants include provisions that, based on the SEC Warrant Accounting Statement, preclude the warrants from being classified as components of equity. As a result, Churchill classified the warrants as liabilities. Under this accounting treatment, we are required to measure the fair value of the Private Placement Warrants at the end of each reporting period and recognize changes in the fair value from the prior period in our operating results for the current period. As a result of the recurring fair value measurement, our financial statements and results of operations may fluctuate quarterly based on factors which are outside our control. We expect that we will recognize non-cash gains or losses due to the quarterly fair valuation of the warrants and that such gains or losses could be material.

In addition, following the issuance of the SEC Warrant Accounting Statement, and after consultation with Churchill's independent registered public accounting firm and Churchill's management team, Churchill concluded that, in light of the SEC Warrant Accounting Statement, it was appropriate to restate its financial statements for the period ended December 31, 2020, and the financial statements as of August 3, 2020 and as of and for the period ended September 30, 2020, in the financial statements accompanying Churchill's Annual Report on Form 10-K/A.

Risks Related to Public Company Requirements

The requirements of being a public company may strain our resources and distract our management, which could make it difficult to manage our business.

We are required to comply with various regulatory and reporting requirements, including those required by the SEC and Nasdaq. Complying with these reporting and other regulatory requirements is time-consuming and will result in increased costs to us and could have a negative effect on our results of operations, financial condition or business. Those requirements and their interpretation and application may also change from time-to-time and those changes could have a material adverse effect on our results of operations, financial condition or business. A failure to comply with such requirements, as interpreted and applied, could also have a material adverse effect on our results of operations, financial condition or business. These obligations and constituents will require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, results of operations, cash flows, and financial condition.

As a public company, we are subject to the reporting requirements of the Exchange Act and the requirements of the Sarbanes-Oxley Act. These requirements may place a strain on our systems and resources. The Exchange Act requires that we file annual, quarterly and current reports with respect to our business and financial condition. The Sarbanes-Oxley Act requires that we implement and maintain effective disclosure controls and procedures and internal controls over financial reporting. In addition, changing laws, regulations, and standards related to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs, and making some activities more time-consuming. These laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices.

To implement, maintain and improve the effectiveness of our disclosure controls and procedures, we will need to commit significant resources, hire additional staff and provide additional management oversight. To comply with the requirements of being a public company, we have undertaken, and expect to continue to further undertake in the future, various actions, such as hiring additional accounting staff and implementing new internal controls and procedures for the purpose of addressing the standards and requirements applicable to public companies. Sustaining our growth also will require us to commit additional management, operational and financial resources to identify new professionals to join us and to maintain appropriate operational and financial systems to adequately support expansion. These activities may divert management's attention from other business concerns, which could have a material adverse effect on our results of operations, financial condition or business.

If we identify material weaknesses or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect investor confidence in us and the value of our common stock.

We are subject to the SEC's internal control over financial reporting requirements. Internal control over financial reporting is complex and may be revised over time to adapt to changes in our business, or changes in applicable accounting rules.

As part of such requirements, we are required to provide management's attestation on the report on internal control over financial reporting by our independent registered public accounting firm. The design of internal controls over financial reporting for our business has required and will continue to require significant time and resources from management and other personnel.

In addition, we are required to report any control deficiencies that constitute a "material weakness" in our internal control over financial reporting. We cannot guarantee that our internal control over financial reporting will be effective in the future or that a material weakness will not be discovered with respect to a prior period for which we had previously believed that our internal control over financial reporting was effective. If we are not able to maintain or document effective internal control over financial reporting, our independent registered public accounting firm will not be able to certify as to the effectiveness of our internal control over financial reporting. Matters impacting our internal control over financial reporting may result in material misstatements of our consolidated financial statements, cause us to be unable to report our financial information on a timely basis, or may cause us to restate previously issued financial information, and thereby subject us to adverse regulatory consequences, including sanctions or investigations by the SEC, or violations of applicable stock exchange listing rules. There could also be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements. This could materially adversely affect us by, for example, leading to a decline in our stock price and impairing our ability to raise capital.

We may be required to take write-downs or write-offs, restructuring and impairment or other charges that could have a significant negative effect on our financial condition, results of operations and stock price, which could cause our stockholders to lose some or all of their investment.

We may be required to later write-down or write-off assets, restructure operations, or incur impairment or other charges that could result in losses. Even though these charges may be non-cash items and not have an immediate impact on our liquidity, charges of this nature could contribute to negative market perceptions about us or our securities. Accordingly, any of our stockholders could suffer a reduction in the value of their shares.

Risks Related to Our Common Stock

The price of our common stock is volatile, and this volatility may negatively impact the market price of our common stock and the trading price of the 2026 Notes.

The trading price of our common stock has fluctuated substantially. The trading price of our securities depends on many factors, including those described elsewhere in this "Risk Factors" section, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause investors to lose all or part of the investment in our securities since investors might be unable to sell them at or above the price the investor paid for them. Any of the factors listed below could have a material adverse effect on stockholders' investment in our securities and our securities may trade at prices significantly below the price stockholders paid for them. In such circumstances, the trading price of our securities may not recover and may experience a further decline.

Factors affecting the trading price of our securities may include:

- market conditions in the broader stock market in general, or in our industry in particular;
- actual or anticipated fluctuations in our quarterly financial or operating results or the quarterly financial or operating results of companies perceived to be similar to ours;
- changes in the market's expectations about our operating results;
- the public's reaction to our press releases, other public announcements and filings with the SEC;
- the public's reaction to the number of unit reservations, financial projections and any other guidance or metrics that we may publicly disclose from time-to-time;
- speculation in the press or investment community;
- actual or anticipated developments in our business, competitors' businesses or the competitive landscape generally;
- the operating results failing to meet the expectation of securities analysts or investors in a particular period;
- the timing of the achievement of objectives under our business plan and the timing and amount of costs we incur in connection therewith;
- changes in financial estimates and recommendations by securities analysts concerning us or the market in general;
- operating and stock price performance of other companies that investors deem comparable to ours;
- changes in laws and regulations affecting our business;
- commencement of, or involvement in, litigation or investigations involving us;
- changes in our capital structure, such as future issuances of securities or the incurrence of additional debt;
- the volume of our common stock available for public sale, including as a result of conversion of our 2026 Notes or our Redeemable Convertible Preferred Stock;
- any major change in our Board or management;
- sales of substantial amounts of our common stock by our directors, officers or significant stockholders or the perception that such sales could occur;
- general economic and political conditions, such as recessions, interest rates, inflation, government closures of banks and liquidity concerns at other financial institutions, changes in diplomatic and trade relationships, fluctuations in foreign currency exchange rates, acts of war or terrorism, and natural disasters; and
- other risk factors listed in this section "Risk Factors."

Broad market and industry factors may materially harm the market price of our securities irrespective of our operating performance. The stock market in general and Nasdaq have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the particular companies affected. The trading prices and valuations of these stocks, and of our securities, may not be predictable. A loss of investor confidence in the market for the stocks of other companies which investors perceive to be similar to ours could depress our stock price and the trading price of the 2026 Notes regardless of our business, prospects, financial conditions or results of operations. Broad market and industry factors, including global conflicts and other geopolitical events, natural disasters, and any other global pandemics, as well as general economic, political and market conditions such as recessions, inflation, government closures of banks and liquidity concerns at other financial institutions, or interest rate changes, may seriously affect the market price of our common stock and other securities, regardless of our actual operating performance. A decline in the market price of our securities also could adversely affect our ability to issue additional securities and our ability to obtain additional financing in the future.

Furthermore, the stock markets in general, and the markets for technology and electric vehicle stocks in particular, have experienced extreme volatility that has sometimes been unrelated to the operating performance of the issuer. The trading price of our common stock may be adversely affected by third parties trying to drive down or drive up the market price. Short sellers and others, some of whom post anonymously on social media, may be positioned to profit if our stock declines or otherwise exhibits volatility, and their activities can negatively affect our stock price and increase the volatility of our stock price. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In addition, hedging activity by holders of the 2026 Notes may impact the market price of our common stock, in particular during any redemption conversion period in connection with a redemption of the 2026 Notes or any observation period for a conversion of the 2026 Notes.

In addition, in the past, following periods of volatility in the overall market and the market prices of particular companies' securities, securities class action litigations have often been instituted against these companies. Litigation of this type, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources. Any adverse determination in any such litigation or any amounts paid to settle any such actual or threatened litigation could require that we make significant payments.

The issuance of additional shares of our common stock or other equity or equity-linked securities, or sales of a significant portion of our common stock, could depress the market price of our common stock.

Future issuances of shares of our common stock, or of securities convertible into or exercisable for our common stock, could depress the market price of our common stock and result in significant dilution for holders of our common stock. The exercise of our outstanding warrants and options, the vesting and settlement of our restricted stock units and/or the conversion of our 2026 Notes or of our Redeemable Convertible Preferred Stock would result in additional dilution to holders of our common stock. Similarly, the redemption or repurchase of our Redeemable Convertible Preferred Stock may result in additional dilution to holders of our common stock if, under the terms of our Redeemable Convertible Preferred Stock, we are then permitted, and elect, to satisfy our obligations in respect thereof by delivery of our common stock. In the future, we may issue additional shares of our common stock, or securities convertible into or exercisable for common stock, in connection with generating additional capital, future acquisitions, repayment of outstanding indebtedness, under our stock incentive plan, or for other reasons.

The market price of shares of our common stock could decline as a result of substantial sales of common stock, particularly by our significant stockholders, a large number of shares of common stock becoming available for sale or the perception in the market that holders of a large number of shares intend to sell their shares.

In addition, pursuant to the Investor Rights Agreement, Ayar, and certain other parties thereto are entitled to, among other things, certain registration rights, including demand, piggy-back and shelf registration rights with respect to its shares of common stock (including shares of common stock underlying the Redeemable Convertible Preferred Stock held by Ayar) and Ayar's shares of the Redeemable Convertible Preferred Stock. If either pursuant to any registration statement filed pursuant to the Investor Rights Agreement or through another avenue, one or more of these stockholders were to sell a substantial portion of the securities they hold, including any common stock issued upon conversion, redemption or repurchase of our Redeemable Convertible Preferred Stock, it could cause the trading price of our common stock to decline. Furthermore, given Ayar's substantial concentration in ownership of our common stock and the Redeemable Convertible Preferred Stock, if Ayar were to elect to sell in the open market or in private placement transactions, it could have the effect of increasing the volatility in our stock price or putting significant downward pressure on the price of our common stock.

Pursuant to the 2024 Subscription Agreement, Ayar has agreed to restrictions on the sale or transfer of shares of Redeemable Convertible Preferred Stock or any shares of common stock issued pursuant to the terms thereof held by it for a period of twelve months following the closing of the transaction. However, following the expiration of this lock-up period, Ayar will not be restricted from selling these securities, other than by applicable securities laws.

We are a "controlled company" within the meaning of the applicable Nasdaq rules and, as a result, qualify for exemptions from certain corporate governance requirements. Our stockholders will not have the same protections afforded to stockholders of companies that are not controlled companies.

As of June 30, 2024, PIF, both directly and indirectly through Ayar, held over 50% of the voting power for the election of our directors. As a result, we are a "controlled company" within the meaning of the Nasdaq rules, and as a result, we qualify for exemptions from certain corporate governance requirements. Under these rules, a company of which more than 50% of the voting power for the election of directors is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements, including the requirements to have: (a) a majority of independent directors on the board; (b) a nominating committee comprised solely of independent directors; (c) compensation of executive officers determined by a majority of the independent directors or a compensation committee comprised solely of independent directors; and (d) director nominees selected, or recommended for the selection by the board, either by a majority of the independent directors or a nominating committee comprised solely of independent directors. Although currently we do not utilize any of these exemptions, we may elect to utilize one or more of these exemptions for so long as we remain a "controlled company." As a result, our stockholders may not have the same protections afforded to stockholders of companies that are subject to all of the Nasdaq corporate governance requirements. Ayar also has the ability to nominate five of the nine directors to our Board.

In addition, for so long as Ayar holds the Redeemable Convertible Preferred Stock and as result of the consent and voting rights of the Redeemable Convertible Preferred Stock, coupled with the voting rights associated with Ayar's existing ownership of common stock in the Company, Ayar has significant power to influence the outcome over any matter submitted for the vote of the holders of our common stock and to influence certain matters affecting our governance and capitalization. This concentration of ownership and voting power allows Ayar control over certain decisions, in particular with regards to governance and capitalization matters, including matters requiring approval by our stockholders (such as, subject to the Investor Rights Agreement, the election of directors and the approval of mergers or other extraordinary transactions), regardless of whether or not other stockholders believe that the transaction is in their own best interests.

The interests of Ayar may differ from the interests of our other stockholders and, as such, Ayar's voting power and influence over us may decrease the relative interests of our other stockholders or of the Company. Such concentration of voting power could also have the effect of delaying, deterring or preventing a change of control or other business combination that might otherwise be beneficial to our stockholders, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company and might ultimately affect the market price of our common stock and the trading price of the 2026 Notes.

PIF and Ayar beneficially own a significant equity interest in us and may take actions that conflict with other stockholders' interests.

The interests of PIF and Ayar may not align with our interests and the interests of our other stockholders or securityholders. PIF and Ayar are each in the business of making investments in companies and may acquire and hold interests in businesses that compete directly or indirectly with us. PIF and Ayar and their respective affiliates, may also pursue acquisition opportunities that may be complementary to our business and, as a result, those acquisition opportunities may not be available to us.

Securities or industry analysts may not publish or cease publishing research or reports about us, our business, our market, or change their recommendations regarding our common stock adversely, which could cause the price and trading volume of our common stock to decline.

The trading market for our common stock can be influenced by the research and reports that industry or securities analysts may publish about us, our business and operations, our market, or our competitors. Similarly, if any of the analysts who do cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, the price of our common stock may decline. If any analyst who covers us were to cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our stock price or trading volume to decline.

We do not anticipate paying any cash dividends for the foreseeable future.

We have never declared or paid cash dividends on our capital stock, and we do not anticipate paying any cash dividends in the foreseeable future. In addition, the ABL Credit Facility, the DDTL Credit Facility and our Redeemable Convertible Preferred Stock limits our and certain of our subsidiaries' ability to pay cash dividends. We currently intend to retain our future earnings, if any, for the foreseeable future, to fund the development and growth of our business.

Any future determination to pay cash dividends will be at the discretion of our Board and will be dependent upon our financial condition, results of operations, capital requirements, applicable contractual restrictions and such other factors as the Board may deem relevant. As a result, capital appreciation in the price of our common stock, if any, will be our stockholders' only source of gain on an investment in our common stock.

There is no guarantee that an active and liquid public market for our securities will be sustained.

If a liquid trading market for our common stock is not sustained:

- holders of our common stock may not be able to liquidate their investment in shares of our common stock;
- holders of our common stock may not be able to resell their shares of our common stock at favorable prices, or at all;
- the market price of shares of our common stock may experience significant price volatility; and
- there may be less efficiency in carrying out purchase and sale orders with respect to our common stock.

Additionally, if our securities become delisted from Nasdaq for any reason, and are quoted on the OTC Bulletin Board, an inter-dealer automated quotation system for equity securities that is not a national securities exchange, the liquidity and price of our securities may be more limited than if we were quoted or listed on Nasdaq or another national securities exchange. Our stockholders may be unable to sell their securities unless a market can be established or sustained.

Our current bylaws designate a state court within the State of Delaware, to the fullest extent permitted by law, as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit the ability of our stockholders to obtain a favorable judicial forum for disputes with us or with our directors, officers or employees and may discourage stockholders from bringing such claims.

Under our current bylaws, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum will be a state court within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or employees to us or our stockholders;
- any action asserting a claim against us or any of our directors or officers or other employees arising pursuant to any provision of the DGCL or our certificate of incorporation or bylaws (as either may be amended, restated, modified, supplemented or waived from time-to-time); or
- any action asserting a claim against us or any of our directors or officers or other employees governed by the internal affairs doctrine.

For the avoidance of doubt, the foregoing provisions of our current bylaws will not apply to any action or proceeding asserting a claim under the Securities Act or the Exchange Act. Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our current bylaws provide that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. Although investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder, any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of, and consented to, the provisions of our current bylaws described in the preceding sentences. These provisions of our current bylaws could limit the ability of our stockholders to obtain a favorable judicial forum for certain disputes with us or with our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and employees. Alternatively, if a court were to find these provisions of our current bylaws inapplicable to, or unenforceable in respect of, one or more of the types of actions or proceedings listed above, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition and results of operations. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions, and there can be no assurance that such provisions will be enforced by a court in those other jurisdictions.

Some provisions of Delaware law, our current certificate of incorporation and our current bylaws, our Certificate of Designations and the indenture for the 2026 Notes may deter third parties from acquiring us and diminish the value of our common stock, the 2026 Notes and the Redeemable Convertible Preferred Stock.

Our current certificate of incorporation and our current bylaws provide for, among other things:

- the ability of our Board to issue one or more series of preferred stock with voting or other rights or preferences that could have the effect of impeding the success of an attempt to acquire us or otherwise effect a change in control;
- subject to the Investor Rights Agreement, advance notice for nominations of directors by stockholders and for stockholders to include matters to be considered at stockholder meetings; and

- certain limitations on convening special stockholder meetings.

In addition, in our current certificate of incorporation, we have not opted out of Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in certain "business combinations" with any "interested stockholder" for a three-year period following the time that the stockholder became an interested stockholder, unless:

- prior to such time, the Board approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of voting stock outstanding at the time the transaction commenced, excluding certain shares; or
- at or subsequent to that time, the business combination is approved by our Board and by the affirmative vote of holders of at least two-thirds of the votes of our outstanding voting stock that is not owned by the interested stockholder.

Generally, a "business combination" includes a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an "interested stockholder" is a person who, together with that person's affiliates and associates, owns, or within the previous three years owned, 15% or more of the votes of our outstanding voting stock. For purposes of this provision, "voting stock" means any class or series of stock entitled to vote generally in the election of directors.

Under certain circumstances, this provision will make it more difficult for a person who would be an "interested stockholder" to effect various business combinations with us for a three-year period. This provision may encourage companies interested in acquiring us to negotiate in advance with our Board because the stockholder approval requirement would be avoided if our Board approves either the business combination or the transaction that results in the stockholder becoming an interested stockholder. These provisions also may have the effect of preventing changes in our Board and may make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

In addition, certain terms of our Redeemable Convertible Preferred Stock and the 2026 Notes may make it more difficult for an entity to acquire us. As the current holder of our Convertible Preferred Stock, Ayar has certain repurchase, conversion and consent rights, including the right, at the option of Ayar, to require us to repurchase for cash or, if under the terms of our Redeemable Convertible Preferred Stock we are then permitted, and we so elect, shares of our common stock (or other securities to be received by a holder of common stock in such fundamental change) in connection with a fundamental change, based on the applicable Minimum Consideration. See "Risks Related to Financing and Strategic Transactions—*Our Redeemable Convertible Preferred Stock has rights, preferences and privileges that are not held by, and are senior to the rights of, our common stockholders*." Similarly, the indenture governing the 2026 Notes generally requires us, at the option of the holders, to repurchase the 2026 Notes for cash upon the occurrence of a fundamental change and, in certain circumstances, to increase the conversion rate for a holder that converts its 2026 Notes in connection with a make-whole fundamental change, as defined in the indenture for the 2026 Notes. These provisions may make it more costly for a potential acquirer to engage in a business combination transaction with us.

These provisions in our current certificate of incorporation, our current bylaws, our Certificate of Designations and the indenture for the 2026 Notes as well as Delaware law could increase the cost and difficulty of acquiring us or may discourage, delay or prevent a transaction involving a change in our control that is in the best interest of our minority stockholders. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock or the value of the 2026 Notes or the Redeemable Convertible Preferred Stock if they are viewed as discouraging future takeover attempts. These provisions could also make it more difficult for stockholders to nominate directors for election to our Board and take other corporate actions, which could also affect the price investors are willing to pay for our common stock, the 2026 Notes or the Redeemable Convertible Preferred Stock.

Item 5. Other Information.

None of the Company's directors or officers adopted, modified or terminated a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement during the quarter ended June 30, 2024, as such terms are defined under Item 408(a) of Regulation S-K.

Item 6. Exhibits.

The exhibits listed on the Exhibit Index to this Form 10-Q are filed herewith or incorporated by reference herein:

EXHIBIT INDEX

Exhibit Number		Incorporation by Reference				Filed Herewith
		Form	File Number	Filing Date	Exhibit Number	
10.1	Lucid Group, Inc. Amended and Restated 2021 Stock Incentive Plan (including the Lucid Group, Inc. 2021 Employee Stock Purchase Plan, attached thereto)	S-8	333-279973	June 5, 2024	99.1	
10.2	Amendment No. 1 to Credit Agreement, dated as of June 6, 2024, by and among Lucid Group, Inc. and Bank of America, N.A., as administrative agent.					X
31.1	Certification of Principal Executive Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended					X
31.2	Certification of Principal Financial Officer Required Under Rule 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended					X
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)					X
101.SCH	Inline XBRL Taxonomy Schema Linkbase Document					X
101.CAL	Inline XBRL Taxonomy Calculation Linkbase Document					X
101.DEF	Inline XBRL Taxonomy Definition Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Labels Linkbase Document					X
101.PRE	Inline XBRL Taxonomy Presentation Linkbase Document					X
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)					X

SIGNATURES

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

LUCID GROUP, INC.

Date: August 5, 2024

By: /s/ Gagan Dhingra
Gagan Dhingra
Interim Chief Financial Officer

AMENDMENT NO. 1 TO CREDIT AGREEMENT

AMENDMENT NO. 1 TO CREDIT AGREEMENT (this "Amendment"), dated as of June 7, 2024, by and among Lucid Group, Inc. (the "Borrower Representative") and Bank of America, N.A., as administrative agent (the "Agent").

PRELIMINARY STATEMENTS

WHEREAS, the Borrower Representative, each of the other Loan Parties party thereto, the Lenders and Issuing Banks party thereto and the Agent are parties to that certain Credit Agreement, dated as of June 9, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified prior to the Amendment No. 1 Effective Date (as defined below), the "Credit Agreement"; and as amended by this Amendment, the "Amended Credit Agreement"; capitalized terms used in this Amendment and not otherwise defined in this Amendment have the same meanings as specified in the Amended Credit Agreement);

WHEREAS, in accordance with Section 2.14(g) of the Credit Agreement, (a) Refinitiv Benchmark Services (UK) Limited has made a public statement identifying a specific date after which all tenors of the Relevant Rate based on "CDOR" (the "CDO Rate") for Loans denominated in Canadian Dollars under the Credit Agreement will no longer be used for determining the interest rate of Loans denominated in Canadian Dollars and will otherwise cease and (b) the Agent and the Borrower Representative desire to amend the Credit Agreement for the purpose of replacing the CDOR Rate under the Credit Agreement with an Alternative Currency Successor Rate based on "CORRA" on the terms and conditions of this Amendment;

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

SECTION 1. Amendments to the Credit Agreement; Etc. Effective as of the Amendment No. 1 Effective Date (as defined below): The Credit Agreement is hereby amended (i) to delete the red or green stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) and (ii) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text), in each case, as set forth in Exhibit A attached hereto.

SECTION 2. Conditions to Effectiveness. This Amendment shall become effective upon, and only upon, the satisfaction or waiver of each of the following conditions precedent in a manner reasonably satisfactory to the Agent (the date of such satisfaction or waiver, the "Amendment No. 1 Effective Date"):

(a) Amendment. This Amendment shall have been duly executed by the Borrower Representative and the Agent.

(b) Representations and Warranties. Each of the representations and warranties set forth in Section 3 below shall be true and correct in all material respects on and as of the date hereof with the same effect as though made on and as of such date, unless such representation or warranty is made as of an earlier specified date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (in each case, without duplication of any materiality standard set forth in any such representation or warranty).

(c) No Default or Event of Default. No Default or Event of Default exists or has occurred and is continuing as of the date hereof.

(d) Expenses. The Borrower Representative shall have paid all reasonable and documented and invoiced out-of-pocket expenses required to be paid by the Borrowers pursuant to Section 9.03 of the Credit Agreement for which invoices have been presented at least three (3) Business Days prior to the date hereof or such later date to which the Borrower Representative may agree (including the reasonable fees and expenses of legal counsel required to be paid), in each case on or before the date hereof.

SECTION 3. Representations and Warranties of the Borrower Representative. The Borrower Representative represents and warrants as follows:

(a) The Borrower Representative is a corporation duly formed, validly existing and in good standing under the laws of its jurisdiction of formation.

(b) No Default or Event of Default exists or has occurred and is continuing as of the Amendment No. 1 Effective Date.

(c) This Amendment has been duly authorized, executed and delivered by the Borrower Representative and the agreements and obligations of the Borrower Representative contained herein constitute legal, valid and binding obligations of the Borrower Representative, enforceable against it in accordance with their terms, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(d) Neither the execution, delivery or performance by the Borrower Representative of this Amendment nor compliance with the terms and provisions thereof nor the consummation of the transactions contemplated hereby will (i) violate, conflict with or cause a breach or a default under any provision of applicable law or regulation or of the Organizational Documents of the Borrower Representative or of any agreement, judgment, injunction, order, decree or other instrument binding upon the Borrower Representative, except for such violations, conflicts, breaches or defaults as would not reasonably be expected to have a Material Adverse Effect or (ii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by the Borrower Representative, other than the Liens created by the Loan Documents and Permitted Liens.

SECTION 4. Reference to and Effect on the Credit Agreement and the Loan Documents.

(a) On and after the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement, and each reference in each of the other Loan Documents to "the Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Amended Credit Agreement.

(b) The Credit Agreement and each of the other Loan Documents, as specifically amended by this Amendment, are and shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. Without limiting the generality of the foregoing, the Collateral Documents and all of the Collateral described therein do and shall continue to secure the payment of all Obligations of the Loan Parties under the Loan Documents, in each case as amended by this Amendment.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Agent under any of the Loan Documents or constitute a waiver of any provision of any of the Loan Documents. This Amendment shall not constitute a novation of the Credit Agreement or any other Loan Document.

(d) This Amendment shall constitute a Loan Document.

SECTION 5. Execution in Counterparts; Etc. This Amendment may be in the form of an electronic record and may be executed using electronic signatures (including, without limitation, facsimile and .pdf) and shall be considered an original, and shall have the same legal effect, validity and enforceability as a paper record. This Amendment may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Amendment. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Agent of a manually signed paper counterpart which has been converted into electronic form (such as scanned into PDF format), or an electronically signed counterpart converted into another format, for transmission, delivery and/or retention. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act or other similar applicable Laws including the Personal Information Protection and Electronic Documents Act (Canada) and the Electronic Commerce Act, 2000 (Ontario); provided that notwithstanding anything contained herein to the contrary, the Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it.

SECTION 6. GOVERNING LAW; ETC. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. Sections 9.09 (*Consent to Jurisdiction*) and 9.10 (*Waiver of Jury Trial*) of the Credit Agreement are hereby incorporated by reference herein, *mutatis mutandis*, as if set forth in full herein.

SECTION 7. Expenses; Indemnity. Section 9.03 (*Costs and Expenses*) of the Credit Agreement is hereby incorporated by reference herein, *mutatis mutandis*, as if set forth in full herein.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first above written.

LUCID GROUP, INC.,
as the Borrower Representative
By: /s/ Gagan Dhingra
Name: Gagan Dhingra
Title: Interim Chief Financial Officer, VP of Accounting

[Signature Page to Amendment No. 1 to Credit Agreement]

BANK OF AMERICA, N.A.,
as the Agent
By: /s/ Kindra M Mullarky
Name: Kindra M Mullarky
Title: Senior Vice President

[Signature Page to Amendment No. 1 to Credit Agreement]

EXHIBIT A

AMENDED CREDIT AGREEMENT

[*See Attached*.]

CREDIT AGREEMENT

dated as of

June 9, 2022**,**

As amended by Amendment No. 1, dated as of June 7, 2024

among

LUCID GROUP, INC.,

as Borrower Representative

THE BORROWERS PARTY HERETO

THE LENDERS PARTY HERETO

and

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

BOFA SECURITIES, INC. and CITIBANK, N.A.
as Joint Lead Arrangers

BOFA SECURITIES, INC., CITIBANK, N.A., BARCLAYS BANK PLC, GOLDMAN SACHS BANK USA, JPMORGAN CHASE BANK, N.A., BNP PARIBAS SECURITIES CORP. and RBC CAPITAL MARKETS[1]
as Joint Bookrunners

BOFA SECURITIES, INC. and CITIBANK, N.A.
as Syndication Agents

and

BARCLAYS BANK PLC, GOLDMAN SACHS BANK USA, JPMORGAN CHASE BANK, N.A., BNP PARIBAS SECURITIES CORP. and RBC CAPITAL MARKETS
as Documentation Agents

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[1] RBC Capital Markets is a marketing name for the capital markets activities of Royal Bank of Canada and its affiliates.

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ARTICLE III
REPRESENTATIONS AND WARRANTIES.

ARTICLE IV
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ARTICLE V
AFFIRMATIVE COVENANTS

SCHEDULES:

EXHIBITS:

CREDIT AGREEMENT dated as of June 9, 2022 (as it may be amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") among LUCID GROUP, INC. (the "**Company**"), as a Borrower, the Lenders and Issuing Banks from time to time party hereto, and BANK OF AMERICA, N.A., as Administrative Agent.

WHEREAS, the Borrower Representative has requested that the Lenders and Issuing Banks extend credit to the Borrowers in the form of an asset-based revolving credit facility with Revolving Commitments in an original aggregate amount equal to $1,000,000,000; and

WHEREAS, the Lenders and Issuing Banks have agreed to extend credit to the Borrowers hereunder, subject to the terms and conditions set form herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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:

"**ABL Collateral**" means all Collateral consisting of the following:

(1) Accounts;

(2) Payment Intangibles that constitute credit card receivables, including Credit Card Account Receivables;

(3) Inventory;

(4) (a) Instruments, Documents, Chattel Paper and General Intangibles evidencing or substituted for the foregoing and (b) Chattel Paper evidencing car leases;

(5) all Deposit Accounts with any bank or other financial institution (including all cash, cash equivalents, financial assets, negotiable instruments and other evidence of payment, and other funds on deposit therein or credited thereto);

(6) all Securities Accounts with any securities intermediary (including any and all Investment Property held therein or credited thereto) except to the extent that such Investment Property constitute identifiable proceeds of Fixed Assets;

(7) all accessions to, substitutions for and replacements of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing; and

(8) to the extent not otherwise included, all Proceeds (including without limitation, all insurance proceeds), Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing;

provided, however, that, any Collateral, regardless of type, received in exchange for ABL Collateral pursuant to an Enforcement Action in accordance with the terms of this Agreement and the Collateral Agreement shall be treated as ABL Collateral under this Agreement, the Collateral Documents and any Fixed Asset Facility Documents; *provided, further,* that any Collateral of the type that constitutes

ABL Collateral, if received in exchange for Fixed Assets pursuant to an Enforcement Action in accordance with the terms of any Fixed Asset Facility Documents and this Agreement, shall be treated as Fixed Assets under this Agreement, the Collateral Documents and any Fixed Asset Facility Documents; and, *provided, further, however,* that "**ABL Collateral**" shall include proceeds from the disposition of any Fixed Assets permitted by this Agreement and any Fixed Asset Facility Documents to the extent such proceeds would otherwise constitute ABL Collateral and are not required to be applied to the mandatory prepayment of any Fixed Asset Facility Obligations pursuant to the applicable Fixed Asset Facility Documents, unless such proceeds either (a) arise from a disposition of Fixed Assets resulting from any Enforcement Action taken by Fixed Asset Facility Collateral Agent on behalf of the secured parties in respect of such Fixed Asset Facility permitted by this Agreement or (b) are deposited in a segregated cash collateral account with the Fixed Asset Facility Collateral Agent to the extent required by the applicable Fixed Asset Facility Documents. Each capitalized term used in this definition that is not otherwise defined in this Agreement shall have the meaning assigned to such term in Article 9 of the UCC. For the avoidance of doubt, it is understood and agreed that the Secured Parties remain entitled to the benefit of a second priority Lien in any Collateral comprised of Fixed Assets (the "**Fixed Asset Collateral**") unless a Fixed Asset Release Date has occurred and no Fixed Asset Facility is then outstanding or will contemporaneously be outstanding. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, in no event shall "ABL Collateral" include, and the provisions of this Agreement and the other Loan Documents with respect to Collateral need not be satisfied with respect to, any Excluded Assets.

"**ABR**", when used in reference to (a) a rate of interest, refers to the Alternate Base Rate, and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate. All ABR Loans shall be denominated in Dollars.

"**Acceptable Intercreditor Agreement**" shall mean an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent in its Permitted Discretion (it being understood and agreed that an intercreditor agreement in form and substance substantially the same as the form attached hereto as Exhibit D-1 or Exhibit D-2, as applicable, is satisfactory to the Administrative Agent).

"**Acceptable Real Estate Appraisa**l" has the meaning assigned to such term in the definition of "Eligible Real Property".

"**Account Debtor**" shall mean any Person obligated on an Account.

"**Accounts**" shall mean (a) all of the rights of any Loan Party in, to and under all "accounts" (as defined in the UCC), (b) all of the rights of any Loan Party in, to and under all purchase orders for goods, services or other property, (c) all of the rights of any Loan Party to any goods, services or other property represented by any of the foregoing (including returned or repossessed goods and unpaid seller's rights of rescission, replevin, reclamation and rights to stoppage in transit) and (d) all monies due to or to become due to any Loan Party under any and all contracts for any of the foregoing (in each case, whether or not yet earned by performance on the part of such Loan Party), including, without limitation, the right to receive the proceeds of said purchase orders and contracts, and all Supporting Obligations of any kind given by any Person with respect to all or any of the foregoing.

"**Account Party**" shall have the meaning assigned to such term in Section 2.06(b).

"**Acquired Borrowing Base Component**" shall mean with respect to assets acquired pursuant to any permitted acquisition or other permitted Investment, (i) (A) until the earlier of (x) the date on which the Administrative Agent receives a Report in respect of the Accounts and Inventory acquired pursuant to such acquisition or Investment and (y) the date that is 120 days after such acquisition or Investment is consummated, the sum of (1) the net book value of Eligible Accounts acquired in connection with such permitted acquisition or other Investment multiplied by 65.0%, plus (2) the net book value of Eligible

Inventory acquired in connection with such permitted acquisition or other Investment multiplied by 45.0% and (ii) thereafter, $0; *provided* that, subject to the immediately following proviso, during such period such Accounts and Inventory shall constitute Eligible Accounts and Eligible Inventory, respectively, for all purposes under this Agreement other than for purposes of clauses (b), (c) and (d) of the definition of "Borrowing Base"; *provided, further,* that the Administrative Agent shall take such actions as are reasonably required to obtain or prepare a Report within 120 days of such acquisition of such Accounts and such Inventory (which Report shall be at the expense of the Company and the related field examinations and/or appraisals shall be in addition to any other field examinations and appraisals permitted to be conducted under this Agreement) promptly upon the request of the Company; *provided*, *further*, that, (1) if the inclusion of all such Eligible Accounts and such Eligible Inventory acquired pursuant to any such acquisition or other Investment in the Acquired Borrowing Base Component, would, in the aggregate, cause the Borrowing Base calculated on a pro forma basis for such acquisition (the "**Post-Acquisition Borrowing Base**") to exceed the Borrowing Base in existence at such time prior to giving effect to such acquisition (the "**Pre-Acquisition Borrowing Base**") by more than 20.0%, then the Acquired Borrowing Base Component shall exclude all such Accounts and Inventory to the extent such Accounts and Inventory would cause the Post-Acquisition Borrowing Base to exceed the Pre-Acquisition Borrowing Base by more than 20.0%.

"**Additional Alternative Currency**" shall mean any Eligible Currency that is approved in accordance with Section 1.08.

"**Additional Lender**" means at any time, any bank, other financial institution or institutional lender or institutional investor (but not an Ineligible Institution) that, in any case, is not an existing Lender and that agrees to provide any portion of any Incremental Commitments in accordance with Section 2.09(e); *provided* that each Additional Lender shall be subject to the consent of the Administrative Agent and each Issuing Bank pursuant to subclauses (B) and (C) of Section 9.04(b)(i) (in each case, such approval not to be unreasonably withheld or delayed and solely to the extent such consent would be required for an assignment of Loans or Commitments to such Person under Section 9.04(b)).

"**Adjustment Date**" means the first day of each fiscal quarter of the Company.

"**Administrative Agent**" shall mean Bank of America, in its capacity as administrative agent hereunder and under any of the other Loan Documents and its successors in such capacity.

"**Administrative Questionnaire**" shall mean an Administrative Questionnaire in a form supplied by the Administrative Agent.

"**Affected Financial Institution**" shall mean (a) any EEA Financial Institution or (b) any UK Financial Institution.

"**Affiliate**" shall mean with respect to any Person (a) any other Person that directly or indirectly controls such Person and (b) any other Person that is controlled by or is under common control with such controlling Person; *provided* that, for the avoidance of doubt, The Public Investment Fund of Saudi Arabia (and/or any direct or indirect controlling Person and/or Persons under direct or indirect common control) shall not constitute an Affiliate of the Company for purposes of this Agreement and the other Loan Documents. For purposes of this definition, "**control**" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise. For purpose of this definition, the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent-Related Person**" has the meaning assigned to such term in Section 9.03(d).

"**Aggregate Revolving Commitment**" shall mean, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Revolving Commitment is $1,000,000,000.

"**Aggregate Revolving Exposure**" shall mean, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

"**Agreement Currency**" shall have the meaning assigned to such term in Section 9.23.

"**Agreement Value**" shall mean, for each Swap Agreement, on any date of determination, the maximum aggregate amount (giving effect to any netting agreements) that the Company, any Borrower or any Restricted Subsidiary would be required to pay if such Swap Agreement were terminated on such date.

"**ALTA**" shall mean the American Land Title Association.

"**Alternate Base Rate**" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the Term SOFR Rate for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; *provided* that for the purpose of this definition, the Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. New York City time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"**Alternative Currencies**" means Pounds Sterling, Euro, Canadian Dollars, Australian Dollars, Swiss Francs, Japanese Yen and each Additional Alternative Currency.

"**Alternative Currency Daily Rate**" shall mean, for any day, with respect to any Credit Extension:

(a) denominated in Pounds Sterling, the rate per annum equal to SONIA determined pursuant to the definition thereof;

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

(c) and with respect to Loans, Letters of Credit and Letter of Credit reimbursement obligations, denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a daily rate), the daily rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.08(a);

provided, that, if any Alternative Currency Daily Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Any change in an Alternative Currency Daily Rate shall be effective from and including the date of such change without further notice.

"**Alternative Currency Daily Rate Loan**" or "**Alternative Currency Daily Rate Borrowing**" means a Loan that bears interest at a rate based on the definition of "**Alternative Currency Daily Rate**". All Alternative Currency Daily Rate Loans must be denominated in an Alternative Currency.

"**Alternative Currency Loan**" shall mean a Loan that bears interest at the Alternative Currency Daily Rate, the Alternative Currency Term Rate or the Canadian Prime Rate.

"**Alternative Currency Successor Rate**" has the meaning specified in Section 2.14(g).

"**Alternative Currency Term Rate**" means, for any Interest Period, with respect to any Credit Extension:

(a) denominated in Euros, the rate per annum equal to the Euro Interbank Offered Rate ("**EURIBOR**"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(b) denominated in Canadian Dollars, the rate per annum equal to the ~~**Canadian Dollar Offered Rate (the "CDOR Rate")**~~**forward-looking term rate based on CORRA ("Term CORRA**, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) ~~**on**~~**(in such case,** the **"Term CORRA Rate** ~~**Determination Date with a term equivalent to**~~**") that is two (2) Business Days prior to the first day of** such Interest Period**, or if such day is not a Business Day, then on the immediately preceding Business Day, *plus* the Term CORRA Adjustment**;

(c) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate ("**BBSY**"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period;

(d) denominated in Japanese Yen, the rate per annum equal to the Tokyo Interbank Offer Rate ("**TIBOR**"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(e) and with respect to Loans, Letters of Credit and Letter of Credit reimbursement obligations denominated in any other Alternative Currency, the term rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders or Issuing Bank pursuant to Section 1.08(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders or Issuing Bank pursuant to Section 1.08(a);

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

"**Alternative Currency Term Rate Loan**" or "**Alternative Currency Term Rate Borrowing**" shall mean a Loan that bears interest at a rate based on the Alternative Currency Term Rate. All Alternative Currency Term Rate Loans must be denominated in an Alternative Currency.

"Amendment No. 1" shall mean that certain Amendment No. 1 to Credit Agreement, dated as of June 7, 2024, by and between the Borrower Representative and the Administrative Agent.

"Amendment No. 1 Effective Date" has the meaning specified in the Amendment No. 1.

"**Ancillary Document**" has the meaning assigned to such term in Section 9.06(b).

"**Anti-Corruption Laws**" shall mean all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to anti-bribery or anti-corruption, including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act, in each case as amended from time to time.

"**Applicable Percentage**" shall mean, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure or Overadvances, a percentage equal to a fraction the numerator of which is such Lender's Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment; *provided* that, if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender's share of the Aggregate Revolving Exposure at that time and (b) with respect to Protective Advances or with respect to the Aggregate Revolving Exposure, a percentage based upon its share of the Aggregate Revolving Exposure and the unused Commitments; *provided* that, in accordance with Section 2.20, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender's Commitment shall be disregarded in the calculations under clauses (a) and (b) above.

"**Applicable Rate**" shall mean, for any day, with respect to any Initial Revolving Loan, the applicable rate per annum set forth below under the caption "Revolver ABR Spread / Canadian Prime Rate Spread" or "Revolver Term Rate Spread / Alternative Currency Daily Rate Spread", as the case may be, determined as of each Adjustment Date based upon the Average Quarterly Availability during the most recently ended fiscal quarter of the Company immediately preceding such Adjustment Date; *provided* that the "Applicable Rate" with respect to the Initial Revolving Loans shall be the applicable rates per annum set forth below in Category 2 during the period from the Effective Date to, and including, the last day of the first fiscal quarter of the Company ending after the Effective Date:

Average Quarterly Availability	**Revolver ABR Spread / Canadian Prime Rate Spread**	**Revolver Term Rate Spread / Alternative Currency Daily Rate Spread**
Category 1 ≥ 66⅔ of the Aggregate Revolving Commitment	0.25%	1.25%
Category 2 < 66⅔ of the Aggregate Revolving Commitment but ≥ 33⅓ of the Aggregate Revolving Commitment	0.50%	1.50%
Category 3 < 33⅓ of the Aggregate Revolving Commitment	0.75%	1.75%

For purposes of the foregoing, each change in the Applicable Rate resulting from a change in Average Quarterly Availability shall be effective during the period commencing on and including the applicable Adjustment Date and ending on the last day of the fiscal quarter immediately preceding such Adjustment Date, it being understood and agreed that, for purposes of determining the Applicable Rate on the first day of any fiscal quarter of the Company, the Average Quarterly Availability during the most recently ended fiscal quarter of the Company shall be used. Notwithstanding the foregoing, the Average Quarterly Availability shall be deemed to be in Category 3 (A) at any time that an Event of Default has occurred and is continuing or (B) at the option of the Administrative Agent or at the request of the Required Lenders if the Borrowers fail to deliver any Borrowing Base Certificate or related information required to be delivered by them pursuant to Section 5.01, during the period from the expiration of the time for delivery thereof until each such Borrowing Base Certificate and related information is so delivered.

The Applicable Rate for any Class of Incremental Term Loans shall be as set forth in the applicable Incremental Amendment.

"**Appraisal and Field Examination Event**" shall mean at any time Specified Availability is less than the greater of (i) 15% of the Line Cap and (ii) the Dollar Equivalent of $75,000,000 for 5 consecutive Business Days; *provided*, that to the extent that the Appraisal and Field Examination Event has occurred, if the Specified Availability is greater than the applicable amount specified above for at least 20 consecutive calendar days, the Appraisal and Field Examination Event shall no longer be deemed to exist or be continuing until such time as the Specified Availability may again be less than the applicable specified amount. If a field examination and/or appraisal is initiated after an Appraisal and Field Examination Event has occurred and material work has occurred with respect thereto, the Administrative Agent shall be permitted to complete (and be entitled to reimbursement of expenses related to) such field examination and/or appraisal regardless of whether such Appraisal and Field Examination Event has ended.

"**Appropriate Lender**" shall mean, at any time, a Lender that has a Commitment or holds a Loan at such time.

"**Approved Counterparty**" means any Person that was the Administrative Agent or a Lender or any Affiliate of the foregoing (i) at the time it entered into a Swap Agreement or Banking Services Agreement, as applicable, in its capacity as a party thereto, (ii) with respect to a Swap Agreement or Banking Services Agreement, in each case in effect as of the Effective Date, as of the Effective Date, as applicable, in its capacity as a party thereto, and in the case of (i) or (ii) notwithstanding whether such Approved Counterparty may cease to be the Administrative Agent, Lender or an Affiliate of the foregoing thereafter, as applicable.

"**Approved Fund**" has the meaning assigned to such term in Section 9.04.

"**Asset Sale**" shall mean any Disposition (by way of merger, casualty, condemnation or otherwise, including a Casualty Event) by the Company, the other Borrowers or any of the Restricted Subsidiaries other than (a) Dispositions of ABL Collateral, (b) Dispositions permitted by Section 6.06 (other than 6.06(l)) and (c) a Disposition or series of related Dispositions having a value not in excess of the Dollar Equivalent of $5,000,000.

"**Assignment and Assumption**" shall mean an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"**Australian Dollar**" shall mean the lawful currency of Australia.

"**Availability**" shall mean, at any time, an amount equal to (a) the Line Cap *minus* (b) the Aggregate Revolving Exposure (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Borrowings).

"**Availability Period**" shall mean the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of all of the Commitments.

"**Available Tenor**" shall mean, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, pursuant to this Agreement as of such date.

"**Average Quarterly Availability**" shall mean, as of any Adjustment Date for any fiscal quarter of the Company, an amount equal to the average daily Availability during such fiscal quarter immediately preceding such Adjustment Date; *provided*, that in order to determine Availability on any day for purposes of this definition, the Borrowing Base for such day shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01 as of such day.

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

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

"**Bank of America**" shall mean Bank of America, N.A., a national banking association, in its individual capacity, and its successors.

"**Banking Services**" shall mean each and any of the following bank services provided to any Loan Party or its Restricted Subsidiaries by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services and interstate depository network services). Banking Services shall not include any Swap Agreements.

"**Banking Services Agreement**" shall mean those agreements entered into from time to time by any Loan Party or any of its Restricted Subsidiaries with a Lender or any of its Affiliates in connection with the obtaining of any of the Banking Services.

"**Banking Services Obligations**" shall mean any and all obligations of the Loan Parties and their Restricted Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"**Bankruptcy Code**" means the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended from time to time.

"**Bankruptcy Event**" shall mean, with respect to any Person, when such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"**BBSY**" has the meaning assigned to such term in clause (c) of the definition of "**Alternative Currency Term Rate**".

"**Benchmark**" shall mean, initially, the Term SOFR Rate; *provided* that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to such Relevant Rate or the then-current Benchmark, then "Benchmark" shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.14(b). Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"**Benchmark Replacement**" shall mean, for purposes of Section 2.14(b)(ii), the first alternative set forth below that can be determined by the Administrative Agent:

(1) [reserved];

(2) the sum of: (a) Daily SOFR and (b) the SOFR Adjustment; and

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

If the Benchmark Replacement as determined pursuant to clause (2) or (3) above would be less than the applicable Floor, the Benchmark Replacement will be deemed to be such Floor for the purposes of this Agreement and the other Loan Documents.

"**Benchmark Replacement Adjustment**" shall mean, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities; *provided* that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent (in consultation with the Borrower Representative) in its reasonable discretion.

"**Benchmark Replacement Conforming Changes**" shall mean, with respect to any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate", "Business Day" or "Interest Period" timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent (in consultation with the Borrower Representative) decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any

portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower Representative) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"**Benchmark Replacement Date**" shall mean the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event", the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); and

(2) in the case of clause (3) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative or not to comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; *provided*, that such non-representativeness, non-compliance, or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Event**" shall mean the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative or do not, or as a specified future date will not, comply with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

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

"**Beneficial Ownership Certification**" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" shall mean 31 C.F.R. § 1010.230.

"**Benefit Plan**" shall mean any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of Section 3(42) of ERISA 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".

"**BHC Act Affiliate**" of a party shall mean an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the U.S.

"**Bona Fide Debt Fund**" means any fund or investment vehicle that is primarily engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit in the ordinary course.

"**Borrower Notice**" shall have the meaning assigned to such term in Section 5.13(b)(ii).

"**Borrower Representative**" has the meaning assigned to such term in Section 11.01.

"**Borrowers**" shall mean, collectively and jointly and severally, (a) the Company and (b) any other Restricted Subsidiary of the Company designated as a Borrower by the Borrower Representative by notice in writing to the Administrative Agent but shall not include any Foreign Subsidiary (other than as provided in Section 2.09); *provided* that, with respect to each Restricted Subsidiary so designated pursuant to this clause (b), (w) the Administrative Agent shall have received a joinder agreement to this Agreement executed by such Restricted Subsidiary in form and substance reasonably satisfactory to the Administrative Agent, (x) to the extent not previously complied with, such Restricted Subsidiary shall comply with the requirements of Section 5.13 *mutatis mutandis* (it being understood that the documents described in Section 5.13(a) shall be delivered on the effective date of the joinder agreement to the extent not previously delivered), (y) the Administrative Agent shall have received documents of the type described in Section 4.01(a)(ii), 4.01(c) and 4.01(f) dated as of the effective date of the joinder agreement with respect to such Restricted Subsidiary in substantially the same form as such documents that were delivered with respect to the Company on the Effective Date and (z) the Administrative Agent shall have received, at least three (3) days prior to the effective date of such joinder, (i) all documentation and other information regarding such Restricted Subsidiary reasonably requested in writing by the Administrative Agent or any Lender in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing to the Borrower Representative at least ten (10) days prior to the effective date of such joinder and (ii) to the extent such Restricted Subsidiary

qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least three (3) days prior to the effective date of such joinder (or such later date as such requesting Person may agree), any Lender that has reasonably requested, in a written notice to the Borrower Representative at least ten (10) days prior to the effective date of such joinder, a Beneficial Ownership Certification in relation to such Restricted Subsidiary shall have received such Beneficial Ownership Certification. Each of the Borrowers are sometimes individually referred to as a "**Borrower**".

"**Borrowing**" shall mean (a) Loans of the same Type, made, converted or continued on the same date and, in the case of Term Rate Loans, as to which a single Interest Period is in effect, (b) a Swingline Loan, (c) a Protective Advance and (d) an Overadvance.

"**Borrowing Base**" shall mean, at any time, the sum of:

(a) 90% of the Loan Parties' Eligible Credit Card Receivables (other than Eligible Investment Grade Accounts) at such time, *plus*

(b) 90% of the Loan Parties' Eligible Investment Grade Accounts (other than Eligible Credit Card Receivables) at such time, *plus*

(c) 85% of the Loan Parties' Eligible Accounts (other than Eligible Credit Card Receivables and Eligible Investment Grade Accounts) at such time, *plus*

(d) the lesser of (i) 75% of the Loan Parties' Eligible Inventory, at such time, valued at the lower of cost or market value, determined on a first-in-first-out basis, and (ii) the product of 85% *multiplied by* the Net Orderly Liquidation Value percentage identified in the most recent Inventory appraisal ordered by the Administrative Agent of the Loan Parties' Eligible Inventory, valued at the lower of cost or market value, determined on a first-in-first-out basis, *plus*

(e) prior to the Fixed Asset Release Date, the lesser of (i) 75% of the Loan Parties' Eligible Machinery and Equipment at such time, valued at the lower of cost or market value, and (ii) the product of 85% *multiplied by* the Net Orderly Liquidation Value identified in the most recent Equipment appraisal ordered by the Administrative Agent of the Loan Parties' Eligible Machinery and Equipment, *plus*

(f) prior to the Fixed Asset Release Date, the Real Estate Component, *plus*

(g) 100% of Eligible Cash, *plus*

(h) the Acquired Borrowing Base Component, *minus*

(i) Reserves;

provided that the maximum amount included as part of the Borrowing Base pursuant to the foregoing clauses (e) and (f) shall not exceed, in the aggregate, (x) at any time prior to the second anniversary of the Effective Date, 50% of the Borrowing Base and (y) from and after the second anniversary of the Effective Date, 35% of the Borrowing Base. The calculations in clause (d) above may be determined on a combined basis for Eligible Inventory or on a category by category basis for Eligible Inventory, as determined by Administrative Agent from time to time in its Permitted Discretion based on its review of any appraisal and/or field examination of such Inventory; *provided*, that, commencing with the delivery of the Borrowing Base Certificate for the month ended December 31, 2023, the Borrower Representative shall determine amounts to be included pursuant to clause (d) above based on monthly inventory accounting methods consistent with the Company's quarterly inventory accounting methods as in effect on the Effective Date (or as otherwise reasonably acceptable to the Administrative Agent in its Permitted Discretion). The calculations in clause (e) above may be determined on a combined basis for Eligible Machinery and Equipment or on a category by category basis for Eligible Machinery and

Equipment, as determined by Administrative Agent from time to time in its Permitted Discretion based on its review of any appraisal of such Equipment. The establishment or increase of any Reserve will be limited to the exercise by the Administrative Agent of its Permitted Discretion, upon at least five Business Days' prior written notice to the Borrower Representative (which notice will include a reasonably detailed description of the Reserve being established); *provided* that, upon such notice, the Borrowers will not be permitted to borrow so as to exceed the Borrowing Base after giving effect to such new or modified Reserves. During such five Business Day period, the Administrative Agent will, if requested, discuss any such new or modified Reserve with the Borrower Representative, and the Borrower Representative may take such action as may be required so that the event, condition or matter that is the basis for such new or modified Reserve no longer exists or exists in a manner that would result in the establishment of a lower Reserve, in each case, in a manner and to the extent reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary herein, (x) the amount of any such Reserve will have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve, (y) no Reserves will be duplicative of other reserves or items that are otherwise addressed, excluded or already accounted for through eligibility criteria (including collection/advance rates) and (z) no Reserve shall be imposed on the first 5% of dilution and thereafter no dilution Reserve shall exceed 1% for each incremental whole percentage in dilution over 5% (it being agreed that partial percentage point Reserves are permitted (e.g., a Reserve for 0.1 percentage points where dilution is 5.1%)). To the extent any component of the Borrowing Base is denominated in a currency other than Dollars, such amount shall be reflected in the Borrowing Base (and reported in the Borrowing Base Certificate) in Dollars based on the Dollar Equivalent thereof.

"**Borrowing Base Certificate**" shall mean a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit C or another form that is reasonably acceptable to the Administrative Agent in its Permitted Discretion, together with such supporting information and schedules as may be reasonably requested by the Administrative Agent.

"**Borrowing Request**" shall mean a notice substantially in the form of Exhibit B-1 or such other form as may be approved by the Administrative Agent (including any form on an Electronic System as shall be approved by the Administrative Agent) by the Borrower Representative requesting any Borrowing in accordance with Section 2.03.

"**Business Day**" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that,

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

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

(c) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Canadian Dollars, shall mean a day other than a day banks are closed for general business in Toronto because such day is a Saturday, Sunday or a legal holiday under the laws of Canada;

(d) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Australian Dollars, shall mean a day other than a day banks are closed for general business in Sydney because such day is a Saturday, Sunday or a legal holiday under the laws of Australia;

(e) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Japanese Yen, shall mean a day other than a day banks are closed for general business in Tokyo because such day is a Saturday, Sunday or a legal holiday under the laws of Japan;

(f) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Swiss Francs, shall mean a day other than a day banks are closed for general business in Bern because such day is a Saturday, Sunday or a legal holiday under the laws of Switzerland;

(g) if such day relates to any fundings, disbursements, settlements or payments in an Additional Alternative Currency, or any other dealings in any Additional Alternative Currency to be carried out pursuant to this Agreement, means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such Additional Alternative Currency; and

(h) if such day relates any interest rate settings as to Loan the reference rate for which utilizes Term SOFR and for any notice periods related to the borrowing or continuation of, or the conversion into, a Term SOFR Loan, shall also mean any day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"**Canadian Dollar**" shall mean the lawful currency of Canada.

"**Canadian Prime Rate**" shall mean, for any day, the rate of interest *per annum* equal to the greater of (a) the interest rate per annum publicly announced from time to time by the Administrative Agent as its reference rate in effect on such day at its principal office in Toronto for determining interest rates applicable to commercial loans denominated in Canadian Dollars and made by it in Canada (each change in such reference rate being effective from and including the date such change is publicly announced as being effective) and (b) the interest rate *per annum* equal to the sum of (i) the ~~**CDOR Rate**~~**Term CORRA Rate for a one (1) month term that is two (2) Business Days prior to such date *plus* the Term CORRA Adjustment** and (ii) 1.00% *per annum*, in each case, adjusted automatically with each quoted or published change in such rate, all without the necessity of any notice to the Borrower Representative or any other Person; provided that if the Canadian Prime Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"**Canadian Prime Rate Loan**" or "**Canadian Prime Rate Borrowing**" mean a Loan or Borrowing that bears interest at the Canadian Prime Rate. All Canadian Prime Rate Loans shall be denominated in Canadian Dollars.

"**Capital Expenditures**" shall mean, for any period, the additions to property, plant and equipment and other expenditures of the Company and the Restricted Subsidiaries, on a consolidated basis, that are (or are required to be) set forth in a consolidated statement of cash flows of the Company and the Restricted Subsidiaries for such period prepared in accordance with GAAP, but excluding in each case any such expenditures that (i) are made to restore, repair, replace or rebuild property to the condition of such property immediately prior to any Casualty Event, to the extent such expenditure is made with insurance proceeds, condemnation awards or damage recovery proceeds relating to any such Casualty Event, (ii) are financed with the proceeds of any Asset Sale which proceeds do not constitute Net Cash Proceeds, (iii) are made pursuant to a Permitted Acquisition, or (iv) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time.

"**Capital Lease**" of any Person shall mean any lease of any property by such Person as lessee which would, in accordance with GAAP but subject to Section 1.04(b), be required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligations**" shall mean, at any time, with respect to any Capital Lease, the amount of all obligations of such Person that is capitalized on a balance sheet of such Person prepared in accordance with GAAP but subject to Section 1.04(b).

"**Cash Dominion Event**" shall mean any of the following: (a) at any time Specified Availability is less than the greater of (i) 12.5% of the Line Cap and (ii) the Dollar Equivalent of $62,500,000 for 5 consecutive Business Days or (b) a Specified ABL Event of Default shall have occurred and be continuing; *provided,* that (x) to the extent that the Cash Dominion Event has occurred due to clause (a) of this definition, if the Specified Availability is greater than the applicable amount specified above for at least 20 consecutive calendar days, the Cash Dominion Event shall no longer be deemed to exist or be continuing until such time as the Specified Availability may again be less than the applicable specified amount and (y) to the extent that the Cash Dominion Event has occurred due to clause (b) of this definition, if no Specified ABL Event of Default exists for at least 20 consecutive calendar days, the Cash Dominion Event shall no longer be deemed to exist or be continuing until such time as a Specified ABL Event of Default may occur and be continuing again.

"**Cash Dominion Notice**" means a written notice delivered by the Administrative Agent at any time a Cash Dominion Event has occurred and is continuing to any bank or other depository at which any Controlled Account is maintained directing such bank or other depository to remit all funds in such Controlled Account to the applicable Exclusive Control Account on a daily basis.

"**Casualty Event**" shall mean any event that gives rise to the receipt by any Loan Party of any insurance proceeds or condemnation awards (or any agreement entered into in connection with any right to receive insurance proceeds or any current or potential condemnation proceeding) in respect of any equipment, fixed assets or real property (including any improvements thereon) or other assets the restoration, repairing, replacement or rebuilding of which would constitute a Capital Expenditure to restore, repair, replace or rebuild such equipment, fixed assets, real property or other assets.

~~**"CDOR Rate" has the meaning assigned to such term in the definition of "Alternative Currency Term Rate".**~~

A "**Change in Control**" shall be deemed to have occurred if:

(a) any "person" or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding (i) any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and (ii) any Permitted Party), acquires beneficial ownership of Voting Stock of the Company representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested);

(b) the Company ceases to own, beneficially and of record, directly or indirectly, one hundred percent (100%) of the issued and outstanding Voting Stock of each other Borrower; and

(c) a "change of control" or similar event (which, in the case of Permitted Convertible Notes, shall include any "fundamental change," "make-whole fundamental change" or other similar event risk provision) shall occur as provided in any document governing any Material Debt and in connection with such "change of control" or similar event, the Company shall be obligated to prepay, repurchase or offer to repurchase all of the affected Material Debt.

"**Change in Law**" shall mean the occurrence after the date of this Agreement (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) of any of the following: (a) the adoption of 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 or application thereof by any Governmental Authority; or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements 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, issued or implemented.

"**Charge**" means any fee, loss, charge, expense, cost, accrual or reserve of any kind.

"**Class**" (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular series of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Revolving Commitments or Incremental Commitments and (c) when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Revolving Loans, Swingline Loans, Protective Advances, Overadvances or Incremental Loans. Incremental Commitments (and in each case, the Loans made pursuant to such Incremental Commitments) that have different terms and conditions shall be construed to be in different Classes. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have the same terms and conditions shall be construed to be in the same Class.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" shall mean any and all property of a Person in which a Lien is granted or purported to be granted pursuant to the Collateral Documents. For the avoidance of doubt, the Collateral shall exclude the Excluded Assets, unless specifically consented to by the Company in writing.

"**Collateral Access Agreement**" shall mean any landlord waiver or other agreement, in form and substance satisfactory to the Administrative Agent in its Permitted Discretion, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, creditor, warehouseman or other similar Person) in possession of any Collateral or any landlord of any real property where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, supplemented or otherwise modified from time to time.

"**Collateral Agreement**" shall mean the Collateral Agreement, dated as of the Effective Date, among the Company, the other Borrowers party thereto from time to time, the Subsidiary Guarantors from time to time party thereto and the Administrative Agent for the benefit of the Secured Parties.

"**Collateral Documents**" shall mean, collectively, the Collateral Agreement, the Mortgages and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

"**Commingled Inventory**" shall mean Inventory of any Borrower that is commingled (whether pursuant to a consignment, a toll manufacturing agreement or otherwise) with Inventory of another Person (other than a Borrower) at a location owned or leased by any Borrower to the extent that such Inventory of the applicable Borrower is not readily identifiable.

"**Commitment**" shall mean, with respect to each Lender, the sum of such Lender's Revolving Commitment, together with the commitment of such Lender to acquire participations in Protective Advances hereunder, and its Incremental Commitment (if any). The initial amount of each Lender's Commitment is set forth on the Commitment Schedule, in the applicable Incremental Amendment, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable.

"**Commitment Fee Rate**" shall mean, for any day, with respect to the commitment fees payable hereunder, a rate per annum equal to 0.25%.

"**Commitment Increase**" has the meaning specified in Section 2.09(e).

"**Commitment Schedule**" shall mean the Schedule attached hereto as Schedule 1.01(d).

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

"**Communications**" has the meaning assigned to such term in Section 9.01(d).

"**Company**" has the meaning specified therefor in the preamble to this Agreement.

"**Compliance Certificate**" shall mean a certificate substantially in the form of Exhibit E.

"**Compliance Period**" shall mean at any time from and after the occurrence of the FCCR Covenant Trigger Date, Specified Availability is less than the greater of (i) 12.5% of the Line Cap and (ii) the Dollar Equivalent of $62,500,000 and shall continue for the period until Specified Availability is equal to or greater than the greater of (i) 12.5% of the Line Cap and (ii) the Dollar Equivalent of $62,500,000 for at least 20 consecutive calendar days.

"**Connection Income Taxes**" shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Consolidated EBITDA**" shall mean, for any period, Consolidated Net Income for such period *plus*

(a) without duplication and, except in the case of clause (xiii), (xiv), (xvii) or (xviii), to the extent deducted in determining such Consolidated Net Income, the sum of:

(i) Consolidated Interest Expense for such period determined in accordance with GAAP;

(ii) provision for taxes based on income, profits or capital of the Company and the Restricted Subsidiaries, including federal, state, franchise, excise, international withholding and similar taxes payable by the Company or any of the Restricted Subsidiaries or accrued during such period including any penalties and interest relating to any tax examinations and state taxes in lieu of business fees (including business license fees);

(iii) all amounts attributable to depreciation and amortization for such period;

(iv) any cash distributions or payments made by an Unrestricted Subsidiary to the Company or any Restricted Subsidiary during such period in respect of the operating cash flow of such Unrestricted Subsidiary;

(v) an amount equal to the sum of (A) Integration Costs, (B) any net after-tax unusual, extraordinary, exceptional, infrequent or non-recurring losses, expenses or other Charges (as determined by the Borrower Representative in good faith) during such period (including any unusual, extraordinary, exceptional, infrequent or non-recurring losses, expenses or other Charges directly attributable to the implementation of cost savings initiatives and any accruals or reserves in respect of any unusual, extraordinary, exceptional, infrequent or non-recurring items), (C) any fees, expenses or charges (including any amortization or write-off of debt issuance or deferred financing costs, premiums or prepayment penalties) related to any Permitted Acquisition and any other Investment permitted hereunder, any Equity Issuance, any incurrence of Debt permitted under Section 6.01, obtaining an increase in Aggregate Revolving Commitment pursuant to Section 2.09, any waivers in respect of, or amendments or modifications to, this Agreement, any other Loan Document, or any Permitted Additional Indebtedness Document, and any disposition, recapitalization or option buyout in each case, whether or not such transactions have been consummated and (D) any fees, expenses or charges incurred in connection with any Permitted Reorganization or Tax Restructuring (in each case, whether or not consummated);

(vi) the amount of (A) strategic and/or business initiative costs, business optimization Charges, including costs and expenses relating to business optimization programs, which, for the avoidance of doubt, shall include, without limitation, implementation of operational and reporting systems and technology initiatives; strategic initiatives; retention; severance; systems establishment costs; systems conversion and integration costs; contract termination costs; recruiting and relocation costs and expenses; costs, expenses and charges incurred in connection with curtailments or modifications to pension and post-retirement employee benefits plans; costs to start-up, ramp-up, pre-opening, opening, closure, transition and/or consolidation of distribution centers, operations, offices and facilities and Charges attributable to the undertaking and/or implementation of cost savings initiatives, cost rationalization programs, operating expense reductions, synergies and/or similar initiatives or programs (including, without limitation, in connection with any inventory optimization program, integration, restructuring or transition, any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, any implementation of operational and reporting systems and initiatives (including any expense relating to the implementation of enhanced accounting or IT functions or new system designs), systems implementation or establishment Charges) including in connection with the Transactions and any Permitted Acquisition or other permitted Investment, and new systems design and implementation, as well as consulting fees and any one-time expense relating to enhanced accounting function, (B) business or facilities (including greenfield facilities) start-up, opening, transition, consolidation, shut-down, closing, expansion and consolidation costs (including but not limited to termination costs, moving costs and legal costs), unused warehouse space costs, new contract costs, restructuring Charges (including restructuring and integration costs related to acquisitions after the Effective Date and adjustments to existing reserves and any restructuring Charge relating to any Permitted Reorganization or any Tax Restructuring), whether or not classified as restructuring expense on the consolidated financial statements, Charges relating to entry into a new market or to exiting a market, one time Charges (including compensation

expense), consulting Charges, software and other intellectual property development Charges, corporate development Charges and Charges in connection with new operations, (C) recruiting, signing, retention and completion bonuses, costs and expenses, human resources costs, transition costs and management transition costs, advertising costs, losses associated with temporary decreases in work volume and expenses related to maintaining underutilized personnel (including duplicative personnel), any transition Charge, any employee ramp-up Charges, costs relating to early termination of rights fee arrangements, costs or cost inefficiencies related to facility or property disruptions or shutdowns and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of multi-employer plan or pension liabilities) and (D) severance, relocation or recruiting costs;

(vii) any losses from abandoned, disposed or discontinued operations;

(viii) Transaction Costs incurred during such period;

(ix) any other noncash charges, losses or expenses (except to the extent representing a non-cash "straight-line" rent expense under sub-clause (x) below or an accrual or reserve for potential cash items in any future period and excluding any amortization of a prepaid cash item that was paid but not expensed in a previous period);

(x) the non-cash portion of "straight-line" rent expense for such period;

(xi) the amount of any minority interest expense attributable to minority interests of third parties in the positive income of any non-wholly owned Restricted Subsidiary;

(xii) (A) the amount of any restructuring charges or reserves, equity-based or non-cash compensation charges or expenses, including any such charges or expenses arising from grants of stock appreciation or similar rights, stock options, restricted stock or other rights or retention charges (including charges or expenses in respect of incentive plans), or pursuant to any management equity plan, stock option plan, equity-based compensation plan or any other management or employee benefit plan or long term incentive plan or agreement, any severance agreement or any stock subscription or shareholder agreement, (B) payments made to option holders in connection with, or as a result of, any distribution made to shareholders and (C) any Charge in connection with the rollover, acceleration or payout of Equity Interests held by management and members of the board of the Company (or any Parent Entity) or any Subsidiary thereof;

(xiii) any adjustments reflected in any quality of earnings report prepared by any of the "Big Four" accounting firms and furnished to the Administrative Agent, in connection with a Permitted Acquisition or other Investment consummated after the Effective Date;

(xiv) at the option of the Company, without duplication, the sum of the following amounts for such period: (A) pro forma adjustments, including the amount of "run rate" cost savings, operating expense reductions, operational improvements and cost synergies (collectively, "**Expected Cost Savings**") related to (X) any of the Transactions that are (i) reasonably identifiable and projected by the Company in good faith to be realized as a result of actions that have been taken or initiated or with respect to which steps have been taken or initiated or are expected to be taken or initiated (in the good faith determination of the Company) or (ii) identified to the Administrative Agent prior to the Effective Date (including by inclusion in any financial model, management presentation, confidential information memorandum, offering memorandum or quality of earnings or similar report of analysis) or (Y) any corporate or business restructuring initiatives, any Specified Transaction, any acquisition or combination, the commencement of activities constituting a business line, the termination or discontinuance of activities constituting a business line or related to any other initiative (including the effect of increased pricing in customer

contracts, the renegotiation of contracts or other arrangements or efficiencies from the shifting of production of one or more products from one manufacturing facility to another (or the provision of services from one location to another)) (any such restructuring initiatives, Specified Transaction, acquisition or combination, cost savings initiative or other initiative, a "**Cost Saving Initiative**") that are reasonably identifiable and projected by the Company in good faith to be realized as a result of actions that have been taken or initiated or with respect to which steps have been taken or initiated or are expected to be taken or initiated within 24 months after the date of any such restructuring initiatives, Specified Transaction, acquisition or combination or other Cost Saving Initiative (in the good faith determination of the Company); *provided* that in each case of this clause (xiv)(A), Expected Cost Savings shall be added to Consolidated EBITDA until fully realized and calculated on a pro forma basis as though such Expected Cost Savings had been realized on the first day of the relevant period, net of the amount of actual benefits realized from such actions (it being understood that "run rate" shall mean the full reasonably expected recurring benefit that is associated with the relevant action) (it being understood that the 24-month look-forward period referred to above will not apply to (x) any other provision of this definition of "Consolidated EBITDA", (y) any amount relating to any adjustment contemplated by the Transactions or identified to the Administrative Agent (including by inclusion in any financial model, management presentation, confidential information memorandum, offering memorandum or quality of earnings or similar report of analysis) prior to the Effective Date (without regard to the amounts or time periods therein) (in each case, regardless of whether actions are taken or are expected to be taken before or after the Effective Date) or (z) any pro forma adjustments consistent with Regulation S-X); and (B) other add-backs and adjustments that are consistent with Regulation S-X;

(xv) one-time public company registration, listing, compliance, reporting and related expenses;

(xvi) (A) losses or discounts in connection with any Permitted Receivables Financing or otherwise in connection with factoring arrangements or the sale of Permitted Receivables Financing Assets and (ii) amortization of (x) capitalized fees, (y) loan origination costs and (z) portfolio discounts, in each case in connection with any Permitted Receivables Financing;

(xvii) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not included in the calculation of Consolidated EBITDA in any prior period to the extent non-cash gains relating to such receipts (or netting arrangement) were deducted in the calculation of Consolidated EBITDA pursuant to clause (b) below for any previous period and not added back;

(xviii) unrealized net losses in the fair market value of any arrangements under any hedge agreements or other derivative instruments; *minus*

(b) without duplication,

(i) consolidated interest income for such period determined in accordance with GAAP;

(ii) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense;

(iii) any net after-tax extraordinary or non-recurring gains during such period;

(iv) all non-cash gains during such period for which no cash inflow is foreseeable;

(v) the amount of any minority interest income attributable to minority interests of third parties in the losses of any non-wholly owned Restricted Subsidiary; *plus*

(vi) cash expenditures (or any netting arrangements resulting in increased cash expenditures) not included in Consolidated EBITDA in any period to the extent non-cash losses relating to such expenditures were added to the calculation of Consolidated EBITDA for any previous periods and not subtracted back.

"**Consolidated Interest Expense**" shall mean, for any period, the aggregate interest expense (including imputed interest expense in respect of Capital Leases), net of interest income, of the Company, the other Borrowers and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP. For purposes of the foregoing, interest expense shall be determined after giving effect to any net payments made or received by the Company, the other Borrowers or any Restricted Subsidiary with respect to interest rate Swap Agreements.

"**Consolidated Net Income**" shall mean, for any period, the net income or loss of the Company and the Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded:

(a) the income of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Restricted Subsidiary,

(b) the income or loss of any Person accrued prior to the date it becomes a Restricted Subsidiary or is merged into or consolidated with any Borrower or any Restricted Subsidiary or the date that such Person's assets are acquired by any Borrower or any Restricted Subsidiary,

(c) the income of any Person in which any other Person (other than the Company, the other Borrowers or a Wholly Owned Subsidiary that is a Restricted Subsidiary or any director holding qualifying shares in accordance with applicable law) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Company, any other Borrower or a Wholly Owned Subsidiary that is a Restricted Subsidiary by such Person during such period,

(d) any gains or losses attributable to Dispositions out of the ordinary course of business,

(e) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period (including with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with Accounting Standards Codification 840 on the definitions and covenants herein, for which GAAP as in effect on the Effective Date shall be applied);

(f) net unrealized gains and losses resulting from obligations under Swap Agreement or other derivative instruments entered into for the purpose of hedging interest rate risk and the application of FASB ASC 815-10;

(g) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP;

(h) the effect of any non-cash impairment charges or write-ups, write-downs or write-offs of assets or liabilities resulting from the application of GAAP and the amortization of intangibles arising from the application of GAAP;

(i) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Company has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is in fact indemnified or reimbursed within the next four fiscal quarters of the Company of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such next four fiscal quarters of the Company);

(j) to the extent covered by insurance and actually reimbursed, or, so long as the Company has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (x) not denied by the applicable carrier in writing within 180 days and (y) in fact reimbursed within next four fiscal quarters of the Company of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such next four fiscal quarters of the Company), expenses, charges or losses with respect to liability or casualty events or business interruption;

(k) any non-cash gain (or loss) attributable to the mark to market movement in the valuation of hedging obligations or other derivative instruments pursuant to FASB Accounting Standards Codification 815-Derivatives and Hedging or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification 825-Financial Instruments; *provided* that any cash payments or receipts relating to transactions realized in a given period shall be taken into account in such period; and

(l) any non-cash gain (or loss) attributable to changes in the fair market value of (i) convertible preferred stock warrant liability and/or (ii) common stock warrant liability.

"**Consolidated Total Assets**" shall mean, as of any date of determination, the total assets of the Company and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as set forth on the consolidated balance sheet of the Company and the Restricted Subsidiaries as of the most recently delivered financial statements pursuant to Sections 5.01(a) or (b), as applicable.

"**Controlled Account**" has the meaning assigned to such term in Section 5.15(a).

"**Copyrights**" shall mean all rights, title and interests (and all related IP Ancillary Rights) in or relating to copyrights and all mask work, database and design rights (including to the fullest extent arising under any Requirement of Law), whether or not registered or published and all registrations thereof.

"CORRA" means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator).

"**Corresponding Tenor**" with respect to any Available Tenor shall mean, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"**Covered Entity**" shall mean 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).

"**Covered Party**" has the meaning assigned to such term in Section 9.22.

"**Credit Card Account Receivables**" shall mean any receivables due to any Borrower in connection with purchases from and other goods and services provided by such Borrower on the following credit cards or payment process systems: Visa, MasterCard, American Express, Stripe, Shopify, Square and such other credit cards and payment processors as the Administrative Agent shall reasonably approve from time to time, in each case which have been earned by performance by such Borrower but not yet paid to such Borrower by the credit card issuer or the credit card processor, as applicable.

"**Credit Extension**" has the meaning assigned to such term in Section 4.02.

"**Credit Party**" shall mean the Administrative Agent, the Issuing Bank or any other Lender.

"**Cure Amount**" has the meaning assigned to such term in Section 7.02.

"**Cure Right**" has the meaning assigned to such term in Section 7.02.

"**Daily Rate Loan**" or "**Daily Rate Borrowing**" shall mean an ABR Loan, a Canadian Prime Rate Loan or an Alternative Currency Daily Rate Loan.

"**Daily SOFR**" means the rate per annum equal to SOFR determined for any day pursuant to the definition thereof plus the SOFR Adjustment. Any change in Daily SOFR shall be effective from and including the date of such change without further notice. If the rate as so determined would be less than 0.0%, such rate shall be deemed to be 0.0% for purposes of this Agreement.

"**DDA**" means any checking, demand deposit or other account maintained by the Loan Parties.

"**DDA Instruction**" has the meaning assigned to such term in Section 5.15(a).

"**Debt**" of a Person shall mean at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) to the extent reflected as a liability on the balance sheet of such Person in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services, which purchase price is due more than 6 months after the date of (x) placing the property in service or taking delivery and title thereto or (y) completion of the service rendered, as applicable, (iv) all Capital Lease Obligations of such Person, (v) all obligations of such Person as account party under letters of credit or similar instrument, (vi) net obligations of such Person under Swap Agreements, valued at the Agreement Value thereof to the extent such obligations would appear as a net liability on a balance sheet of such Person (other than in the footnotes) prepared in accordance with GAAP, (vii) all Disqualified Equity

Interests of such Person, (viii) all Guarantees of such Person in respect of the Debt described in clauses (i) through (vii) above and (ix) all Debt of the types described in clauses (i) through (vii) above secured by any Lien on any property owned by such Person, whether or not such Debt has been assumed by such Person *(provided* that, if the Person has not assumed or otherwise become liable in respect of such Debt, such Debt shall be deemed to be in an amount equal to the lesser of (x) the aggregate unpaid amount of Debt secured by such Lien and (y) the fair market value of the property to which such Lien relates as determined in good faith by such Person); *provided* that, notwithstanding the foregoing, Debt will be deemed not to include indebtedness, guarantees or obligations that are (1) trade payables incurred by such Person in accordance with customary practices and in the ordinary course of business of such Person, (2) earn outs, purchase price holdbacks or similar obligations until such obligation has become a liability of such Person on its balance sheet in accordance with GAAP and solely if not paid after becoming due and payable, (3) intercompany liabilities arising in the ordinary course of business, (4) intercompany loans and advances made by Loan Parties having a term not exceeding 364 days (inclusive of any roll over or extension of terms) and made in the ordinary course of business or consistent with past practice or industry norm and (5) Debt of any direct or indirect parent appearing on the balance sheet of such Person solely by reason of push down accounting under GAAP.

Accrual of interest, the accretion of accreted value, the payment of interest in the form of additional Debt with the same terms, the payment of dividends on Disqualified Equity Interests in the form of additional shares of Disqualified Equity Interests of the same class, accretion or amortization of original issue discount or liquidation preference and increases in the amount of Debt outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Debt for purposes of Section 6.01. Guarantees of, or obligations in respect of letters of credit relating to, Debt which is otherwise included in the determination of a particular amount of Debt shall not be included in the determination of such amount of Debt; provided that the incurrence of the Debt represented by such guarantee or letter of credit, as the case may be, was permitted under this Agreement. With respect to any Debt consisting of Disqualified Equity Interests, the principal amount thereof shall be deemed to be the liquidation preference or the maximum fixed repurchase price, as the case may be. For the avoidance of doubt, in no event will Debt include any obligations in respect of any Issuer Option.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"**Default**" shall mean any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"**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.

"**Defaulting Lender**" shall mean any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied; (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized

officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

"**Deposit Account Control Agreement**" means a control agreement executed by the Administrative Agent, the applicable Loan Party and the applicable bank or other depository at which a deposit account of such Loan Party is maintained that, in each case, gives the Administrative Agent the right, without further action by the applicable Loan Party, to direct the disposition of the funds in such deposit account.

"**Designated Event of Default**" shall mean any Event of Default under clauses (a), (b) (solely on account of a breach of Section 5.01(j), Section 6.13 or Section 6.14), (f) or (g) of Section 7.01.

"**Designated Non-Cash Consideration**" shall mean the fair market value of non-cash consideration received by the Company or any Restricted Subsidiary in connection with a Disposition designated as Designated Non-Cash Consideration pursuant to a certificate of a Financial Officer of the Borrower Representative setting forth the basis of such valuation, *less* the amount of cash or Permitted Investments received in connection with a subsequent sale of such Designated Non-Cash Consideration.

"**Disposition**" or "**Dispose**" shall mean the sale, transfer, or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a division or otherwise) of any Property of any Person (including any sale and leaseback transaction, the sale of any Equity Interest owned by such Person and any issuance of Equity Interest by any subsidiary of such Person to any other Person).

"**Disqualified Equity Interests**" shall mean any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or, other than with respect to Permitted Convertible Notes, requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the date that is 91 days following the Stated Maturity Date at the time of the issuance of such Equity Interest; *provided, however,* that (i) only the portion of such Equity Interest which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be a Disqualified Equity Interest, (ii) if such Equity Interests are issued to any current or former employees or other service providers or to any plan for the benefit of employees, directors, officers, members of management or consultants (including any equity or incentive compensation or benefit plan) of the Company or its subsidiaries or by any such compensation or plan to such current or former employees, other service providers, directors, officers, members of management or consultants, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by such Person in order to satisfy applicable statutory or regulatory obligations or as a result of such current or former employee's, other service provider's, director's, officer's, management member's or consultant's termination, death or disability, (iii) any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Equity Interests shall not be deemed to be Disqualified Equity Interests, and (iv) Equity Interests will not constitute Disqualified Equity Interests solely because of provisions giving holders thereof the right to require repurchase or redemption upon an initial public offering, "asset sale" or "change of control" occurring prior to such date; or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) Debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time prior to the date that is 91 days following the Stated Maturity Date at the time of the issuance of such Equity Interest.

"**Disqualified Lender**" shall mean any (i) competitor of the Company or any of its subsidiaries and (ii) such other Person, in each case of the foregoing clause (i) and (ii), identified in writing to the Administrative Agent prior to the Effective Date, and, in the case of the foregoing clause (i) and (ii), the clearly identifiable (solely on the basis of the similarity of its name) Affiliates of any of the foregoing (other than any Affiliate that is a Bona Fide Debt Fund); *provided* that, after the Effective Date, the Borrower Representative shall be permitted, upon three Business Days' prior notice to the Administrative Agent, to supplement in writing the list of competitors provided for in clause (i) to include additional competitors and/or any Affiliates thereof (other than any Affiliate that is a Bona Fide Debt Fund) and to remove institutions from such list (such list, as so supplemented or modified from time to time, the "**Disqualified Institution List**"); *provided, further,* that the foregoing shall not apply retroactively to disqualify any parties that have previously acquired an assignment or participation interest in the Loans to the extent such party was not a Disqualified Lender at the time of the applicable assignment or participation, as the case may be. The Administrative Agent will make available to a Lender, upon the request of such Lender, the Disqualified Institution List.

"**Document**" has the meaning assigned to such term in Article 9 of the UCC.

"**Dollar Equivalen**t" means, for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Alternative Currency last provided (either by publication or otherwise provided to the Administrative Agent) by Reuters on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with the Alternative Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion.

"**Dollars**" or "**$**" refers to lawful currency of the United States of America.

"**Domestic Subsidiary**" shall mean any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**ECP**" shall mean an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

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

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

"**Effective Date**" shall mean the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

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

"**Electronic System**" shall mean any electronic system, including e-mail, e-fax, web portal access for a Loan Party, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent and the Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"**Eligible Accounts**" shall mean, at any time, all Accounts owned by a Loan Party based on the criteria set forth below. Eligible Accounts shall not include any Account of a Loan Party:

(a) which is not subject to a first priority perfected security interest in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent unless an appropriate Reserve (as determined by the Administrative Agent in its Permitted Discretion) shall have been established or maintained by the Loan Parties or (iii) a Lien permitted in this Agreement that is subject to an Acceptable Intercreditor Agreement;

(c) (i) which is unpaid (a) more than 90 days after the date of the original invoice therefor; *provided* that, with respect to this clause (a), any Accounts owing by McLaren Applied LTD and its Affiliates may be included as Eligible Accounts after such 90 day period so long as such Accounts are not unpaid for more than 120 days after the date of the original invoice therefor or (b) more than 60 days after the original due date therefor or (ii) which has been written off the books of the Loan Parties or otherwise designated as uncollectible; *provided* that a Permitted Bank Financing Account shall not be eligible if it is unpaid more than 10 days past the consummation of the related sale;

(d) which is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c) above;

(e) at any time when the amount of Eligible Accounts exceeds the Dollar Equivalent of $5,000,000, which is owing by an Account Debtor to the extent the aggregate amount of Accounts (excluding, for the avoidance of doubt, any Permitted Bank Financing Accounts) owing from such Account Debtor and its Affiliates to all Loan Parties exceeds 25% of the aggregate amount of Eligible Accounts of all Loan Parties; *provided*, that the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined based on all of the otherwise Eligible Accounts after giving effect to any eliminations other than this clause (e);

(f) with respect to which any covenant, representation or warranty contained in this Agreement or in the Collateral Agreement has been breached or is not true in a material respect (and all respects to the extent such covenant, representation or warranty is already qualified by materiality);

(g) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Administrative Agent in its Permitted Discretion which has been sent to the Account Debtor, (iii) represents a progress billing (provided, the foregoing shall not exclude any Account in respect of the sale of motor vehicles solely because a de minimis portion of such Account relates to future services to be provided in respect of such motor vehicle(s)), (iv) is contingent upon such Loan Party's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis (except as to bill and hold invoices, if Administrative Agent shall have received an agreement in writing from the account debtor, in form and substance satisfactory to Administrative Agent in its Permitted Discretion, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice) or (vi) relates to payments of interest, finance charges or late charges;

(h) for which goods giving rise to such Account have not been received by the Account Debtor or for which the services giving rise to such Account have not been performed by such Loan Party (*provided*, the foregoing shall not exclude any Account in respect of the sale of motor vehicles solely because a de minimis portion of such Account relates to future services to be provided in respect of such motor vehicle(s)) or if, in duplication, such Account was invoiced more than once (provided, that only the amount of the Account related to the duplicative invoice shall be deemed ineligible by virtue of this clause (h));

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws (other than post-petition accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Code and reasonably acceptable to the Administrative Agent), (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due or (v) ceased operation of its business;

(k) which is owed by any Account Debtor which has sold all or substantially all of its assets;

(l) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the U.S. or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, unless, in any such case, either (x) such Account is backed by a Letter of Credit acceptable to the Administrative Agent in its Permitted Discretion and which is in the possession of, and is directly drawable by, the Administrative Agent or (y) such Account is subject to credit insurance payable to the Administrative Agent issued by an insurer and on terms and in an amount (net of any applicable deductibles) deemed acceptable to the Administrative Agent in its Permitted Discretion; *provided* that notwithstanding this clause (l), the Borrowing Base may include Accounts owing from large multinational corporations reasonably acceptable to the Administrative Agent in its Permitted Discretion so long as (1) such Account Debtor has an Investment Grade Rating, (2) such Account Debtor maintains its chief executive office in, and is organized under applicable law of, an Eligible Jurisdiction or Canada and (3) each parent entity of such Account Debtor maintains its chief executive office in, and is organized under applicable law of, the U.S., any state of the U.S., the District of Columbia, an Eligible Jurisdiction or Canada;

(m) which is owed in any currency other than Dollars, Euros, Pounds Sterling, Swiss Francs, Japanese Yen, Canadian Dollars or any other Alternative Currency;

(n) which is owed by (i) any Governmental Authority of any country other than the U.S., (ii) any Governmental Authority of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.) and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction, or (iii) any Governmental Authority that is any state government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the state law (if any) that is substantially equivalent to the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.) and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction, in each case with respect to the foregoing clauses (i) through (iii), unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent in its Permitted Discretion and which is in the possession of, and is directly drawable by, the Administrative Agent;

(o) which is owed by any Affiliate of any Loan Party or any employee, officer, director, agent or stockholder of any Loan Party or any of its Affiliates;

(p) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(q) which is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;

(r) which is evidenced by any promissory note, chattel paper or instrument (unless such promissory note, chattel paper or instrument is in the possession of the Administrative Agent, and to the extent necessary or appropriate, endorsed to the Administrative Agent);

(s) which is owed by an Account Debtor (i) located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Loan Party to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Loan Party has filed such report or qualified to do business in such jurisdiction or (ii) which is a Sanctioned Person;

(t) with respect to which such Loan Party has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business (provided, that only the amount of the non-ordinary course of business reduction of any such Account shall be deemed ineligible by virtue of this clause (t)), or any Account which was partially paid and such Loan Party created a new receivable for the unpaid portion of such Account (provided, that only the amount of partially paid shall be deemed ineligible by virtue of this clause (t));

(u) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board to the extent that such non-compliance adversely affects the collectability of the Accounts;

(v) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Loan Party has or has had an ownership interest in such goods, or which indicates any party other than such Loan Party as payee or remittance party;

(w) which was created on cash on delivery terms;

(x) which is owing by an Account Debtor that is a natural person (it being understood, for the avoidance of doubt, that this clause (x) shall not apply to any Permitted Bank Financing Account); or

(y) which the Administrative Agent determines in its Permitted Discretion may not be paid by reason of the Account Debtor's inability to pay or which the Administrative Agent otherwise determines is unacceptable in its Permitted Discretion.

Without duplication of any dilution reserve or eligibility criteria, in determining the amount of an Eligible Account of a Loan Party, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that such Loan Party may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Loan Party to reduce the amount of such Account.

"**Eligible Cash**" shall mean the aggregate amount of unrestricted cash (which, for the avoidance of doubt, shall include cash restricted in favor of any Secured Party) and unrestricted Permitted Investments of the Company and the Restricted Subsidiaries that is in a deposit account or securities account, as the case may be, located within the United States and such account is either (a) the Exclusive Control Account or (b) any other account maintained with the Administrative Agent or an Affiliate thereof and designated by the Borrower Representative in writing to the Administrative Agent as an "Eligible Cash" account, to the extent such designated account is subject to a control agreement (including a "springing" control agreement) to provide a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties with respect thereto; *provided* that, solely in the case of this clause (b), prior to any withdrawal by the Borrower Representative or its Subsidiaries of Eligible Cash from such designated account, the Borrower Representative shall provide the Administrative Agent with prompt prior notice of such withdrawal. Promptly (or such later time permitted by the Administrative Agent) following the voluntary deposit (excluding, for the avoidance of doubt, any deposits that are the result of the Sweep pursuant to Section 5.15) of any additional "Eligible Cash" in the Exclusive Control Account or any

account described in clause (b) above, the Borrower Representative shall deliver an updated Borrowing Base Certificate to the Administrative Agent after giving effect to such deposit and no amount of any such deposit shall be deemed "Eligible Cash" hereunder until the delivery of such updated Borrowing Base Certificate; *provided* that, for the avoidance of doubt, such updated Borrowing Base Certificate shall not reflect any updates or modifications to any other component of the Borrowing Base set forth in the then-most most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01 as of such day.

"**Eligible Credit Card Receivables**" shall mean, at any time, all Credit Card Account Receivables based on the criteria below and that were earned, and are owned, by a Loan Party and represent bona fide amounts due to a Loan Party from a credit card processor and/or credit card issuer. Eligible Credit Card Receivables shall not include any Credit Card Account Receivable of a Loan Party:

(a) which is not subject to a first priority perfected security interest in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent unless an appropriate Reserve (as determined by the Administrative Agent in its Permitted Discretion) shall have been established or maintained by the Loan Parties, (iii) a Lien permitted in this Agreement that is subject to an Acceptable Intercreditor Agreement or (iv) Permitted Encumbrances contemplated by the processor agreements and for which appropriate Reserves (as determined by the Administrative Agent in its Permitted Discretion) have been established or maintained by the Loan Parties;

(c) which was not originated in the ordinary course of business of the applicable Loan Party;

(d) which indicates any Person other than a Loan Party as payee or remittance party;

(e) which Credit Card Account Receivable is not owned by a Loan Party or for which a Loan Party does not have good or marketable title to such Credit Card Account Receivable;

(f) which Credit Card Account Receivable is neither a "Payment Intangible" nor an "Account" (each as defined in the UCC) or which Credit Card Account Receivable has been outstanding more than seven Business Days;

(g) for which the credit card issuer or credit card processor of the applicable credit card with respect to such Credit Card Account Receivable has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws (other than post-petition accounts payable of a credit card issuer or credit card processor that is a debtor-in-possession under the Bankruptcy Code and reasonably acceptable to the Administrative Agent), (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due or (v) ceased operation of its business;

(h) for which the credit card issuer or credit card processor of the applicable credit card with respect to such Credit Card Account Receivable has sold all or substantially all of its assets;

(i) which is owed in any currency other than Dollars or an Alternative Currency;

(j) which Credit Card Account Receivable is not a valid, legally enforceable obligation of the applicable credit card issuer or credit card processor (as applicable) with respect thereto;

(k) with respect to which any covenant, representation or warranty contained in this Agreement or the Collateral Agreement has been breached or is not true in a material respect (and all respects to the extent such covenant, representation or warranty is already qualified by materiality);

(l) which Credit Card Account Receivable is subject to risk of set-off, non-collection or not being processed due to unpaid and/or accrued credit card processor fee balances, to the extent of the lesser of the balance of such Credit Card Account Receivable or unpaid credit card processor fees;

(m) which Credit Card Account Receivable is evidenced by "chattel paper" or an "instrument" of any kind unless such "chattel paper" or "instrument" is in the possession of the Administrative Agent, and to the extent necessary or appropriate, endorsed to the Administrative Agent;

(n) which the Administrative Agent determines in its Permitted Discretion may not be paid by reason of the inability to pay of the credit card issuer or credit card processor of the applicable credit card or which the Administrative Agent otherwise determines is unacceptable in its Permitted Discretion; or

(o) for which goods giving rise to such Credit Card Account Receivable have not been received by the Account Debtor (or end customer in respect thereof) or for which the services giving rise to such Credit Card Account Receivable have not been performed by such Loan Party (provided, the foregoing shall not exclude any Credit Card Account Receivable in respect of the sale of motor vehicles solely because a de minimis portion of such Credit Card Account Receivable relates to future services to be provided in respect of such motor vehicle(s)) or if, in duplication, such Credit Card Account Receivable was invoiced more than once (provided, that only the amount of the Credit Card Account Receivable related to the duplicative invoice shall be deemed ineligible by virtue of this clause (o)).

In determining the amount to be so included in the calculation of the value of an Eligible Credit Card Receivable, the face amount thereof shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all customary fees and expenses in connection with any credit card arrangements and (ii) the aggregate amount of all cash received in respect thereof but not yet applied by the applicable Loan Party to reduce the amount of such Eligible Credit Card Receivable.

"**Eligible Currency**" shall mean any lawful currency other than Dollars that is readily available, freely transferable and convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Equivalent may be readily calculated. If, after the designation by the Lenders of any currency as an Additional Alternative Currency pursuant to Section 1.08, any change in currency controls or exchange regulations or any change in the national or international financial, political or economic conditions are imposed in the country in which such currency is issued, result in, in the reasonable opinion of the Administrative Agent (in the case of any Alternative Currency Loans) or the applicable Issuing Bank (in the case of any Letter of Credit to be denominated in an Alternative Currency), (a) such currency no longer being readily available, freely transferable and convertible into Dollars, (b) a Dollar Equivalent no longer being readily calculable with respect to such currency, (c) such currency being impracticable for the Lenders to provide or (d) such currency no longer being a currency in which the Required Lenders are willing to make such Credit Extensions (each of clauses (a), (b), (c) and (d) a "**Disqualifying Event**"), then the Administrative Agent shall promptly notify the Lenders and the Borrower Representative, and such country's currency shall no longer be an Additional Alternative Currency until such time as the Disqualifying Event(s) no longer exist(s) (in the Permitted Discretion of the Administrative Agent in consultation with the Company).

"**Eligible In-Transit Inventory**" shall mean Inventory owned by a Loan Party:

(a) which is either (i) subject to a negotiable document of title, showing the Administrative Agent (or, with the consent of the Administrative Agent in its Permitted Discretion, the applicable Loan Party) as consignee and the Administrative Agent has control over such documents of title (including by delivery of customs broker or freight forwarder agreements in a form and substance reasonably acceptable to the Administrative Agent) or (ii) subject to a Reserve established by the Administrative Agent in its Permitted Discretion;

(b) which is fully insured in such amounts, with insurance companies and subject to such deductibles as are reasonably satisfactory to the Administrative Agent in its Permitted Discretion (including, without limitation, to the extent applicable, marine cargo insurance);

(c) which is in-transit (i) in the United States, (ii) to the United States from any country that is not a Sanctioned Country (or any other country that is reasonably acceptable to the Administrative Agent in its Permitted Discretion) or (iii) from the United States to Canada or an Eligible Jurisdiction;

(d) which would meet all of the criteria of "Eligible Inventory" if it were not in transit (solely to a location in the United States that would otherwise be acceptable pursuant to the other clauses of this definition);

(e) which has been identified to the applicable sales contract and title has passed to the applicable Loan Party;

(f) which is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against such Inventory (in each case, solely to the extent of such rights);

(g) which is shipped by a common carrier that is not affiliated with the vendor and has not been acquired from a Person that is currently a Sanctioned Person; and

(h) which is being handled by a customs broker, freight-forwarder or other handler that has delivered a customary lien waiver;

provided that the aggregate amount of Eligible In-Transit Inventory shall not at any time exceed the Dollar Equivalent of $100,000,000 (which may, in the Permitted Discretion of the Administrative Agent, be increased to $150,000,000).

"**Eligible Inventory**" shall mean, at any time, all Inventory owned by a Loan Party based on the criteria set forth below. Eligible Inventory shall not include any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent unless an appropriate Reserve (as determined by the Administrative Agent in its Permitted Discretion) shall have been established or maintained by the Loan Parties or (iii) a Lien permitted in this Agreement that is subject to an Acceptable Intercreditor Agreement;

(c) (i) which is, in the Administrative Agent's reasonable opinion in the exercise of its Permitted Discretion, slow moving, obsolete, used or defective and (ii) other than with respect to any parts Inventory used to service finished goods, which is, in the Administrative Agent's reasonable opinion in the exercise of its Permitted Discretion, unmerchantable, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business;

(d) with respect to which any covenant, representation or warranty contained in this Agreement or in the Collateral Agreement has been breached in any material respect or is not true in any material respect (in each case, and all respects to the extent such covenant, representation or warranty is already qualified by materiality);

(e) in which any Person other than such Loan Party (i) has direct or indirect ownership, interest or title or (ii) is indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have direct or indirect ownership, interest or title;

(f) spare or replacement parts (not intended for sale), subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return (other than vehicles that have been returned and marked for resale and with respect to which such Loan Party shall have completed all internal protocols and met all internal standards for such vehicles to be considered resalable), repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) which is not located in the U.S. or is in transit (other than Eligible In-Transit Inventory);

(h) which is located in any location leased by such Loan Party unless (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (ii) a Reserve for rent, charges and other amounts due or to become due with respect to the lease of such facility for up to three (3) months (plus any past due amounts) has been established by the Administrative Agent in its Permitted Discretion; *provided* that, during the 90 day period immediately following the Effective Date (or such longer period as the Administrative Agent may agree in its sole discretion), such location need not be subject to a Collateral Access Agreement and neither the lack thereof nor the absence of a Reserve hereunder during such period shall cause the applicable Inventory to be ineligible;

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement or (ii) an appropriate Reserve for fees, rents, charges for such warehousing or bailment up to three (3) months (plus any past due amounts) has been established by the Administrative Agent in its Permitted Discretion; *provided* that, during the 90 day period immediately following the Effective Date (or such longer period as the Administrative Agent may agree in its sole discretion), such warehouse need not be subject to a Collateral Access Agreement and neither the lack thereof nor the absence of a Reserve hereunder during such period shall cause the applicable Inventory to be ineligible;

(j) which is located at an owned location subject to a mortgage or other similar security interest in favor of a creditor other than the Administrative Agent or the junior Permitted Liens under Section 6.02(o) unless either (x) a reasonably satisfactory Collateral Access Agreement has been delivered to the Administrative Agent or (y) Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto; *provided* that, during the 90 day period immediately following the Effective Date, such location need not be subject to a Collateral Access Agreement and neither the lack thereof nor the absence of a Reserve hereunder during such period shall cause the applicable Inventory to be ineligible;

(k) which is being processed offsite at a third party location or outside processor, or is in-transit to or from such third party processor location or outside processor (other than Eligible In-Transit Inventory);

(l) which is a discontinued product or a component thereof *(provided,* this clause (l) shall not apply to prior model years so long as such prior model year is not obsolete and is resalable);

(m) which is the subject of a consignment by such Loan Party as consignor unless Reserves reasonably satisfactory to the Administrative Agent in its Permitted Discretion have been established;

(n) which contains or bears any intellectual property rights licensed to such Loan Party or jointly developed by such Loan Party and a third party unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor or third party, (ii) violating any contract with such licensor or third party, or (iii) incurring any liability with respect to payment of royalties other than, with respect to intellectual property rights licensed to such Loan Party, royalties incurred pursuant to sale of such Inventory under the current licensing agreement; provided that this clause (n) shall not exclude any Inventory so long as (x) such intellectual property can be removed from such Inventory within a period of time that is acceptable to the Administrative Agent in its Permitted Discretion and, after giving effect to such removal, the circumstances described in the foregoing clauses (i) through (iii) would not apply and (y) Reserves reasonably satisfactory to the Administrative Agent may be established with respect thereto;

(o) which is not reflected in a current perpetual inventory report of such Loan Party;

(p) for which reclamation rights have been asserted by the seller;

(q) which has been acquired from a Sanctioned Person;

(r) which is located at a single location where the aggregate value of Inventory at such location is less than the Dollar Equivalent of $500,000;

(s) consists of apparel, personal accessories and other promotional merchandise items outside of the core business of the Company and its Subsidiaries;

(t) which is manufactured, assembled or otherwise produced in violation of the Fair Labor Standards Act and subject to the "hot goods" provisions contained in Title 25 U.S.C. 215(a)(i);

(u) which is not covered by casualty insurance required by the terms of this Agreement;

(v) which does not conform in all material respects to all standards imposed by any governmental agency, division or department thereof which has regulatory authority over such goods or the use or sale thereof;

(w) which is Commingled Inventory;

(x) which is subject to a license agreement or other arrangement with a third party which, in the Administrative Agent's Permitted Discretion, restricts the ability of the Administrative Agent to exercise its rights under the Loan Documents with respect to such Inventory unless such third party has entered into an agreement in form and substance reasonably satisfactory to the Administrative Agent permitting the Administrative Agent to exercise its rights with respect to such Inventory or the Administrative Agent has otherwise agreed to allow such Inventory to be eligible in the Administrative Agent's Permitted Discretion;

(y) consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available;

(z) which consists of goods for which a certificate of title has been issued unless a perfected security interest in such goods is granted in favor of the Administrative Agent by (i) filing a UCC financing statement in the applicable financing office with respect to the Loan Party that owns such goods identifying the Administrative Agent as the secured party with respect to any goods subject to a certificate of title that constitute inventory held for sale or lease by a Person or leased by that Person as lessor and that Person is in the business of selling goods of that kind or (ii) making a notation on such certificate of title identifying the Administrative Agent as the secured party with respect to all other goods subject to a

certificate of title, in each case of clauses (i) and (ii) which documents shall be in a form reasonably satisfactory to the Administrative Agent;

(aa) which is Inventory in respect of which there is a related Eligible Account; or

(bb) which the Administrative Agent otherwise determines is unacceptable in its Permitted Discretion.

"**Eligible Investment Grade Accounts**" shall mean, at any time, all Eligible Accounts owned by a Loan Party and owing by an Account Debtor who has an Investment Grade Rating.

"**Eligible Jurisdiction**" shall mean each of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and England and Wales; *provided* that the Administrative Agent may, in its Permitted Discretion in consultation with the Borrower Representative, remove one or more of the countries comprising the Eligible Jurisdictions and subsequently add one or more countries back as Eligible Jurisdictions.

"**Eligible Machinery and Equipment**" shall mean at any time, all Equipment owned by a Loan Party based on the criteria set forth below. Eligible Machinery and Equipment shall not include any Equipment:

(a) which is not subject to a first priority perfected Lien in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance which does not have priority over the Lien in favor of the Administrative Agent unless an appropriate Reserve (as determined by the Administrative Agent in its Permitted Discretion) shall have been established or maintained by the Loan Parties or (iii) a Lien permitted in this Agreement that is subject to an Acceptable Intercreditor Agreement;

(c) which is excess, obsolete, unsalable, shopworn, seconds, damaged or unfit for sale;

(d) which is located in any location leased by such Loan Party unless (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (ii) a Reserve for rent, charges and other amounts due or to become due with respect to the lease of such facility for up to three (3) months (plus any past due amounts) has been established by the Administrative Agent in its Permitted Discretion; *provided* that, during the 90 day period immediately following the Effective Date (or such longer period as the Administrative Agent may agree in its sole discretion), such location need not be subject to a Collateral Access Agreement and neither the lack thereof nor the absence of a Reserve hereunder during such period shall cause the applicable Equipment to be ineligible;

(e) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement or (ii) an appropriate Reserve for fees, rents, charges for such warehousing or bailment up to three (3) months (plus any past due amounts) has been established by the Administrative Agent in its Permitted Discretion; *provided* that, during the 90 day period immediately following the Effective Date (or such longer period as the Administrative Agent may agree in its sole discretion), such warehouse need not be subject to a Collateral Access Agreement and neither the lack thereof nor the absence of a Reserve hereunder during such period shall cause the applicable Equipment to be ineligible;

(f) which is located at an owned location subject to a mortgage or other similar security interest in favor of a creditor other than the Administrative Agent or the junior Permitted Liens under Section 6.02(o) unless either (x) a reasonably satisfactory Collateral Access Agreement (as determined by the Administrative Agent in its Permitted Discretion) has been delivered to the Administrative Agent or (y) Reserves reasonably satisfactory to the Administrative Agent in its Permitted Discretion have been established with respect thereto; *provided* that, during the 90 day period immediately following the Effective Date (or such longer period as the Administrative Agent may agree in its sole discretion), such location need not be subject to a Collateral Access Agreement and neither the lack thereof nor the absence of a Reserve hereunder during such period shall cause the applicable Equipment to be ineligible;

(g) which is located at any location that is not owned or leased by such Loan Party, except as set forth in clause (e) above;

(h) which is in transit;

(i) which is not covered by casualty insurance required by the terms of this Agreement;

(j) with respect to which any covenant, representation or warranty contained in this Agreement or in the Collateral Agreement has been breached in any material respect or is not true in any material respect (in each case, and all respects to the extent such covenant, representation or warranty is already qualified by materiality);

(k) which does not conform in all material respects to all standards imposed by any governmental agency, division or department thereof which has regulatory authority over such goods or the use or sale thereof;

(l) which is subject to a license agreement or other arrangement with a third party which, in the Administrative Agent's Permitted Discretion, restricts the ability of the Administrative Agent to exercise its rights under the Loan Documents with respect to such Equipment unless such third party has entered into an agreement in form and substance reasonably satisfactory to the Administrative Agent permitting the Administrative Agent to exercise its rights with respect to such Equipment or the Administrative Agent has otherwise agreed to allow such Equipment to be eligible in the Administrative Agent's Permitted Discretion;

(m) which is located outside of the United States;

(n) which has been acquired from a Sanctioned Person; or

(o) which the Administrative Agent otherwise determines is unacceptable in its Permitted Discretion.

"**Eligible Real Property**" shall mean (x) the real property listed on Schedule 1.01(a) owned by a Loan Party and (y) any other real property owned by a Loan Party which is acceptable in the Permitted Discretion of the Administrative Agent for inclusion in the Borrowing Base and which the Borrower Representative has requested to identify as "Eligible Real Property" by notice to the Administrative Agent, in each case of clauses (x) and (y) which satisfies each of the following criteria:

(a) which is wholly owned in fee simple by a Loan Party;

(b) in respect of which a FIRREA-compliant appraisal prepared by an appraiser, with appropriate credentials, has been delivered to the Administrative Agent in form, scope and substance reasonably satisfactory to the Administrative Agent and the Lenders (each, an "**Acceptable Real Estate Appraisal**");

(c) in respect of which a Mortgage is filed and recorded creating a perfected first priority Lien on such real property (subject to Permitted Encumbrances);

(d) in respect of which an environmental assessment report has been completed and delivered to the Administrative Agent in form reasonably satisfactory to the Administrative Agent in its Permitted Discretion and, unless otherwise approved by Administrative Agent, which does not indicate any pending, threatened or existing Environmental Liability or noncompliance with any Environmental Law;

(e) which is adequately protected by fully-paid valid lenders title insurance policy with endorsements and in amounts acceptable to the Administrative Agent in its Permitted Discretion, insuring that the Administrative Agent, for the benefit of the Secured Parties, shall have a perfected first priority Lien on such real property, evidence of which shall have been provided in form and substance satisfactory to the Administrative Agent, which title insurance policy shall not contain a general mechanics lien exception or any listed exceptions, limitations or qualifications other than Permitted Encumbrances;

(f) a Flood Determination Form and, if any such parcel of real property is shown in such determination or otherwise determined by the Administrative Agent to be in a Special Flood Hazard Area, a Borrower Notice form signed by the Borrower Representative and Evidence of Flood Insurance in compliance with all applicable Flood Laws, has been delivered to the Administrative Agent;

(g) an ALTA survey has been delivered for which all necessary fees have been paid and which is acceptable to the Title Company for the issuance of the aforementioned title insurance policies, including the survey related endorsements and no survey exception, in a form and substance reasonably acceptable to the Administrative Agent, and which shows all buildings and other improvements, any offsite improvements, the location of any easements, parking spaces, rights of way, building setback lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects acceptable to the Administrative Agent in its Permitted Discretion;

(h) in respect of which local counsel for a Loan Party in states in which such real property is located have delivered a letter of opinion with respect to the enforceability of the Mortgages and any related fixture filings and such other customary matters incidental thereto in form and substance reasonably satisfactory to the Administrative Agent in its Permitted Discretion;

(i) if required by the Administrative Agent in its Permitted Discretion, in respect of which such Loan Party shall have used its commercially reasonable efforts to obtain estoppel certificates executed by all tenants of such real property and such other consents, agreements and confirmations of tenants, lessors and third parties, in each case, as the Administrative Agent may deem necessary or desirable in its Permitted Discretion, together with evidence that all other actions that the Administrative Agent may deem necessary in its Permitted Discretion in order to create perfected first priority Liens on the property described in the Mortgages have been taken; and

(j) in respect of which the Administrative Agent shall have received evidence satisfactory to it that such real property is covered by property and liability insurance that is reasonably satisfactory to the Administrative Agent and, in the case of property insurance, names the Administrative Agent an additional insured and as mortgagee and lender's loss payee.

Notwithstanding anything contained in this Agreement to the contrary, no Mortgage shall be executed and delivered with respect to any real property unless and until each Lender has received, at least (a) if the applicable real property is not in a "special flood hazard area", ten (10) Business Days or (b) if the applicable real property is in a "special flood hazard area", fifteen (15) days in advance of execution and delivery of such Mortgage, the documents described in clause (f) above, and Administrative Agent has determined that flood insurance due diligence and flood insurance compliance has been completed to its reasonable satisfaction and no Lender has notified Administrative Agent that such Lender has not completed any necessary flood insurance due diligence and flood insurance compliance relating to the applicable real property to its reasonable satisfaction (and the date by which any Loan Party is required to deliver a Mortgage hereunder shall automatically be extended to the extent necessary to comply with the foregoing).

For the avoidance of doubt, there shall be no minimum value or minimum appraised value requirement for the inclusion of real property as Eligible Real Property and/or including in the Borrowing Base.

"**Enforcement Action**" means, with respect to the Obligations or the Fixed Asset Facility Obligations, the exercise of any rights and remedies with respect to any Collateral securing such obligations or the commencement or prosecution of enforcement of any of the rights and remedies under, as applicable, the Loan Documents or the Fixed Asset Facility Documents, or applicable law, including without limitation the exercise of any rights of set-off or recoupment, and the exercise of any rights or remedies of a secured creditor under the Uniform Commercial Code of any applicable jurisdiction or under the Bankruptcy Code.

"**Environment**" shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface, sediments, and subsurface strata & natural resources such as wetlands, flora and fauna.

"**Environmental Laws**" shall mean any Requirement of Law relating to pollution or protection of the environment, or human health and safety (as it relates to exposure to harmful or deleterious substances), or the generation, use, handling, transportation, treatment, storage, disposal or Release of harmful or deleterious substances.

"**Environmental Liability**" shall mean all Liabilities arising out of or relating to (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of, or the arrangement for such activities with respect to, any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the presence or Release of any Hazardous Materials or (e) any contract or agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Equipment**" (a) for purposes of the definition of Eligible Machinery and Equipment and provisions relating to the Borrowing Base, shall mean any "equipment" as such term is defined in Article 9 of the UCC owned by any Loan Party, and in any event, shall include, but shall not be limited to, all machinery, equipment, furnishings and fittings now or hereinafter owned by any Loan Party and all additions, all accessions thereto, wherever located, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto and (b) for all other purposes, has the meaning assigned to such term in Article 9 of the UCC.

"**Equity Interests**" shall mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person, and any option, warrant or other right entitling the holder thereof to purchase or otherwise acquire any such equity interest (excluding any agreement for the purchase of the equity interests of a Subsidiary), but excluding, for the avoidance of doubt, any Permitted Convertible Notes.

"**Equity Issuance**" shall mean any issuance or sale by the Company of any Equity Interests.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"**ERISA Affiliate**" shall mean any trade or business (whether or not incorporated) that, together with the Borrowers, is treated as a single employer under Section 414(b) or (c) of the Code and, for purposes of provisions relating to Section 412 of the Code, any member of an affiliated service group within the meaning of Section 414(m) or 414(o) of the Code.

"**ERISA Event**" shall mean (a) any "reportable event", as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) with respect to a Plan, the failure to satisfy the "minimum funding standard" within the meaning of Section 412 or 430 of the Code or Section 302 or 303 of ERISA, whether or not waived, or the failure to make by its due date a required installment under Section 430(j) of the Code or Section 303(j) of ERISA with respect to a Plan, (c) the failure of any Borrower or any ERISA Affiliate to timely make any required contribution to a Multiemployer Plan, (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (e) the imposition of any liability under Title IV of ERISA upon any Borrower or any ERISA Affiliate with respect to the termination of any Plan, (f) the withdrawal or partial withdrawal (within the meaning of Title IV of ERISA) of any Borrower or any ERISA Affiliate from any Plan or Multiemployer Plan, (g) the filing of a notice of intent to terminate, the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan, (h) an event or condition that constitutes grounds under Section 4042 of ERISA for, and that would reasonably be expected to result in, the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, (i) the occurrence of a non-exempt "prohibited transaction" (within the meaning of Section 4975 of the Code or Section 406 of ERISA) for which any Borrower or any of the Subsidiaries has or is reasonably expected to have any material liability, (j) the receipt by any Borrower or any ERISA Affiliate of notice from any Multiemployer Plan (1) imposing Withdrawal Liability on any Borrower or any ERISA Affiliate, (2) notifying any Borrower or any ERISA Affiliate that such Multiemployer Plan is, or is expected to be, in "insolvency" pursuant to Section 4245 of ERISA, if applicable or (3) notifying any Borrower or any ERISA Affiliate that such Multiemployer Plan is, or is expected to be, in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA, if applicable), (k) a determination that any Plan is, or is expected to be, in "at risk" status (as defined in Section 430(i)(4) of the Code or Section 303(i)(4) of ERISA, if applicable) or (l) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303(k) of ERISA with respect to any Plan.

"**ESG Amendment**" has the meaning assigned to such term in Section 1.12.

"**ESG Pricing Provisions**" has the meaning assigned to such term in Section 1.12.

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"**EURIBOR**" has the meaning assigned to such term in in clause (a) of the definition of "**Alternative Currency Term Rate**".

"**Euro"** or "**€**" means the single currency of participating member states of the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

"**Event of Default**" has the meaning assigned to such term in Article VII.

"**Evidence of Flood Insurance**" shall have the meaning assigned to such term in Section 5.13(b)(iv).

"**Excluded Accounts**" shall mean any deposit account (a) containing solely cash or deposits in respect of which a Lien is permitted pursuant to Section 6.02(b), (b) exclusively used for trust, payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any employees of any Loan Party or any Restricted Subsidiary, (c) after the occurrence of the Fixed Asset Release Date, solely containing proceeds of the sale of Fixed Assets, (d) that is a zero balance account; *provided*, that the available balance of each such zero balance account is automatically swept on each Business Day into another account that is subject to a Deposit Account Control Agreement for the benefit of the Administrative Agent and such other account does not provide for automatic payments to, or debit of amounts disbursed from, other linked accounts that are not subject to a Deposit Account Control Agreement for the benefit of the Administrative Agent, (e) that is located outside of the United States, (f) exclusively used for, and which solely contain, customer deposits in respect of motor vehicles that have not been delivered to such customers and (g) other than the Exclusive Control Account and any Controlled Account, with an average monthly balance of less than the Dollar Equivalent of $5,000,000 for each such individual deposit account and less than the Dollar Equivalent of $25,000,000 in the aggregate for all such deposit accounts.

"**Excluded Assets**" shall mean (a) voting Equity Interests, including any interest treated as an Equity Interest for U.S. federal income tax purposes, of any first-tier Foreign Subsidiary or Foreign Holdco in excess of 65% of all of the issued and outstanding Equity Interests of such Foreign Subsidiary or Foreign Holdco and Equity Interests of any Subsidiary of a Foreign Subsidiary or of a Foreign Holdco, (b) assets of any Foreign Subsidiary (that is not a Loan Party) or any other Subsidiary that may require registration under the laws of any jurisdiction outside the U.S., (c) Excluded Accounts listed in clauses (a), (b), (f) and (g) (in the case of clause (g), only to the extent any such account is subject to a Permitted Lien) of the definition thereof, (d) all Intellectual Property (excluding any proceeds of Intellectual Property generated from the sale of Inventory containing such Intellectual Property), (e) all leasehold interests in Real Estate or any fee owned Real Estate that is not a Material Real Property or Eligible Real Property, (f) motor vehicles and other assets subject to certificates of title and Letter of Credit Rights (as defined in the UCC) (in each case, other than (x) to the extent a security interest in such rights can be perfected by filing of financing statements or analogous notice filings in appropriate form in the applicable jurisdiction under the Uniform Commercial Code or analogous law of such jurisdiction and (y) motor vehicles that are included in Eligible Inventory), (g) commercial tort claims with an individual value of less than the Dollar Equivalent of $10,000,000, (h) Equity Interests in and assets of (i) an Unrestricted Subsidiary, (ii) Immaterial Subsidiary, (iii) Limited Purpose Subsidiary, (iv) Lucid, LLC, a limited liability company established in the Kingdom of Saudi Arabia, (v) any Person (other than a Wholly Owned Subsidiary) to the extent not permitted by the terms of such Person's organizational or joint venture documents or applicable law; *provided,* that, such Equity Interests shall cease to be Excluded Assets at such time as such prohibition ceases to be in effect or (vi) any Subsidiary established primarily for the purpose of owning or otherwise holding rights in respect of Intellectual Property, (i) any rights or interests in any agreement, lease, permit, license, charter or license agreement, if under the terms thereof or applicable law with respect thereto, the valid grant of a security interest or Lien therein to the Administrative Agent would constitute or result in a breach, termination or

default under such agreement, lease, permit, license, charter or license agreement and such breach, termination or default has not been or is not waived or the consent of the other party to such agreement, lease, permit, license, charter or license agreement has not been or is not otherwise obtained or under applicable law such prohibition cannot be waived; *provided,* that this clause (i) shall in no way be construed (x) to apply if any such prohibition is unenforceable under Section 9-406, 9-407 or 9-408 of the UCC or other applicable law or (y) so as to limit, impair or otherwise affect the Administrative Agent's unconditional continuing security interests in and Liens upon any rights or interests of any Loan Party in or to monies due or to become due under any such agreement, lease, permit, license, charter or license agreement, (j) any property or assets the pledge of which or the security interests or Lien thereon would require any governmental consent, approval, license or authorization that has not been obtained, (k) any asset subject to a Permitted Lien securing a Capital Lease Obligation or purchase money indebtedness to the extent the documents governing such Lien prohibit such asset from being subject to a Lien of the Administrative Agent, (l) any asset subject to a Lien existing at the time of its acquisition and not incurred in contemplation thereof to the extent the documents governing such Lien prohibit such assets from being subject to a Lien of the Administrative Agent, and (m) such other property or assets as reasonably determined by the Administrative Agent and the Company, the burden or cost or other consequence (including material adverse tax consequences) of providing a security interest in such property or asset outweighs the benefit to the Secured Parties. Notwithstanding the foregoing, in no event shall "Excluded Assets" include any assets that are subject to a Lien securing any Permitted Additional Secured Indebtedness or that are included in the Borrowing Base. Notwithstanding the foregoing, the Borrower Representative may from time to time elect to cause any asset that would otherwise constitute an Excluded Asset hereunder to become Collateral under the Collateral Documents (but shall have no obligation to do so) with the consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed); *provided* that the Administrative Agent shall have received such collateral documents as are customary for the applicable asset in the applicable jurisdiction and reasonably requested by the Administrative Agent.

"**Excluded Subsidiary**" shall mean any subsidiary of the Company:

(i) that is not a Wholly Owned Subsidiary;

(ii) that is an Immaterial Subsidiary;

(iii) that is prohibited from providing a Guarantee in respect of the Obligations by (x) any provision of any agreement, instrument or other undertaking to which such subsidiary is a party or by which it or any of its assets or property is bound existing on the date such Person became a subsidiary; *provided* that such provision is not entered into for the purpose of qualifying as an "Excluded Subsidiary" under this Agreement or (y) applicable law;

(iv) that would require the consent, approval, license or authorization of any third party in order to provide a Guarantee in respect of the Obligations pursuant to any agreement, instrument or other undertaking referred to in clause (iii)(x) above or applicable law (in each case, to the extent such consent, approval, license or authorization has not been received);

(v) that is a Foreign Holdco;

(vi) that is (x) a Foreign Subsidiary or (y) a Domestic Subsidiary of a Foreign Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957(a) of the Code;

(vii) that is newly formed for the purpose of consummating a merger transaction pursuant to an acquisition permitted by this Agreement, which Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it substantially contemporaneously with the closing of such merger transaction (it being understood that any surviving Subsidiary of such merger transaction shall not constitute an Excluded Subsidiary under this clause (vii));

(viii) to the extent the provision a Guarantee by such subsidiary in respect of the Obligations would reasonably be expected to result in material adverse tax consequences to the Company or any of its Subsidiaries as reasonably determined by the Borrower Representative in good faith in consultation with the Administrative Agent;

(ix) that is an Unrestricted Subsidiary;

(x) that does not own any assets (other than de minimis assets) that are not Intellectual Property, so long as such subsidiary is not an obligor in respect of any Permitted Additional Indebtedness;

(xi) with respect to which, as reasonably determined by the Administrative Agent and the Borrower Representative, the burden or cost or other consequences (including material adverse tax consequences) of providing a Guarantee outweighs the benefits to the Secured Parties; or

(xii) any not-for-profit Subsidiaries, captive insurance companies, broker-dealer Subsidiaries, Receivables Subsidiary or other Special Purpose Entities (each, a "**Limited Purpose Subsidiary**");

provided that the Borrower Representative, in its sole discretion, may cause any Restricted Subsidiary that qualifies as an Excluded Subsidiary under any of the clauses above to become a Guarantor in accordance with the definition thereof (pursuant to documentation reasonably acceptable to the Administrative Agent in its Permitted Discretion and subject to customary restrictions under applicable local law and completion of any requested "know your customer" and similar requirements of the Administrative Agent and the Lenders and the requirements of Section 5.13 as if such Subsidiary were required to comply with such Section as a Domestic Subsidiary) and thereafter such Subsidiary shall not constitute an "Excluded Subsidiary" (unless and until the Borrower Representative elects, in its sole discretion, to designate such Persons as an Excluded Subsidiary).

"**Excluded Swap Obligation**" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an ECP at the time the Guarantee of such Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"**Excluded Taxes**" shall mean 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, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f); and (d) any withholding Taxes imposed under FATCA.

"**Exclusive Control Account**" means a deposit account maintained with the Administrative Agent and located within the United States that is subject to (a) a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties and (b) a control agreement granting the Administrative Agent non-springing control over such account.

"**Existing Convertible Notes**" shall mean the 1.25% convertible senior notes issued by the Company and due in December 2026 in an aggregate principal amount of aggregate of $2,012,500,000.

"**Existing Letters of Credit**" shall mean each letter of credit issued prior to the Effective Date that (a) upon delivery of written notice by the Borrower Representative to the Administrative Agent on or after the Effective Date and subject to the consent of the applicable Issuing Bank in its discretion, will be deemed to be issued and outstanding hereunder for all purposes of this Agreement and the other Loan Documents from and after the date on which such notice is delivered to the Administrative Agent and (b) is listed on Schedule 2.06 hereto.

"**fair market value**" means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset. Except as otherwise expressly set forth herein, such value shall be as determined in good faith by the Company.

"**FATCA**" shall mean 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 and any agreement entered into pursuant thereto, including any intergovernmental agreements and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreements and implementing such Sections of the Code.

"**FCCR Covenant Trigger Date**" shall mean, the first date after the Effective Date on which (i) the Fixed Charge Coverage Ratio shall have been greater than 1.0 to 1.0 for two consecutive fiscal quarters, in each case on a trailing four fiscal quarter basis as of the end of the last quarter for which financial statements have most recently been delivered or are required to be delivered pursuant to Section 5.01(a) or Section 5.01(b) and (ii) the Borrower Representative delivers written notice to the Administrative Agent of the Borrower Representative's election to cause (x) the financial covenant set forth in Section 6.13 to become effective (from and after the date specified in such notice) and (y) the financial covenant set forth in Section 6.14 to cease to be effective (from and after the date specified in such notice), which written notice shall include a certification with respect to the accuracy of clause (i) of this definition and the calculation of the Fixed Charge Coverage Ratio for the two applicable consecutive fiscal quarters.

"**Federal Funds Effective Rate**" shall mean, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"**Financial Officer**" of any Person shall mean the chief financial officer, principal accounting officer, treasurer, controller, vice president - tax and treasury or any manager with similar responsibilities of such Person.

"**FIRREA**" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended from time to time.

"**Fiscal Year**" shall mean, with respect to the Company and the Restricted Subsidiaries, a fiscal year ending on December 31 of each calendar year.

"**Fixed Asset Collateral**" has the meaning assigned to such term in the definition of "ABL Collateral".

"**Fixed Asset Facility**" means any Debt that is permitted to be incurred and permitted to be secured by first priority Liens on the Fixed Assets pursuant to Section 6.01(s) and Section 6.02(o).

"**Fixed Asset Facility Collateral Agent**" shall mean, with respect to any Fixed Asset Facility, the collateral agent for the secured parties in respect of such Fixed Asset Facility.

"**Fixed Asset Facility Documents**" shall mean, with respect to any Fixed Asset Facility, the definitive documentation governing such Fixed Asset Facility.

"**Fixed Asset Facility Obligations**" shall mean, with respect to any Fixed Asset Facility, the "Obligations" (or equivalent term) as defined in the applicable Fixed Asset Facility Documents.

"**Fixed Asset Release Date**" means the first date on which each of the following conditions is satisfied:

(a) no Event of Default shall have occurred and be continuing as of such date or would result therefrom;

(b) the Administrative Agent shall have received an updated appraisal of the Borrowers' Inventory and an updated field examination in each case from a firm satisfactory to the Administrative Agent in its Permitted Discretion, which appraisal and field examination shall be satisfactory to the Administrative Agent in its Permitted Discretion;

(c) Specified Availability for each day in the 30-day period prior to such date, and as of such date, shall not be less than 25% of the Line Cap then in effect, on a pro forma basis as of such date; and

(d) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower Representative (i) requesting, on behalf of the Borrowers, either (x) if no Fixed Asset Facility is then outstanding or will contemporaneously be outstanding, the release of the Liens on the Fixed Assets securing the Secured Obligations or (y) if a Fixed Asset Facility is then outstanding or will contemporaneously be outstanding, the subordination of the Liens on the Fixed Assets securing the Secured Obligations to the Liens securing such Fixed Asset Facility pursuant to the terms of an Acceptable Intercreditor Agreement and (ii) (x) certifying that each of the conditions set forth in the foregoing clauses (a) through (c) have been satisfied as of such date and (y) confirming that none of such Fixed Assets shall be included in the Borrowing Base on and after such date.

"**Fixed Assets**" means all assets other than ABL Collateral.

"**Fixed Charge Coverage Ratio**" shall mean, with respect to the Company and its Restricted Subsidiaries on a consolidated basis, for any applicable period, the ratio of (a) Consolidated EBITDA for such period, *minus* Unfinanced Capital Expenditures, to (b) Fixed Charges for such period.

"**Fixed Charges**" shall mean, as to the Company and its Restricted Subsidiaries on a consolidated basis, with respect to any period, the sum of, without duplication, (a) all Consolidated Interest Expense that was paid or payable in cash during such period, plus (b) all regularly scheduled (as determined at the beginning of the respective period) principal payments of Money Borrowed (other than intercompany debt) (but excluding, for purposes of the foregoing clauses (a) and (b), (i) any non-cash interest or deferred financing costs, (ii) any amortization or write-down of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (iii) any expensing of bridge, commitment and other financing fees (and including fees and expenses associated with the Transactions and any annual agency fees) and costs associated with obtaining, or breakage costs in respect of, Swap Agreements and commissions, discounts, yield and other fees and expenses related to any Permitted Receivables Financing, (iv) penalties and interest related to taxes, (v) any imputed interest as a result of purchase accounting, (vi) fees and expenses associated with Dispositions, acquisitions, Investments, the sale or issuance of Equity Interests or incurrence of Debt (in each case, whether or not consummated) and (vii) the payment or Satisfaction of Conversion Obligation of any Permitted Convertible Notes at their final maturity date or upon conversion thereof), in each case paid or payable in cash during such period (and without duplicating items in (a) and (b) of this definition, the interest component with respect to Debt under Capital Leases), plus (c) all taxes paid or required to be paid during such period in cash (net of tax refunds received during such period), plus (d) solely to the extent testing compliance with the Payment Conditions for purposes of making a Restricted Distribution, all Restricted Distributions paid in cash (other than those made to a Loan Party or otherwise eliminated in consolidation) that were made in reliance on Section 6.03(h).

"**Flood Determination Form**" shall have the meaning assigned to such term in Section 5.13(b)(i).

"**Flood Laws**" has the meaning assigned to such term in Section 8.10.

"**Floor**" means, (i) with respect to BBSY, the Canadian Prime Rate, the ~~CDOR~~**Term CORRA** Rate, EURIBOR, SONIA and Term SOFR, 0.0% per annum and (ii) for any other benchmark rate, the floor, if any, provided in this Agreement (as of the execution of a modification, amendment or renewal of this Agreement or otherwise) in respect thereof.

"**Foreign Holdco**" shall mean any direct or indirect subsidiary of the Company, that has no material assets other than Equity Interests, or Equity Interests and Debt, of one or more direct or indirect Foreign Subsidiaries.

"**Foreign Lender**" shall mean (a) if a Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if a Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

"**Foreign Subsidiary**" shall mean any Subsidiary that is not a Domestic Subsidiary.

"**Fronting Exposure**" means a Defaulting Lender's LC Exposure, Swingline Exposure and participation in Protective Advances, except to the extent (x) cash collateralized by the Defaulting Lender by the delivery of cash to the Administrative Agent, as security for the payment of such Lender's LC Exposure, in an amount equal to 103% of such LC Exposure or (y) allocated to other Lenders hereunder.

"**Funding Account**" means one or more deposit account(s) designated in writing by the Borrower Representative to the Administrative Agent from time to time into which the Administrative Agent and the Lenders are authorized by the Borrower Representative to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

"**GAAP**" shall mean United States generally accepted accounting principles as in effect from time to time (except as otherwise expressly provided herein).

"**Government Official**" shall have the meaning assigned to such term in Section 3.21.

"**Governmental Authority**" shall mean the government of the U.S., any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Guarantee**" of or by any Person shall mean any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Debt or other obligation, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Debt or other obligation of the payment of such Debt or other obligation or (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation; provided, however, that the term "**Guarantee**" shall not include endorsements for collection or deposit in the ordinary course of business and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Debt).

The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Debt in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"**Guarantee Agreement**" shall mean the Guarantee Agreement, dated as of the Effective Date, among the Company, the other Borrowers party thereto from time to time, the Subsidiary Guarantors from time to time party thereto and the Administrative Agent for the benefit of the Secured Parties.

"**Guarantors**" shall mean the Subsidiary Guarantors.

"**Hazardous Materials**" shall mean (a) any petroleum products or byproducts and all other hydrocarbons, asbestos or asbestos containing materials, polychlorinated biphenyls, per- and polyfluoroalkyl substances, chlorofluorocarbons and all other ozone depleting substances, and (b) any other chemical, material, pollutant, contaminant, substance or waste that is prohibited or regulated by or pursuant to any Environmental Law due to its harmful or deleterious character (including microbial matter, mycotoxins, mold and mold spores).

"**Immaterial Subsidiary**" shall mean any Restricted Subsidiary that, together with its subsidiaries that are Restricted Subsidiaries and every other Immaterial Subsidiary, (i) did not, as of the most recently ended Test Period, have total assets with a value in excess of 5.0% of Consolidated Total Assets and (ii) did not, during the most recently ended Test Period, have revenues in excess of 5.0% of the consolidated total revenues of the Company and its Subsidiaries for such period (and the Borrower Representative will designate in writing to the Administrative Agent from time to time the Restricted Subsidiaries that will cease to be treated as "Immaterial Subsidiaries" in order to comply with the foregoing limitations).

"**Incremental Amendment**" has the meaning specified in Section 2.09(e).

"**Incremental Amount**" means, as of any date of determination, the sum of:

(a) $500,000,000, plus

(b) the aggregate amount (without duplication) of (i) all voluntary permanent terminations or reductions, as applicable, of the Initial Revolving Commitments and all other Commitments and (ii) all permanent terminations or reductions, as applicable, of any Initial Revolving Commitments and all other Commitments of any Lender pursuant to Sections 2.09, 2.19 and 9.02(d); *provided* that, in each case of clauses (i) and (ii), any prepayment accompanying such permanent termination or reduction, as applicable, is not funded with long-term Debt (other than revolving loans), plus

(c) an amount, if positive, by which the Borrowing Base (other than with respect to any portion of the Borrowing Base based on Eligible Cash) exceeds the Aggregate Revolving Commitments at the time of determination.

"**Incremental Commitments**" has the meaning specified in Section 2.09(e).

"**Incremental Lender**" has the meaning specified in Section 2.09(e).

"**Incremental Loans**" means, collectively, any Incremental Term Loans and any Loans made pursuant to a Commitment Increase.

"**Incremental Term Loans**" has the meaning specified in Section 2.09(e)(ix).

"**Indemnified Taxes**" shall mean (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 the foregoing clause (a) hereof, Other Taxes.

"**Indemnitee**" has the meaning assigned to such term in Section 9.03(c).

"**Ineligible Institution**" has the meaning assigned to such term in Section 9.04(b).

"**Information**" has the meaning assigned to such term in Section 9.12.

"**Initial Revolving Commitment**" shall mean, with respect to each Lender, the commitment of such Lender to make Initial Revolving Loans and to acquire participations in Letters of Credit, Swingline Loans and Overadvances hereunder, expressed as an amount representing the maximum aggregate permitted amount of such Lender's Revolving Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Initial Revolving Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Initial Revolving Commitment, as applicable.

"**Initial Revolving Exposure**" shall mean, with respect to any Initial Revolving Lender at any time, the sum of the Dollar Equivalent of (a) the outstanding principal amount of such Lender's Initial Revolving Loans and LC Exposure at such time, *plus* (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Swingline Loans outstanding at such time, *plus* (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time, *plus* (d) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

"**Initial Revolving Lender**" shall mean, as of any date of determination, a Lender with an Initial Revolving Commitment or, if the Initial Revolving Commitments have terminated or expired, a Lender with Initial Revolving Exposure.

"**Initial Revolving Loan**" shall mean a Loan made under an Initial Revolving Commitment pursuant to Section 2.01.

"**Integration Costs**" shall mean non-recurring integration costs incurred in connection with any Permitted Acquisition or similar Investment.

"**Intellectual Property**" shall mean all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets and IP Licenses and any other intellectual property rights (and all IP Ancillary Rights related thereto) to the fullest extent arising under any Requirement of Law.

"**Intercompany Note**" shall mean an intercompany note in form and substance reasonably satisfactory to the Administrative Agent in its Permitted Discretion (it being understood and agreed that an intercompany note in form and substance substantially the same as the form attached hereto as Exhibit D-3, is satisfactory to the Administrative Agent).

"**Interest Charges**" has the meaning assigned to such term in Section 9.17.

"**Interest Election Request**" shall mean a request by the Borrower Representative to convert or continue a Borrowing in accordance with Section 2.08, which shall be substantially in the form of Exhibit B-2 or such other form as approved by the Administrative Agent (including any form on an Electronic System as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower Representative.

"**Interest Payment Date**" shall mean (a) with respect to any Daily Rate Loan (including any Swingline Loan), the first calendar day of each fiscal quarter and the Maturity Date, and (b) with respect to any Term Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Term Rate Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period) and the Maturity Date.

"**Interest Period**" shall mean, with respect to any Term Rate Borrowing, the period commencing on the date of such Term Rate Borrowing and ending on the numerically corresponding day in the calendar month that is one, ~~**two (solely**~~**three or six months (other than** for a Term Rate Loan based on the ~~**CDOR**~~**Term CORRA** Rate)~~**, three or six months**~~ thereafter, as the Borrower Representative may elect, or to the extent available (as determined by each Appropriate Lender) to all Appropriate Lenders, less than one month (in which case the Interest Period shall end on the day designated by the Borrower Representative); *provided,* that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, thereafter, shall be the effective date of the most recent conversion or continuation of such Borrowing.

"**Internet Domain Name**" shall mean all rights, title and interests (and all related IP Ancillary Rights) in or relating to internet domain names (including to the fullest extent arising under any Requirement of Law), together with all goodwill associated therewith.

"**Inventory**" has the meaning given to such term in Article 9 of the UCC and shall include raw materials, in-transit, work-in-process, parts, supplies and finished goods.

"**Investment Grade Rating**" shall mean, with respect to any Account Debtor, that the long-term senior unsecured publicly held debt rating or corporate family rating of such Account Debtor is equal to or higher than Baa3 (or its equivalent) by Moody's or BBB (or its equivalent) by S&P.

"**Investments**" shall mean, 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 Guarantees the Debt of such Person or (c) the purchase or other acquisition (in one transaction or 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 the definition of "**Unrestricted Subsidiary**" and Section 6.07:

(a) "Investments" shall include the portion (proportionate to the Company's direct or indirect Equity Interest in such subsidiary) of the fair market value of the net assets of a subsidiary of the Company at the time that such subsidiary is designated an Unrestricted Subsidiary; and

(b) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Company.

The amount, as of any date of determination, of (i) any Investment in the form of a loan or an advance shall be the principal amount thereof outstanding on such date, minus any payments actually received by such investor representing interest in respect of such Investment, but without any adjustment for writedowns or write-offs (including as a result of forgiveness of any portion thereof) with respect to such loan or advance after the date thereof, (ii) any Investment in the form of a Guarantee shall be equal to the stated or determinable amount of the related primary obligation, or portion or maximum amount thereof, in each case in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof, as determined in good faith by the Borrower Representative, (iii) any Investment in the form of a transfer of Equity Interests or other non-cash property by the investor to the investee, including any such transfer in the form of a capital contribution, shall be the fair market value of such Equity Interests or other property as of the time of the transfer, minus any payments actually received by such investor representing a return or reduction of capital of, or dividends, share buybacks, or other distributions in respect of, such Investment, but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment and (iv) any Investment (other than any Investment referred to in clause (i), (ii) or (iii) above) by the specified Person in the form of a purchase or other acquisition for value of any Equity Interests, evidences of indebtedness or other securities of any other Person shall be the original cost of such Investment (including any indebtedness assumed in connection therewith), plus (1) the cost of all additions thereto, minus (2) the amount of any portion of such Investment that has been repaid to (or on behalf of) the investor as a repayment of principal or a return of capital, and of any payments actually received by (or on behalf of) such investor representing interest, dividends or other distributions in respect of such Investment, but without any other adjustment for increases or decreases in value of, or write-ups, write-downs or write-offs with respect to, such Investment after the date of such Investment. For purposes of Section 6.07, if an Investment involves the acquisition of more than one Person, the amount of such Investment shall be allocated among the acquired Persons in accordance with GAAP; *provided* that pending the final determination of the amounts to be so allocated in accordance with GAAP, such allocation shall be as reasonably determined by the Borrower Representative.

"**IP Ancillary Rights**" shall mean, with respect to any Intellectual Property, as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property, and, in each case, all rights to obtain or enforce any other IP Ancillary Right.

"**IP License**" shall mean all licenses granting any right to exploit any Intellectual Property.

"**IRS**" shall mean the United States Internal Revenue Service.

"**ISDA Definitions**" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"**ISP**" shall mean, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the Issuing Bank for use.

"**Issuer Option**" shall mean (a) any Note Hedge Option and (b) any Upper Strike Warrant.

"**Issuing Bank**" shall mean in its capacity as the issuer of Letters of Credit hereunder, each of (i) Bank of America and, to the extent Bank of America is no longer the Administrative Agent hereunder, any successor Administrative Agent, (ii) Citibank, N.A., (iii) JPMorgan Chase Bank, N.A., (iv) BNP Paribas, (v) Royal Bank of Canada, (vi) Wells Fargo Bank, N.A. and (vii) and any other Lender that agrees to act as an Issuing Bank. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or all Issuing Banks, as the context may require.

"**Issuing Bank Sublimits**" means (a) $97,500,000, in the case of Bank of America, (b) $97,500,000, in the case of Citibank, N.A., (c) $45,000,000, in the case of JPMorgan Chase Bank, N.A., (d) $40,000,000, in the case of BNP Paribas, (e) $40,000,000, in the case of Royal Bank of Canada, (f) $30,000,000, in the case of Wells Fargo Bank, N.A. and (g) with respect to any other Issuing Bank, such amount as shall be designated to the Administrative Agent in writing (which may be email) by the Borrower Representative and such Issuing Bank. The Issuing Bank Sublimit of any Issuing Bank may be increased or decreased by the mutual written agreement of the Borrowers and the affected Issuing Bank (and notified to the Administrative Agent in writing).

"**Japanese Yen**" or "**¥**" shall mean the lawful currency of Japan.

"**Joint Lead Arrangers**" shall mean BofA Securities, Inc. and Citibank, N.A., each in their capacity as a joint lead arranger hereunder and BofA Securities, Inc., Citibank, Inc., Barclays Bank PLC, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., BNP Paribas Securities Corp. and RBC Capital Markets, each in their capacity as a joint bookrunner hereunder.

"**Judgment Currency**" shall have the meaning assigned to such term in Section 9.23.

"**Junior Financing**" shall mean any Debt of the Loan Parties that is (i) contractually subordinated in right of payment to the Obligations or (ii) secured by a Lien on the Collateral that is junior to the Lien on the Collateral securing the Secured Obligations pursuant to an Acceptable Intercreditor Agreement (it being agreed that a Fixed Asset Facility shall not constitute Junior Financing so long as such Fixed Asset Facility is secured by a Lien on any Fixed Assets that is pari passu or senior to the Lien on such Fixed Assets securing the Secured Obligations).

"**Junior Financing Documentation**" shall mean any documentation governing the Junior Financing.

"**Jurisdictional Requirements**" shall have the meaning assigned to such term in Section 6.05(a).

"**Last-Out Tranche**" means a tranche of Incremental Commitments that is established pursuant to Section 2.09(e) and which may take the form of term loan commitments, with respect to which Loans incurred thereunder shall rank junior in right of payment to the Initial Revolving Loans and, solely to the extent constituting revolving loans, will be subject to the same Borrowing Base and other terms applicable to the Initial Revolving Loans, except as otherwise permitted under Section 2.09(e).

"**LC Collateral Account**" has the meaning assigned to such term in Section 2.06(j).

"**LC Disbursement**" shall mean any payment made by an Issuing Bank pursuant to a Letter of Credit.

"**LC Exposure**" shall mean, at any time, the sum of the Dollar Equivalent of (a) the aggregate undrawn amount of all Letters of Credit outstanding at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by, or on behalf of, the Borrowers at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

"**LC Instrument**" means any letter of credit, letter of guarantee, bank guarantee, bankers' acceptance, performance bond, surety bond or other similar document or instrument.

"**LCT Election**" shall have the meaning assigned to such term in Section 1.05(a).

"**LCT Test Date**" shall have the meaning assigned to such term in Section 1.05(a).

"**Legal Reservations**" means applicable Debtor Relief Laws or other laws affecting creditors' rights generally, general principles of equity, regardless of whether considered in a proceeding in equity or at law and general principles of good faith and fair dealing.

"**Lender-Related Person**" has the meaning assigned to such term in Section 9.03(b).

"**Lenders**" shall mean the Persons listed on the Commitment Schedule, each Incremental Lender, each Additional Lender and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Issuing Bank and the Swingline Lender.

Letter of Credit Expiration Date" shall have the meaning assigned to such term in Section 2.06(c).

"**Letters of Credit**" shall mean the letters of credit issued pursuant to this Agreement, and the term "Letter of Credit" shall mean any one of them or each of them singularly, as the context may require.

"**Liabilities**" shall mean all claims (including intraparty claims), actions, suits, judgments, orders, demands, damages, losses, liabilities, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

"**Licensed Intellectual Property**" shall mean all Intellectual Property owned by a third party and licensed or sublicensed to a Loan Party.

"**Lien**" shall mean, with respect to any asset, any mortgage, deed of trust, deed to secure debt, lien, pledge, charge, security interest or encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset. For the purposes of this Agreement and the other Loan Documents, the Company, the other Borrowers or any of their respective subsidiaries shall be deemed to own, subject to a Lien, any asset which any of them has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement (other than non-exclusive licenses) relating to such asset. Notwithstanding the foregoing, in no event will an operating lease or agreement to sell be deemed to constitute a Lien.

"**Limited Condition Eligible Transaction**" shall mean (a) any Investment or acquisition by the Borrower or one or more of the Restricted Subsidiaries, including by way of merger or amalgamation, of any assets, business or Person permitted pursuant to this Agreement (and including the incurrence or assumption of Debt in connection therewith) whose consummation is not conditioned on the availability of, or on obtaining, third party financing and (b) any redemption, repurchase, defeasance, satisfaction and discharge or repayment permitted under this Agreement of Debt requiring the giving of advance irrevocable notice of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

"**Limited Condition Transaction**" shall mean any Limited Condition Eligible Transaction with respect to which the Borrower Representative has made an LCT Election.

"**Limited Purpose Subsidiary**" has the meaning assigned to such term in the definition of "Excluded Subsidiary".

"**Line Cap**" shall mean the lesser of (a) the Borrowing Base and (b) the Aggregate Revolving Commitment.

"**Liquidity**" shall mean, on any date of determination, an amount equal to the sum of, without duplication, (a) Availability as of such date, *plus* (b) the aggregate amount of unrestricted cash and unrestricted Permitted Investments of the Company and the Restricted Subsidiaries (and including, for the avoidance of doubt, Eligible Cash not already included in the Borrowing Base as of such date) (which, for the avoidance of doubt, shall in each case of this clause (b) include cash restricted in favor of any Secured Party); *provided* that the aggregate amount of unrestricted cash and unrestricted Permitted Investments of Foreign Subsidiaries shall not at any time exceed 25% of all Liquidity (calculated after giving effect to the inclusion of such assets for the Foreign Subsidiaries) (such amounts, "**Foreign Liquidity**"); *provided, further*, that such Foreign Liquidity shall be calculated net of any applicable Taxes or other amounts that would be payable or reserved against as a result of repatriating such amounts. With respect to any amounts included in the calculation of "Liquidity" (whether Foreign Liquidity or otherwise) that are held in an account that is not maintained with the Administrative Agent (or an Affiliate thereof), the Administrative Agent shall (x) be entitled to reasonably request cash reporting on a daily basis with respect to any such account or (y) be reasonably satisfied in its Permitted Discretion with any other method of verifying the amounts on deposit therein.

"**Loan Documents**" shall mean, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, **Amendment No. 1,** any Letter of Credit applications, the Collateral Documents, any Acceptable Intercreditor Agreement, any Incremental Amendment and all other agreements, instruments, documents and certificates, including those identified in Section 4.01, executed by or on behalf of any Loan Party, and delivered to, or in favor of, the Administrative Agent or any Lender and required pursuant to the foregoing. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative. For the avoidance of doubt, Loan Documents shall not include Banking Services Agreements.

"**Loan Parties**" shall mean, collectively, the Company, the other Borrowers, the Subsidiary Guarantors and their successors and assigns, and the term "**Loan Party**" shall mean any one of them or all of them individually, as the context may require.

"**Loans**" shall mean the loans and advances made by the Lenders pursuant to this Agreement, including, Overadvances and Protective Advances.

"**Margin Stock**" shall have the meaning assigned to such term in Regulation U.

"**Material Adverse Effect**" shall mean (a) a material adverse effect on the financial condition, results of operations or business of the Company and the Restricted Subsidiaries, taken as a whole, (b) a material impairment of the ability of the Company, the other Borrowers and the other Loan Parties, taken as a whole, to perform any of their respective payment obligations under the Loan Documents, taken as a whole, or (c) a material adverse effect on the material rights and remedies of or benefits available to, taken as a whole, the Administrative Agent and the Lenders under the Loan Documents (taken as a whole).

"**Material Debt**" shall mean Money Borrowed of any one or more of the Loan Parties or any of their respective Restricted Subsidiaries in an aggregate principal amount (i) for purposes of the definition of "Maturity Date", $500,000,000 and (ii) for all other purposes, $200,000,000; *provided* that in no event shall any of the following be Material Debt: (a) Debt under a Loan Document, (b) Capital Leases, (c) obligations under any Permitted Receivables Financing, (d) intercompany Debt and (e) Debt under any Swap Agreements.

"**Material IP**" means any Intellectual Property that is material to the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole (as determined by the Borrower Representative in good faith).

"**Material IP Subsidiary**" means each Subsidiary that owns, directly or indirectly through one or more of its subsidiaries, any Material IP.

"**Material Real Property**" shall mean any owned Real Estate located in the United States having a fair market value in excess of the Threshold Amount (per property).

"**Material Subsidiary**" shall mean any Restricted Subsidiary other than an Immaterial Subsidiary.

"**Maturity Date**" shall mean (a) with respect to the Initial Revolving Commitment and the Initial Revolving Loans, the earlier of (i) the Stated Maturity Date and (ii) the date that is 91 days prior to the stated maturity date of any Material Debt and (b) with respect to any Incremental Commitments or Incremental Loans made hereunder, the final maturity date applicable thereto as specified herein or in the applicable Incremental Amendment.

"**Maximum Rate**" has the meaning assigned to such term in Section 9.17.

"**Money Borrowed**" shall mean (a) Debt for borrowed money arising from the lending of money by any third party to any Loan Party or any of their respective Subsidiaries, (b) Debt, whether or not in any such case arising from the lending by any third party of money to any Loan Party or any of their respective Subsidiaries, (i) which is represented by notes payable or drafts accepted that evidence extensions of credit or (ii) which constitutes obligations evidenced by bonds, debentures, notes or similar instruments, (c) reimbursement obligations with respect to letters of credit or guaranties of letters of credit, and (d) without duplication to any Debt under clauses (a), (b) or (c) hereof, Debt of any Loan Party or any of their respective Subsidiaries under any guarantee of obligations that would constitute Debt for Money Borrowed under clauses (a), (b) or (c) hereof, if owed directly by any Loan Party or any of their respective Subsidiaries.

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Mortgaged Properties**" shall mean all Material Real Property with respect to which a Mortgage is delivered pursuant to the terms hereof and shall include all Eligible Real Property.

"**Mortgages**" shall mean the mortgages, deeds of trust, deeds to secure debt, assignments of leases and rents and other security documents (including any assignment, amendment, amendment and restatement or similar modification of any existing mortgage) delivered pursuant to the terms hereof, in each case, reasonably acceptable to the Administrative Agent and the Borrower Representative.

"**Multiemployer Plan**" shall mean a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA and in respect of which the Company or any other Borrower makes or is obligated to make contributions, or with respect to which such Borrower has liability under Section 4212(c) of ERISA (including on account of any ERISA Affiliate).

"**Net Cash Proceeds**" shall mean, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a Casualty Event, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, *minus* (b) the sum of (i) all fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event and restoration costs following a Casualty Event and out-of-pocket costs incurred in connection therewith, (ii) in the case of a Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Debt (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event (including principal amount, premium or penalty, if any, interest and breakage costs) and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative) and (iv) without duplication of the foregoing, in the case of any Disposition or Casualty Event by a non-wholly owned Restricted Subsidiary, the *pro rata* portion of the Net Cash Proceeds thereof (calculated without regard to this clause (iv) attributable to minority interests and not available for distribution to or for the account of the Company or a wholly owned Restricted Subsidiary as a result thereof).

"**Net Orderly Liquidation Value**" shall mean, with respect to Inventory or Equipment (or in each case any category thereof) of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion by an appraiser acceptable to the Administrative Agent in its Permitted Discretion, net of all costs of liquidation thereof.

"**NFIP**" shall have the meaning assigned to such term in Section 5.13(b)(ii).

"**Non-Consenting Lender**" has the meaning assigned to such term in Section 9.02(d).

"**Note Hedge Option**" shall mean any hedging agreement (including, but not limited to, any bond hedge transaction, call option, transaction, or capped call transaction), with respect to Permitted Stock, purchased by the Company (or any parent company thereof) (with respect to Permitted Convertible Notes issued by the Company (or any parent company thereof, as the case may be)) in connection with the issuance of Permitted Convertible Notes (whether such transaction is settled in shares of Permitted Stock, the cash value of such shares or a combination thereof).

"**Notice of Intent to Cure**" has the meaning assigned to such term in Section 7.02.

"**NYFRB**" shall mean the Federal Reserve Bank of New York.

"**NYFRB's Website**" shall mean the website of the NYFRB at ~~http://www.newyorkfed.org~~http://www.newyorkfed.org, or any successor source.

"**Obligations**" shall mean all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred in respect of any of the Letters of Credit or other instruments at any time evidencing any thereof.

"**Organizational Documents**" shall mean (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation and any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the Equity Interests (other than options and warrants) of a Person, or, in each case, the equivalent in any applicable jurisdiction.

"**Other Connection Taxes**" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection 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, Letter of Credit or any Loan Document).

"**Other Taxes**" shall mean 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 2.19).

"**Overadvance**" has the meaning assigned to such term in Section 2.05(b).

"**Owned Intellectual Property**" shall mean all Intellectual Property owned by a Loan Party.

"**Paid in Full**" or "**Payment in Full**" shall mean, (a) the indefeasible payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the applicable Issuing Bank of a cash deposit, or at the discretion of such Issuing Bank a back-up standby letter of credit satisfactory to such Issuing Bank, in an amount equal to 103% of the LC Exposure as of the date of such payment), (c) the indefeasible payment in full in cash of the accrued and unpaid fees, (e) the indefeasible payment in full in cash of all reimbursable expenses and other Secured Obligations (other than (x) Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement, (y) Banking Services Obligations and (z) Swap Agreement Obligations), together with accrued and unpaid interest thereon and (e) the termination of all Commitments.

"**Participant**" has the meaning assigned to such term in Section 9.04(c).

"**Participant Register**" has the meaning assigned to such term in Section 9.04(d).

"**Patent**" shall mean all rights, title and interests (and all related IP Ancillary Rights) in or relating to letters patents and design letters patents (including to the fullest extent arising under any Requirement of Law).

"**Payment Conditions**" shall mean, and will be deemed to be satisfied with respect to any particular action as to which the satisfaction of the Payment Conditions is being determined if, as of the applicable date of determination in accordance with Section 1.05(a), with respect to Investments, incurrence of Debt, incurrence of Liens, Restricted Distributions and Restricted Debt Payments:

(i) no Specified ABL Event of Default has occurred and is continuing,

(ii) Specified Availability for each day in the 30-day period prior to such action and on the date of such proposed action is equal to or greater than the greater of (x) 15% of the Line Cap then in effect and (y) $75,000,000, on a pro forma basis, and

(iii) the Fixed Charge Coverage Ratio would be at least 1.0 to 1.0 on a pro forma basis as of the last day of the most recent Test Period; *provided* that compliance with the Fixed Charge Coverage Ratio will not be required if after giving pro forma effect to the taking of such action, Specified Availability for each day in the 30-day period prior to the relevant test date and on the relevant test date, is equal to or greater than the greater of (i) 20% of the Line Cap then in effect and (ii) $100,000,000, on a pro forma basis.

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"**Perfection Certificate**" shall mean the Perfection Certificate substantially in the form of Exhibit II to the Collateral Agreement.

"**Permitted Acquisition**" shall have the meaning assigned to such term in Section 6.07(f).

"**Permitted Additional Indebtedness**" shall mean Permitted Additional Unsecured Indebtedness and Permitted Additional Secured Indebtedness.

"**Permitted Additional Indebtedness Documents**" shall mean Permitted Additional Unsecured Indebtedness Documents and Permitted Additional Secured Indebtedness Documents.

"**Permitted Additional Secured Indebtedness**" shall mean Debt incurred or issued under Section 6.01(s)(vi)(B).

"**Permitted Additional Secured Indebtedness Documents**" shall mean on and after the execution and delivery thereof, each note, indenture, purchase agreement, loan agreement, credit agreement, guaranty, security agreement, pledge agreement, mortgage, other collateral document and other document relating to the incurrence or issuance of any Permitted Additional Secured Indebtedness, as the same may be amended, modified, restated, renewed, extended and/or supplemented from time to time in accordance with the terms hereof and thereof.

"**Permitted Additional Unsecured Indebtedness**" shall mean Debt incurred or issued under Section 6.01(s)(vi)(A).

"**Permitted Additional Unsecured Indebtedness Documents**" shall mean, on and after the execution and delivery thereof, each note, indenture, purchase agreement, loan agreement, credit agreement, guaranty and other document relating to the incurrence or issuance of any Permitted Additional Unsecured Indebtedness, as the same may be amended, modified, restated, renewed, extended and/or supplemented from time to time in accordance with the terms hereof and thereof.

"**Permitted Bank Financing**" shall mean a transaction in which (a) a bank or other financial institution finances the purchase of a motor vehicle by a customer from the Company or a Restricted Subsidiary or purchases the Account of a customer that finances the purchase of a motor vehicle, (b) such bank or other financial institution becomes the Account Debtor in respect of the relevant Account (such Account, a "**Permitted Bank Financing Account**"), (c) such Account is the valid, legally enforceable obligation of such bank or other financial institution and (d) such bank or other financial institution has no recourse to the Company or its Subsidiaries if the customer fails to pay the bank or other financial institution in respect of financing such purchase; *provided* that, upon the reasonable request of the Administrative Agent, the Borrower Representative shall provide supporting documentation demonstrating each of the foregoing requirements.

"**Permitted Bank Financing Account**" has the meaning provided in the definition of Permitted Bank Financing.

"**Permitted Common Stock**" shall mean, with respect to Permitted Convertible Notes issued by the Company, authorized shares of common stock of the Company.

"**Permitted Contest**" shall mean a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made; *provided* that any enforcement action by the holder of the obligation that is the subject of such contest is effectively stayed during such challenge.

"**Permitted Convertible Notes**" shall mean, collectively, (i) the Existing Convertible Notes and (ii) any other unsecured convertible senior debt securities of the Company or any Restricted Subsidiary issued pursuant to, and containing the requirements of, Section 6.01(s) or Section 6.01(t), as applicable, which unsecured convertible senior securities are convertible into Equity Interests of the Company (or any direct or indirect parent of the Company), cash or a combination of cash and Equity Interests of the Company (or any direct or indirect parent of the Company).

"**Permitted Convertible Notes Documents**" shall mean any Permitted Convertible Notes and any Permitted Convertible Notes Indenture.

"**Permitted Convertible Notes Indenture**" shall mean each indenture (or similar document) pursuant to which any Permitted Convertible Notes are issued.

"**Permitted Discretion**" shall mean a determination made by the Administrative Agent in its commercially reasonable judgment exercised in good faith in accordance with customary business practices for comparable asset-based lending transactions. When Permitted Discretion relates to the establishment of Reserves after the Effective Date or the imposition of additional exclusionary criteria after the Effective Date, it shall require that (a) such establishment or imposition be based on (i) the results of any field examination or appraisal performed after the Effective Date, or (ii) an analysis of facts or events first occurring or first discovered by the Administrative Agent after the Effective Date or that are different from the facts or events occurring and known to the Administrative Agent on the Effective Date, unless the Borrower Representative and the Administrative Agent otherwise agree in writing, (b) the contributing factors to the imposition of any Reserves shall not duplicate (i) the exclusionary criteria set forth in the definitions of Eligible Accounts, Eligible Investment Grade Accounts, Eligible Cash, Eligible Credit Card Receivables, Eligible Inventory, Eligible In-Transit Inventory, Eligible Machinery and Equipment or Eligible Real Property, as applicable (and vice versa) or (ii) any reserves deducted in computing book value, and (c) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria shall be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

"**Permitted Encumbrances**" shall mean:

(a) Liens imposed by law and other non-consensual Liens, in each case, for taxes, assessments or other governmental charges or levies (i) not at the time delinquent or (ii) the subject of a Permitted Contest;

(b) carriers', warehousemen's, mechanics', landlords' mortgagee's, materialmen's, repairmen's, vendor's and other similar Liens and agricultural and similar Liens, in each case, imposed by law or otherwise non-consensual, arising in the ordinary course of business, and which are securing obligations which are not overdue by more than thirty (30) days or which are the subject of a Permitted Contest;

(c) pledges and deposits made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security or similar laws or regulations;

(d) judgments and other similar Liens in respect of judgments, orders for the payment of money or other court proceedings that do not constitute an Event of Default under clause (k) of Section 7.01;

(e) (i) easements, zoning restrictions, licenses, rights-of-way, site plan agreements, development agreements, cross easement or reciprocal agreements, and other non-monetary encumbrances on real property that do not materially detract from the value of the affected property or interfere in any material respect with the ordinary conduct of business of any Borrower or any Subsidiary (taken as a whole) or the operation of such real property for its intended purpose or (ii) title defects or irregularities with respect to Real Estate which are of a minor nature and which in the aggregate do not materially detract from the value of the affected property or interfere in any material respect with the ordinary conduct of business of any Borrower or any Subsidiary or the operation of such real property for its intended purpose;

(f) ground leases in respect of Real Estate on which facilities or equipment owned or leased by the Company or any of the Restricted Subsidiaries are located;

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

(h) licenses and sublicenses, and grants and permits, including in respect of Intellectual Property and software, granted by the Company or any Restricted Subsidiary and leases and subleases (by the Company or any Restricted Subsidiary as lessor or sublessor) to third parties, in each case in the ordinary course of business and not interfering in any material respect with the business of the Company and the Restricted Subsidiaries, taken as a whole; *provided, however,* unless approved by the Administrative Agent, such leases shall (i) not grant to the lessee any options to purchase or rights of first refusal or first offer to purchase, (ii) shall be subordinate to the applicable Mortgage unless the Administrative Agent elects, at its sole option, to subordinate the Mortgage to such lease and (iii) provide that the lessee thereunder shall recognize and attorn to any person succeeding in the interest of the mortgagor upon foreclosure of the Mortgage (or deed in lieu thereof);

(i) with respect to leasehold interests, mortgages, obligations, Liens and other encumbrances incurred, created, assumed or permitted to exist and arising by, through or under a landlord, ground lessor or owner of the leased property, with or without consent of the lessee; *provided,* that with respect to mortgages by ground lessor or owner of the leased property, such Borrower or other Loan Party, as the case may be, shall use commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement, in a form reasonably acceptable to the Administrative Agent, from the mortgagees of such ground lessor or owner;

(j) with respect to Credit Card Account Receivables, Liens in favor of a credit card processor or a payment processor arising in the ordinary course of business under any processor agreement; and

(k) Liens arising from precautionary UCC financing statements or any similar filings, including those made in respect of the sale of Permitted Receivables Financing Assets and related assets in connection with any Permitted Receivables Financing.

"**Permitted Investments**" shall mean:

(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 270 days from the date of acquisition thereof and having, at such date of acquisition, one of the two highest credit ratings obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent, any Lender or any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than the Dollar Equivalent of $500,000,000 and that issues (or the parent of which issues) commercial paper rated at least "Prime 1" (or then equivalent grade) by Moody's or "A-1" (or then equivalent grade) by S&P;

(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 of clause (c) above;

(e) investments in "money market funds" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (d) above; and

(f) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments of a type analogous to the foregoing.

"**Permitted Lien**" shall mean a Lien permitted by Section 6.02.

"**Permitted Party**" means Ayar Third Investment Company, The Public Investment Fund of Saudi Arabia, any of their respective Affiliates, any Permitted Transferee of any of the foregoing, or any general partnership, limited partnership, limited liability company, corporation or other entity exclusively owned by any of the foregoing.

"**Permitted Payee**" means, collectively (i) any future, current or former officer, director, manager, member, member of management, employee, consultant, distributor or independent contractor of the Company, any Subsidiary or any direct or indirect parent company thereof or (ii) any Affiliate, Permitted Transferee or other transferee of any of the foregoing Persons listed in clause (i).

"**Permitted Receivables Financing**" means any securitization or other similar financing (including any factoring or receivables program or sale transaction) of Permitted Receivables Financing Assets that is non-recourse to the Borrower and the other Restricted Subsidiaries (except for (i) recourse to any Foreign Subsidiary that owns the assets underlying such financing (or have sold such assets in connection with such financing), (ii) any customary limited recourse pursuant to the Standard Securitization Undertakings or, to the extent applicable only to Foreign Subsidiaries, recourse that is customary in the relevant local market, (iii) any performance undertaking or Guarantee, to the extent applicable only to Foreign Subsidiaries that is customary in the relevant local market and (iv) an unsecured parent Guarantee by a Borrower or any Restricted Subsidiary that is a parent company of a Foreign Subsidiary of obligations of such Subsidiaries), and in each case, reasonable extensions thereof.

"**Permitted Receivables Financing Assets**" means (a) any accounts receivable, credit card receivable, loan receivables, mortgage receivables, receivables or loans relating to the financing of insurance premiums, royalty, patent or other revenue streams and other rights to payment or related assets and the proceeds thereof and (b) all Related Security, in each case in connection with a Permitted Receivables Financing. For the avoidance of doubt, no Permitted Receivables Financing Assets that are then-currently subject to a Permitted Receivables Financing shall be included in the Borrowing Base.

"**Permitted Refinancing**" shall mean Debt constituting a refinancing or extension of Debt permitted under Section 6.01 hereunder that (a) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Debt being refinanced or extended plus an amount equal to accrued and unpaid interest and any premium thereon paid in connection with such refinancing or extension and other reasonable amounts paid and fees and expenses reasonably incurred, in connection therewith, (b) has a weighted average maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Debt being refinanced or extended, (c) is not secured by a Lien on any assets other than the collateral securing the Debt being refinanced or extended, and is not secured by a Lien having higher priority than the Lien securing the Debt being refinanced or extended, (d) the obligors of which shall not include any Person that is not at the time of such refinancing an obligor of the Debt being refinanced or extended, (e) is subordinated to the Obligations to at least the same extent as the Debt being refinanced or extended and (f) is otherwise on terms no less favorable to the Loan Parties, taken as a whole, than those of the Debt being refinanced or extended.

"**Permitted Reorganization**" means, to the extent not otherwise permitted under this Agreement, any corporate reorganization (or similar transaction or event) undertaken (each, a "**Reorganization**"), and each step reasonably undertaken to effect such Reorganization; *provided* that, in connection therewith, (a) no Specified ABL Event of Default is continuing immediately prior to such Reorganization and immediately after giving effect thereto as determined on the applicable date in accordance with Section 1.05 and (b) after giving effect to such Reorganization, the security interests of the Lenders in the Collateral and the Guarantees of the Secured Obligations, taken as a whole, would not be materially impaired; *provided* that, if such Permitted Reorganization involves Loan Parties with assets included in the Borrowing Base, upon the consummation of such Permitted Reorganization, the Borrower Representative shall have delivered to the Administrative Agent a Borrowing Base Certificate recomputing the Borrowing Base on a pro forma basis after giving effect to such Permitted Reorganization.

"**Permitted Stock**" shall mean Permitted Common Stock and Qualified Preferred Stock.

"**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, step-children, grandchildren and their respective lineal descendants, parent, step-parent, grandparent, domestic partner, former domestic partner, sibling or step-sibling (and any lineal descendant thereof), mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive relationships), (b) any trust, partnership, estate planning vehicle or other legal entity the beneficiaries of which are persons referred to in the preceding clause (a) and (c) such Person's estate, heirs, legatees, distributees, executors and/or administrators upon the death of such Person, or any private foundation or fund that is controlled thereby, 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 Company or any direct or indirect parent company thereof.

"**Person**" shall mean any natural person, corporation, business, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Plan**" shall mean any "employee pension benefit plan" as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Sections 412 and 430 of the Code or Section 302 of ERISA, and in respect of which any 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.

"**Platform**" shall mean Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"**Pledged Collateral**" shall have the meaning set forth in the Collateral Agreement.

"**Post-Acquisition Borrowing Base**" has the meaning assigned to such term in the definition of "Acquired Borrowing Base Component".

"**Pounds Sterling**" or "**£**" shall mean the lawful currency of the United Kingdom.

"**Pre-Acquisition Borrowing Base**" has the meaning assigned to such term in the definition of "Acquired Borrowing Base Component".

"**Preferred Equity**", as applied to the Equity Interests of any Person, shall mean Equity Interests of such Person (other than common Equity Interests of such Person) of any class or classes (however designed) that ranks prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Equity Interests of any other class of such Person, and shall include any Qualified Preferred Stock, but shall exclude any Permitted Convertible Notes.

"**Prime Rate**" shall mean the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate". The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"**pro forma basis**," "**pro forma compliance**" and "**pro forma effect**" mean, as to any Person, for any events as described below that occur subsequent to the commencement of the Test Period for which the effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred as of the first day (or, in the case of Consolidated Total Assets, or with respect to any determination pertaining to the balance sheet, including the acquisition of cash and Permitted Investments in connection with an acquisition of a Person, business line, unit, division or product line, the last day) of such Test Period (the "**Reference Period**"): (a) in making any determination of Consolidated EBITDA or any component thereof, as further described below, effect shall be given to the Transactions, any Specified Transaction and any Expected Cost Savings pertaining to the business of the Company or any Restricted Subsidiary (with respect to Expected Costs Savings, calculated on a pro forma basis as though such Expected Cost Savings had been realized on the first day of the applicable Test Period and as if such Expected Cost Savings were realized in full during the entirely of such period); provided that any increase in Consolidated EBITDA as a result of Expected Cost Savings pursuant to this definition shall be subject to the limitations set forth in clause (b)(1) of the definition of "Consolidated EBITDA"; (b) in making any determination on a pro forma basis, of pro forma compliance or of pro forma effect, (x) all Debt (including Debt issued, incurred or assumed as a result of, or to finance, any relevant transactions and for which the pro forma effect is being calculated, whether incurred under the Loan Documents or otherwise) issued, incurred, assumed, retired or repaid during the Reference Period (or with respect to Debt retired or repaid, during the Reference Period or subsequent to the end of the Reference Period and prior to, or simultaneously with, the event for which the calculation of any such ratio is made) shall be deemed to have been issued, incurred, assumed, retired or repaid at the beginning of such period and (y) (1) interest expense of such Person attributable to interest on any Debt for which pro forma effect is being given as provided in preceding clause (x) bearing floating interest rates shall be computed on a pro forma basis with an implied rate of interest for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Debt at the relevant date of determination (taking into account any interest hedging arrangements applicable to such Debt), (2) interest expense of such Person attributable to any Capital Lease Obligation shall be deemed to accrue at an interest rate determined as set forth in the definition of "Consolidated Interest Expense" and (3) interest expense of such Person attributable to any Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen by the Borrower Representative; (c)(i) in the case of (A) any Disposition of all or substantially all of the Equity Interests of any Restricted Subsidiary or any division and/or product line of the Borrower Representative or any Restricted Subsidiary or (B) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary, income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, shall be excluded as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made and (ii) in

the case of any Permitted Acquisition, Investment and/or designation of an Unrestricted Subsidiary as a Restricted Subsidiary described in the definition of the term "Specified Transaction", income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction shall be included as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made; (d) the acquisition of any assets (including cash and Permitted Investments) included in calculating Consolidated Total Assets, whether pursuant to any Specified Transactions or any Person becoming a subsidiary or merging, amalgamating or consolidating with or into the Borrower Representative or any of its subsidiaries, or the Disposition of any assets (including cash and Permitted Investments) included in calculating Consolidated Total Assets described in the definition of "Specified Transaction" shall be deemed to have occurred as of the last day of the applicable Test Period with respect to any test or covenant for which such calculation is being made; and (e) notwithstanding anything to the contrary in this definition or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the asset sale, transfer, disposition or lease thereof has been entered into as discontinued operations, no pro forma effect shall be given to the classification thereof as discontinued operations (and the Consolidated EBITDA or any component thereof attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such asset sale, transfer, disposition or lease shall have been consummated.

Whenever a financial ratio or test or covenant is to be calculated on a pro forma basis, the reference to the "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements of the Borrower Representative were delivered pursuant to Section 5.01(a) or (b) or, at the election of the Borrower Representative, are internally available; *provided* that prior to the initial delivery or availability of such financial statements following the Effective Date, any such calculation shall use the financial statements of the Target delivered to the Joint Lead Arrangers for the fiscal quarter ended March 31, 2022.

"**Proceeds**" has the meaning assigned to such term in Article 9 of the UCC.

"**Property**" shall mean any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

"**Protective Advance**" has the meaning assigned to such term in Section 2.04.

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

"**Public Company Costs**" means costs relating to compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Company's status (or any relevant parent of the Company's status) as a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act, the rules of securities exchange companies with listed equity securities, directors' compensation, fees and expense reimbursement, shareholder meetings and reports to shareholders, directors' and officers' insurance and other executive costs, legal and other professional fees, and listing fees.

"**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).

"**QFC Credit Support**" has the meaning assigned to such term in Section 9.22.

"**Qualified Capital Stock**" of any Person shall mean any Equity Interest of such Person that is not a Disqualified Equity Interest.

"**Qualified Preferred Stock**" shall mean any Preferred Equity of the Company that constitutes Qualified Capital Stock, in each case, so long as the terms of any such Preferred Equity (and the terms of any Equity Interests into which such Preferred Equity is convertible or for which it is exchangeable, either mandatorily or at the option of the holder thereof) (x) do not require the cash payment of dividends or distributions that would otherwise be prohibited by the terms of this Agreement and (y) do not contain any covenants (other than periodic reporting requirements) that are more restrictive, taken as a whole, than the covenants contained in this Agreement (as reasonably determined by the Company in good faith).

"**Rate Determination Date**" shall mean, with respect to the relevant Interest Period, two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; *provided* that, to the extent such market practice is not administratively feasible for the Administrative Agent, then "Rate Determination Date" means such other day as otherwise reasonably determined by the Administrative Agent).

"**Re-Load**" has the meaning set forth in the definition of "Real Estate Component".

"**Re-Load Election**" has the meaning set forth in the definition of "Real Estate Component".

"**Real Estate**" shall mean any real property owned, leased or subleased by any Loan Party or any subsidiary of any Loan Party.

"**Real Estate Component**" shall mean an amount equal to 50% of the fair market value of the Loan Parties' Eligible Real Property as set forth in each applicable Acceptable Real Estate Appraisal at the time such Eligible Real Property is first added to the Borrowing Base (or, subject to the conditions set forth herein in connection with any Re-Load or pursuant to the last sentence of this definition, as set forth in each applicable Acceptable Real Estate Appraisal obtained in connection with the Borrower Representative's most recent Re-Load Election or pursuant to the last sentence of this definition, as applicable); *provided, however,* that for each parcel of Eligible Real Property that is included in the Borrowing Base, the Availability generated with respect to such parcel of Eligible Real Property shall be reduced on a monthly basis, commencing on the first calendar day of the month immediately following the first date such Eligible Real Property is first added to the Borrowing Base (or, subject to the conditions set forth herein in connection with any Re-Load, commencing on the first calendar day of the month immediately following any Re-Load) and on the first calendar day of each month thereafter, by an amount equal to 1/180 of the original amount of Availability generated by such parcel of Eligible Real Property as of the first date such parcel of Eligible Real Property was added to the Borrowing Base (or, subject to the conditions set forth herein in connection with any Re-Load, as of the date of any Re-Load); *provided, further,* for the avoidance of doubt, no Real Estate will constitute Eligible Real Property until the applicable Loan Party has complied with the provisions of the definition of "Eligible Real Property".

Notwithstanding the foregoing, on up to two occasions after the Effective Date, the Borrower Representative may elect (a "**Re-Load Election**") to have all (but not less than all) Eligible Real Property at the time of such Re-Load Election to be re-appraised at the Borrowers' expense. Upon the Administrative Agent's receipt and review of Acceptable Real Estate Appraisals and environmental reports requested by the Administrative Agent and acceptable to the Administrative Agent and the Lenders for each parcel of Eligible Real Property in connection with a Re-Load Election made in accordance with this paragraph, the Real Estate Component shall be recalculated to give effect to such Acceptable Real Estate Appraisals (including giving effect to such Acceptable Real Estate Appraisal notwithstanding that the fair market value of any such Eligible Real Property in any such appraisal may be less than the fair market value of such Eligible Real Property in the most recently completed Acceptable Real Estate Appraisals) (such recalculation, a "**Re-Load**").

Notwithstanding the foregoing, the Administrative Agent may conduct (or have conducted) appraisals of any or all of the Eligible Real Property at Borrowers' expense at any time after the occurrence of an Event of Default, and if the fair market value of any such Eligible Real Property in any such appraisal is less than the fair market value of such Eligible Real Property in the most recently completed Acceptable Real Estate Appraisal, then such new appraisal shall be utilized for purposes of calculation of the "Real Estate Component".

"**Receivables Subsidiary**" means (i) any Special Purpose Entity established in connection with a Permitted Receivables Financing and (ii) any Foreign Subsidiary involved in a Permitted Receivables Financing.

"**Recipient**" shall mean, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, or any combination thereof (as the context requires).

"**Refinance**" or "**refinance**" shall mean, in respect of any indebtedness, to refinance, replace, defease, refund or repay, or to issue other indebtedness or enter into alternative financing arrangements, in exchange or replacement for, such indebtedness in whole or in part, including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors. "**Refinanced**" or "**refinanced**" and "**Refinancing**" or "**refinancing**" shall have correlative meanings.

"**Refunding Capital Stock**" shall have the meaning assigned to such term in Section 6.03(l).

"**Register**" has the meaning assigned to such term in Section 9.04(b).

"**Regulation T**" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Related Parties**" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives and advisors of such Person and such Person's Affiliates.

"**Related Security**" means, with respect to any accounts receivable, revenue stream or other right of payment, (a) all of the interest in the inventory and goods (including returned or repossessed inventory or goods), if any, the financing or lease of which gave rise to such accounts receivable, revenue stream or other right of payment and all insurance contracts with respect thereto, (b) all other security interests or liens and property subject thereto from time to time, if any, purporting to secure payment of such accounts receivable, revenue stream or other right of payment, whether pursuant to the contract related thereto or otherwise, together with all financing statements and security agreements describing any collateral securing such accounts receivable, revenue stream or other right of payment, (c) all guaranties, letters of credit, letter-of-credit rights, supporting obligations, insurance and other agreements or arrangements of whatever character from time to time supporting or securing payment of such accounts receivable, revenue stream or other right of payment, whether pursuant to the contract related thereto or otherwise, (d) all service contracts and other contracts and agreements associated with such accounts receivable, revenue stream or other right of payment, (e) all records related thereto, and all of the applicable Receivables Subsidiary's right, title and interest in, to and under the applicable documentation.

"**Release**" shall mean any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration into or through the Environment or within, from or into any equipment, fixture, building or structure.

"**Release Conditions**" means, with respect to any Borrower or any other Loan Party with assets included in the Borrowing Base, (a) in the case of a Borrower, such Borrower has no outstanding Loans or other Obligations, (b) the release of such Borrower as a Borrower or other Loan Party as a Loan Party would not result in an Overadvance and (c) the Borrower Representative shall have notified the Administrative Agent three (3) Business Days in advance of the release of such Borrower as a Borrower or other Loan Party as a Loan Party and the Administrative Agent shall be reasonably satisfied that the conditions in clauses (a) and (b), as applicable, above are satisfied.

"**Relevant Governmental Body**" shall mean the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or, in each case, any successor thereto.

"**Relevant Rate**" shall mean with respect to any Credit Extension denominated in (a) Pounds Sterling, SONIA, (b) Euros, EURIBOR, (c) Canadian Dollars, ~~the CDOR~~Term CORRA Rate, (d) Swiss Francs, SARON, (e) Japanese Yen, TIBOR and (f) Australian Dollars, BBSY, as applicable.

"**Relevant Rate Loans**" shall mean a Loan denominated in an Alternative Currency bearing interest at the Relevant Rate.

"**Reorganization**" has the meaning assigned to such term in the definition of "Permitted Reorganization".

"**Report**" shall mean reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations, audits or environmental or other reports pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent subject to Lenders' confidentiality obligations hereunder.

"**Required Lenders**" shall mean, at any time, Lenders (other than Defaulting Lenders) having Revolving Exposures and unused Commitments representing more than 50% of the sum of the Aggregate Revolving Exposure and unused Commitments at such time; *provided* that, as long as there are only two Lenders, Required Lenders shall mean both Lenders.

"**Requirement of Law**" shall mean, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Rescindable Amounts**" shall mean, with respect to any payment that the Administrative Agent makes for the account of the Lenders or any Issuing Bank hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies: (1) the applicable Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by such Borrower (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such Issuing Bank, in same day funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Reserves**" shall mean, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves that the Administrative Agent from time to time determines in its Permitted Discretion as being appropriate to reflect:

(1) the impediments to the Administrative Agent's ability to realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;

(2) claims and liabilities that will need to be satisfied, or will dilute the amounts received by holders of Loans, in connection with the realization upon such Collateral; or

(3) criteria, events, conditions, contingencies or risks that adversely affect any component of the Borrowing Base, the Collateral included therein or the validity or enforceability of the Loan Documents or any material remedies of the Administrative Agent, each Issuing Bank and each Lender under the Loan Documents with respect to such Collateral.

Notwithstanding the foregoing, Reserves may include any and all reserves which the Administrative Agent deems necessary, in its Permitted Discretion, for accrued and unpaid interest on the Secured Obligations, Secured Banking Services Reserves, Secured Swap Agreement Reserves, volatility reserves, reserves in an amount up to the aggregate outstanding principal amount of any Money Borrowed that is in an aggregate principal amount greater than $5,000,000 and matures earlier than the Stated Maturity Date and that does not constitute Material Debt under clause (i) of the definition thereof (provided, such reserves may only be imposed from and after the date that is 91 days prior to the stated maturity date of such Debt), reserves for any outstanding trade payables of the Loan Parties which have been unpaid for more than 90 days after the due date therefor (other than trade payables being contested or disputed by any Loan Party or Restricted Subsidiary thereof in good faith), reserves for rent at locations leased by any Loan Party and for consignee's, warehousemen's and bailee's charges, reserves for dilution of Accounts (based on the ratio of the aggregate amount of non-cash reductions in Accounts of the Loan Parties for any period to the aggregate Dollar Equivalent amount of sales of the Loan Parties for such period) calculated by the Administrative Agent for any period that is or is reasonably anticipated to be greater than five percent, reserves in connection with the accounts payable balance owed to third-party vendors where Inventory of the Loan Parties is physically located with such vendor, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Liens on any Accounts or Inventory of a Loan Party on account of priming agricultural related liens or trusts, reserves for contingent liabilities of any Loan Party, reserves relating to Environmental Liabilities in respect of Eligible Real Property included in the Borrowing Base, reserves for uninsured losses of any Loan

Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation, reserves for currency exchange (including, without limitation, in connection with any component of the Borrowing Base that is denominated in a foreign currency), and reserves for taxes, fees, assessments, and other governmental charges with respect to the Collateral or any Loan Party. Notwithstanding anything to the contrary herein, (A) the amount of Reserve established by the Administrative Agent, and any change in the amount of any Reserve, shall be limited to such Reserve or changes as the Administrative Agent determines in its Permitted Discretion to be necessary (x) to reflect items that would reasonably be expected to adversely affect the value of the applicable assets contributing to the Borrowing Base or (y) to reflect items that would reasonably be expected to adversely affect the enforceability or priority of the Administrative Agent's Liens on the applicable Collateral and (B) no Reserves may be established after the Effective Date based on circumstances, contingencies, events, conditions or matters known to the Administrative Agent as of the Effective Date for which no Reserve was imposed on the Effective Date or criteria included in the definitions of Eligible Accounts, Eligible Investment Grade Accounts, Eligible Cash, Eligible Credit Card Receivables, Eligible Inventory, Eligible In-Transit Inventory, Eligible Machinery and Equipment or Eligible Real Property, in each case, as in effect on the Effective Date, unless there has been an adverse change in such circumstances, events, conditions, contingencies or risks since the Effective Date.

"**Resolution Authority**" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Responsible Officer**" shall mean with respect to any Person, such Person's chief executive officer, president, vice president, chief operating officer, secretary, assistant secretary or Financial Officer, director, manager or other officer having substantially the same authority and responsibility with respect to the matters at hand (or having substantially the same knowledge of the contents of the certificate, document or other document being delivered).

"**Restricted Debt Payment**" has the meaning assigned to such term in Section 6.12(a).

"**Restricted Distribution**" shall mean as to any Person (i) any dividend or other distribution on any Equity Interest in such Person (except those payable solely in its equity interests of the same class) or (ii) any payment by such Person (except those payable solely by issuance of common stock of such Person) on account of the purchase, redemption, retirement, defeasance, surrender or acquisition of any Equity Interests in such Person or any claim respecting the purchase or sale of any Equity Interest in such Person. For the avoidance of doubt, no Satisfaction of Conversion Obligation of Permitted Convertible Notes up to the principal amount of such Permitted Convertible Notes, nor the purchase, sale or performance of obligations under any Issuer Option, shall constitute a Restricted Distribution.

"**Restricted Subsidiary**" shall mean, collectively, any existing or future direct or indirect subsidiary of the Company, other than any Unrestricted Subsidiary but including, at all times, the Borrowers.

"**Revaluation Date**" shall mean, with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month and (iii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof; and (iv) any additional date as the Administrative Agent may determine at any time when an Event of Default exists.

"**Revolving Commitment**" shall mean, with respect to any Lender, its Initial Revolving Commitment, Incremental Commitment or other commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit, Swingline Loans and Overadvances hereunder, expressed as an amount representing the maximum aggregate permitted amount of such Lender's Revolving Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04, in each case, of any Class or any combination thereof (as the context requires).

"**Revolving Exposure**" shall mean, with respect to any Lender at any time, the sum of the Dollar Equivalent of (a) the outstanding principal amount of such Lender's Revolving Loans and LC Exposure at such time, *plus* (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Swingline Loans outstanding at such time, *plus* (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time, *plus* (d) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

"**Revolving Lender**" shall mean, as of any date of determination, an Initial Revolving Lender, any Incremental Lender and each other Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"**Revolving Loan**" shall mean the Initial Revolving Loans and the other revolving loans and advances made by the Lenders to the Borrowers pursuant to this Agreement (other than any loans and advances in respect of any Incremental Term Loans), including Swingline Loans and Protective Advances.

"**S&P**" shall mean Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"**Sale Leaseback Transaction**" means a sale leaseback transaction with respect to all or any portion of any real property, equipment or capital assets owned by the Company or any Restricted Subsidiary or other property customarily included in such transactions.

"**Sanctioned Country**" shall mean, at any time, a country, region or territory which is itself the subject or target of any Sanctions (which, as of the Effective Date, shall include Cuba, Iran, North Korea, the Crimea Region of Ukraine, Syria, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic).

"**Sanctioned Person**" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, or Her Majesty's Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

"**Sanctions**" shall mean all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, or Her Majesty's Treasury of the United Kingdom.

"**SARON**" shall mean, with respect to any applicable determination date, the Swiss Average Rate Overnight published on the second Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); *provided*, *however*, that if such determination date is not a Business Day, SARON means such rate that applied on the first Business Day immediately prior thereto.

"**Satisfaction of Conversion Obligation**" shall mean any settlement upon conversion of Permitted Convertible Notes consisting of Permitted Stock, cash or a combination of cash and Permitted Stock.

"**Scheduled Unavailability Date**" has the meaning specified in Section 2.14(g)(B).

"**SEC**" shall mean the Securities and Exchange Commission of the U.S.

"**Secured Banking Services Obligations**" shall mean Banking Services Obligations where the arrangements governing such Banking Services Obligations are (or were) entered into with an Approved Counterparty and designated in writing by the Borrower Representative and such Approved Counterparty (except that no notice shall be required from an Approved Counterparty who is the Administrative Agent) to the Administrative Agent as Secured Banking Services Obligations; *provided* that in the case of Secured Banking Services Obligations of a Restricted Subsidiary other a Loan Party, the Borrower Representative shall designate in the applicable designation whether such obligations shall be deemed to be "Secured Banking Services Obligations" for purposes hereof and the other Loan Documents; *provided, further*, that for any of the foregoing to be included as a Secured Obligation for purposes of a distribution pursuant to Section 2.18(b) ratably with principal of the Revolving Loans, the Borrower Representative shall have provided written notice to the Administrative Agent of (i) the existence of the applicable Banking Services Obligations and (ii) the maximum amount of obligations arising thereunder that are intended to be discharged ratably with principal of the Loans pursuant to Section 2.18(b) (the "**Secured Banking Services Obligations Amount**"). The Secured Banking Services Obligations Amount may be changed from time to time upon written notice by the Borrower Representative to the Administrative Agent pursuant to Section 2.22. No Secured Banking Services Obligations Amount may be established or increased if a Default or Event of Default is continuing or if a Reserve in such amount would cause the Aggregate Revolving Exposure to exceed the Line Cap.

"**Secured Banking Services Obligations Amount**" has the meaning assigned to such term in the definition of "Secured Banking Services Obligations".

"**Secured Banking Services Reserves**" shall mean all Reserves which the Administrative Agent from time to time establishes in its Permitted Discretion for Secured Banking Services Obligations then provided or outstanding.

"**Secured Obligations**" shall mean all Obligations, together with (a) all Secured Banking Services Obligations and (b) all Secured Swap Agreement Obligations; *provided, however,* that the definition of "Secured Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

"**Secured Parties**" shall mean (a) the Administrative Agent, (b) the Lenders, (c) the Issuing Bank, (d) each Approved Counterparty owed Secured Banking Services Obligations or Secured Swap Agreement Obligations, (e) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (f) the successors and permitted assigns of each of the foregoing.

"**Secured Swap Agreement Obligations**" shall mean Swap Agreement Obligations under each Swap Agreement that is (or was) entered into with an Approved Counterparty and designated in writing by the Borrower Representative and such Approved Counterparty (except that no notice shall be required from an Approved Counterparty who is the Administrative Agent) to the Administrative Agent as Secured Swap Agreement Obligations; *provided* that in the case of Secured Swap Agreement Obligations of a Restricted Subsidiary other than a Loan Party, the Borrower Representative shall designate in the applicable designation whether such obligations shall be deemed to be "Secured Swap Agreement Obligations" for purposes hereof and the other Loan Documents; *provided, further*, that for the foregoing to be included as a Secured Obligation for purposes of a distribution pursuant to Section 2.18(b) ratably with principal of the Revolving Loans, the Borrower Representative shall have provided written notice to the Administrative Agent of (i) the existence of the applicable Swap Agreement Obligations and (ii) the maximum amount of obligations arising thereunder that are intended to be discharged ratably with principal of the Loans pursuant to Section 2.18(b) (the "**Secured Swap Agreement Obligations Amount**"). The Secured Swap Agreement Obligations Amount may be changed from time to time upon written notice by the Borrower Representative to the Administrative Agent pursuant to Section 2.22. No Secured Swap Agreement Obligations Amount may be established or increased if a Default or Event of Default is continuing or if a Reserve in such amount would cause the Aggregate Revolving Exposure to exceed the Line Cap.

"**Secured Swap Agreement Obligations Amount**" has the meaning assigned to such term in the definition of "Secured Swap Agreement Obligations".

"**Secured Swap Agreement Reserves**" shall mean all Reserves which the Administrative Agent from time to time establishes in its Permitted Discretion for Secured Swap Agreement Obligations then provided or outstanding.

"**Settlement**" has the meaning specified in Section 2.24(d).

"**Settlement Date**" has the meaning specified in Section 2.24(d).

"**SOFR**" shall mean a rate equal to the secured overnight financing rate as administered by the NYFRB (or a successor administrator of the secured overnight financing rate).

"**SOFR Adjustment**" shall mean 0.10% (10 basis points) per annum.

"**Solvent**" shall mean, with respect to any Person on any date of determination, (a) the fair value and the present saleable value of any and all property of such Person and its subsidiaries, on a consolidated basis, is greater than the probable liability on existing debts of such Person and its subsidiaries, on a consolidated basis, as they become absolute and mature, (b) such Person and its subsidiaries, on a consolidated basis, are able to pay their debts (including contingent and subordinated liabilities) as they become absolute and mature, (c) such Person and its subsidiaries do not intend to, nor believes that they will, incur debts that would be beyond their ability to pay as such debts mature and (d) such Person and its subsidiaries, on a consolidated basis, are not engaged in businesses or transactions, nor about to engage in businesses or transactions, for which any property remaining would constitute unreasonably small capital. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

"**SONIA**" shall mean, with respect to any applicable determination date, the Sterling Overnight Index Average Reference Rate published on the fifth Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); *provided*, *however*, that if such determination date is not a Business Day, SONIA means such rate that applied on the first Business Day immediately prior thereto.

"**Special Flood Hazard Area**" shall mean an area that the Federal Emergency Management Agency's current flood maps indicate has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year.

"**Special Purpose Entity**" means a direct or indirect Subsidiary of any Loan Party, whose Organizational Documents contain restrictions on its purpose and activities intended to preserve its separateness from such Loan Party and/or one or more Subsidiaries of such Loan Party.

"**Specified ABL Event of Default**" shall mean (i) any Specified Event of Default and (ii) any Event of Default under clauses (b)(i), (b)(ii), (b)(iii) (solely with respect to (x) Section 6.13 (only after the FCCR Covenant Trigger Date and to the extent that the minimum Fixed Charge Coverage Ratio covenant is then in effect during a Compliance Period and the Borrower Representative has not, and is not entitled to, exercise a Cure Right) and (y) Section 6.14 (only prior to the occurrence of the FCCR Covenant Trigger Date)) and (d) (with respect to representations made in any Borrowing Base Certificate only and solely to the extent such Event of Default resulted in a material overstatement of the Borrowing Base) of Section 7.01.

"**Specified Availability**" means, at any time, the sum of (a) Availability at such time plus (b) Suppressed Availability (which shall not be less than zero) at such time.

"**Specified Event of Default**" shall mean any Event of Default under clauses (a), (f) or (g) of Section 7.01.

"**Specified Transaction**" means, with respect to any period during the Transactions, any Investment, Disposition, incurrence or repayment of Debt, Restricted Distribution, subsidiary designation, operating improvements, restructurings, cost saving initiatives or other initiatives or any other event that by the terms of the loan documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a "pro forma basis" or after giving "pro forma effect" to such event.

"**Standard Letter of Credit Practice**" shall mean any domestic or foreign law or letter of credit practices applicable in the city in which the applicable Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (A) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (B) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

"**Standard Securitization Undertakings**" means all representations, warranties, covenants, pledges, transfers, purchases, dispositions, guaranties and indemnities (including repurchase obligations (and/or any guarantees thereof) in the event of a breach of representation or warranty, covenant or otherwise (including, without limitation, as a result of a receivable or a portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take any action by or other event relating to the applicable person)) and other undertakings made or provided, and servicing obligations undertaken by any Subsidiary that the Borrower Representative has determined in good faith to be customary in connection with a Permitted Receivables Financing.

"**Stated Maturity Date**" shall mean June 9, 2027.

"**Statements**" has the meaning assigned to such term in Section 2.18(g).

"**subsidiary**" shall mean, with respect to any Person (herein referred to as the "parent"), any corporation, partnership, limited liability company, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, controlled or held, or (b) that is, at the time any determination is made, otherwise controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"**Subsidiary**" shall mean any subsidiary of the Company.

"**Subsidiary Guarantor**" shall mean each Subsidiary that is listed on Schedule 1.01(b), and each other Subsidiary (other than the Company) that is or becomes a party to the Guarantee Agreement.

"**Supported QFC**" has the meaning assigned to such term in Section 9.22.

"**Supporting Obligations**" shall have the meaning given in the UCC.

"**Suppressed Availability**" means an amount, if positive, by which the Borrowing Base exceeds the Aggregate Revolving Commitments; *provided* that, for the purposes of calculating Specified Availability, Suppressed Availability shall not exceed 5.0% of the Aggregate Revolving Commitments at such time.

"**Sustainability Targets**" means specified key performance indicators with respect to certain environmental, social and governance targets of the Company and its Subsidiaries.

"**Swap Agreement**" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by any Permitted Payee shall be a Swap Agreement. For the avoidance of doubt, in no event will Swap Agreements include any Issuer Option or obligation in respect thereof.

"**Swap Agreement Obligations**" means any and all obligations of the Loan Parties and their Restricted Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder. For the avoidance of doubt, in no event will Swap Obligations include any Issuer Option or obligation in respect thereof.

"**Sweep**" has the meaning assigned to such term in Section 5.15(a).

"**Swingline Exposure**" means, at any time, the aggregate principal amount of all outstanding Swingline Loans at such time. The Swingline Exposure of any Revolving Lender at any time shall mean its Applicable Percentage of the aggregate Swingline Exposure at such time.

"**Swingline Lender**" means Bank of America in its capacity as lender of Swingline Loans hereunder.

"**Swingline Loan**" means a Revolving Loan made pursuant to Section 2.24.

"**Swingline Loan Request**" means a notice of a Borrowing of Swingline Loans pursuant to Section 2.24(a), which shall be substantially in the form of Exhibit B-1 or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower Representative.

"**Swiss Franc**" shall mean the lawful currency of Switzerland.

"**TARGET Day**" means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

"**Tax Restructuring**" means any reorganizations and other activities related to tax planning and tax reorganization (as determined by the Borrower Representative in good faith) entered into after the Effective Date so long as such Tax Restructuring does not materially impair the Guarantee or the security interests of the Lenders taken as a whole; *provided* that, if such Permitted Reorganization involves Loan Parties with assets included in the Borrowing Base, upon the consummation of such Tax Restructuring, the Borrower Representative shall have delivered to the Administrative Agent a Borrowing Base Certificate recomputing the Borrowing Base on a pro forma basis after giving effect to such Tax Restructuring.

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

"Term CORRA" has the meaning assigned to such term in clause (b) of the definition of "Alternative Currency".

"Term CORRA Adjustment" means 0.29547% (29.547 basis points) for an Interest Period of one-month's duration and 0.32138% (32.138 basis points) for an Interest Period of three-months' duration.

"Term CORRA Rate" has the meaning assigned to such term in clause (b) of the definition of "Alternative Currency".

"**Term Rate Loan**" or "**Term Rate Borrowing**" shall mean a Term SOFR Loan or an Alternative Currency Term Rate Loan.

"**Term SOFR**" shall mean,

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **"Periodic Term SOFR Determination Day"**) that is two (2) Business Days prior to the first day of such applicable Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term SOFR Determination Day, in each case, *plus* the SOFR Adjustment for such Interest Period; and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day the **"ABR Term SOFR Determination Day"**) that is two (2) Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator as long as such first preceding Business Day is not more than three (3) Business Days prior to such ABR Term SOFR Determination Day.

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

"**Term SOFR Loan**" shall mean a Loan bearing interest based on the Term SOFR Rate, other than pursuant to clause (c) of the definition of "**Alternate Base Rate**".

"**Term SOFR Reference Rate**" shall mean the forward-looking term rate based on SOFR.

"**Term SOFR Rate**" shall mean, with respect to any tenor, an interest rate per annum equal to Term SOFR for such tenor; *provided* that, if Term SOFR as so determined would be less than zero, Term SOFR will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

"**Test Period**" shall mean, as of any date of determination, (a) for purposes of determining actual compliance with Section 6.13, the period of four consecutive fiscal quarters of the Company then most recently ended and (b) for any other purpose, the most recently completed four consecutive fiscal quarters of the Company ending on or prior to such date for which financial statements have been delivered pursuant to Section 5.01(a) or 5.01(b); *provided* that prior to the first date on which financial statements have been delivered pursuant to Section 5.01(a) or 5.01(b), the Test Period in effect shall be the period of four consecutive fiscal quarters of the Company ended March 31, 2022.

"**Threshold Amount**" shall mean, as of any date of determination, the Dollar Equivalent of $100,000,000.

"**TIBOR**" has the meaning assigned to such term in in clause (d) of the definition of "**Alternative Currency Term Rate**".

"**Title Company**" shall have the meaning assigned to such term in Section 5.13(b)(ix).

"**Trade Secret**" shall mean all rights, title and interests (and all related IP Ancillary Rights) in or relating to trade secrets (including to the fullest extent arising under any Requirement of Law).

"**Trademark**" shall mean all rights, title and interests (and all related IP Ancillary Rights) in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers (including to the fullest extent arising under any Requirement of Law), together with all goodwill associated therewith, all registrations and recordations thereof.

"**Transaction Costs**" shall mean all fees, costs and expenses incurred in connection with the Transactions.

"**Transactions**" shall mean the execution, delivery and performance by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

"**Type**", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Term SOFR Rate, Alternative Currency Term Rate, Alternative Currency Daily Rate, Canadian Prime Rate or the Alternate Base Rate.

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests or otherwise.

"**UCP**" shall mean, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by the Issuing Bank for use.

"**UK Financial Institutions**" shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Unadjusted Benchmark Replacement**" shall mean the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**Unfinanced Capital Expenditures**" means, for any period, Capital Expenditures made during such period which are not financed from the proceeds of any (a) Debt (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures), (b) Asset Sale or (c) issuance or sale of Equity Interests.

"**Unliquidated Obligations**" shall mean, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (b) any other obligation (including any guarantee) that is contingent in nature at such time; or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

"**Unrestricted Subsidiary**" shall mean (a) as of the Effective Date, each subsidiary of the Company listed on Schedule 1.01(c), (b) any subsidiary of the Company designated by the Company as an Unrestricted Subsidiary pursuant to Section 5.14 subsequent to the Effective Date and (c) any subsidiary of an Unrestricted Subsidiary; *provided,* that (i) notwithstanding the foregoing clauses (a), (b) and (c), in no event shall any subsidiary that owns any Equity Interest of any Borrower, any Restricted Subsidiary or any Material IP Subsidiary, in each case, be an Unrestricted Subsidiary and (ii) subject to the provisions of Section 5.14, any subsidiary that is redesignated as a Restricted Subsidiary shall cease to be an Unrestricted Subsidiary.

"**Upper Strike Warrant**" shall mean any call option, warrant or right to purchase (or substantially equivalent derivative transaction) with respect to Permitted Stock sold by the Company in connection with the issuance of Permitted Convertible Notes by the Company (or any parent company thereof) (whether such option, warrant, right to purchase (or similar transaction) is settled in shares, cash or a combination thereof).

"**U.S.**" shall mean the United States of America.

"**U.S. Person**" shall mean a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"**U.S. Special Resolution Regime**" has the meaning assigned to such term in Section 9.22.

"**U.S. Tax Compliance Certificate**" has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

"**USA PATRIOT Act**" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

"**Voting Stock**" shall mean, as of any date, the Equity Interests of any Person that are at the time entitled to appoint or to vote (without regard to the occurrence of any contingency) in the election of the board of directors, board of managers or other equivalent governing body of such Person (or, if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity).

"**Wholly Owned Subsidiary**" of any Person shall mean a subsidiary of such Person of which securities (except for directors' qualifying shares) or other ownership interests representing 100% of the Equity Interests are, at the time any determination is being made, owned, controlled or held by such Person or one or more wholly owned subsidiaries of such Person or by such Person and one or more wholly owned subsidiaries of such Person.

"**Withdrawal Liability**" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"**Withholding Agent**" shall mean any Loan Party and the Administrative Agent.

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

Section 1.02. *Classification of Loans and Borrowings*. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., an "**Initial Revolving Loan**") or by Type (e.g., a "**Term Rate Loan**") or by Class and Type (e.g., a "**Term Rate Initial Revolving Loan**"). Borrowings also may be classified and referred to by Class (e.g., an "**Initial Revolving Borrowing**") or by Type (e.g., a "**Term Rate Borrowing**") or by Class and Type (e.g., a "**Term Rate Initial Revolving Borrowing**").

Section 1.03. *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 "law" shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word "will" shall be construed to have the same meaning and effect as the word "shall". 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, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) 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, (e) 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, (f) any reference in any definition to the phrase "at any time" or "for any period" shall refer to the same time or period for all calculations or determinations within such definition, and (g) 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 1.04. Accounting Terms; GAAP.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP as in effect from time to time; *provided, however,* that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the Effective Date on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI or any related definition for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders.

(b) Lease Treatment. Notwithstanding anything to the contrary contained in Section 1.04(a) above or the definition of "**Capital Lease Obligations**", only those leases that would constitute capital leases prior to the implementation of ASC 842 shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such accounting change shall contain a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

Section 1.05. Limited Condition Transactions; Certain Calculations and Tests.

(a) In connection with any action being taken solely in connection with a Limited Condition Transaction (including any contemplated incurrence or assumption of Debt (including any Last-Out Tranche) in connection therewith (other than the borrowing of Loans or the issuance of Letters of Credit)), for purposes of (a) determining compliance with any financial ratio or test (including, without limitation, Sections 6.13 or 6.14, any Fixed Charge Coverage Ratio test (including any Fixed Charge Coverage Ratio component of Payment Conditions), and/or any cap expressed as a percentage of Consolidated Total Assets, Consolidated Net Income or Consolidated EBITDA) (but excluding any calculation of Availability or Specified Availability), (b) testing availability under baskets set forth in this Agreement (other than any Availability or Specified Availability threshold applicable to such baskets) or (c) determining the accuracy of representations and warranties and/or whether a Default or Event of Default shall have occurred and be continuing (other than with respect to Section 4.02), in each case, at the option of the Borrower (the Borrower Representative's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements with respect to such Limited Condition Transaction are entered into, in the case of a Limited Condition Eligible Transaction described in clause (a) of the definition thereof, or the date on which irrevocable notice of the applicable repayment or redemption of Debt is delivered, in the case of a Limited Condition Eligible Transaction described in clause (b) of the definition thereof (in each case, the "**LCT Test Date**"), and if, after giving pro forma effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Debt or Liens and the use of proceeds thereof) as if they had occurred at the beginning of the most recent period of four consecutive fiscal quarters ending on or prior to the LCT Test Date (or, if such date is not the last day of any fiscal quarter, the most recently completed Test Period), the Company could have taken such action on the relevant LCT Test Date in compliance with such ratio, basket or requirement with respect to the accuracy of representations and warranties or absence of Defaults or Events of Default, such ratio, basket or requirement shall be deemed to have been complied with; *provided*, with respect to any provision that requires minimum Availability or Specified Availability, compliance with such Availability or Specified Availability test shall be made at the time any Limited Condition Transaction is consummated instead of on the LCT Test Date. If the Borrower has made an LCT Election for any Limited Condition Transaction, then, in connection with any subsequent calculation of the ratios or baskets on or following the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated or (ii) the date that the definitive agreement for such Limited

Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated on a pro forma basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Debt or Liens and the use of proceeds thereof) have been consummated.

(b) [reserved].

(c) Notwithstanding anything to the contrary herein, for purposes of the covenants described in Article VI, if any transaction or action would be permitted pursuant to one or more provisions described therein, the Borrower Representative may divide and classify such transaction or action within any covenant in any manner that complies with the covenants set forth therein, and may later divide and reclassify any such transaction or action so long as the transaction or action (as so divided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification; *provided* that if any financial ratio or test governing any applicable amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test would be satisfied in any subsequent period following the utilization of any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test, such reclassification shall be deemed to have automatically occurred if not elected by the Borrower Representative. It is understood and agreed that any Debt, Lien, Restricted Distribution, Restricted Debt Payment, Investment, Disposition and/or Affiliate transaction need not be permitted solely by reference to one category of permitted Debt, Lien, Restricted Distribution, Restricted Debt Payment, Investment, Disposition and/or Affiliate transaction within the same covenant, but may instead be permitted in part under any combination thereof or under any other available exception within the same covenant. This Section 1.05(c) shall not apply to any transaction or event permitted pursuant to the satisfaction of the Payment Conditions.

Section 1.06. *Pro Forma Calculations.* (a) Notwithstanding anything to the contrary herein, all financial ratios and tests shall be calculated in the manner prescribed by this Section 1.06.

(b) In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Debt included in the calculation of any financial test or ratio (other than Debt incurred or repaid under any revolving credit facility unless such Debt has been permanently repaid and has not been replaced but including the Debt issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any financial ratio or test is being calculated), subsequent to the end of the period of four consecutive fiscal quarters for which any financial test or ratio is being calculated but prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial test or ratio shall be calculated giving pro forma effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Debt and the application of the proceeds of such Debt, as if the same had occurred on the last day of the applicable Test Period.

(c) For purposes of calculating any financial test or ratio, Specified Transactions that have been made by the Company or any Restricted Subsidiary during the applicable Test Period or subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions had occurred on the first day of the applicable Test Period. If since the beginning of any such Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Company or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section, the then applicable financial test or ratio shall be calculated giving pro forma effect thereto for such period as if such Specified Transaction occurred at the beginning of the applicable Test Period. If since the beginning of such Test Period any Restricted Subsidiary is designated an Unrestricted Subsidiary or any Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, then such ratio shall be calculated giving pro forma effect thereto for such period as if such designation had occurred at the beginning of the applicable Test Period. If any Debt bears a floating rate of interest and is being given pro forma effect, for purposes of determining the

pro forma Fixed Charge Coverage Ratio, the interest on such Debt shall be calculated as if the rate in effect on the date of determination has been the applicable rate for the entire Test Period, and interest on any Debt under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Debt during the applicable Test Period.

(d) The pro forma calculations permitted or required to be made by the Company or any Restricted Subsidiary pursuant to this Agreement shall include only those adjustments that are (i) permitted or required by Regulation S-X under the Securities Act of 1933, as amended or (ii) permissible by the definition of "Consolidated EBITDA".

Section 1.07. *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.

Section 1.08. Additional Alternative Currencies.

(a) The Borrower Representative may from time to time request that Credit Extensions be made in a currency other than Dollars, Pounds Sterling, Euro, Canadian Dollars, Australian Dollars, Swiss Francs or Japanese Yen; *provided* that such requested currency is an Eligible Currency. Any such request shall be subject to the approval of the Administrative Agent and, in the case of Loans, all the Lenders, or, in the case of Letters of Credit, each applicable Issuing Bank, in each case such consent not to be unreasonably withheld, conditioned or delayed (it being understood that Citibank, N.A., as Issuing Bank, consents to Norwegian Kroner for purposes of the Existing Letters of Credit).

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., New York City time, fifteen (15) Business Days prior to the date of the desired Credit Extension (or such shorter time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the Issuing Bank, in its or their reasonable discretion). The Administrative Agent shall promptly notify the Lenders and the Issuing Banks, as applicable, of such request. Each Lender and each Issuing Bank requested to make a Credit Extension in such currency shall notify the Administrative Agent, not later than 11:00 a.m., five (5) Business Days (or such later date as the Administrative Agent may permit in its sole discretion) after receipt of such request whether it consents, in its sole discretion, to the making of such Credit Extensions in such requested currency.

(c) Any failure by a Lender, or an Issuing Bank to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Person to permit such Credit Extension to be made in such requested currency. If the Administrative Agent and the Lenders or the applicable Issuing Banks, as the case may be, consent to the making of Credit Extensions in such requested currency, (i) the Administrative Agent shall so notify the Borrower Representative, (ii) the Administrative Agent and the Borrower Representative may amend the terms of this Agreement, including the definition of "Alternative Currency Term Rate", as applicable, to the extent necessary to, among other things, add the applicable rate for such currency and any applicable adjustment for such rate and (iii) after giving effect to such amendments, such currency shall thereupon constitute an Additional Alternative Currency for purposes of all applicable Credit Extensions hereunder. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.08 from the Lenders and/or the applicable Issuing Banks, the Administrative Agent shall promptly so notify the Borrower Representative.

Section 1.09. *Letter of Credit Amounts*. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit available to be drawn at such time; *provided* that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

Section 1.10. Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Dollar Equivalent amounts of Letter of Credit extensions denominated in Alternative Currencies. Such Dollar Equivalent shall become effective as of such Revaluation Date and shall be the Dollar Equivalent of such amounts until the next Revaluation Date to occur. Except for purposes of financial statements delivered by the Borrower hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any Alternative Currency for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing Bank, as applicable.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in an Alternative Currency, such amount shall be the Dollar Equivalent of such amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Bank, as the case may be.

Section 1.11. *Timing of Payment or Performance*. When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

Section 1.12. Sustainability Targets

(a) The parties hereto acknowledge that the Sustainability Targets have not been determined and agreed as of the date of this Agreement and that Schedule 1.12 therefore has been intentionally left blank. The Borrower Representative may at any time submit a request in writing to the Administrative Agent that this Agreement be amended to include the Sustainability Targets and other related provisions (including without limitation those provisions described in this Section 1.12), to be mutually agreed among the parties hereto in accordance with this Section 1.12 and Section 9.02 (such amendment, the "**ESG Amendment**"). Such request shall be accompanied by the proposed Sustainability Targets as prepared by the Borrower Representative in consultation with one or more Lenders serving as "sustainability structuring agents", which shall be included as Schedule 1.12. The proposed ESG Amendment shall also include the ESG Pricing Provisions.

(b) The Administrative Agent, the Lenders and the Borrower Representative shall in good faith enter into discussions to reach an agreement in respect of the proposed Sustainability Targets, and any proposed incentives and penalties for compliance and noncompliance, respectively, with the Sustainability Targets, including any adjustments to the Applicable Rate and the Commitment Fee Rate (such provisions, collectively, the "**ESG Pricing Provisions**"); *provided* that (i) the amount of such adjustments shall not exceed (A) a 0.05% increase and/or a 0.05% decrease in the otherwise applicable Revolver Term Rate Spread, the Alternative Currency Daily Rate Spread, the Revolver ABR Spread and/or Canadian Prime Rate Spread, in each case, determined based on the effective date of the ESG Amendment, and the adjustments to the Revolver ABR Spread and/ Canadian Prime Rate Spread shall be the same amount, in basis points, as the adjustments to the Revolver Term Rate Spread and the Alternative Currency Daily Rate Spread or (B) a 0.01% increase and/or a 0.01% decrease in the otherwise applicable unused Commitment Fee Rate payable pursuant to Section 2.12(a), (ii) in no event shall any of the Revolver Term Rate Spread, the Alternative Currency Daily Rate Spread, the Revolver ABR Spread and/or Canadian Prime Rate Spread be less than 0% at any time and (iii) for the avoidance of doubt, such pricing adjustments shall not be cumulative year-over-year, and each applicable adjustment shall only apply until the date on which the next adjustment is due to take place.

(c) Notwithstanding anything in Section 9.02 to the contrary, the effectiveness of the ESG Amendment (including the ESG Pricing Provisions) will be subject only to the consent of the Required Lenders and, following the effectiveness of the ESG Amendment, any amendment or other modification to the ESG Pricing Provisions which does not have the effect of reducing the Revolver Term Rate Spread, the Alternative Currency Daily Rate Spread, the Revolver ABR Spread and/or Canadian Prime Rate Spread or the Commitment Fee Rate to a level not otherwise permitted by this Section 1.12 shall also be subject only to the consent of the Required Lenders.

Section 1.13. *Funding in Certain Currencies*. Notwithstanding anything in this Agreement to the contrary, until such time as Wells Fargo Bank, National Association shall have completed its foreign "know-your-customer" diligence (with results satisfactory to Wells Fargo Bank, National Association in its sole discretion) (or such earlier time as Wells Fargo Bank, National Association may agree), Wells Fargo Bank, National Association shall not be required to fund any Loan requested by the Borrowers in Australian Dollars.

ARTICLE II
THE CREDITS

Section 2.01. *Commitments*. Subject to the terms and conditions set forth herein, each Lender severally (and not jointly) agrees to make Revolving Loans to the Borrowers from time to time during the Availability Period denominated in Dollars, Pounds Sterling, Euros, Canadian Dollars, Australian Dollars, Swiss Francs, Japanese Yen or any other Alternative Currency, as requested by the Borrower Representative pursuant to Section 2.02, in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (ii) the Aggregate Revolving Exposure exceeding the Line Cap; *provided*, the Administrative Agent may, in its sole discretion, make Protective Advances and Overadvances pursuant to the terms of Sections 2.04 and 2.05. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans.

Section 2.02. *Loans and Borrowings*. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; *provided* that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Protective Advance and any Overadvance shall be made in accordance with the procedures set forth in Sections 2.04 and 2.05. Any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.24.

(b) Subject to Section 2.14, (i) each Revolving Borrowing denominated in Dollars shall be comprised entirely of ABR Loans or Term SOFR Loans as the Borrower Representative may request in accordance herewith, (ii) each Revolving Borrowing denominated in Pounds Sterling or Swiss Francs shall be comprised entirely of Alternative Currency Daily Rate Loans, as the Borrower Representative may request in accordance herewith, (iii) each Revolving Borrowing denominated in Euros, Australian Dollars, Japanese Yen or any other Alternative Currency (other than Canadian Dollars, Pounds Sterling and Swiss Francs) shall be comprised entirely of Alternative Currency Term Rate Loans as the Borrower Representative may request in accordance herewith and (iv) each Revolving Borrowing denominated in Canadian Dollars shall be comprised entirely of Canadian Prime Rate Loans or Alternative Currency Term Rate Loans as the Borrower Representative may request in accordance herewith; *provided* that Canadian Prime Rate Loans shall not be made to the applicable Borrower unless such Borrower is unable to request a Loan bearing interest at the ~~CDOR~~**Term CORRA** Rate as a result of any of the circumstances set forth in Section 2.14. Each Swingline Loan to any Borrower shall be an ABR Loan denominated in Dollars. Each Lender at its option may make any Term Rate Loan, Canadian Prime Rate Loan or Alternative Currency Daily Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); *provided* that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Term Rate Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Dollar Equivalent of $500,000 and not less than the Dollar Equivalent of $1,000,000. ABR Borrowings and Canadian Prime Rate Borrowings may be in any amount. Borrowings of more than one Type and Class may be outstanding at the same time; *provided* that there shall not at any time be more than a total of ten (10) Term Rate Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Stated Maturity Date.

Section 2.03. *Requests for Revolving Borrowings*. To request a Revolving Borrowing, the Borrower Representative shall notify the Administrative Agent of such request either in writing (delivered by hand or facsimile) in a form approved by the Administrative Agent and signed by the Borrower Representative or by telephone or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, not later than (a) in the case of a Term SOFR Borrowing denominated in Dollars, 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Term SOFR Borrowing, (b) in the case of an ABR Borrowing denominated in Dollars, 1:00 p.m., New York City time, one (1) Business Day before the date of the proposed ABR Borrowing; *provided* that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 11:00 a.m., New York time, on the date of such proposed Borrowing, (c) in the case of a Revolving Borrowing denominated in Pounds Sterling, Euros, Canadian Dollars, Swiss Francs or any other Alternative Currency (other than Australian Dollars and Japanese Yen), 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Alternative Currency Daily Rate Borrowing, Alternative Currency Term Rate Borrowing or Canadian Prime Rate Borrowing, as applicable; *provided* that any such notice of a Canadian Prime Rate Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 11:00 a.m., New York time, on the date of such proposed Borrowing, (d) in the case of a Revolving Borrowing denominated in Australian Dollars or Japanese Yen, 1:00 p.m., New York City time, four (4) Business Days before the date of the proposed Alternative Currency Term Rate Borrowing; *provided* that, notwithstanding the foregoing, with respect to any Borrowing proposed to be made on the Effective Date or requested prior to the Effective Date, not later than 2:00 p.m., New York City time, two (2) Business Days prior to the Effective Date (or such later time agreed to by the Administrative Agent) the Administrative Agent shall have received a Borrowing Request from the Borrower Representative. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, facsimile or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower Representative. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower(s);

(ii) the aggregate amount of the requested Revolving Borrowing and a breakdown of the separate wires comprising such Borrowing;

(iii) the date of such Revolving Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be made in Dollars, Pounds Sterling, Euros, Canadian Dollars, Swiss Francs, Australian Dollars, Japanese Yen or another Alternative Currency;

(v) whether such Revolving Borrowing is to be an ABR Borrowing, a Canadian Prime Rate Borrowing, an Alternative Currency Daily Rate Borrowing, a Term SOFR Borrowing or an Alternative Currency Term Rate Borrowing; *provided* that all Loans denominated in Pounds Sterling or Swiss Francs shall be Alternative Currency Daily Rate Loans, whether or not specified; and

(vi) in the case of a Term SOFR Borrowing or an Alternative Currency Term Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "**Interest Period**".

If no election as to currency is specified in such Borrowing Request, then the requested Borrowing shall be made in Dollars. If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be (w) in the case of Borrowings denominated in Dollars, an ABR Borrowing, (x) in the case of Borrowings denominated in Canadian Dollars, a Canadian Prime Rate

Borrowing, (y) in the case of Borrowings denominated in Pounds Sterling or Swiss Francs, an Alternative Currency Daily Rate Borrowing and (z) in the case of Borrowings denominated in any other Alternative Currency, an Alternative Currency Term Rate Borrowing. If no Interest Period is specified with respect to any requested Term Rate Revolving Borrowing, then the applicable Borrowers shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04. *Protective Advances*. (a) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the Borrowers in Dollars, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Secured Obligations or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "**Protective Advances**"); *provided* that, the aggregate principal amount of Protective Advances outstanding at any time, together with the aggregate principal amount of Overadvances outstanding at such time, shall not at any time exceed 10% of the Line Cap; *provided, further,* that the aggregate amount of outstanding Protective Advances plus the Aggregate Revolving Exposure shall not exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be ABR Borrowings. The making of a Protective Advance on one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(a)(ii).

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

Section 2.05. Overadvances.

(a) [Reserved].

(b) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation), on behalf of the Revolving Lenders, (x) make Revolving Loans to the Borrowers, in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "**Overadvances**"); or (y) deem the amount of Revolving Loans outstanding to the Borrowers that are in excess of Availability to be Overadvances; *provided* that, no Overadvance shall result in a Default due to Borrowers' failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances shall constitute ABR Borrowings. The making of an Overadvance on any one occasion shall not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount, together with the aggregate principal amount of Protective Advances outstanding at such time, not to exceed at any time 10% of the Line Cap, and no Overadvance shall cause any Revolving Lender's Revolving Exposure to exceed its Revolving Commitment; *provided* that, the Required Lenders may at any time, via written notice of the same, revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof.

(c) Upon the making of an Overadvance (whether before or after the occurrence of a Default and regardless of whether a settlement has been requested with respect to such Overadvance), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Overadvance in proportion to its Applicable Percentage of the Revolving Commitment. The Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Overadvance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Overadvance.

Section 2.06. *Letters of Credit*. (a) General. Subject to the terms and conditions set forth herein, the Borrower Representative may request the issuance of Letters of Credit for its own account or for the account of another Borrower and/or any of its Subsidiaries (provided that such Borrower will be the applicant) denominated in Dollars, Pounds Sterling, Euros, Canadian Dollars, Australian Dollars, Swiss Francs, Japanese Yen or any other Alternative Currency as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrowers to, or entered into by the Borrowers with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Each Borrower unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the support of any Subsidiary's obligations as provided in the first sentence of this paragraph, such Borrower will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(b) to the same extent as if it were the sole account party in respect of such Letter of Credit (such Borrower hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such Subsidiary that is an account party in respect of any such Letter of Credit). Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is

the subject of any Sanctions, except to the extent permitted for a Person required to comply with Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated or indemnified for hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it, (iii) Issuing Bank has received notice in writing from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. New York City time one Business Day prior to the date of the proposed issuance directing the Issuing Bank not to issue such Letter of Credit due to the fact that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, or (iv) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements 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 not to be in effect on the Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented. Notwithstanding the foregoing, it is hereby acknowledged and agreed that, from and after the date on which the Borrower Representative delivers written notice to the Administrative Agent pursuant to the definition of "Existing Letters of Credit", the Existing Letters of Credit set forth in such notice shall be deemed to be Letters of Credit issued and outstanding hereunder for all purposes of this Agreement and the other Loan Documents.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions*. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower Representative shall deliver by hand or facsimile (or transmit through Electronic System, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of, but in any event no less than three (3) Business Days prior (or, in the case of a Special Notice Currency (other than Australian Dollars), five (5) Business Days prior) to the requested date of issuance, amendment, renewal or extension of a Letter of Credit) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section 2.06), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the applicable Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the aggregate LC Exposure shall not exceed the Dollar Equivalent of $350,000,000, (ii) no Revolving Lender's Revolving Exposure shall exceed its Revolving Commitment, and (iii) the Aggregate Revolving Exposure shall not exceed the Line Cap. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower Representative may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of

such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of this Agreement, and shall not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b). The Borrowers are responsible for the final text of the Letter of Credit as issued by the Issuing Bank, irrespective of any assistance the Issuing Bank may provide such as drafting or recommending text or by the Issuing Bank's use or refusal to use text submitted by the Borrowers. The Borrowers understand that the final form of any Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by the Issuing Bank. The Borrowers are solely responsible for the suitability of the Letter of Credit for the Borrowers' purposes. If the Borrowers request the Issuing Bank to issue a Letter of Credit for an affiliated or unaffiliated third party (an "Account Party"), (i) such Account Party shall have no rights against the Issuing Bank; (ii) the Borrowers shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Letter of Credit shall be among the Issuing Bank and the Borrowers.

(c) *Expiration Date*. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the Issuing Bank to the beneficiary thereof or from the beneficiary thereof to the Issuing Bank, as applicable) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, including, without limitation, any automatic renewal provision, one year after the then-current expiration date at the time of such extension) and (ii) the date that is five (5) Business Days prior to the Stated Maturity Date (such earlier date, the "Letter of Credit Expiration Date") (or, in each case, such Letter of Credit Expiration Date shall be any later date as to which the applicable Borrower and the applicable Issuing Bank may agree); it being understood that Wells Fargo Bank, National Association and Citibank, N.A. have agreed that their applicable Existing Letters of Credit may expire after the Letter of Credit Expiration Date); *provided* that any Letter of Credit that does not expire on or prior to the Letter of Credit Expiration Date shall be backstopped by a letter of credit on terms reasonably acceptable to the applicable Issuing Bank or cash collateralized five (5) Business Days prior to the Stated Maturity Date.

(d) *Participations*. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Revolving Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit (in respect of any Letter of Credit issued in any currency other than Dollars, expressed in the Dollar Equivalent thereof). In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of the Dollar Equivalent of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section 2.06, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever; *provided* that, for the avoidance of the doubt, each of the Revolving Lender's obligations to acquire participations in Letters of Credit that expire after the Letter of Credit Expiration Date shall terminate in full on the Maturity Date.

(e) *Reimbursement*. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to the Dollar Equivalent of such LC Disbursement (i) not later than 2:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower Representative shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, (ii) if such notice has not been received by the Borrower Representative prior to such time on such date, then not later than 2:00 p.m., New York City time, on (A) the Business Day that the Borrower Representative receives such notice, if such notice is received prior to 9:00 a.m., New York time, on the day of receipt, or (B) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, (x) if such LC Disbursement is denominated in Dollars, the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03, 2.04(b) or 2.05 that such payment be financed with an ABR Revolving Borrowing or Swingline Borrowing in an equivalent amount, (y) if such LC Disbursement is denominated in Canadian Dollars, the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with a Canadian Prime Rate Revolving Borrowing denominated in Canadian Dollars in an equivalent amount or with a Swingline Borrowing in an equivalent amount denominated in Dollars in an amount equal to the Dollar Equivalent of such Canadian Dollars or (z) if such LC Disbursement is denominated in any other Alternative Currency, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be converted into an equivalent amount of an ABR Revolving Borrowing or Swingline Borrowing denominated in Dollars in an amount equal to the Dollar Equivalent of such Alternative Currency, and, in each case, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing. If the Borrowers fail to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the amount of the payment then due from the Borrowers in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or funding of participations in Swingline Loans, as contemplated above) shall not constitute a Loan and shall not relieve the Borrowers of their obligation to reimburse such LC Disbursement. For the avoidance of the doubt, each of the Revolving Lender's obligations to reimburse LC Disbursements in respect of Letters of Credit that expire after the Letter of Credit Expiration Date shall terminate in full on the Maturity Date.

(f) *Obligations Absolute*. The Borrowers' joint and several obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and the Issuing Bank's rights and remedies against the Borrowers shall not be impaired by any circumstances in each case including (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder or (v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to any Borrower or any Subsidiary or in the relevant currency markets generally. None of the Administrative Agent, the Revolving Lenders, the Issuing Bank or any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; *provided* that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) *Disbursement Procedures*. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the applicable Borrower by telephone (confirmed by facsimile or email) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrowers of their obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) *Interim Interest*. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans and such interest shall be payable on the date when such reimbursement is due; *provided* that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section 2.06, then Section 2.13 shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section 2.06 to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) *Replacement or Resignation of Issuing Banks*. An Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent (such consent not to be unreasonably withheld or delayed), the replaced Issuing Bank and the successor Issuing Bank. An Issuing Bank may resign at any time by giving thirty (30) days' notice to the Borrower Representative and the Administrative Agent. The Administrative Agent shall notify the Revolving Lenders of any such replacement or resignation of an Issuing Bank. At the time any such replacement or resignation shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced or retiring Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "**Issuing Bank**" shall be deemed to include such successor. After the replacement or resignation of an Issuing Bank hereunder, the replaced or retiring Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) *Cash Collateralization*. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower Representative receives written notice from the Administrative Agent (at the direction of the Required Lenders) or the Required Lenders if such notice is received prior to 2:00 p.m., New York City time, or otherwise on the next succeeding Business Day, demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "**LC Collateral Account**"), an amount in cash equal to 103% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (g) or (f) of Section 7.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Secured Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Administrative Agent.

(k) *LC Exposure Determination*. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

(l) *Issuing Bank Reports to the Administrative Agent*. Unless otherwise agreed by the Administrative Agent, each Issuing Bank shall, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be reasonably requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments and renewals, all expirations and cancellations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the stated amount and currency of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) promptly after each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) promptly, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Issuing Bank.

(m) Unless otherwise expressly agreed by the Issuing Bank and the Borrowers when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit and (ii) the rules of the UCP shall apply to each commercial Letter of Credit; ***provided*** that, in each case, such rules are not in conflict with the internal policies of the Issuing Bank. The Issuing Bank shall be deemed to have acted with due diligence and reasonable care if the Issuing Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement.

Section 2.07. *Funding of Borrowings*. (a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; *provided* that Swingline Loans shall be made as provided in Section 2.24. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the amounts so received, in like funds, to the Funding Account; *provided* that (i) ABR Revolving Loans and Canadian Prime Rate Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank, (ii) Swingline Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Swingline Lender and (ii) a Protective Advance or an Overadvance shall be retained by the Administrative Agent.

(b) Unless the Administrative 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 Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.07 and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, 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 or (ii) in the case of the Borrowers, (x) in the case of any Borrowing made in Dollars, the interest rate applicable to ABR Loans, (y) in the case of any Borrowing made in Euros, Canadian Dollars, Australian Dollars, Japanese Yen or any other Alternative Currency (other than Pounds Sterling and Swiss Francs), the interest rate applicable to Alternative Currency Term Rate Loans with an Interest Period of one month's duration (provided that, if the ~~CDOR~~**Term CORRA** Rate is unavailable, such corresponding amount of any Borrowing denominated in Canadian Dollars shall bear interest at the Canadian Prime Rate) and (z) in the case of any Borrowing in Pounds Sterling or Swiss Francs, the interest rate applicable to Alternative Currency Daily Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

Section 2.08. *Interest Elections*. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Rate Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Rate Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.08. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Loans, Overadvances or Protective Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election by telephone or through an Electronic System, if arrangements for doing so have been approved by the Administrative Agent, by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, Electronic System or facsimile to the Administrative Agent of a written Interest Election Request signed by the Borrower Representative.

(c) Each telephonic and written Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing, Term Rate Borrowing, Alternative Currency Daily Rate Borrowing or a Canadian Prime Rate Borrowing; and

(iv) if the resulting Borrowing is a Term Rate Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "**Interest Period**".

If any such Interest Election Request requests a Term Rate Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Term SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. If the applicable Borrower fails to deliver a timely Interest Election Request with respect to an Alternative Currency Term Rate Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an Alternative Currency Term Rate Borrowing denominated in the same Alternative Currency with an Interest Period of one (1) month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as such Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Rate Borrowing and (ii) unless repaid, each Term Rate Borrowing shall be converted to an ABR Borrowing (in the case of any such Borrowing denominated in an Alternative Currency, in an equivalent amount denominated in Dollars in an amount equal to the Dollar Equivalent of such Alternative Currency) at the end of the Interest Period applicable thereto.

Section 2.09. *Termination and Reduction of Commitments; Increase in Revolving Commitments*. (a) Unless previously terminated, the Revolving Commitments shall terminate on the Maturity Date. Unless previously terminated, the Commitments of any other Class shall automatically terminate on the Maturity Date specified therefor in the applicable Incremental Amendment.

(b) The Borrowers may at any time terminate the Revolving Commitments upon the Payment in Full of the Secured Obligations.

(c) The Borrowers may from time to time reduce the Revolving Commitments; *provided* that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of $5,000,000 and not less than $20,000,000, (ii) no such reduction shall reduce the Aggregate Revolving Commitment below $100,000,000 (unless in connection with a termination of the Revolving Commitments in accordance with Section 2.09(b) and (iii) the Borrowers shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Aggregate Revolving Exposure would exceed the lesser of the Aggregate Revolving Commitment and the Borrowing Base.

(d) The Borrower Representative shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) or (c) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section 2.09 shall be irrevocable; *provided* that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other indebtedness or any other event, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

(e) Subject to Section 1.05, the Borrowers shall have the right to request Commitments (the "**Incremental Commitments**") from one or more of the Lenders or one or more Additional Lenders (each such Person providing an Incremental Commitment, an "**Incremental Lender**"), which Incremental Commitments shall either be an increase in the Revolving Commitments (a "**Commitment Increase**") or a new Class of Commitments (subject, in the case of any new Class of Commitments that is not a Last-Out Tranche, to clause (v) below) in an aggregate amount not to exceed the Incremental Amount available at the time such Incremental Commitments are established; *provided* that:

(i) the terms, provisions and documentation of any Commitment Increase shall be identical to the Revolving Commitments as existing on the effective date of such Commitment Increase;

(ii) subject to clause (v) below, the terms and provisions of any new Class of Incremental Commitments shall be as agreed between the Borrowers and the applicable Incremental Lenders (and the Revolving Loans and any Commitment Increase in respect thereof shall not benefit from any "most favored nation" pricing provisions in respect thereof) and shall be set forth in the applicable Incremental Amendment, except that such new Class shall have a maturity no earlier than the maturity of the Revolving Loans;

(iii) at the option of the Administrative Agent, any new Class of Commitments may be documented pursuant to a separate credit agreement and subject to a customary intercreditor agreement that is reasonably satisfactory, in form and substance, to the Administrative Agent;

(iv) subject to clauses (v) and (x) below, the security interests, collateral, borrower and guarantees benefitting such Incremental Commitments and the Loans made pursuant thereto shall be identical to those benefitting the Revolving Commitments and Revolving Loans;

(v) any new Class of Incremental Commitments that is not in the form of a Last-Out Tranche (i) shall not exceed, in the aggregate for all such Classes, $250,000,000 and (ii) shall be incurred by a Borrower that is Foreign Subsidiary (a "**Foreign Subsidiary Borrower**") without regard to the restrictions set forth in clause (iv), so long as (A) the jurisdiction of formation of such Foreign Subsidiary Borrower is acceptable to the Administrative Agent in its Permitted Discretion, (B) any such Foreign Subsidiary Borrower shall have complied with the requirements in the proviso to the definition of "Borrowers" herein, (C) the borrowers and loan parties with assets in the borrowing base and the borrowing base applicable to such Commitments shall be independent of the Borrowing Base hereunder and comprised of assets and subject to advance rates and eligibility criteria in each case acceptable to the Administrative Agent in its Permitted Discretion, (D) the Administrative Agent shall have received the results of an appraisal and a field examination with respect to such Foreign Subsidiary Borrower from an appraiser and an examiner reasonably satisfactory to the Administrative Agent in its Permitted Discretion and (E) such Foreign Subsidiary Borrower shall have duly authorized, executed and delivered such customary documentation, and taken such other customary collateral security and perfection actions, deemed reasonably necessary by the Administrative Agent in its Permitted Discretion, to provide a valid and enforceable first priority and perfected or equivalent Lien (subject to Permitted Liens) in the collateral of such Foreign Subsidiary Borrower included in the applicable borrowing base;

(vi) each such requested increase shall be in an amount of at least $10,000,000 (unless otherwise agreed by the Administrative Agent in its reasonable discretion);

(vii) such request shall be furnished in writing to the Administrative Agent and be promptly transmitted by the Administrative Agent to each Lender and Additional Lender selected by the Borrowers;

(viii) no Lender shall have any obligation or commitment to participate in such increase;

(ix) each such Additional Lender shall assume all of the rights and obligations of a "Lender" hereunder; and

(x) with respect to any Loans under a Last-Out Tranche, (1) such Loans shall be secured by a *pari passu* Lien on the Collateral with the Initial Revolving Loans, but shall be junior in right of payment to all Initial Revolving Loans, (2) such Loans will be incurred on a "last out" basis vis-à-vis the Initial Revolving Loans, and the borrowing mechanics and voluntary and mandatory prepayment and commitment reduction provisions herein may be modified to reflect such "last out" basis, (3) such Loans will be incurred on a "first in" basis vis-à-vis the Initial Revolving Loans, and the borrowing mechanics and voluntary and mandatory prepayment and commitment reduction provisions herein may be modified to reflect such "first in" basis, (4) such Loans may be in the form of term loans ("**Incremental Term Loans**"), (5) (x) the borrowing base with respect to such Loans shall be the same as the Borrowing Base that is applicable to the Initial Revolving Loans, except such borrowing base with respect to such Loans may have a greater advance rate with respect to the components of the Borrowing Base than the advance rates applicable to the Initial Revolving Loans (subject to aggregate advance rates of the same assets of no more than 100%) and (y) to the extent constituting Revolving Loans, shall provide that assignments and participations of such Incremental Commitments and such Loans shall be governed by the same assignment and participation provisions applicable to Revolving Commitments and Revolving Loans existing on the effective date of such Incremental Commitments and (6) the aggregate principal amount of all Loans under any Last-Out Tranche sharing the same Borrowing Base as the Initial Revolving Loans (when added to the aggregate principal amount of all other Initial Revolving Exposure) shall in no event exceed the sum of:

(A) 95% of the Borrowers' Eligible Credit Card Receivables at such time, plus

(B) 95% of the Borrowers' Eligible Accounts at such time, plus

(C) the lesser of (i) 95% of the Borrowers' Eligible Inventory, at such time, valued at the lower of cost or market value, determined on a first-in-first-out basis, and (ii) the product of 95% multiplied by the Net Orderly Liquidation Value percentage identified in the most recent Inventory appraisal ordered by the Administrative Agent of the Borrowers' Eligible Inventory, valued at the lower of cost or market value, determined on a first-in-first-out basis, plus

(D) prior to the Fixed Asset Release Date, the lesser of (i) 95% of the Borrowers' Eligible Machinery and Equipment at such time, valued at the lower of cost or market value, and (ii) the product of 95% multiplied by the Net Orderly Liquidation Value identified in the most recent Equipment appraisal ordered by the Administrative Agent of the Borrowers' Eligible Machinery and Equipment, plus

(E) prior to the Fixed Asset Release Date, 100% of the Real Estate Component, plus

(F) 100% of Eligible Cash, plus

(G) the Acquired Borrowing Base Component.

Incremental Commitments shall become Commitments under this Agreement pursuant to an amendment (an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Loan Documents, executed by the Administrative Agent, the applicable Issuing Bank(s), the Borrowers and the applicable Incremental Lender(s) being added or increasing their Commitment. The Incremental Amendment may, without the consent of any other Person, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower Representative, to effect the provisions of this Section 2.09(e) and the provisions of this Section 2.09(e) shall supersede any provisions in Section 9.02 to the contrary. Within a reasonable time after the effective date of any Incremental Commitments, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such Incremental Commitments and shall distribute such revised Commitment Schedule to each of the Lenders and each of the Borrowers, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement. On the Business Day following any such Incremental Commitments that are not Incremental Commitments for a Last-Out Tranche, all outstanding Alternative Currency Daily Rate Borrowings, ABR Borrowings or Canadian Prime Rate Borrowings, as applicable, shall be reallocated among the Lenders (including any newly added Lenders) in accordance with the Lenders' respective revised Applicable Percentages. Term Rate Borrowings shall also be so reallocated among the Lenders in accordance with the Lenders' respective revised Applicable Percentages, but not prior to the expiration of the applicable Interest Period in effect at the time of any such increase. For the purposes of any calculation hereunder that includes an increase in the calculation of Commitments that are not Incremental Commitments for a Last-Out Tranche and that requires compliance with an Availability threshold (to the extent not based upon a percentage of the Line Cap), such Availability threshold shall be proportionately adjusted to reflect such increase in the Commitments.

(f) Any amendment hereto for such an increase or addition under paragraph (e) of this Section shall be in form and substance satisfactory to the Administrative Agent and shall only require the written signatures of the Administrative Agent, the Borrowers and each Lender being added or increasing its Commitment. As a condition precedent to such an increase or addition, the Borrowers shall deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article III and the other Loan Documents are true and correct, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (2) no Event of Default exists, and (ii) legal opinions and documents substantially consistent with those delivered on the Effective Date, to the extent requested by the Administrative Agent.

(g) On the effective date of any such increase or addition under paragraph (e) of this Section, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Revolving Commitment shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent shall make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrowers shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Revolving Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Alternative Currency Term Rate Loan, shall be subject to indemnification by the Borrowers

pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any such increase or addition, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and shall distribute such revised Commitment Schedule to each of the Lenders and the Borrower Representative, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement.

Section 2.10. *Repayment of Loans; Evidence of Debt*. (a) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender of each Class the then unpaid principal amount of each Revolving Loan of such Class on the applicable Maturity Date, (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and written demand by the Administrative Agent, (iii) to the Administrative Agent the then unpaid principal amount of each Overadvance on the earlier of the Maturity Date and written demand by the Administrative Agent and (iv) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date therefor and the date that is ten (10) Business Days after such Swingline Loan is made. In the event any Incremental Loans pursuant to a Last-Out Tranche are made, such Incremental Loans shall be repaid by the Borrowers in the amounts and on the dates set forth in the applicable Incremental Amendment with respect thereto and on the applicable Maturity Date thereof.

(b) At all times that a Cash Dominion Event has occurred and is continuing pursuant to Section 5.15, on each Business Day, the Administrative Agent shall (other than amounts as it may determine in its Permitted Discretion to retain or release to the Borrower Representative) apply all funds credited to each Controlled Account on such Business Day first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans and to cash collateralize outstanding LC Exposure.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Debt of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

(g) Except to the extent such excess arises from Protective Advances permitted under Section 2.04 or Overadvances permitted under Section 2.05, if the Administrative Agent notifies the Borrower at

any time that the aggregate Dollar Equivalent of all Loans and all LC Exposure at such time exceeds an amount equal to 100% of the Line Cap then in effect, then, upon receipt of such notice (or, if such excess amount is solely as a result of the fluctuation of foreign currency rates, one Business Day after receipt of such notice), the Borrowers shall prepay Loans and/or cash collateralize Letters of Credit in accordance with Section 2.06(j), in an aggregate amount sufficient to reduce such amount as of such date of payment to an amount not to exceed 100% of the Line Cap then in effect.

Section 2.11. *Prepayment of Loans*. (a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (d) of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(b) Except to the extent such excess arises from Protective Advances permitted under Section 2.04 or Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the lesser of (A) the Aggregate Revolving Commitment and (B) the Borrowing Base, the Borrowers shall prepay the Revolving Loans and/or LC Exposure or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess.

(c) [Reserved].

(d) The Borrower Representative shall notify the Administrative Agent by telephone (confirmed by facsimile) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than 12:00 p.m., New York time, (A) in the case of prepayment of a Term Rate Revolving Borrowing or Alternative Currency Daily Rate Borrowing, three (3) Business Days before the date of prepayment, or (B) in the case of prepayment of a Swingline Borrowing, ABR Borrowing or Canadian Prime Rate Borrowing, one (1) Business Day prior to the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; *provided* that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Revolving Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

Section 2.12. *Fees*. (a) The Borrowers agree to pay to the Administrative Agent for the ratable account of each Lender a commitment fee, for the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate, equal to (I) the average of the daily difference between (x) the Aggregate Revolving Commitment and (y) the sum of (A) the aggregate principal Dollar Equivalent of all outstanding Revolving Loans (excluding any Swingline Loans) plus (B) the Dollar Equivalent of LC Exposure times (II) the Commitment Fee Rate. Accrued commitment fees shall be payable in arrears on the first calendar day of each fiscal quarter and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the Effective Date. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the rates and times set forth in Schedule 2.06A and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rates and times set forth in Schedule 2.06A. Participation fees and fronting fees accrued through and including the last day of each fiscal quarter of the Company shall be payable on the first

calendar day of each fiscal quarter, commencing on the first such date to occur after the Effective Date; *provided* that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within ten (10) Business Days after written demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due in Dollars, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Revolving Lenders. Fees paid shall not be refundable under any circumstances.

Section 2.13. Interest.

(a) (i) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate and (ii) the Loans comprising each Canadian Prime Rate Borrowing shall bear interest at the Canadian Prime Rate plus the Applicable Rate.

(b) (i) The Loans comprising each Term Rate Borrowing shall bear interest at either the Term SOFR Rate or an Alternative Currency Term Rate, as applicable, for the Interest Period in effect for such Borrowing plus the Applicable Rate and (ii) the Loans comprising each Alternative Currency Daily Rate Borrowing shall bear interest at the applicable Alternative Currency Daily Rate plus the Applicable Rate.

(c) Each Protective Advance and each Overadvance shall bear interest at the Alternate Base Rate plus the Applicable Rate for Revolving Loans plus 2% per annum.

(d) Notwithstanding the foregoing, upon the occurrence and during the continuation of a Designated Event of Default, the Administrative Agent or the Required Lenders may, at their option, by written notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates), declare that all overdue amounts outstanding hereunder shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder.

(e) Accrued interest on each Loan (for ABR Loans, Canadian Prime Rate Loans and Alternative Currency Daily Rate Loans, accrued through the last day of the prior calendar quarter) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; *provided* that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan, Canadian Prime Rate Loan or Alternative Currency Daily Rate Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate or by reference to an interest rate reasonably determined by the Administrative Agent shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed. All interest hereunder computed by reference to the Term SOFR Rate, the Alternative Currency Daily Rate, the Alternative Currency Term

Rate (other than EURIBOR) or the Canadian Prime Rate shall be computed on the basis of a year of 365 days ~~(or 366 days in a leap year)~~, and in each case shall be payable for the actual number of days elapsed, or, in the case of Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. All other computations of interest hereunder, including EURIBOR, shall be made on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed. The applicable Alternate Base Rate, Term SOFR Rate, Alternative Currency Daily Rate, Alternative Currency Term Rate or Canadian Prime Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.14. Inability to Determine Term SOFR; Replacement of Benchmark; Illegality.

(a) *Inability to Determine Term SOFR*. If at any time prior to the commencement of any Interest Period for a Term SOFR Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error, but shall be made only after consultation with the Borrower) that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate for such Interest Period; *provided* that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Administrative Agent is advised by the Required Lenders that the Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter, whereupon (A) no Loans may be made as, or converted to, Term SOFR Loans, (B) any Borrowing Request given by a Borrower with respect to Term SOFR Loans shall be deemed to be rescinded by such Borrower and (C) the utilization of the Term SOFR component in determining the Alternate Base Rate shall be suspended, in each case, until the Administrative Agent revokes such notice (which the Administrative Agent agrees to do promptly upon such circumstances ceasing to exist).

(b) *Replacement of Benchmark*. Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) Upon the occurrence of a Benchmark Transition Event in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the 5th Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error).

(ii) At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrowers' receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the applicable Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ABR Loans. During the period referenced in the foregoing sentence, the component of the Alternate Base Rate based upon the Benchmark will not be used in any determination of the Alternate Base Rate.

(c) *Benchmark Replacement Conforming Changes.* In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent (in consultation with the Borrower Representative) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Documents.

(d) The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.14.

(e) *Unavailability of Tenor of Benchmark.* At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Inability to Determine Other Relevant Rate; Replacement of Other Relevant Rate.

(i) If in connection with any request for a Relevant Rate Loan or a conversion of Loans to Relevant Rate Loans or a continuation of any of such Loans, as applicable, (x) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Alternative Currency Successor Rate for the Relevant Rate for the applicable Alternative Currency has been determined in accordance with Section 2.14(g) and the circumstances under clause (A) of Section 2.14(g) or the Scheduled Unavailability Date has occurred with respect to such Relevant Rate (as applicable), or (B) adequate and reasonable means do not otherwise exist for determining the Relevant Rate for the applicable Alternative Currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed Relevant Rate Loan or in connection with an existing or proposed Canadian Prime Rate Loan, or (y) the Administrative Agent or the Required Lenders determine that for any reason that the Relevant Rate with respect to a proposed Loan denominated in an Alternative Currency for any requested Interest Period or determination date(s) does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower Representative and each Lender.

(ii) Thereafter, (1) the obligation of the Lenders to make or maintain such Relevant Rate Loans in the affected currencies, as applicable, or to convert Canadian Prime Rate Loans to Relevant Rate Loans, shall be suspended in each case to the extent of the affected Relevant Rate Loans or Interest Period or determination date(s), as applicable and (2) in the event of a determination described in the preceding sentence with respect to any component of the Canadian Prime Rate, the utilization of such component in determining the Canadian Prime Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (y) of Section 2.14(f)(i), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

(iii) Upon receipt of such notice, (x) the Borrowers may revoke any pending request for a Borrowing of, or conversion to Relevant Rate Loans, or Borrowing of, or continuation of Relevant Rate Loans to the extent of the affected Alternative Currency or Interest Period or determination date(s), as applicable or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans denominated in Dollars in the Dollar Equivalent of the amount specified therein and (y) any outstanding affected Relevant Rate Loans shall either (A) be converted into a Borrowing of ABR Loans denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Relevant Rate Loan immediately at the end of the applicable Interest Period or (B) be prepaid in full immediately at the end of the applicable Interest Period; *provided* that if no election is made by the applicable Borrower by the last day of the current Interest Period, the applicable Borrower shall be deemed to have elected clause (A) above.

(g) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower Representative or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower Representative) that the Borrower Representative or Required Lenders (as applicable) have determined, that:

(A) adequate and reasonable means do not exist for ascertaining the Relevant Rate for an Alternative Currency because none of the tenors of such Relevant Rate (including any forward-looking term rate thereof) is available or published on a current basis and such circumstances are unlikely to be temporary;

(B) the applicable administrator for the Relevant Rate for such Alternative Currency has made a public statement identifying a specific date after which all tenors of the Relevant Rate for an Alternative Currency (including any forward-looking term rate thereof) shall or will no longer be representative or made available, or used for determining the interest rate of loans denominated in such Alternative Currency, or shall or will otherwise cease, provided that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such representative tenor(s) of the Relevant Rate for such Alternative Currency (the latest date on which all tenors of the Relevant Rate for such Alternative Currency (including any forward-looking term rate thereof) are no longer representative or available permanently or indefinitely, the "**Scheduled Unavailability Date**"); or

(C) syndicated loans currently being executed and agented in the U.S., are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for an Alternative Currency;

or if the events or circumstances of the type described in Section 2.14(g)(A), (B) or (C) have occurred with respect to the Alternative Currency Successor Rate then in effect, then, the Administrative Agent and the applicable Borrower Representative may amend this Agreement solely for the purpose of replacing the Relevant Rate for an Alternative Currency or any then current Alternative Currency Successor Rate for an Alternative Currency in accordance with this Section 2.14 with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in such Alternative Currency for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in such Alternative Currency for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, an "**Alternative Currency Successor Rate**"), and any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower Representative unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower Representative and each Lender of the implementation of any Alternative Currency Successor Rate.

Any Alternative Currency Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Alternative Currency Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Alternative Currency Successor Rate as so determined would otherwise be less than zero, the Alternative Currency Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

(h) [Reserved].

(i) *Disclaimer*. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to (i) the administration, submission or any other matter related to the secured overnight financing rate or other rates in the definition of "Term SOFR Rate" or with respect to any alternative or successor rate thereto, or replacement rate thereof or of any Alternative Currency Successor Rate (including, without limitation any Benchmark Replacement implemented hereunder, or the selection of such rate and any related spread or other adjustment), (ii) the composition or characteristics of any such Benchmark Replacement or Alternative Currency Successor Rate, including whether it is similar to, or produces the same value or economic equivalence to Term SOFR or any other Benchmark or Relevant Rate or have the same volume or liquidity as did Term SOFR or any other Benchmark or Relevant Rate, (iii) any actions or use of its discretion or other decisions or determinations made with respect to any matters covered by this Section 2.14 including, without limitation, whether or not a Benchmark Transition Event or any of the events listed in Section 2.14(g) have occurred, the removal or lack thereof of unavailable or non-representative tenors, the implementation or lack thereof of any Benchmark Replacement Conforming Changes, the delivery or non-delivery of any notices required by Sections 2.14(b) or (c) above or otherwise in accordance herewith and (iv) the effect of any of the foregoing provisions of this Section 2.14.

(j) *Illegality*. If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to a Relevant Rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to determine or charge interest rates based upon a Relevant Rate or to purchase or sell, or to take deposits of, any Alternative Currency in the applicable interbank market, then, upon notice thereof by such Lender to the Borrower Representative (through the Administrative Agent), (a) any obligation of such Lender to make or maintain Alternative Currency Loans in the affected currency or currencies or, in the case of Loans denominated in Dollars, to make or maintain Term SOFR Rate Loans or to convert ABR Loans to Term SOFR Rate Loans or, in the case of Loans denominated in Canadian Dollars, to make or maintain Alternative Currency Term Rate Loans based on the ~~CDOR~~**Term CORRA** Rate or to convert Canadian Prime Rate Loans to Alternative Currency Term Rate Loans based on the ~~CDOR~~**Term CORRA** Rate, shall be, in each case, suspended in each case to the extent of the affected Loans or Interest Periods or determination dates, as applicable, (b) if such notice asserts the illegality of such Lender making or maintaining ABR Loans or Canadian Prime Rate Loans the interest rate on which is determined by reference to the Term SOFR Rate component of the Alternate Base Rate or the ~~CDOR~~**Term CORRA** Rate component of the Canadian Prime Rate, the interest rate on which ABR Loans or Canadian Prime Rate Loans, as applicable, of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Alternate Base Rate or the ~~CDOR~~**Term CORRA** Rate component of the Canadian Prime Rate, as applicable, in each case until such Lender notifies the Administrative Agent and the Borrower Representative that the circumstances giving

rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), (x) prepay all Alternative Currency Loans, as applicable, of such Lender (other than Loans bearing interest at the ~~CDOR~~**Term CORRA** Rate that are subject to clause (z), below), (y) convert all Term SOFR Rate Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR Rate component of the Alternate Base Rate) and (z) convert all Alternative Currency Term Rate Loans of such Lender bearing interest based on the ~~CDOR~~**Term CORRA** Rate to Canadian Prime Rate Loans (the interest rate on which Canadian Prime Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~CDOR~~**Term CORRA** Rate component of the Canadian Prime Rate), in each case, immediately, or, in the case of Alternative Currency Term Rate Loans, on the last day of the Interest Period therefor if such Lender may lawfully continue to maintain such Alternative Currency Term Rate Loans to such day and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Term SOFR Rate or the ~~CDOR~~**Term CORRA** Rate, the Administrative Agent shall during the period of such suspension compute the Alternate Base Rate or the Canadian Prime Rate, as applicable, applicable to such Lender without reference to the Term SOFR Rate or ~~CDOR~~**Term CORRA** Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Term SOFR Rate or ~~CDOR~~**Term CORRA** Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.16.

Section 2.15. *Increased Costs*. (a) If any Change in Law shall:

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

(ii) impose on any Lender or the Issuing Bank or the London or other applicable offshore interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Alternative Currency Daily Rate Loans or Alternative Currency Term Rate Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) 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;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Alternative Currency Daily Rate Loan or Alternative Currency Term Rate Loans (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then, within thirty (30) days after the Borrower Representative's receipt of the certificate contemplated by paragraph (c) of this Section 2.15, the Borrowers will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower Representative accompanied by a certificate setting forth in reasonable detail any amount or amounts and upon such delivery of such items, shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; *provided* that the Borrowers shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; *provided* further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16. *Break Funding Payments*. In the event of (a) the payment of any principal of any Term Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Term Rate Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Rate Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(d) and is revoked in accordance therewith) or (d) the assignment of any Term Rate Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or 9.02(d), then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Term Rate Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Rate Loan had such event not occurred, at the Term SOFR Rate or Alternative Currency Term Rate that would have been applicable to such Term Rate Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Term Rate Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in the corresponding currency of a comparable amount and period from other banks in the applicable offshore interbank market. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

Section 2.17. Withholding of Taxes; Gross-Up.

(a) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable 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 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) *Payment of Other Taxes by the Borrowers*. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) *Evidence of Payment*. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) *Indemnification by the Loan Parties*. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (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 amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) *Indemnification by the Lenders*. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) *Status of Lenders*. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), 2.17(f)(ii)(B) and 2.17(f)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower Representative and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "**10-percent shareholder**" of a Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to any 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 W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "**FATCA**" shall include any amendments made to FATCA after the date of this Agreement.

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 Representative and the Administrative Agent in writing of its legal inability to do so.

Each Lender authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 2.17(f).

(g) *Treatment of Certain Refunds*. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), 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 2.17 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 (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) *Survival*. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative 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 (including the Payment in Full of the Secured Obligations).

(i) *Defined Terms*. For purposes of this Section 2.17, the term "applicable law" includes FATCA and the term "**Lender**" includes any Issuing Bank and the Swingline Lender.

Section 2.18. *Payments Generally; Allocation of Proceeds; Sharing of Set-offs*. (a) The Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at Bank of America, N.A., ATTN: Kindra Mullarky, Senior Vice President, 2600 West Big Beaver Road, Troy, MI 48084, Mail Code: MI8-900-02-70, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as otherwise specified herein, all payments hereunder on Loans and other obligations denominated in Dollars shall be made in Dollars and all payments on Loans or other obligations denominated in an Alternative Currency shall be made in such Alternative Currency. If, for any reason, any Borrower is prohibited by any Requirement of Law from making any required payment hereunder in an Alternative Currency such Borrower shall make such payment in Dollars in an amount equal to the Dollar Equivalent of such other currency payment amount, plus any increased costs, expenses and/or losses (other than loss profits) as a result of accepting such payment in Dollars.

(b) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrowers), or (B) amounts to be applied from the Controlled Accounts when full cash dominion is in effect (which shall be applied in accordance with Section 2.10(b)) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Administrative Agent and the Issuing Bank from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Swingline Loans, Overadvances and Protective Advances, fourth, to pay the principal of the Swingline Loans, Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances) and unreimbursed LC Disbursements, to pay any amounts owing with respect to Secured Banking Services Obligations and Secured Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, in each case (with respect to Secured Banking Services Obligations and Secured Swap Agreement Obligations) for which Secured Banking Services Reserves (not in excess of the applicable Secured Banking Services Obligations Amount) and Secured Swap Agreement Reserves (not in excess of the applicable Secured Swap Agreement Obligations Amount), as applicable, have been established, and to pay an amount to the Administrative Agent equal to one hundred three percent (103%) of the aggregate LC Exposure to be held as cash collateral for such Obligations, ratably, seventh, to payment of any amounts owing with respect to Secured Banking Services Obligations and Secured Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, and to the extent not paid pursuant to clause sixth above, and eighth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the

foregoing amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless an Event of Default has occurred and is continuing, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Term SOFR Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding ABR Loans of the same Class and, in any such event, the Borrowers shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section 2.18 or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees and expenses as described in Section 9.03) and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03, 2.04 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) If, except as otherwise expressly provided herein, 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 participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements; *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 paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each 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 such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower Representative prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender hereunder. Application of amounts pursuant to (i) and (ii) above shall be made in any order determined by the Administrative Agent in its discretion.

(g) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the "**Statements**"). The Administrative Agent is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers shall not be in default of payment with respect to the billing period indicated on such Statements. Notwithstanding the foregoing, acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver by the Administrative Agent or any Lender of their right to receive payment of the unpaid amount in full at another time.

Section 2.19. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrowers are 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 2.17, then such Lender shall 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 2.15 or 2.17, 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. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.15, (ii) the Borrowers are 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 2.17, or (iii) any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (x) if the Borrowers shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank), which consent shall not unreasonably be withheld or delayed, (y) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts) and (z) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

Section 2.20. *Defaulting Lenders*. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(c) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only (x) to the extent that the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower Representative shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time) and (y) to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure and to exceed its Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall within two (2) Business Days following notice by the Administrative Agent (x) first prepay such Swingline Exposure and (y) second, cash collateralize, for the benefit of the Issuing Bank, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.12(a) and 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(d) so long as such Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend, renew, extend or increase any Letter of Credit, unless the Swingline Lender or such Issuing Bank, as applicable, is satisfied that such Defaulting Lender's then outstanding Swingline Exposure or LC Exposure, as applicable, will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(c), and LC Exposure related to any newly issued or increased Letter of Credit and newly made Swingline Loans shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(c)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to the parent of any Lender shall occur following the date hereof and for so long as such event shall continue or (ii) the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Issuing Bank shall have entered into arrangements with the Borrowers or such Lender, satisfactory to the Issuing Bank to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrowers, the Swingline Lender and each Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 2.21. *Returned Payments.* If after receipt of any payment which is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

Section 2.22. *Secured Banking Services and Secured Swap Agreements*. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party or any Restricted Subsidiary of a Loan Party, in each case to the extent intended to be secured by the Collateral, shall deliver to the Administrative Agent, promptly after entering into such Banking Services Agreements or Swap Agreements (or with respect to any Banking Services Agreement or Swap Agreement existing as of the Effective Date, promptly after the Effective Date), written notice setting forth the aggregate amount of all such Secured Banking Services Obligations and such Secured Swap Agreement Obligations of such Loan Party or Restricted Subsidiary thereof to such Lender or Affiliate (whether matured or unmatured, absolute or contingent) (it being understood and agreed such amount shall not exceed the Secured Banking Services Obligations Amount and/or the Secured Swap Agreement Obligations Amount, as applicable). In addition, each such Lender or Affiliate thereof shall deliver to the Borrower Representative, for approval in its sole discretion and, if so approved, delivery to the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Secured Banking Services Obligations and Secured Swap Agreement Obligations which amount shall be deemed to be the applicable Secured Banking Services Obligations Amount or the Secured Swap Agreement Obligations Amount, as applicable. The most recent Secured Banking Services Obligations Amount and/or the Secured Swap Agreement Obligations Amount information provided to the Administrative Agent shall be used in determining the applicable Reserve amounts to be applied in respect of such Secured Banking Services Obligations and/or Secured Swap Agreement Obligations pursuant to Section 2.18(b) and which tier of the waterfall, contained in Section 2.18(b), such Secured Banking Services Obligations and/or Secured Swap Agreement Obligations will be placed.

Section 2.23. Joint and Several Liability of Borrowers.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Secured Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Secured Obligations (including any Secured Obligations arising under this Section 2.23), it being the intention of the parties hereto that all the Secured Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Accordingly, each Borrower hereby waives any and all suretyship defenses that would otherwise be available to such Borrower under applicable law.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Secured Obligations as and when due, whether upon maturity, acceleration, or otherwise, or to perform any of the Secured Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Secured Obligations until such time as all of the Secured Obligations are paid in full, and without the need for demand, protest, or any other notice or formality.

(d) The Secured Obligations of each Borrower under the provisions of this Section 2.23 constitute the absolute and unconditional, full recourse Secured Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.23(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Revolving Loans or any Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Secured Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Administrative Agent or Lenders under or in respect of any of the Secured Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in any Secured Party's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against any Secured Party, any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to any Secured Party, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Secured Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by any Secured Party including any defense based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other Borrower. Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Secured Obligations, the acceptance of any payment of any of the Secured Obligations, the acceptance of any partial payment thereon, any waiver,

consent or other action or acquiescence by Administrative Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Administrative Agent or Lenders in respect of any of the Secured Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Secured Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent or any Lender with respect to the failure by any Borrower to comply with any of its respective Secured Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.23 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Secured Obligations under this Section 2.23, it being the intention of each Borrower that, so long as any of the Secured Obligations hereunder remain unsatisfied, the Secured Obligations of each Borrower under this Section 2.23 shall not be discharged except by performance and then only to the extent of such performance. The Secured Obligations of each Borrower under this Section 2.23 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Secured Party. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Secured Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Secured Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Secured Obligations to the extent of such payment. Administrative Agent may, at the election of the Required Lenders, foreclose upon any Collateral held by Administrative Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Administrative Agent, any other Secured Party may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Secured Obligations have been paid.

(f) Each Borrower represents and warrants to Administrative Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Secured Obligations. Each Borrower further represents and warrants to Administrative Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Secured Obligations.

(g) The provisions of this Section 2.23 are made for the benefit of Administrative Agent, each Secured Party and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Administrative Agent, any Secured Party, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Secured Obligations hereunder or to elect any other remedy. The provisions of this Section 2.23 shall remain in effect until all of the Secured Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Secured Obligations, is rescinded or must otherwise be restored or returned by Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.23 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.23, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Administrative Agent or any other Secured Party against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Secured Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Secured Party are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Secured Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Secured Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Secured Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Administrative Agent, for the benefit of the Secured Parties, and shall forthwith be paid to Administrative Agent to be credited and applied to the Secured Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Secured Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "**Foreclosed Borrower**"), including after payment in full of the Secured Obligations, if all or any portion of the Secured Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

(i) Each of the Borrowers hereby acknowledges and affirms that it understands that to the extent the Secured Obligations are secured by Real Estate located in California, the Borrowers shall be liable for the full amount of the liability hereunder notwithstanding the foreclosure on such Real Estate by trustee sale or any other reason impairing such Borrower's right to proceed against any other Loan Party. In accordance with Section 2856 of the California Civil Code or any similar laws of any other applicable jurisdiction, each of the Borrowers hereby waives until such time as the Secured Obligations have been paid in full:

(i) all rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the Borrowers by reason of Sections 2787 to 2855, inclusive, 2899, and 3433 of the California Civil Code or any similar laws of any other applicable jurisdiction;

(ii) all rights and defenses that the Borrowers may have because the Secured Obligations are secured by Real Estate located in California, meaning, among other things, that: (A) Administrative Agent and the other Secured Parties may collect from the Borrowers without first foreclosing on any real or personal property collateral pledged by any Loan Party, and (B) if Administrative Agent, on behalf of the Secured Parties, forecloses on any Real Estate pledged by any Loan Party, (1) the amount of the Secured Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (2) the Secured Parties may collect from the Loan Parties even if, by foreclosing on the Real Estate, Administrative Agent or the other Secured Parties have destroyed or impaired any right the Borrowers may have to collect from any other Loan Party, it being understood that this is an unconditional and irrevocable waiver of any rights and defenses the Borrowers may have because the Secured Obligations are secured by Real Estate (including, without limitation, any rights or defenses based upon Sections 580a, 580d, or 726 of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction); and

(iii) all rights and defenses arising out of an election of remedies by Administrative Agent and the other Secured Parties, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Secured Obligations, has destroyed the Borrowers' rights of subrogation and reimbursement against any other Loan Party by the operation of Section 580d of the California Code of Civil Procedure or any similar laws of any other applicable jurisdiction or otherwise.

Section 2.24. Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to any Borrower in Dollars, from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in the aggregate principal amount of outstanding Swingline Loans exceeding $100,000,000; *provided*, that, after giving effect to any Borrowing of Swingline Loans, the Aggregate Revolving Exposure shall not exceed the lesser of (x) the Aggregate Revolving Commitment and (y) the Borrowing Base; *provided*, *further*, that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Swingline Loans shall constitute Revolving Loans, except that payments thereon shall be made to the Administrative Agent for its own account until the applicable Revolving Lenders have funded their respective participations therein as provided below, and shall reduce Availability in the same manner as a Revolving Loan. The Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by the making of such Swingline Loan, may have, Fronting Exposure. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and re-borrow Swingline Loans. To request a Swingline Loan, the applicable Borrower shall irrevocably notify the Swingline Lender and the Administrative Agent of such request by delivering a Swingline Loan Request, in each case, not later than 12:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan, which shall be an aggregate amount that is an integral multiple of $500,000 and not less than $1,000,000. Promptly after receipt by the Swingline Lender of any Swingline Loan Request (delivered by hand or facsimile) in a form approved by the Administrative Agent and signed by the Borrower Representative or by telephone or through an Electronic System, if arrangements for doing so have been approved by the Administrative Agent, the Swingline Lender will confirm with the Administrative Agent in writing that the Administrative Agent has also received such Swingline Loan Request and, if not, the Swingline Lender will notify the Administrative Agent in writing of the contents thereof. Unless the Swingline Lender has received notice in writing from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m., New York City time on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first proviso to the first sentence of this clause (a), or (B) that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, then, subject to the terms and

conditions hereof, the Swingline Lender will, not later than 3:00 p.m., New York City time on the borrowing date specified in such Swingline Loan Request, make each Swingline Loan available to such Borrower by means of a credit to the applicable Funding Account(s).

(b) The Swingline Lender may, upon written notice delivered to the Administrative Agent not later than 11:00 a.m., New York City time, on a Business Day, require the Revolving Lenders to acquire participations in all or a portion of the Swingline Loans outstanding on such Business Day. Such notice shall specify the aggregate Dollar amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the applicable Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrowers (or other party on behalf of the Borrowers) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; *provided* that any such payment so remitted shall be repaid by the applicable Revolving Lender to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to any Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve any Borrower of any default in the payment thereof.

(c) Upon the making of a Swingline Loan (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender without recourse or warranty, an undivided interest and participation in such Swingline Loan in proportion to its Applicable Percentage of the Revolving Commitment. The Swingline Lender may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Loan.

(d) The Administrative Agent, on behalf of the Swingline Lender, shall request settlement (a "**Settlement**") with the Revolving Lenders on at least a weekly basis (unless the settlement amount is *de minimis*) or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by telephone, through an Electronic System or e-mail no later than 1:00 p.m., New York City time on the date of such requested Settlement (the "**Settlement Date**"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 3:00 p.m., New York City time on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the Swingline Lender's Swingline Loans with respect to the applicable Borrower and, together with Swingline Lender's Applicable Percentage of such Swingline Loan, shall constitute Revolving Loans of such Revolving Lenders, respectively. If a Swingline Loan cannot be settled among Lenders, whether due to the insolvency proceedings of the type described in Section 7.01(f) or Section 7.01(g) or any other reason, each Lender shall pay the amount of its participation in the Loan to the Administrative Agent, in immediately available funds, within one (1) Business Day after the Administrative Agent's request therefor. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon as specified in Section 2.07.

ARTICLE III
REPRESENTATIONS AND WARRANTIES.

Each of the Company and the other Borrowers represents and warrants to the Lenders that:

Section 3.01. *Existence and Power*. Each Loan Party is duly organized, validly existing and in good standing (to the extent the concept of "good standing" is applicable in the applicable jurisdiction) under the laws of the jurisdiction of its organization and has all powers and all governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted, except where the failure to be in good standing or have such licenses, authorizations, consents and approvals would not reasonably be expected to have a Material Adverse Effect. Each Loan Party is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

Section 3.02. *Organization and Governmental Authorization; No Contravention*. The Transactions, including the execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party, (a) are within the powers of each Loan Party, (b) have been duly authorized by all necessary action pursuant to the Organizational Documents of each Loan Party, (c) require no further action by or in respect of, or filing with, any governmental body, agency or official (except (i) those as have been obtained or made and are in full force and effect and (ii) filings necessary to perfect or maintain perfection of the Liens created under the Loan Documents, including recordation of the Mortgages, the filing of Uniform Commercial Code financing statements and filings with the United States Patent and Trademark Office and the United States Copyright Office), (d) do not violate, conflict with or cause a breach or a default under any provision of applicable law or regulation or of the Organizational Documents of any Loan Party or of any agreement, judgment, injunction, order, decree or other instrument binding upon it, except for such violations, conflicts, breaches or defaults as would not reasonably be expected to have a Material Adverse Effect and (e) do not result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by any Borrower or any other Loan Party, other than the Liens created by the Loan Documents and Permitted Liens.

Section 3.03. *Binding Effect*. This Agreement has been executed and delivered by the Company and the other Borrowers and constitutes, and each other Loan Document to which any Loan Party is a party, when executed and delivered will constitute, a valid and binding agreement or instrument of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.04. *Corporate Structure*. The authorized equity securities of each of the Loan Parties as of the Effective Date is as set forth on Schedule 3.04. All issued and outstanding equity securities of each of the Loan Parties are duly authorized and validly issued, fully paid, non-assessable, free and clear of all Liens other than those in favor of the Administrative Agent for the benefit of the Secured Parties, those in favor of the collateral agent in respect of Permitted Additional Secured Indebtedness for the benefit of the secured parties under the applicable Permitted Additional Secured Indebtedness Documents and any inchoate tax Liens and any Permitted Liens, and such equity securities were issued in compliance in all material respects with all applicable state, federal and foreign laws concerning the issuance of securities. The identity of the holders of the equity securities of the Loan Parties, the percentage of their ownership of the equity securities of the Loan Parties and a description of the options and warrants outstanding with respect thereto as of the Effective Date is set forth on Schedule 3.04. As of the Effective Date, no shares of the capital stock or other equity securities of the Loan Parties, other than those described above, are issued and outstanding. Except as set forth on Schedule 3.04, as of the Effective Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Loan Party of any equity securities of any such entity.

Section 3.05. *Financial Statements; No Material Adverse Effect*. (a) the Company has heretofore furnished to the Administrative Agent the (i) audited consolidated balance sheets of the Company as of December 31, 2021, the related consolidated statements of operations and comprehensive loss, convertible preferred stock and stockholders' equity (deficit), and cash flows for the fiscal year ended December 31, 2021 and (ii) unaudited consolidated balance sheets of the Company as of March 31, 2022, the related consolidated statements of operations and comprehensive loss, convertible preferred stock and stockholders' equity (deficit), and cash flows for the three month period ended March 31, 2022. Such financial statements fairly present in all material respects, in conformity with GAAP, the consolidated financial position of the Company and its consolidated subsidiaries as of such dates and their consolidated results of operations, changes in stockholders' equity and cash flows for such periods subject to normal year-end audit adjustments and the absence of footnotes.

(b) Since December 31, 2021, no event, change or condition has occurred that has had, or would reasonably be expected to have, a Material Adverse Effect.

Section 3.06. *Litigation*. Except as set forth in Schedule 3.06, there is no action, suit or proceeding pending against, or to Borrowers' knowledge affecting, any Loan Party, before any Governmental Authority as to which there is a reasonable probability of an adverse decision and in which any such adverse decision would reasonably be expected to have a Material Adverse Effect.

Section 3.07. *Ownership of Property*. As of the Effective Date, except as set forth on Schedule 3.07, the Company, the other Borrowers and each of the Restricted Subsidiaries has good, valid and marketable title to, or has valid leasehold interests in, all properties and other assets (real or personal, tangible, intangible or mixed) material to the operation of its business, including the Mortgaged Properties (except as sold or otherwise disposed of in the ordinary course of business).

Section 3.08. *Labor Matters*. Except as set forth in Schedule 3.06, as of the Effective Date, there are no strikes, organized work slowdowns, lockouts, organized work stoppages or picketing pending or, to Borrowers' knowledge, threatened against the Company or any of the Restricted Subsidiaries, in each case, that would reasonably be expected to have a Material Adverse Effect. As of the Effective Date, no claim, complaint, charge or investigation by a governmental entity for violation by the Company or any of the Restricted Subsidiaries with respect to hours worked and payments made to the employees of any such Person or violation of the Fair Labor Standards Act or any other applicable law dealing with such matters has been made or initiated, in each case, that would reasonably be expected to have a Material Adverse Effect.

Section 3.09. *Investment Company Act*. No Loan Party is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 3.10. *Margin Regulations*. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any Margin Stock or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, Regulation U or Regulation X.

Section 3.11. *Compliance With Laws*. Each Loan Party is in compliance with all Requirements of Law, except for Requirements of Law the non-compliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.12. *Taxes*. Each Loan party has filed all federal, state and other tax returns and reports required to be filed, and have paid all federal, state 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 would not reasonably be expected to have a Material Adverse Effect.

Section 3.13. *Compliance with ERISA*. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (a) all Plans comply in form and in operation with their terms and the current applications of ERISA and the Code and the regulations and published interpretations thereunder, (b) no ERISA Event has occurred or is reasonably expected to occur, and (c) the present value of all projected benefit obligations under each Plan (based on the assumptions used for purposes of Accounting Standards Codification No. 715: Compensation-Retirement Benefits) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan allocable to such accrued benefits.

Section 3.14. *Anti-Corruption Laws and Sanctions*. Each Loan Party has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and directors and, to the knowledge of such Loan Party, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary, any of their respective directors or officers or, to the knowledge of such Loan Party or such Subsidiary, employees, or (b) to the knowledge of any Loan Party, any agent of any Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

Section 3.15. *Compliance with Environmental Requirements; No Hazardous Materials*. Except as would not reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect (a) each Loan Party and its subsidiaries and their facilities and operations are and have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all permits, licenses or approvals required by any applicable Environmental Law, (b) no Loan Party and no subsidiary of any Loan Party is party to, and no Loan Party and no subsidiary of any Loan Party and no Real Estate currently (or to the knowledge of any Loan Party previously) owned, leased, operated or subleased by or for any such Person is subject to or the subject of, any pending (or, to the knowledge of any Loan Party, threatened) order, action, investigation, suit, proceeding, audit, claim, demand, dispute or notice of violation or of potential liability relating to such Loan Party's compliance with Environmental Laws, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any property of any Loan Party or any subsidiary of any Loan Party and, to the knowledge of any Loan Party, no facts, circumstances or conditions exist that would reasonably be expected to result in any such Lien attaching to any such property as a result of Loan Parties' operations, (d) no Loan Party and no subsidiary of any Loan Party has caused or suffered to occur a Release of Hazardous Materials at, to or from any current, or to the knowledge of any Loan Party, former Real Estate or any other location, including any third party disposal site, that has resulted or would reasonably be expected to result in an Environmental Liability of such Loan Party or subsidiary of a Loan Party, (e) there is no threat of Release and there has been no Release of Hazardous Materials at, under, on or from any Real Estate currently or, to the knowledge of any Loan Party, previously owned, leased, operated or subleased by or for any Loan Party and each subsidiary of each Loan Party (f) to the knowledge of each Loan Party and its subsidiaries there are no facts, circumstances or conditions, including the receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.) or similar Environmental Laws, which would reasonably be expected to result in an Environmental Liability of such Loan Party or subsidiary of a Loan Party.

Section 3.16. *Intellectual Property; Data Security*. (a) Each Loan Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is necessary to the conduct of such Loan Party's business, taken as a whole, as currently conducted except for such Intellectual Property the failure of which to own or license or otherwise have the right to use would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) (i) The Owned Intellectual Property, Licensed Intellectual Property and the conduct and operations of the business of each Loan Party and each Restricted Subsidiary as currently conducted does not infringe, misappropriate, dilute, violate or otherwise impair any Intellectual Property owned by any other Person, (ii) except as set forth on Schedule 3.16, no other Person has contested in writing any right, title or interest of such Loan Party or any Restricted Subsidiary of such Loan Party in, or relating to, any Intellectual Property and (iii) each Loan Party is the owner of its Owned Intellectual Property free and clear of any Lien other than any Permitted Liens, other than, in the case of (i), (ii) or (iii) above, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) With respect to each Loan Party (i) none of the Owned Intellectual Property and, to the knowledge of such Loan Party, none of the Licensed Intellectual Property has been adjudged invalid or unenforceable in whole or part, and, to the knowledge of such Loan Party, all such Owned Intellectual Property and, to the knowledge of such Loan Party, all of the Licensed Intellectual Property is valid and enforceable, and (ii) there exist no restrictions on the disclosure, use, license or transfer of any Owned Intellectual Property or, to the knowledge of such Loan Party, of any Licensed Intellectual Property, other than, in the case of (i) or (ii) above, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Each Loan Party has taken all actions reasonably necessary to maintain and protect its rights in its Owned Intellectual Property and Licensed Intellectual Property, including payment of applicable maintenance fees and filing of applicable statements of use, other than, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) Each Loan Party has taken commercially reasonable actions to protect and maintain the security, integrity and continuous operation of its material software and systems (and the data stored therein or processed thereby), and there has been no breach, violation or unauthorized access to same, other than incidents that were resolved without material cost, liability or the duty to notify any Person.

Section 3.17. *Real Property Interests*. Except for the fee ownership and leasehold interests set forth in the Perfection Certificate, no Loan Party has, as of the Effective Date, any fee ownership or leasehold interest in any Real Estate.

Section 3.18. *Solvency*. The Company and the Restricted Subsidiaries, taken as a whole, on a consolidated basis, are Solvent immediately after the consummation of the Transactions to occur on the Effective Date, including the making of the Loans and the use of the proceeds thereof.

Section 3.19. *Full Disclosure*. (a) Subject to the next sentence, none of the written factual information (financial or otherwise) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the consummation of the transactions contemplated by the Loan Documents (as modified or supplemented by any other information so furnished) when taken as a whole contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading when taken as a whole in light of the circumstances under which such statements were made. All financial projections delivered to the Administrative Agent and the Lenders have been prepared on the basis of the assumptions stated therein, which assumptions were believed by the Borrowers at the time such projections were prepared and at the time such projections were delivered to the Lenders to be fair in light of the then current business conditions; provided, however, that the Borrowers can give no assurance that such projections will be attained (it being recognized by the Lenders and the Administrative Agent that actual results may vary significantly from any such projected results).

(b) As of the Effective Date, to the knowledge of any Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

Section 3.20. *Collateral Documents*. (a) The Collateral Agreement creates in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described in the Collateral Agreement and the proceeds thereof, except as enforceability may be limited by the Legal Reservations and (i) upon the taking of possession or control by the Administrative Agent of any Pledged Collateral, the Liens created under the Collateral Agreement shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in such Pledged Collateral, in each case prior and superior in right to any adverse claim of any other Person (other than with respect to "Permitted Liens") and (ii) when UCC financing statements in appropriate form are filed in the offices specified on Schedule 3.20, the Liens created under the Collateral Agreement will, to the extent that a security interest therein may be perfected by filing pursuant to the UCC, constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral, in each case prior and superior in right to any other Person, other than with respect to Permitted Liens.

(b) Each of the Mortgages, when executed and delivered, is effective to create in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the applicable county records, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, in each case prior and superior in right to any adverse claim of any other Person (other than with respect to Permitted Encumbrances), as security for the Secured Obligations.

Section 3.21. *Foreign Corrupt Practices Act*. Each of the Company, the Restricted Subsidiaries and, to the knowledge of each of the Company and the Restricted Subsidiaries, their respective directors, officers, agents, employees, and any person acting for or on behalf of the Company or any Restricted Subsidiary, has complied in all material respects with, and will comply in all material respects with Anti-Corruption Laws, and it and they have not made, offered, promised, or authorized, and will not make, offer, promise, or authorize, whether directly or indirectly, any payment, of anything of value to: (a) an executive, official, employee or agent of a governmental department, agency or instrumentality, (b) a director, officer, employee or agent of a wholly or partially government-owned or -controlled company or business, (c) a political party or official thereof, or candidate for political office or (d) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the

World Bank) (each of (a), (b), (c) and (d) above, a "**Government Official**"); while knowing or having a reasonable belief that all or some portion will be used for the purpose of: (x) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (y) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity or (z) securing an improper advantage; in each case, in order to obtain, retain, or direct business.

Section 3.22. *Deposit Accounts, Securities Accounts, Etc*. As of the Effective Date, other than accounts constituting Excluded Assets, no Loan Party has any deposit accounts or securities accounts other than the accounts set forth in Schedule 3.22. As of the Effective Date, the purpose and type of each such account is specified on Schedule 3.22.

Section 3.23. *Affected Financial Institution*. No Loan Party is an Affected Financial Institution.

ARTICLE IV
CONDITIONS.

Section 4.01. *Effective Date*. The obligations of the Lenders to make initial Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received:

(i) (x) this Agreement executed by each party hereto, (y) the Guarantee Agreement executed by each Loan Party and (z) the Collateral Agreement executed by each Loan Party; and

(ii) a legal opinion of (A) Davis Polk & Wardwell LLP, as New York counsel to the Loan Parties and (B) Morris, Nichols, Arsht & Tunnell LLP, as Delaware counsel to the Loan Parties, in each case, addressed to the Administrative Agent, the Issuing Bank and the Lenders, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(b) [Reserved].

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary, Assistant Secretary or other Responsible Officer, which shall (A) certify the resolutions of its Board of Directors authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and (C) attaching the certificate or articles of incorporation or organization or other charter document of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, or other Organizational Document, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(d) Closing Certificate. The Administrative Agent shall have received a certificate, signed by a Responsible Officer of each Borrower, dated as of the Effective Date (i) stating that no Default has occurred and is continuing and (ii) stating that the representations and warranties contained in the Loan Documents are true and correct in all material respects as of such date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date are true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier are true and correct in all respects).

(e) Fees. Substantially simultaneously with the Effective Date, the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented in writing (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

(f) Perfection Certificate. The Administrative Agent shall have received a Perfection Certificate with respect to the Loan Parties dated the Effective Date and duly executed by a Responsible Officer of the Company.

(g) [Reserved].

(h) Solvency. The Administrative Agent shall have received a certificate signed by a Financial Officer dated the Effective Date that the Company and the Restricted Subsidiaries, taken as a whole, on a consolidated basis are Solvent immediately after the consummation of the Transactions to occur on the Effective Date, including the making of any Loans and the use of the proceeds thereof (if any).

(i) Borrowing Base Certificate. The Administrative Agent shall have received a Borrowing Base Certificate, which calculates the Borrowing Base as of March 31, 2022.

(j) Filings, Registrations and Recordings. Except as set forth in Schedule 5.18, each document, certificate and instrument (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under applicable law to be filed, registered or recorded or delivered in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation or shall have been delivered to the Administrative Agent.

(k) [Reserved].

(l) Appraisal. The Administrative Agent shall have received an appraisal of the Borrowers' Equipment from a firm reasonably satisfactory to the Administrative Agent in its Permitted Discretion, and which appraisal shall be in form reasonably satisfactory to the Administrative Agent in its Permitted Discretion.

(m) USA PATRIOT Act, Etc. (i) The Administrative Agent shall have received, at least three (3) days prior to the Effective Date, all documentation and other information regarding the Borrowers requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrowers at least ten (10) days prior to the Effective Date, and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least three (3) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrowers at least ten (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

The Administrative Agent shall notify the Borrowers, the Lenders and the Issuing Bank of the Effective Date, and such notice shall be conclusive and binding.

Section 4.02. *Each Credit Event*. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit (each such event, a "**Credit Extension**"), is subject to the satisfaction of the following conditions (*provided* that, for the avoidance of doubt (including for purposes of the last paragraph of this Section 4.02), with respect to any Last-Out Tranche advanced in connection with any Limited Condition Transaction, the testing of the following conditions in respect of any such Last-Out Tranche shall be subject to Section 1.05 (to the extent permitted to be tested in accordance therewith) and Section 2.09(e)):

(a) The representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(c) After giving effect to any Borrowing or the issuance, amendment, renewal or extension of any Letter of Credit, Availability shall not be less than zero.

Except with respect to Protective Advances and the Settlement of Swingline Loans, each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section.

ARTICLE V
AFFIRMATIVE COVENANTS

Each of the Company and the other Borrowers covenants and agrees with each Lender that until all of the Secured Obligations have been Paid in Full, each of the Company and the other Borrowers will, and will cause each of the Restricted Subsidiaries to:

Section 5.01. *Financial Statements and Other Reports.* In the case of the Company and the other Borrowers, maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in accordance with GAAP and to provide the information required to be delivered to the Lenders hereunder, and will deliver to the Administrative Agent which shall furnish to each Lender:

(a) as soon as practicable and in any event within 45 days after the end of each of the first three fiscal quarters of each Fiscal Year of the Company (commencing with the fiscal quarter ending June 30, 2022), setting forth in each case in comparative form figures for the corresponding periods of the previous Fiscal Year (which requirement to set forth comparative form figures shall commence with the fiscal quarter ending June 30, 2022), the unaudited consolidated balance sheets of the Company as of the end of such fiscal quarter and the related consolidated income statement and statement of cash flows for the fiscal period then ending, in each case, for such quarter, and for the portion of the Fiscal Year ended at the end of such fiscal quarter, all in reasonable detail and certified by a Financial Officer as fairly presenting in all material respects the financial condition and results of operations of the Company and its consolidated subsidiaries and as having been prepared in accordance with GAAP, subject to changes resulting from audit and other year-end adjustments and the absence of footnote disclosures;

(b) as soon as available and in any event within 90 days after the end of each Fiscal Year of the Company (commencing with the Fiscal Year ending December 31, 2022), setting forth in each case in comparative form figures for the previous Fiscal Year, the audited consolidated balance sheets of the Company as of the end of such Fiscal Year and the related consolidated income statement and statement of cash flows for such Fiscal Year, certified by Grant Thornton LLP or other independent public accountants of nationally recognized standing or reasonably acceptable to the Administrative Agent and shall not be subject to any qualification as to the Company's ability to continue as a "going concern" (other than a "going concern" or "emphasis of matter" explanatory paragraph or like statement) or scope of the audit, other than any such exception, explanatory paragraph or qualification that is with respect to, or resulting from or relating to, (A) an actual or potential breach of a financial covenant hereunder or under any Permitted Additional Indebtedness Document, (B) an upcoming maturity date of Debt occurring within 12 months of such audit or (C) activities, operations, financial results or liabilities of Unrestricted Subsidiaries; *provided* that such financial statements shall not be required to reflect any purchase accounting (or similar) adjustments;

(c) if any Unrestricted Subsidiary exists, concurrently with each delivery of financial statements under Section 5.01(a) or (b) above, financial statements (in substantially the same form as the financial statements delivered pursuant to Section 5.01(a) or (b) above, as applicable) prepared on the basis of consolidating the accounts of the Company and its Restricted Subsidiaries and treating any Unrestricted Subsidiaries as if they were not consolidated with the Company, together with an explanation of reconciliation adjustments in reasonable detail;

(d) (i) prior to the FCCR Covenant Trigger Date, within five (5) Business Days of and (ii) from and after the FCCR Covenant Trigger Date concurrently with, each delivery of financial statements pursuant to Sections 5.01(a) and 5.01(b) a Compliance Certificate substantially in the form of Exhibit E (which shall set forth reasonably detailed calculations of Liquidity, and if a Compliance Period is then in effect, the Fixed Charge Coverage Ratio and Consolidated EBITDA); *provided* that, (x) with respect to any period prior to the occurrence of the FCCR Covenant Trigger Date, the Compliance Certificate shall not be required to include a calculation of the Fixed Charge Coverage Ratio or Consolidated EBITDA and (y) with respect to any period after the occurrence of the FCCR Covenant Trigger Date, the Compliance Certificate shall not be required to include a calculation of Liquidity;

(e) promptly upon their becoming available, copies of all financial statements and regular, periodic or special reports which such Person may make to, or file with, the Securities and Exchange Commission or any successor or similar Governmental Authority;

(f) promptly upon any Responsible Officer of the Company or any of the Restricted Subsidiaries obtaining knowledge thereof, notice of (i) the existence of any Event of Default or Default or (ii) the institution of any litigation or arbitration which would reasonably be expected to have a Material Adverse Effect or (iii) the occurrence of any other event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(g) except to the extent such activities would not reasonably be expected to result in a Material Adverse Effect, promptly upon any Responsible Officer of the Company or any of the Restricted Subsidiaries obtaining knowledge of any complaint, order, citation, notice, request for information or other written communication from any Person alleging any Environmental Liability of the Company or any Restricted Subsidiary, a certificate of a Responsible Officer specifying the nature and estimated Liability of any such matter, or specifying the notice given or action taken by such holder or Person, and what action the applicable Loan Party has taken, is taking or proposes to take with respect thereto;

(h) solely during the period prior to the Fixed Asset Release Date, on or before the required date for delivery of information pursuant to Section 5.01(d), a written certification from a Responsible Officer of the Borrower Representative which describes, in such detail as the Administrative Agent shall reasonably require, with respect to each Loan Party during such fiscal quarter, acquisitions of interests in Material Real Property;

(i) on or prior to the date the financial statements are required to be delivered pursuant to clause (b) above, an operating budget for the such fiscal year then-commenced (and not requiring information for any subsequent period), in a form as customarily prepared by management of the Company for such purpose or such other form as the Company and the Administrative Agent may reasonably agree;

(j) commencing with the month ending May 31, 2022, within 20 days after the end of each month (or, in the case of the first such six calendar months ending after the Effective Date, 30 days) or during the period any Cash Dominion Event shall have occurred and be continuing, within 3 Business Days after the end of each week in such period, a Borrowing Base Certificate, as at the end of such month or week, as applicable, duly certified by a Financial Officer of the Borrower Representative; *provided*, that, to the extent not otherwise previously received by Administrative Agent, after the end of any Cash Dominion Event, the Borrower Representative shall promptly deliver (but in any event within 20 days after the end of such Cash Dominion Event) a Borrowing Base Certificate as at the last day of the most recent month ended prior to the end of such Cash Dominion Event; *provided*, *further*, that (x) at any time after the Effective Date the Borrower Representative may deliver one or more updated Borrowing Base Certificates at any time for the sole purpose of adding Eligible Real Property to the Borrowing Base and (y) the Borrower Representative may elect to deliver a Borrowing Base Certificate more frequently than otherwise required in this clause (j) (but not more frequently than weekly, except as otherwise required pursuant to the second sentence of the definition of "Eligible Cash"), which if such increased frequency is weekly, shall continue until the end of the first full calendar month following the initial delivery thereof (it being understood, for

the avoidance of doubt, that (i) nothing in this proviso with respect to more frequent deliveries shall limit any of the foregoing requirements of this clause (j) and (ii) the requirements of clause (y) of this proviso shall not apply to more frequent delivery of Borrowing Base Certificates pursuant to the second sentence of the definition of "Eligible Cash"); *provided*, *further*, that, prior to the occurrence of the FCCR Covenant Trigger Date, each Borrowing Base Certificate shall be accompanied by a reasonably detailed calculation of Liquidity duly certified by a Financial Officer of the Borrower Representative;

(k) [reserved];

(l) (i) upon request by the Administrative Agent (it being understood and agreed that no such request may require any such field examinations more frequently than once in any period of 12 consecutive calendar months except that (A) during an Appraisal and Field Examination Event, the Administrative Agent may require in its Permitted Discretion one (1) additional field examination during such period and (B) during the continuance of an Event of Default, the Administrative Agent may require in its Permitted Discretion additional field examinations at the Borrowers' expense), a field examination with respect to the applicable assets of the Loan Parties, (ii) upon request by the Administrative Agent (it being understood and agreed that no such request may require any such appraisal more frequently than once in any period of 12 consecutive calendar months except that (A) during an Appraisal and Field Examination Event, the Administrative Agent may require in its Permitted Discretion one (1) additional appraisal of Inventory during such period and one (1) additional appraisal of Equipment (to the extent then included in the Borrowing Base) during such period and (B) during the continuance of an Event of Default, the Administrative Agent may require in its Permitted Discretion additional appraisals at the Borrowers' expense), an appraisal of the Inventory of the Borrowers and an appraisal of the Equipment of the Borrowers (to the extent then included in the Borrowing Base) (which, for the avoidance of doubt shall be two separate appraisals), in each case which appraisal is conducted by an independent appraiser selected or approved by the Administrative Agent and reasonably satisfactory to the Borrower Representative, conducted in such a manner and methodology and of such a scope as is reasonably acceptable to the Administrative Agent, the results of which the Administrative Agent and Lenders are expressly permitted to rely and (iii) such other reports as to each Borrower's and each of its respective Restricted Subsidiaries' accounts payable and other Collateral as the Administrative Agent shall reasonably request from time to time (it being understood that if any of the records or reports of the accounts payable or Collateral are prepared by an accounting service or other agent, the Borrowers hereby authorize such service or agent to deliver such records, reports and related documents to the Administrative Agent, for distribution to the Lenders);

(m) [reserved];

(n) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and, to the extent the applicable Borrower qualifies as a "legal entity customer" thereunder, the Beneficial Ownership Regulation; and

(o) with reasonable promptness, such other information and data with respect to the operations, business affairs and financial condition of any Loan Party or Restricted Subsidiary as from time to time may be reasonably requested by the Administrative Agent.

Notwithstanding the foregoing, the obligations in paragraphs (a) and (b) of this Section 5.01 may be satisfied with respect to any financial statements of the Company by furnishing (A) the applicable financial statements of any Person that is a direct or indirect parent of the Company and of which the Company is a direct or indirect subsidiary (a "**Parent Entity**") or (B) the Form 10-K or 10-Q (or the equivalent), as applicable, of the Company or any Parent Entity filed with the SEC or any securities exchange, in each case, within the time periods specified in such paragraphs and without any requirement to provide notice of such filing to the Administrative Agent or to any Lender; *provided* that, with respect to each of clauses (A) and (B), (i) if (1) such financial statements relate to any Parent Entity and (2) either (I) such Parent Entity (or any other Parent Entity that is a subsidiary of such Parent Entity) has any non *de-minimis* third party Debt and/or non *de-minimis* operations (as determined by the Company in good faith and other than any operations that are attributable solely to such Parent Entity's ownership of the Company and its Subsidiaries) or (II) there are non *de-minimis* differences between the financial statements of such Parent Entity and its consolidated subsidiaries, on the one hand, and the Company and its consolidated Subsidiaries, on the other hand, such financial statements or the Form 10-K or Form 10-Q, as applicable, shall be accompanied by consolidating information (which need not be audited) that summarizes in reasonable detail the differences between the information relating to such Parent Entity, on the one hand, and the information relating to the Company and its consolidated Subsidiaries on a standalone basis, on the other hand, and (ii) to the extent such statements are in lieu of statements required to be provided under Section 5.01(a), such statements shall be accompanied by a report of an independent accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report shall satisfy the applicable requirements set forth in Section 5.01(a) as if the references to "the Company" therein were references to such Parent Entity.

Documents required to be delivered pursuant to this Section 5.01 may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the earlier of the date (I) on which the Borrower Representative (or a representative thereof) posts such documents, or provides a link thereto, on the Company's website on the Internet, (II) on which such documents are delivered by the Borrower to the Administrative Agent for posting on the Company's behalf on IntraLinks/IntraAgency, SyndTrak or another secure website, if any, to which each Revolving Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent), (III) on which such documents are faxed to the Administrative Agent (or electronically mailed to an address provided by the Administrative Agent) or (IV) in respect of the items required to be delivered pursuant to Section 5.01(f) above in respect of information filed by any Parent Entity, the Company or any of its Restricted Subsidiaries with any securities exchange or with the SEC or any analogous governmental or private regulatory authority with jurisdiction over matters relating to securities (other than Form 10-Q Reports and Form 10-K Reports), on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority or securities exchange; *provided* that the Administrative Agent shall have no obligation to request the delivery of or maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

Notwithstanding anything to the contrary in this Article V, none of the Company or any Restricted Subsidiary will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter pursuant to this Article V that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives or contractors) is prohibited by any Requirements of Law or any binding confidentiality agreement, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) in respect of which the Company (or any Parent Entity thereof) or any Subsidiary owes confidentiality obligations to any third party; *provided* that if the Borrower Representative does not provide information that is otherwise required to be delivered pursuant to this Article V as a result of any of the foregoing exceptions, the Borrower Representative shall use commercially reasonable efforts to (A) notify the Administrative Agent that such information is being withheld and (B) describe the applicable information in reasonable detail, in each case with respect to the foregoing clauses (A) and (B), solely to the Company or such Subsidiary, as applicable,

determines in good faith that such notification and description (x) are feasible, (y) are permitted under Requirements of Law and such binding agreements and (z) would not result in the waiver or deemed waiver of any such privilege, as applicable. For the avoidance of doubt, anything disclosed, examined inspected or otherwise made available pursuant to this Article V shall be subject to the provisions of Section 9.12 to the extent applicable.

Section 5.02. *Maintenance of Existence*. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence; *provided* that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution, including any Permitted Reorganization or Tax Restructuring, permitted by Section 6.05 or Section 6.07 or any Disposition permitted by Section 6.06.

Section 5.03. *Payment and Performance of Obligations*. Pay and discharge, and cause each Restricted Subsidiary to pay and discharge, at or before maturity, all of their respective obligations and liabilities, including Tax liabilities, except (i) where the same may be the subject of a Permitted Contest and (ii) for such obligations and/or liabilities the nonpayment or nondischarge of which would not reasonably be expected to have a Material Adverse Effect.

Section 5.04. Maintenance of Property; Insurance.

(a) Keep all Mortgaged Property and all other property useful and necessary in its business in good working order and condition, ordinary wear and tear and casualty and condemnation excepted, except where such failure would not reasonably be expected to have a Material Adverse Effect.

(b) Except when the failure to do so has not resulted in, or would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, maintain physical damage insurance on all real and personal property on an all risk basis, covering the repair and replacement cost of all such property and consequential loss coverage for business interruption and public liability insurance in each case in amounts and to the extent and of the kinds customarily carried or maintained by Persons of established reputation engaged in similar businesses operating in similar locations. All such insurance shall be provided by insurers with A.M. Best Rating of at least A- VII. The Administrative Agent acknowledges and agrees that the insurance carried by the Loan Parties and in effect and the insurers thereof on the Effective Date are acceptable.

(c) Within the applicable time period set forth in Schedule 5.18, unless otherwise agreed to by Administrative Agent in its sole discretion, (i) cause the Administrative Agent to be named as an additional insured on liability policies and as mortgagee and lender's loss payee on property policies, in each case required to be maintained pursuant to this Section 5.04 (other than, from and after the occurrence of the Fixed Asset Release Date, any business interruption insurance, for which the Fixed Asset Facility Collateral Agent shall be named as additional insured on liability policies and as assignee or loss payee on property policies) pursuant to endorsements reasonably acceptable to the Administrative Agent and (ii) deliver to the Administrative Agent a certificate from Borrowers' insurance broker dated such date showing the amount of coverage in place as of each such policy's effective date, and that such policies will include waiver of subrogation for additional insureds on liability policies and loss payees on property policies.

(d) Promptly deliver to the Administrative Agent, within 30 Business Days of receipt of notice from any insurer, a copy of any notice of cancellation, non-renewal or material change in coverage from that existing on the Effective Date, and notice of any cancellation or non-renewal of coverage by a Loan Party.

(e) In the event the Borrowers fail to provide the Administrative Agent with evidence of the insurance coverage required by this Agreement, the Administrative Agent may, upon not less than 10 Business Days' prior written notice to the Borrowers (or such lesser notice as may constitute the number of days until the cancellation of any insurance shall become effective) purchase insurance at Borrowers' reasonable expense to protect the Administrative Agent's interests in the Collateral, so long as the Borrowers shall not be a co-insurer with respect to any such coverage. This insurance may, but need not, protect Borrowers' interests. The coverage purchased by the Administrative Agent may not pay any claim made by any Loan Party or any claim that is made against a Loan Party in connection with the Collateral. The Borrowers may later cancel any insurance purchased by the Administrative Agent, but only after providing the Administrative Agent with reasonably satisfactory evidence that the Borrowers have obtained insurance as required by this Agreement. If the Administrative Agent purchases insurance for the Collateral, the Borrowers will be responsible for the reasonable costs of that insurance, including interest and other reasonably related charges imposed by the Administrative Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations and shall be deemed an advance by the Administrative Agent hereunder. The costs of the insurance may be more than the cost of insurance a Loan Party is able to obtain on its own.

(f) If at any time the improvement(s) located on any Mortgaged Property is located in a Special Flood Hazard Area, obtain and thereafter maintain flood insurance in an amount no less than as required to ensure compliance with the NFIP as set forth in the Flood Laws and otherwise in form and substance reasonably acceptable to the Administrative Agent and each Lender. Following the date of inclusion of any Mortgaged Properties in the Collateral for which flood insurance would be required as set forth above, promptly upon the request of the Administrative Agent or any Lender, the Borrower Representative shall deliver to the Administrative Agent or such Lender evidence of compliance and annual renewals of the flood insurance policy or annual renewals of a force-placed flood insurance policy. In connection with any amendment to this Agreement pursuant to which any increase, extension or renewal of Loans is contemplated, the Borrowers shall cause to be delivered to the Administrative Agent a Flood Determination Form for any Mortgaged Property, and Borrower Notice and Evidence of Flood Insurance for any Mortgaged Property, for which flood insurance would be required as set forth above.

Section 5.05. *Compliance with Laws*. Comply with all Requirements of Law (including Environmental Laws and ERISA and the rules and regulations thereunder), except for such non-compliance which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by each Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.06. *Inspection of Property, Books and Records*. Keep proper books of record and account in accordance with sound business practice in which true and correct entries in all material respects shall be made of all dealings and transactions in relation to its business and activities; and permit, at the sole cost of the Company or any applicable Restricted Subsidiary, representatives of the Administrative Agent and, if an Event of Default has occurred and is continuing, of any Lender that accompanies the Administrative Agent to visit and inspect during normal business hours (but, absent an Event of Default, no more frequently than once per Fiscal Year) any of its properties (including to conduct a field examination), to examine and make abstracts or copies from any of its books and records, to conduct a collateral audit and analysis of their respective accounts and to discuss its affairs, finances and accounts with its officers, employees and independent public accountants as often as may reasonably be desired, in each case, at such reasonable times during normal business hours and as often as may be reasonably desired but subject to any restrictions in leases, upon reasonable advance notice to the Company; *provided,* field examinations and collateral audits shall be permitted only set forth in Section 5.01(l) hereof. Notwithstanding anything to the contrary in this Section, neither the Company nor any Restricted Subsidiary shall be required to disclose, permit the inspection, examination or making of copies or abstracts of, or any discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by law or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product. The Administrative Agent shall give the Company the opportunity to participate in any discussions with the Borrower's independent public accountants.

Section 5.07. Use of Proceeds.

(a) All Loans made or Letters of Credit provided to or for the benefit of the Borrowers pursuant to the provisions hereof shall be used by the Borrowers only for general operating, working capital, to fund Permitted Acquisitions, other Investments, Restricted Distributions and other general corporate purposes of the Loan Parties and their subsidiaries not otherwise prohibited by the terms hereof.

(b) No Borrower will request any Borrowing or Letter of Credit, and no Borrower shall use, and each Borrower shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (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 any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 5.08. [Reserved].

Section 5.09. [Reserved].

Section 5.10. [Reserved].

Section 5.11. *Fiscal Year*. Each of the Borrowers and each of the Restricted Subsidiaries will maintain its Fiscal Year end date unless reasonably acceptable to the Administrative Agent (and in connection therewith, the Administrative Agent is authorized to make technical amendments to this Agreement to accommodate such change); *provided* that any of the Borrowers and any of the Restricted Subsidiaries may change their Fiscal Years to align with the Fiscal Year of the Company.

Section 5.12. *Further Assurances*. Subject to Section 5.13, at its own cost and expense, cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as may from time to time be necessary or as the Administrative Agent or the Required Lenders may from time to time reasonably request in order to carry out the provisions of the Loan Documents and the transactions contemplated thereby, including all such actions to (a) establish, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens or, in the case of Eligible Real Property, Permitted Encumbrances) in favor of the Administrative Agent for the benefit of the Secured Parties on the Collateral (including Collateral acquired after the Effective Date), including on any and all assets of each Loan Party, whether now owned or hereafter acquired and (b) grant, continue and affirm each Guarantee made by a Loan Party in respect of the Obligations.

Section 5.13. Covenant to Guarantee Obligations and Give Security.

(a) If after the Effective Date (x) any Loan Party forms or acquires any new direct or indirect Domestic Subsidiary that is a Restricted Subsidiary (other than an Excluded Subsidiary), (y) any existing direct or indirect wholly-owned Domestic Subsidiary that is an Unrestricted Subsidiary is redesignated as a Restricted Subsidiary (other than an Excluded Subsidiary) in accordance with Section 5.14, or (z) any Restricted Subsidiary that was an Excluded Subsidiary ceases to be an Excluded Subsidiary, the Borrower Representative shall, on or prior to the date that is the later of (1) 60 days after such Subsidiary was formed, acquired, designated or ceased to be an Excluded Subsidiary, as applicable and (2) the date on which financial statements are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, for the fiscal quarter in which such Subsidiary was formed, acquired, designated or ceased to be an Excluded Subsidiary, as applicable (or, in each case, such later date to which the Administrative Agent may agree in its sole discretion):

(i) cause such Restricted Subsidiary to become a party to (x) the Guarantee Agreement as a Subsidiary Guarantor by executing and delivering (or joining pursuant to a joinder agreement acceptable to the Administrative Agent) a Supplement (as defined in the Guarantee Agreement) and (y) the Collateral Agreement as a Grantor (as defined therein) by executing and delivering (or joining pursuant to a joinder agreement acceptable to the Administrative Agent) a Supplement (as defined in the Collateral Agreement);

(ii) cause such Restricted Subsidiary to deliver any and all certificates representing Equity Interests directly owned by such Subsidiary accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and, to the extent required by the Collateral Agreement, instruments, if any, evidencing the intercompany debt held by such Subsidiary, if any, indorsed in blank to the Administrative Agent or accompanied by other appropriate instruments of transfer; provided that the requirements of this Section 5.13(a)(ii) shall (x) be limited, in the case of Equity Interests of any Foreign Subsidiary or any Foreign Holdco, that is directly owned by the Borrowers or any Domestic Subsidiary, to 100% of the non-voting Equity Interests of such Foreign Subsidiary (if any) or Foreign Holdco and 65% of the voting Equity Interests of such Foreign Subsidiary or Foreign Holdco and (y) shall exclude any Equity Interest that constitutes Excluded Assets; and

(iii) (A) take and cause such Subsidiary to take whatever reasonable action (including the filing of Uniform Commercial Code financing statements (or comparable documents or instruments under other applicable law), and delivery of certificates evidencing stock and membership interests) as may be necessary in the reasonable opinion of the Administrative Agent to grant in favor of the Administrative Agent valid and subsisting Liens on the properties of such Subsidiary in accordance with, and to the extent required by, the Collateral Documents; and (B) if requested, as soon as reasonably practicable after the reasonable request therefor by the Administrative Agent, deliver to the Administrative Agent a signed copy of customary legal opinions, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties (or, where customary in the applicable jurisdiction, the Administrative

Agent) reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 5.13 as the Administrative Agent may reasonably request.

(b) If, after the Effective Date and prior to the occurrence of the Fixed Asset Release Date, a fee interest is acquired in any Material Real Property (other than Eligible Real Property) by the Borrowers or any Guarantor, or a Restricted Subsidiary (that is required to or that becomes a Guarantor) that owns the fee interest in any Material Real Property (other than Eligible Real Property) is acquired by a Borrower or any Guarantor, such Borrower or such Guarantor, as the case may be, shall give notice thereof to the Administrative Agent and shall, if reasonably requested by the Administrative Agent or the Required Lenders, cause such Material Real Property to be subjected to a Lien securing the Secured Obligations and will take, or cause such Borrower or such Subsidiary Guarantor to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect or record such Lien within 120 days after such request (or such longer period as the Administrative Agent may agree in its reasonable discretion) by delivering to the Administrative Agent:

(i) a completed standard life of loan flood hazard determination form (a "**Flood Determination Form**") to the extent not obtained by the Administrative Agent;

(ii) if the improvement(s) located on a Material Real Property is located in a Special Flood Hazard Area, a notification to the Borrower Representative ("**Borrower Notice**") and (if applicable) notification to the Borrower Representative that flood insurance coverage under the National Flood Insurance Program ("**NFIP**") is not available because the community in which the property is located does not participate in the NFIP;

(iii) documentation, if available, evidencing the Borrowers' receipt of the Borrower Notice (e.g., countersigned Borrower Notice, return receipt of certified U.S. mail, or overnight delivery);

(iv) if the Borrower Notice is required to be given and flood insurance is available in the community in which the improved Material Real Property is located, evidence of flood insurance as required by Section 5.04(f) hereof ("**Evidence of Flood Insurance**");

(v) a Mortgage, duly executed and delivered, in form for recording in the recording office of each jurisdiction where such Material Real Property is located, in favor of the Administrative Agent, for its benefit and the benefit of the Secured Parties, together with such other instruments as shall be required to create a Lien under applicable law, all of which shall be in form and substance reasonably satisfactory to the Administrative Agent and the Borrowers, which Mortgage and other instruments shall be effective to create and/or maintain a Lien on such Material Real Property, subject to no Liens other than Permitted Liens;

(vi) evidence of insurance as required by Section 5.04;

(vii) UCC, judgment and tax Lien searches (in each case to the extent the same exists in the relevant jurisdiction) with respect to the applicable Loan Party that owns such Material Real Property;

(viii) evidence reasonably acceptable to Administrative Agent of payment by the applicable Loan Party (or of arrangements for such payment satisfactory to the Administrative Agent) of all title insurance premiums, search and examination charges, mortgage, filing and recording taxes, fees and related charges required for the recording of the Mortgages and issuance of the title insurance policies referred to in clause (ix) below;

(ix) a fully paid policy of title insurance (or "**pro forma**" or marked up commitment having the same effect of a title insurance policy) (A) in a form reasonably approved

by the Administrative Agent insuring the Lien of the Mortgage encumbering such Material Real Property as a valid Lien, (B) in an amount at least equal to the fair market value of such Material Real Property as reasonably determined by the Borrower Representative and acceptable to the Administrative Agent, (C) issued by a nationally recognized title company selected by Borrower Representative and reasonably acceptable to the Administrative Agent (the "**Title Company**"), (D) that includes (1) such coinsurance and reinsurance (with provisions for direct access) as shall be reasonably acceptable to Administrative Agent and (2) such customary and commercially reasonable endorsements or affirmative insurance as required by the Administrative Agent and available for reasonable cost in the applicable jurisdiction and (E) that contains no exceptions to title other than Permitted Liens; provided that the applicable Loan Party shall deliver to the Title Company such affidavits and indemnities as shall be reasonably required to induce the Title Company to issue the policy or policies (or commitment) contemplated in this paragraph;

(x) (A) copies of any existing surveys relating to such Material Real Property and (B) with respect to each Material Real Property, a new American Land Title Association/National Society of Professional Surveyors (ALTA/NSPS) form of survey by a duly registered and licensed land surveyor for which all necessary fees have been paid dated a date reasonably acceptable to the Administrative Agent, certified to the Administrative Agent and the Title Company in a manner reasonably satisfactory to the Administrative Agent and the Title Company and reasonably acceptable to the Administrative Agent; *provided, however,* that the Borrowers shall not be required to deliver a new survey pursuant to this Section 5.13(b)(x)(B) if the Borrowers shall deliver no change affidavits together with the existing surveys referenced in Section 5.13(b)(x)(A) and the Title Company shall issue the policies of title insurance referenced in Section 5.13(b)(ix) and such policies of title insurance will delete the standard survey exception and include full coverage (and survey-related endorsements) with respect to survey-related matters; and

(xi) an opinion of local counsel in states in which such Material Real Property is located, with respect to the enforceability and validity of the Mortgages applicable to such Material Real Property, subject to customary qualifications and limitations, in form and substance reasonably satisfactory to the Administrative Agent.

(c) If at any time after the occurrence of the Fixed Asset Release Date any Borrower or any other Loan Party enters into a Fixed Asset Facility, the Company shall (A) take and cause each applicable Subsidiary to take whatever reasonable action (including the filing of Uniform Commercial Code financing statements (or comparable documents or instruments under other applicable law), delivery of certificates evidencing stock and membership interests, and delivery of Mortgages and other documents and the taking of such actions as described in the foregoing Section 5.13(b)) as may be necessary to grant in favor of the Administrative Agent valid and subsisting equal priority or second priority Liens (as elected by the Company) on the Fixed Assets of such Subsidiary that secures such Fixed Asset Facility; and (B) if requested, as soon as reasonably practicable after the reasonable request therefor by the Administrative Agent, deliver to the Administrative Agent a signed copy of customary legal opinions, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties (or, where customary in the applicable jurisdiction, the Administrative Agent) reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 5.13(c) as the Administrative Agent may reasonably request.

(d) Notwithstanding anything to the contrary in this Section 5.13, no Mortgage shall be executed and delivered with respect to any real property unless and until each Lender has received, at least (a) if the applicable real property is not in a "special flood hazard area", ten (10) Business Days or (b) if the applicable real property is in a "special flood hazard area", fifteen (15) days in advance of execution and delivery of such Mortgage, the documents described in Section 5.13(b)(i) through 5.13(b)(iv) above, and Administrative Agent has determined that flood insurance due diligence and flood insurance compliance has been completed to its reasonable satisfaction and no Lender has notified Administrative Agent that such Lender has not completed any necessary flood insurance due diligence and flood insurance compliance relating to the applicable real property to its reasonable satisfaction (and the date by which any Loan Party is required to deliver a Mortgage hereunder shall automatically be extended to the extent necessary to comply with the foregoing).

Section 5.14. *Designation of Subsidiaries*. The Company may at any time after the Effective Date (x) designate any subsidiary as an Unrestricted Subsidiary or (y) redesignate any subsidiary that was an Unrestricted Subsidiary on the Effective Date or that was designated as an Unrestricted Subsidiary at the time of the formation or acquisition of such Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after any such designation, no Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Loan Parties shall be in compliance with the financial covenants set forth in Section 6.13 or Section 6.14, as applicable, determined on a pro forma basis, (iii) no Subsidiary of the Company may be designated as an Unrestricted Subsidiary for purposes of this Agreement if it is a "**Restricted Subsidiary**" for the purpose of any other Material Debt of the Company or any of the Restricted Subsidiaries, and (iv) in no event shall any Borrower, or any subsidiary that owns any Equity Interest of any Borrower, any Restricted Subsidiary or any Restricted Subsidiary that owns any Material IP (at the time of such designation), in each case, be designated as an Unrestricted Subsidiary. The designation of any subsidiary as an Unrestricted Subsidiary after the Effective Date shall constitute an Investment by the Company (or its relevant Restricted Subsidiary) therein at the date of designation in an amount equal to the book value of the Company's (or such Restricted Subsidiary's) Investment therein. On the date of redesignation of any Subsidiary as a Restricted Subsidiary, the Company shall be deemed to continue to have a permanent "**Investment**" in an Unrestricted Subsidiary equal to the amount (if positive) equal to (a) the "**Investment**" of the Company in such subsidiary at the time of such redesignation, *less* (b) the fair market value (as determined in good faith by the Company) of the net assets of such subsidiary at the time of such redesignation.

Section 5.15. Cash Management.

(a) With respect to each Loan Party's DDAs (other than Excluded Accounts), within 120 days of the Effective Date (or such later date as the Administrative Agent may agree in its reasonable discretion) or, if opened following the Effective Date, within the later of (x) 120 days of the Effective Date (or such later date as the Administrative Agent may agree in its reasonable discretion) or (y) 30 days of the opening of such DDA (or such later date as the Administrative Agent may agree in its reasonable discretion) or, if acquired or assumed through a Permitted Acquisition after the Effective Date, within 120 days (or such later date as the Administrative Agent may agree in its reasonable discretion), of the date any Person that owns such DDA becomes a Loan Party hereunder, (i) each Loan Party shall ensure that all payments received from any Account Debtor with respect to Accounts shall be deposited into DDAs or into Excluded Accounts; *provided* that any such payments deposited into an Excluded Account described in clause (e) of the definition of "Excluded Accounts" shall be, within ten Business Days (or such longer period as may be agreed by the Administrative Agent, which agreement may be retroactive) of such deposit, transferred to a DDA or Excluded Account located within the United States, (ii) each Loan Party shall instruct (a "**DDA Instruction**") each bank or other depository institution that maintains a DDA (other than an Excluded Account or a DDA that otherwise complies with the requirements of clause (iii) below) to cause all amounts on deposit and available at the close of each Business Day in such DDA (net of any required minimum balance) to be swept to a concentration deposit account maintained by any Loan Party (each, a "**Controlled Account**") and (iii) each Loan Party shall obtain from each bank or other depository institution that maintains a Controlled Account a Deposit Account Control Agreement that provides for

such bank or other depository institution, following its receipt of a Cash Dominion Notice (it being understood that the Administrative Agent shall reasonably promptly deliver a copy of such Cash Dominion Notice to the Borrower Representative), to transfer to the Exclusive Control Account, on a daily basis, all balances in such Controlled Account for application, subject to clause (c) below, to the Obligations then outstanding in accordance with Section 2.10(b) (the "**Sweep**"); *provided*, that, following the termination of the Cash Dominion Event, the Administrative Agent shall promptly instruct such bank or other depository institution to terminate the Sweep.

(b) For the avoidance of doubt, (i) so long as no Event of Default has occurred and is continuing and (ii) no Cash Dominion Event has occurred and is continuing, the Loan Parties will have full and complete access to, and may direct the manner of disposition of (subject to the DDA Instruction), funds in the DDAs and the Controlled Accounts, as applicable.

(c) The Exclusive Control Account shall be under the sole dominion and control of the Administrative Agent. Each Loan Party hereby acknowledges and agrees that (i) such Loan Party has no right of withdrawal from the Exclusive Control Account, (ii) the funds on deposit in the Exclusive Control Account shall at all times continue to be collateral security for all of the applicable Secured Obligations and (iii) the funds on deposit in the Exclusive Control Account shall be applied as provided in this Agreement and, to the extent such funds constitute Collateral, each applicable Acceptable Intercreditor Agreement then-extant. Without limiting the obligations set forth in clause (a) above, each Loan Party agrees that it will not, at any time prior to the Payment in Full, revoke any DDA Instruction except to the extent in connection with the closure of a DDA (or such DDA becoming an Excluded Account) while a Cash Dominion Event is not then continuing.

Section 5.16. [Reserved].

Section 5.17. *Conduct of Business*. Each Borrower and each Restricted Subsidiary will engage only in (i) material lines of business substantially the same as those lines of business carried on by it on the Effective Date and/or (ii) any business or other activities that are reasonable extensions of, or related, complementary, similar, incidental, corollary, synergistic or ancillary to, those lines of business described in clause (i), or a reasonable development or expansion thereof (including, for the avoidance of doubt, with respect to energy storage systems and the selling and/or licensing of battery packs and battery management systems (and/or Intellectual Property related thereto) to residential, commercial and utility-scale customers).

Section 5.18. *Post-Closing Covenant*. Each Loan Party, as applicable, shall execute and deliver and complete the tasks set forth on Schedule 5.18 attached hereto, in each case within the time limit specified on such Schedule (or such later times as the Administrative Agent may agree to in its sole discretion).

ARTICLE VI
NEGATIVE COVENANTS

Each of the Company and the other Borrowers covenants and agrees with each Lender that until all of the Secured Obligations have been Paid in Full, neither the Company nor the Borrowers will, nor will they cause or permit any Restricted Subsidiary, directly or indirectly, to:

Section 6.01. *Debt*. Incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for:

(a) Debt incurred or created hereunder and under the other Loan Documents (including Debt created under Section 2.09);

(b) Debt outstanding on (or made pursuant to binding commitments existing or contemplated on) the Effective Date and, with respect to any such item of Debt with an aggregate outstanding principal amount on the Effective Date in excess of the Dollar Equivalent of $5,000,000, set forth on Schedule 6.01(b) and Permitted Refinancings thereof;

(c) (i) Debt (including Capital Lease Obligations, purchase money indebtedness, mortgage financing, industrial revenue bonds, industrial development bonds or similar financings) incurred or assumed by the Company or any of the Restricted Subsidiaries for the purpose of financing the acquisition, development, purchase, lease, construction, repair, restoration, installation, replacement, maintenance, upgrade, expansion or improvement of fixed or capital assets or other property (whether real or personal) (whether through the direct purchase of property or the Equity Interests of any Person owning such assets); *provided* that (x) such Debt is incurred concurrently with or within 180 days after the applicable acquisition, development, purchase, lease, construction, repair, restoration, replacement, maintenance, upgrade, expansion or improvement and (y) the aggregate principal amount at any time outstanding of Debt incurred pursuant to this paragraph (i) shall not exceed the Dollar Equivalent of $165,000,000; and (ii) Permitted Refinancings thereof;

(d) intercompany Debt among the Company and its Restricted Subsidiaries; *provided* that (x) upon request of the Administrative Agent any such Debt in a principal amount exceeding the Dollar Equivalent of $2,500,000 owed to a Loan Party shall be evidenced by an Intercompany Note pledged and delivered to the Administrative Agent as additional security for the Secured Obligations, together with an appropriate allonge or note power and (y) with respect to any such Debt owed by a Loan Party to a Restricted Subsidiary that is not a Loan Party, such Debt shall be subordinated in right of payment to the Obligations pursuant to an Intercompany Note and (z) any corresponding Investment shall be permitted by Section 6.07;

(e) Debt of Subsidiaries that are not Loan Parties in an aggregate principal amount outstanding at any time not to exceed the Dollar Equivalent of $200,000,000;

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

(g) (i) Debt assumed in connection with Permitted Acquisitions; *provided*, that, (x) such Debt was not incurred in contemplation of such Permitted Acquisition and (y) both immediately prior and after giving effect to any Debt incurred pursuant to this clause (g), no Event of Default shall have occurred and be continuing and (ii) any Permitted Refinancing thereof;

(h) Debt incurred by the Company or any Restricted Subsidiary so long as the Payment Conditions are satisfied immediately after giving pro forma effect to the incurrence of such Debt;

(i) Debt representing deferred compensation, severance and health and retirement benefits or the equivalent thereof to Permitted Payees incurred in the ordinary course of business;

(j) Debt consisting of obligations with respect to indemnification, the adjustment of the purchase price (including customary earnouts) or similar adjustments incurred in connection with a Permitted Acquisition or any other Investment or Disposition expressly permitted hereunder;

(k) (i) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business and (ii) Debt in respect of credit card processing agreements, automatic clearinghouse arrangements, overdraft protections and similar arrangements in each case in connection with cash management and deposit accounts and in the ordinary course of business; provided that any such Debt (other than credit card processing agreements or similar arrangements) is owed to the financial institutions providing such arrangements (or any Affiliate thereof);

(l) Debt incurred by the Company or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments, in each case, issued or created in the ordinary course of business, including in respect of workers' compensation claims, health, disability or other employee benefits (including with respect to immediate family members of employees, directors or members of management) or property, casualty or liability insurance or self-insurance or other Debt with respect to reimbursement-type obligations regarding workers compensation claims or obligations referred to in paragraph (m) below, letters of credit in the nature of a security deposit (or similar deposit or security) given to a lessor under an operating lease of Real Estate under which such Person is lessee, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from Governmental Authorities, and any refund, replacement, refinancing or defeasance of any of the foregoing;

(m) obligations in respect of surety, stay, customs and appeal bonds, performance bonds and performance and completion guarantees and similar obligations provided by the Company or any of the Restricted Subsidiaries, in each case, issued or created in the ordinary course of business and consistent with past practice;

(n) Debt arising under Swap Agreements not incurred for purposes of speculation;

(o) Debt consisting of the accretion of original issue discount with respect to Permitted Convertible Notes;

(p) Guarantees of Debt of the Company or any Subsidiary, which Debt is otherwise permitted hereunder; *provided* that (x) if such Debt is subordinated to the Obligations, such guarantee shall be subordinated to the same extent and (y) no such Guarantee by a Loan Party shall be permitted under this paragraph (p) of Debt of a subsidiary that is not a Loan Party, other than Guarantees constituting an Investment permitted under Section 6.07;

(q) Debt owing to Permitted Payees to finance the purchase or redemption of Equity Interests of the Company (or any direct or indirect parent of the Company) permitted by Section 6.03(a) and Permitted Refinancings thereof;

(r) Debt of the Company or any Restricted Subsidiary owing to any joint venture (regardless of the form of legal entity) that is not a subsidiary arising in the ordinary course of business of the Company and its subsidiaries in connection with the cash management operations (including with respect to intercompany self-insurance arrangements);

(s) Debt (including Permitted Convertible Notes), if at the time of issuance or incurrence thereof:

(i) no Default or Event of Default then exists or would result therefrom;

(ii) [reserved];

(iii) such Debt does not have any mandatory redemption, prepayment, amortization, sinking fund or similar obligations prior to the Stated Maturity Date (other than pursuant to (x) fundamental change, make-whole fundamental change, change of control or other similar event risk provisions and, in the case of term loans or senior notes that are not convertible into Equity Interests only, customary asset sale (or casualty or condemnation event), extraordinary receipts and/or (solely in the case of term loans) excess cash flow offer or repayment provisions and, in the case of any customary bridge financing, prepayments of such bridge financing from the issuance of equity or other Debt permitted hereunder which meets the requirements of this clause and customary asset sale (or casualty or condemnation event) repayment provisions, and (y) in the case of term loans, nominal amortization requirements not to exceed 5% per annum (or increases thereto to account for fungibility matters) of the initial aggregate principal amount of such Debt), *provided* that for the avoidance of doubt, any provision of Permitted Convertible Notes (x) providing for a satisfaction of conversion obligation thereof or (y) permitting cash interest shall, in each case, not cause the Permitted Convertible Notes to fail to satisfy the provisions of this clause (iii);

(iv) the covenants and events of default set forth in the applicable definitive documentation for such Debt are not materially more restrictive, taken as a whole, than the covenants and events of default set forth in this Agreement (as determined by the Company in good faith), except for (x) provisions applicable only to periods after the Stated Maturity Date in effect at the time of effectiveness of the applicable definitive documentation for such Debt, (y) provisions related to any equity provisions of such Debt or (z) terms that are customary market terms for Debt of such type as reasonably determined by the Borrower Representative;

(v) to the extent such Debt is subordinated, the terms of such Debt provide for customary payment or lien subordination, as applicable, to the Obligations as reasonably determined by the Administrative Agent in good faith; and

(vi) which Debt may be:

(A) unsecured; or

(B) secured; *provided* that if such Debt is secured:

(1) prior to the Fixed Asset Release Date, to the extent such Debt is secured by assets of the Loan Parties constituting Collateral, the Lien on such Collateral securing such Debt shall be junior to the Lien on such Collateral securing the Secured Obligations;

(2) from and after the Fixed Asset Release Date, (i) to the extent such Debt is secured by assets of the Loan Parties constituting ABL Collateral, the Lien on such ABL Collateral securing such Debt shall be junior to the Lien on such ABL Collateral securing the Secured Obligations and (ii) to the extent such Debt is secured by assets of the Loan Parties constituting Fixed Assets, the Secured Obligations shall be secured by a Lien on such Fixed Assets, which Lien may be, at the option of the Company, senior to, pari passu with or junior to the Lien on such Fixed Assets securing such Debt; and

(3) if such Debt is secured by a Lien on Collateral, at the time of the entering into of any such Debt, an Acceptable Intercreditor Agreement shall have been entered into and shall be in full force and effect, which shall provide, (I) in connection with any such Debt prior to the Fixed Asset Release Date, *inter alia*, that the Administrative Agent, for the benefit of the Secured Parties, shall retain a first priority lien on all Fixed Assets constituting Collateral or (II) in connection with any Fixed Asset Facility entered into after the Fixed Asset Release Date, *inter alia*, that the Administrative Agent, for the benefit of the Secured Parties, shall retain a first priority lien on all ABL Collateral and shall have, at the option of the Company, a first priority, equal priority or junior priority lien on the Fixed Assets constituting Collateral and securing such Debt;

(t) Permitted Convertible Notes and Guarantees by Loan Parties in respect thereof (and, without duplication, any Permitted Refinancing thereof); *provided* that with respect to any such Permitted Convertible Notes issued or incurred after the Effective Date, at the time of such issuance or incurrence thereof:

(i) no Default or Event of Default then exists or would result therefrom;

(ii) such Permitted Convertible Notes do not have a scheduled maturity earlier than the stated maturity date of the Existing Convertible Notes as of the Effective Date (other than an earlier maturity date for customary fundamental change, make-whole fundamental change, change of control or other similar event risk provisions or customary bridge financings which, subject to customary conditions, would either be automatically converted into or required to be exchanged for permanent financing which does not provide for a maturity date earlier such stated maturity date); *provided* that for the avoidance of doubt, any provision of Permitted Convertible Notes (x) providing for a Satisfaction of Conversion Obligation thereof or (y) permitting cash interest shall, in each case, not cause the Permitted Convertible Notes to fail to satisfy the provisions of this clause (ii);

(iii) such Permitted Convertible Notes do not have any mandatory redemption, prepayment, amortization, sinking fund or similar obligations prior to the Stated Maturity Date (other than pursuant to fundamental change, make-whole fundamental change, change of control or other similar event risk provisions and, in the case of any customary bridge financing, prepayments of such bridge financing from the issuance of equity or other Permitted Convertible Notes permitted hereunder which meets the requirements of this clause and customary asset sale (or casualty or condemnation event) repayment provisions); *provided* that for the avoidance of doubt, any provision of Permitted Convertible Notes (x) providing for a Satisfaction of Conversion Obligation thereof or (y) permitting cash interest shall, in each case, not cause the Permitted Convertible Notes to fail to satisfy the provisions of this clause (iii);

(iv) the covenants and events of default set forth in the applicable definitive documentation for such Permitted Convertible Notes are not materially more restrictive, taken as a whole, than the covenants and events of default applicable to the Existing Convertible Notes (as determined by the Company in good faith) except for (x) provisions applicable only to periods after the Stated Maturity Date in effect at the time of effectiveness of the applicable definitive documentation for such Permitted Convertible Notes and (y) provisions related to any equity provisions of such Permitted Convertible Notes;

(v) to the extent such Permitted Convertible Notes are subordinated, the terms of such Permitted Convertible Notes provide for customary payment subordination to the Obligations as reasonably determined by the Administrative Agent in good faith; and

(vi) such Permitted Convertible Notes shall be in an aggregate principal amount not to exceed the Dollar Equivalent of $3,000,000,000 at any time outstanding;

(u) (i) Debt in connection with any Permitted Receivables Financings and (ii) without duplication, any Permitted Refinancing of any Debt set forth in the immediately preceding subclause (i);

(v) Debt and obligations in respect of performance, bid, appeal, indemnity, stay, customs, judgment, completion, return-of-money and/or surety bonds, bankers' acceptance facilities, completion guarantees and other obligations of a like nature, leases, tenders, statutory obligations (including health, safety and environmental obligations), warranties, bids, government or trade contracts (including customer contracts), indemnities and similar obligations of the Borrower Representative or any Restricted Subsidiary or obligations in respect of LC Instruments related to the foregoing, in each case in the ordinary course of business; and

(w) Debt consisting of (i) obligations in respect of incentive, supplier finance, supply, license, sublicense or similar agreements, or take or pay obligations or contracts, in each case entered into in the ordinary course of business, (ii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business, (iii) customer deposits and advance payments received in the ordinary course of business from customers for goods or services purchased in the ordinary course of business and/or (iv) the deferred purchase price of goods or services or progress payments in connection with such goods and services incurred in connection with open accounts extended by suppliers in the ordinary course of business.

Section 6.02. *Liens*. Create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except:

(a) Liens created by the Collateral Documents;

(b) Liens on cash or deposits granted in favor of the issuing bank of a letter of credit issued pursuant to Section 6.01(l);

(c) Liens existing on the Effective Date and, with respect to any such Lien securing obligations in respect of Money Borrowed on the Effective Date in excess of the Dollar Equivalent of $5,000,000, set forth on Schedule 6.02, and any modifications, replacements, renewals or extensions thereof; *provided,* that such Liens shall secure only those obligations that they secure on the Effective Date and Permitted Refinancing thereof and shall not subsequently apply to any other property or assets of the Company or any Restricted Subsidiary other than (i) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed or refinanced by Debt otherwise permitted under Section 6.01 and (ii) proceeds and products thereof; it being understood and agreed that individual financings by any lender may be cross-collateralized to other financings provided by such lender or its Affiliates;

(d) (i) any Lien on any asset securing Debt permitted under Section 6.01(c); *provided* that, (A) such Liens do not at any time encumber any property other than the property acquired, developed, purchased, leased, constructed, repaired, restored, replaced, maintained, upgraded, expanded or improved with the proceeds of such Debt, except for accessions and additions to such property, replacements or improvements thereof, customary security deposits with respect thereto, related contract rights and payment intangibles, and the proceeds and the products thereof, and any lease of such property (including accessions thereto) and the proceeds and products thereof and (B) with respect to Capital Lease Obligations, such Liens do not at any time extend to or cover any assets (except for accessions and additions to such assets, replacements and products thereof and customary security deposits, related contracts rights and payment intangibles, and the proceeds and products of such assets) other than the assets subject to such Capital Lease Obligations; *provided, further*, that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender or its Affiliates and (ii) any Lien on any asset securing the transactions described on Schedule 6.15 (and Permitted Refinancings thereof); *provided* that such Liens do not at any time extend to or cover any assets (except for accessions and additions to such assets, replacements and products thereof and customary security deposits, related contracts rights and payment intangibles, and the proceeds and products of such assets) other than the assets subject to such arrangements;

(e) Liens constituting Permitted Encumbrances;

(f) Liens in favor of collecting banks arising under Section 4-210 of the Uniform Commercial Code or, with respect to collecting banks located in the State of New York, under Section 4-208 of the Uniform Commercial Code, in each case on items in the course of collection;

(g) Liens (i) (including the right of set-off) in favor of a bank or other depositary institution or securities intermediary arising as a matter of law encumbering deposits or securities, (ii) on deposits of cash in favor of banks or another depository institution created in the ordinary course of business in connection with the establishment of depository relations with such bank or depository institution and not in connection with the issuance of Debt, (iii) on securities contained in a securities account in favor of a securities intermediary which lien secures fees, indemnities, and other obligations owed to the securities intermediary arising in the ordinary course of business in connection with the establishment of such securities account with such securities intermediary and not, for the avoidance of doubt, in connection with the issuance of Debt, margin loans or other securities financing, (iv) relating to pooled deposits, sweep accounts, reserve accounts or similar accounts of the Company or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business, including with

respect to credit card chargebacks and similar obligations or (v) relating to purchase orders and other agreements entered into with customers, suppliers or service providers of the Company or any Restricted Subsidiary in the ordinary course of business;

(h) Liens arising (i) out of conditional sale, (ii) out of title retention, consignment or similar arrangements for the sale of goods entered into by the Company or any Restricted Subsidiary in the ordinary course of business or (iii) by operation of law under the UCC (or any similar law of any jurisdiction);

(i) Liens on earnest money deposits of cash or Permitted Investments in connection with any Permitted Acquisition;

(j) Liens on property or assets of Subsidiaries that are not Loan Parties securing Debt of Subsidiaries that are not Loan Parties that is permitted pursuant to Section 6.01(e);

(k) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto in the ordinary course of business;

(l) any interest or title of a lessor, sublessor, licensor or sublicensor under any lease (other than a Capital Lease), sublease, license or sublicense entered into in the ordinary course of business by the Company or any Restricted Subsidiary;

(m) (i) pledges and deposits made in the ordinary course of business in compliance with workers compensation, health, disability or other employee benefits or property and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (ii) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Company or any Restricted Subsidiary;

(n) ground leases in respect of Real Estate other than Material Real Property and Eligible Real Property;

(o) Liens existing on property at the time of its acquisition or existing on the property of any Person at the time such Person becomes a Restricted Subsidiary (including, for the avoidance of doubt, Liens securing Debt permitted by Section 6.01(g) to the extent such Liens extend only to the assets that are the subject of the underlying Permitted Acquisition), in each case after the Effective Date, and any Permitted Refinancing thereof; *provided* that (x) such Lien was not incurred in contemplation of such Person becoming a Restricted Subsidiary, (y) such Lien does not extend to or cover any other assets or property (other than the proceeds or products thereof and after-acquired property subject to a Lien pursuant to terms existing at the time of such acquisition, it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (z) the Debt secured thereby (or, as applicable, any Permitted Refinancing thereof) is permitted under Section 6.01;

(p) Liens securing Debt permitted under Section 6.01(h) or Permitted Additional Secured Indebtedness; *provided* that, in each case, to the extent securing Debt for borrowed money on Collateral, an Acceptable Intercreditor Agreement is in full force and effect with respect thereto and (i) prior to the Fixed Asset Release Date, any Liens on Collateral securing such Debt are junior to the Liens on such Collateral securing the Secured Obligations and (ii) on and after the Fixed Asset Release Date, (x) any Liens on ABL Collateral securing such Debt are junior to the Liens on such ABL Collateral securing the Secured Obligations and (y) any Liens on Fixed Assets securing such Debt may be, at the option of the Company, senior to, pari passu with or junior to the Liens on such Fixed Assets securing the Secured Obligations;

(q) Liens incurred or deposits made to secure the performance of leases, tenders, statutory obligations (including those to secure health, safety and environmental obligations and Liens required by Requirements of Law to be granted in favor of creditors in relation to a merger or other reorganization), warranties, bids, government or trade contracts (including customer contracts, but other than for the payment of Debt for borrowed money), indemnities, governmental contracts, performance, bid, appeal, indemnity, stay, customs, judgment, completion, return-of-money and/or surety bonds, bankers' acceptance facilities, completion guarantees and other obligations of a like nature and obligations in respect of LC Instruments posted to support any of the foregoing, in each case incurred in the ordinary course of business;

(r) Liens of record (but not securing any Debt) existing on the Effective Date on any Real Estate (other than Eligible Real Property) not otherwise permitted under this Section 6.02;

(s) Liens on Accounts and related assets subject to sales or assignments permitted pursuant to, and in accordance with, Section 6.06(q);

(t) Liens on assets securing Debt or other obligations in an aggregate principal amount as of the date of incurrence not to exceed the Dollar Equivalent of $100,000,000; *provided* that to the extent on Collateral, an Acceptable Intercreditor Agreement shall be in full force and effect in respect of such Debt and (i) prior to the Fixed Asset Release Date, any Liens on Collateral securing such Debt are junior to the Liens on such Collateral securing the Secured Obligations and (ii) on and after the Fixed Asset Release Date, (x) any Liens on ABL Collateral securing such Debt are junior to the Liens on such ABL Collateral securing the Secured Obligations and (y) any Liens on Fixed Assets securing such Debt may be, at the option of the Company, senior to, pari passu with or junior to the Liens on such Fixed Assets securing the Secured Obligations;

(u) Liens in respect of Sale Leaseback Transactions (or transactions described on Schedule 6.15) on the assets or property sold and/or leased in such Sale Leaseback Transaction (or transaction described on Schedule 6.15) and Liens securing Permitted Refinancings thereof; and

(v) Liens (i) on Permitted Receivables Financing Assets or Liens on other assets granted pursuant to Standard Securitization Undertakings, in each case, incurred in connection with Permitted Receivables Financings permitted under Section 6.01 and (ii) securing Permitted Refinancings of the foregoing.

Section 6.03. *Restricted Distributions*. Pay or make any Restricted Distribution; *provided* that the foregoing shall not restrict or prohibit any Restricted Subsidiary from paying or making Restricted Distributions, directly or indirectly, to the Persons who hold the Equity Interests in such Restricted Subsidiary on a ratable basis (or greater than ratable basis if to any Loan Party or any other Borrower or any Restricted Subsidiary) and shall not restrict or prohibit the following Restricted Distributions, directly or indirectly, by or to the Company:

(a) Restricted Distributions for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Company held directly or indirectly by any Permitted Payee upon or in connection with the death, disability, retirement or termination of employment or services of, or pursuant to the terms of any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement (including any separation, stock subscription, shareholder or partnership agreement) with, or breach of restrictive covenants by, any such Person or otherwise in accordance with any stock option or stock appreciation rights plan, any management, director and/or employee stock ownership or incentive plan, stock subscription plan, stock subscription or equity incentive award agreement, employment termination agreement or any other employment agreements or equity holders' agreement; *provided,* the aggregate Restricted Distributions made pursuant to this Section 6.03(a) in any fiscal year after the Effective Date shall not exceed: (i) $25,000,000; *provided* that any unused amounts pursuant to this clause (i) during any fiscal year may be carried forward into the immediately succeeding fiscal year (but not subsequent years) and shall be deemed first applied thereto, *plus* (ii) an amount not to exceed the cash proceeds of key man life insurance policies received by the Company or the Restricted Subsidiaries after the Effective Date, *plus* (iii) the amount of any cash bonuses otherwise payable to any such persons that are foregone in exchange for the receipt of Equity Interests of the Company (or any parent company thereof) pursuant to any compensation arrangement, including any deferred compensation plan;

(b) Restricted Distributions in such amounts as are necessary or appropriate to pay, without duplication, (i) administrative expenses and other corporate overhead costs and expenses (including, but not limited to, reasonable directors fees, employee compensation and benefits, customary indemnity payments and payroll, social security or similar taxes) payable by any direct or indirect parent company of the Company, (ii) expenses to maintain the limited corporate existence of any such parent company, (iii) premiums and other charges necessary to maintain the insurance required under the terms of this Agreement and other commercially reasonable insurance acquired and maintained by any such parent company in the ordinary course of business, including director and officer, employment practices and other similar liability insurance, (iv) Public Company Costs, (v) the payment of business related expenses which are incurred by any such parent company in the ordinary course of business, and (vi) the proceeds of which will be used to pay customary salary, bonus and other benefits payable to Permitted Payee of any such parent company to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Company and the Restricted Subsidiaries;

(c) Restricted Distributions (not consisting of cash or Permitted Investments) made in lieu of fees or expenses (including by way of discount), in each case in connection with any Permitted Receivables Financing permitted under Section 6.01;

(d) Restricted Distributions, (x) the proceeds of which shall be used by the Company to make (or to make a payment to any direct or indirect parent of the Company to enable it to make) (i) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Company or any direct or indirect parent thereof; *provided* that any such cash payment shall not be for the purpose of evading the limitations set forth in this Section 6.03 (as determined in good faith by the board of directors or the managing board, as the case may be, of the Company (or any authorized committee thereof)) and/or (ii) honor any conversion request by a holder of convertible Debt, make any cash payments in lieu of fractional shares in connection with any conversion and make payments on convertible Debt in accordance with its terms and (y) consisting of (i) payments made or expected to be made in respect of withholding or similar Taxes payable by any Permitted Payee and/or (ii) repurchase of Equity Interests in consideration of the payments described in sub-clause (x) above, including demand repurchases in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Company or any direct or indirect parent thereof and the issuance of restricted stock units or similar stock based awards;

(e) the Company may enter into, purchase, settle, perform (including the payment of any premium with respect to), repurchase, terminate or unwind any Issuer Option;

(f) Restricted Distributions to the Company to finance any Investment permitted to be made pursuant to Section 6.07; *provided* that (i) such Restricted Distribution shall be made substantially concurrently with the closing or consummation of such Investment and (ii) with respect to any such Investment (other than an Investment in the Equity Interests of an Unrestricted Subsidiary), the Company shall, immediately following the closing or consummation thereof, cause (A) substantially all property acquired (whether assets or Equity Interests) to be contributed to a Borrower or a Subsidiary Guarantor (or a Person that will become a Subsidiary Guarantor upon receipt of such contribution) or (B) the merger (to the extent permitted in Section 6.05) of the Person formed or acquired into a Borrower or a Subsidiary Guarantor;

(g) repurchases of Equity Interests in the Company (or any direct or indirect parent company of the Company), or any of its subsidiaries, deemed to occur upon "cashless" exercise of stock options or warrants;

(h) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Company and its subsidiaries may make Restricted Distributions in an aggregate amount that does not exceed the sum of (i) together with the aggregate amount of Restricted Debt Payments made in reliance on Section 6.12(a)(vii), the Dollar Equivalent of $150,000,000 and (ii) additional amounts so long as the Payment Conditions are satisfied immediately after giving pro forma effect to such Restricted Distribution;

(i) Restricted Distributions the proceeds of which are to pay cash interest that is required pursuant to any Permitted Convertible Notes;

(j) Restricted Distributions the proceeds of which shall be used by the Company or any direct or indirect parent thereof to pay fees and expenses (other than to Affiliates) related to any unsuccessful equity or debt offering not prohibited by this Agreement (in the case of any such parent or indirect parent, only to the extent such parent or indirect parent does not hold material assets other than those relating to the Company and its subsidiaries);

(k) to the extent constituting Restricted Distributions, transactions expressly permitted by Sections 6.05, 6.06 (other than 6.06(h)), 6.07 (other than 6.07(s)) and 6.08(c), 6.08(d), 6.08(e), 6.08(g) and 6.08(i);

(l) (i) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("**Retired Capital Stock**") of the Company or any direct or indirect parent of the Company in exchange for, or out of the proceeds of, the substantially concurrent sale of, Equity Interests of the Company or any direct or indirect parent of the Company or contributions to the equity capital of the Company (other than any Disqualified Equity Interests or any Equity Interests sold to a subsidiary of the Company) (collectively, including any such contributions, "**Refunding Capital Stock**") and (ii) the declaration and payment of dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a subsidiary of the Company) of Refunding Capital Stock;

(m) in respect of any taxable period for which the Company and/or any of its subsidiaries are members of a consolidated, combined, unitary or similar Tax group for U.S. federal and/or applicable state, local or foreign income tax purposes of which a direct or indirect owner is the common parent, including a group in which the Company is disregarded for U.S. federal income tax purposes from its parent (a "**Tax Group**"), any Restricted Subsidiary may make cash distributions to direct or indirect owners and the Company may make cash distributions to any direct or indirect parent company of the Company, in respect of any such tax period (including an estimated tax period) in an amount necessary to enable the parent of such Tax Group to pay consolidated, combined, unitary or similar income Tax liabilities of such group that

are attributable to the taxable income of the Company and/or its applicable subsidiaries for such tax period; *provided* that the amount of any such payments pursuant to this clause (m) shall not exceed the amount of such Taxes that the Company and/or its applicable subsidiaries would have paid had the Company and/or each such subsidiary, as applicable, been a stand-alone corporate taxpayer (or a stand-alone corporate group);

(n) Restricted Distributions constituting or otherwise made in connection with or relating to any Permitted Reorganization or Tax Restructuring; *provided* that if immediately after giving pro forma effect to any such Permitted Reorganization or Tax Restructuring and the transactions to be consummated in connection therewith, any distributed asset ceases to be owned by a Borrower or a Restricted Subsidiary (or any entity ceases to be a Restricted Subsidiary), the applicable portion of such Restricted Distribution must be otherwise permitted under another provision of this Section 6.03 (and shall constitute utilization of such other Restricted Distribution exception or capacity);

(o) in any event and notwithstanding anything to the contrary contained in this Agreement, to the extent any Loan Party is permitted to make a Restricted Distribution to the Company (or any direct or indirect parent of the Company) for any of the foregoing purposes, such Loan Party may, alternatively, make any such payment directly to the applicable obligee or payee of the Company (or any direct or indirect parent of the Company) on its behalf, and such payment shall be treated, for all purposes of this Agreement and the other Loan Documents, as a permitted Restricted Distribution; and

(p) Restricted Distributions of the Equity Interests or other securities of, or debt owed to the Company or any Restricted Subsidiary by, any Unrestricted Subsidiary, other than any Unrestricted Subsidiary the primary assets of which are cash and/or cash equivalents received as an Investment from the Company or any Restricted Subsidiary.

Notwithstanding anything herein to the contrary, the foregoing provisions of this Section 6.03 will not prohibit the payment or making of any Restricted Distribution within 60 days after the date of declaration of such Restricted Distribution if at the date of declaration or the giving of such notice such payment would have complied with the provisions of this Agreement.

Section 6.04. *Restrictive Agreements*. (I) Enter into or assume any written agreement prohibiting the creation or assumption of any Lien upon the properties or assets of the Loan Parties to secure the Obligations, whether now owned or hereafter acquired or (II) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary to: (i) pay or make Restricted Distributions to the Company or any Restricted Subsidiary; (ii) pay any Debt owed to the Company or any Restricted Subsidiary; (iii) make loans or advances to the Company or any Restricted Subsidiary; or (iv) transfer any of its property or assets to the Company or any Restricted Subsidiary, except for:

(a) Liens or restrictions set forth in the Loan Documents and other agreements governing Debt incurred under Section 6.01(c), 6.01(g) and 6.01(h) (but only to the extent such restrictions relate to the Property financed by such Debt);

(b) contractual encumbrances or restrictions in effect on the Effective Date, including in respect of Swap Agreements;

(c) (i) contracts or agreements for the Disposition of any assets, or all of the Equity Interests, of any Subsidiary, but only to the extent such restrictions relate to the assets and Equity Interests (and assets of the applicable Subsidiary) to be sold or (ii) restrictions and conditions imposed by the documentation governing any Permitted Receivables Financing or similar transaction permitted hereunder;

(d) restrictions requiring minimum reserves of cash or other deposits or minimum net worth requirements imposed by customers under contracts entered into in the ordinary course of business;

(e) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(f) negative pledges and restrictions on Liens in favor of any holder of Debt permitted under Section 6.01 but solely to the extent any negative pledge relates to the property financed by or the subject of such Debt or securing such Debt;

(g) customary restrictions and conditions contained in the document relating to any Lien, so long as (i) such Lien is permitted under Section 6.02 and such restrictions or conditions relate only to the specific assets subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.04;

(h) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business and related to such joint ventures;

(i) customary provisions contained in leases, subleases, licenses, and other similar agreements entered into in the ordinary course of business and related to the assets subject to such agreements;

(j) with respect to the restrictions in clause (II) above, any restrictions imposed by any agreement relating to Debt incurred pursuant to Section 6.01 entered into after the Effective Date if such restrictions are not materially more restrictive, taken as a whole, in the good faith judgment of the Company, than (A) the restrictions contained in the Loan Documents or (B) in the case of Debt incurred in connection with a Permitted Refinancing, the restrictions that are in effect on the Effective Date pursuant to such Debt to be Refinanced;

(k) with respect to the restrictions in clause (I) above, and restrictions imposed by any Permitted Additional Secured Indebtedness Document if such restrictions are not materially more restrictive, taken as a whole, in the good faith judgment of the Company, than the restrictions contained in the Loan Documents; or

(l) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (k) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower Representative, no more restrictive in any material respect with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 6.05. *Fundamental Changes*. Merge, dissolve, liquidate, consolidate with or into another Person, except that:

(a) any Subsidiary may merge, dissolve, liquidate or consolidate with or into (i) any Borrower (including a merger, the purpose of which is to reorganize such Borrower into a new jurisdiction so long as such Borrower remains organized under the laws of any state of the United States or the District of Columbia (or, in the case of any Foreign Subsidiary Borrower, its jurisdiction of formation) (the "**Jurisdictional Requirements**")); *provided* that such Borrower shall be the continuing or surviving Person or the continuing or surviving Person shall expressly assume the obligations of such Borrower under the Loan Documents in a manner reasonably acceptable to the Administrative Agent and shall have complied with the requirements of the proviso to clause (b) of the definition of "Borrower" or (ii) any one or more other Subsidiaries; *provided* that when any Subsidiary that is a Loan Party is merging, dissolving, liquidating or consolidating with or into another Subsidiary, (w) a Loan Party or a Person that upon consummation of such transaction becomes a Loan Party shall be the continuing or surviving Person, (x) to the extent constituting an Investment, such Investment must be an Investment permitted by Section 6.07 and any Debt corresponding to such Investment must be permitted by Section 6.01, (y) to the extent constituting a Disposition, such Disposition must be permitted by Section 6.06 and (z) such Loan Party shall have complied with any applicable requirements of Section 5.13;

(b) (i) any Restricted Subsidiary that is not a Loan Party may merge, dissolve, liquidate or consolidate with or into any other Restricted Subsidiary that is not a Loan Party and (ii) any Restricted Subsidiary (other than the Borrowers) may liquidate, dissolve or (if such change does not adversely affect the priority of the Liens securing the Obligations) change its legal form if the Borrower Representative determines in good faith that such action is in the best interests of the applicable Borrower or such Restricted Subsidiary or the business of the Company and the Restricted Subsidiaries taken as a whole;

(c) any Borrower or any Subsidiary may merge with any other Person in order to effect an Investment permitted pursuant to Section 6.07, including a Permitted Acquisition; provided that (x) the continuing or surviving Person shall be a Borrower or a Subsidiary, which together with each of its subsidiaries, shall have complied with all applicable requirements of Section 5.13 and (y) to the extent constituting an Investment such Investment must be an Investment permitted pursuant to Section 6.07; provided, further, that if any Borrower is a party to any transaction effected pursuant to this Section 6.05(c), (1) a Borrower shall be the continuing and surviving Person or the continuing or surviving Person shall expressly assume the obligations of such Borrower in a manner reasonably acceptable to the Administrative Agent, (2) the Jurisdictional Requirements shall be satisfied and (3) no Event of Default shall have occurred and be continuing or would result therefrom; and

(d) any Borrower and/or any Restricted Subsidiary may enter into any Permitted Reorganization or any Tax Restructuring.

Section 6.06. *Dispositions*. Dispose of any property other than:

(a) Dispositions of (i) worn-out, obsolete or surplus Property, in each case in the ordinary course of business or (ii) property that is reasonably determined by the applicable Loan Party or Restricted Subsidiary to be no longer economically practicable to maintain or no longer useful in any material respect in the conduct of the business of the Loan Parties and their subsidiaries, taken as a whole;

(b) licenses and sublicenses granted by a Loan Party or any Restricted Subsidiary and leases and subleases (by a Loan Party or any Restricted Subsidiary as lessor or sub-lessor) to third parties in each case not interfering in any material respect with the business of the Loan Parties or the subsidiaries, taken as a whole;

(c) Disposition or abandonment of any Intellectual Property that either (i) is reasonably determined by the applicable Loan Party or Restricted Subsidiary to be no longer economically practicable to maintain or worth the cost of maintaining or no longer useful in any material respect in the conduct of the business of the Loan Parties and their subsidiaries, taken as a whole or (ii) is in accordance with historical business practices;

(d) sales of inventory in the ordinary course of business;

(e) Dispositions of Permitted Investments;

(f) transfers of property between and among the Company and its subsidiaries; *provided* that (i) if the transferor in such a transaction is a Loan Party, then (x) the transferee must be a Loan Party or (y) the portion of any such Disposition made for less than fair market value and any non-cash consideration received in exchange for such Disposition shall in each case constitute an Investment in such subsidiary and must be otherwise permitted hereunder, and (ii) if the transferor in such transaction is a Restricted Subsidiary and the transferee is an Unrestricted Subsidiary, then the portion of any such Disposition made for less than fair market value and any non-cash consideration received in exchange for such Disposition shall constitute an Investment in such Unrestricted Subsidiary; *provided* that the foregoing shall not prohibit transfers of Intellectual Property to a Restricted Subsidiary to the extent not prohibited by Section 6.16;

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

(h) Liens permitted by Section 6.02, Restricted Distributions permitted by Section 6.03, Investments permitted by Section 6.07 and transactions permitted by Sections 6.05 and 6.08;

(i) (i) the discount or write-off of accounts receivable for the purpose of collection to any collection agency, in each case in the ordinary course of business and (ii) Dispositions of receivables (including defaulted receivables), notes receivable, rights to payment or other current assets or, in each case, participations therein, in the ordinary course of business or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable or rights to payment in connection with the settlement of delinquent accounts receivable, the collection or compromise thereof or as part of any bankruptcy or reorganization process of suppliers, customers or other commercial counterparties (including any discount or forgiveness in connection with the foregoing);

(j) transfers of property (i) subject to Casualty Events upon receipt of the Net Cash Proceeds of such Casualty Event, (ii) by reason of the exercise of termination rights under any lease, sublease, license, sublicense, concession or other agreement or (iii) pursuant to buy/sell arrangements under any joint venture or similar agreement or arrangement;

(k) the unwinding of any Swap Agreement pursuant to its terms;

(l) Dispositions not otherwise permitted hereunder which are made for fair market value; *provided* that, (x) no Event of Default shall exist immediately before and immediately after giving effect to such Disposition, (y) to the extent any such Disposition results in a decrease to the Borrowing Base in excess of 10%, the Borrower Representative shall have delivered to the Administrative Agent a Borrowing Base Certificate, recomputing the Borrowing Base on a pro forma basis after giving effect to such Disposition and (z) not less than seventy-five percent (75%) of the aggregate sales price from such Disposition shall be paid in cash or Permitted Investments; *provided*, *further*, that each of the following items will be deemed to be cash for purposes of this Section 6.06(l):

(1) any liabilities of the Company or the Restricted Subsidiaries (as shown on the most recently delivered financial statements pursuant to Section 5.01(a) or (b) or in the notes thereto), other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are assumed by the transferee with respect to the applicable disposition and for which the Company and the Restricted Subsidiaries have been validly released by all applicable creditors in writing; and

(2) any Designated Non-Cash Consideration received in respect of such disposition; *provided* that the aggregate fair market value of all such Designated Non-Cash Consideration, as determined by a Responsible Officer of the Borrower Representative in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (2) that is then outstanding, does not exceed the Dollar Equivalent of $100,000,000 as of the date any such Designated Non-Cash Consideration is received, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value;

(m) Dispositions of property pursuant to Sale Leaseback Transactions permitted pursuant to Section 6.15 or other transactions described on Schedule 6.15; *provided* that no Event of Default exists or would result therefrom (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists);

(n) The termination or unwind of any Issuer Option;

(o) Dispositions required to be made to comply with the order of any Governmental Authority or applicable law;

(p) Dispositions of property acquired, constructed, renovated or improved after the Effective Date in connection with the financing of such acquisition, construction, renovation or improvement; *provided,* that (i) any such financing which is permitted under Section 6.01(c), and (ii) such Disposition occurs within 180 days after the applicable acquisition, construction, renovation or improvement;

(q) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind;

(r) Dispositions in connection with the undertaking or consummation of any Permitted Reorganization or any Tax Restructuring and, in each case, any transaction related thereto or contemplated thereby; and

(s) Dispositions of assets in connection with any Permitted Receivables Financing Assets (including Equity Interests in any Subsidiary all or substantially all of the assets of which are Permitted Receivables Financing Assets) pursuant to any Permitted Receivables Financing permitted under Section 6.01.

Notwithstanding the foregoing, in the case of paragraphs (d), (e) and (g) above, such Dispositions shall only be permitted pursuant to this Section 6.06 if made for not less than fair market value at the time of such Disposition.

Section 6.07. *Investments*. Make any Investment in any Person other than:

(a) Investments existing on, or made pursuant to binding commitments existing on, the Effective Date and, with respect to any such Investment that is individually in excess of the Dollar Equivalent of $5,000,000 as of the Effective Date, set forth on Schedule 6.07 or an Investment consisting of any extension, modification, renewal, replacement or reinvestment of any such Investment (other than reimbursements of Investments in the Company or any of its subsidiaries); *provided* that the amount of any such Investments may not be increased unless as required by the terms of such Investment as in existence on the Effective Date and as otherwise permitted under this Agreement;

(b) Investments in cash and Permitted Investments;

(c) Investments (including by way of transfers or other dispositions of assets),

(i) by the Company or any Restricted Subsidiary in the Company or any Restricted Subsidiary; and

(ii) by the Company or any Restricted Subsidiary in a Person, if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary;

(d) Investments acquired in connection with the settlement of delinquent accounts receivable in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;

(e) loans or advances to officers, directors, members of management, and employees of the Company or any of its subsidiaries (or any direct or indirect parent of the Company) in an aggregate amount not to exceed $20,000,000 at any time outstanding, for business-related travel, entertainment, relocation and analogous ordinary business purposes (determined without regard to any write-downs or write-offs of such loans or advances);

(f) the purchase or other acquisition of all or substantially all of the assets or business of any Person, or of the assets constituting a business unit, a line of business or a division of any Person, or all of the Equity Interests in a Person that, upon consummation thereof, will be a Restricted Subsidiary of the Company (including as a result of a merger, amalgamation or consolidation); *provided,* that, with respect to such purchase or other acquisition made pursuant to this clause (f) (a "**Permitted Acquisition**") each applicable Loan Party and any such newly created or acquired Subsidiary shall have complied with the requirements of Section 5.13 to the extent required to do so or will comply with Section 5.13 within the time periods set out therein;

(g) Investments consisting of the transfer of Intellectual Property to a Restricted Subsidiary to the extent not prohibited by Section 6.16;

(h) accounts receivable owing to the Company or the Restricted Subsidiaries, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms;

(i) Investments in the form of Swap Agreements permitted pursuant to Section 6.01;

(j) Investments consisting of promissory notes or other non-cash consideration received in connection with a transaction permitted pursuant to Section 6.06(m);

(k) Investments in connection with any Issuer Option;

(l) Investments consisting of non-cash loans made by the Company to management, executives, officers, directors, consultants, professional advisors and/or employees of a Restricted Subsidiary which are used by such Persons to purchase Equity Interests of the Company (or any direct or indirect parent company thereof);

(m) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of intellectual property in the ordinary course of business;

(n) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit or (ii) customary trade arrangements with customers;

(o) loans and advances to the Company or any direct or indirect parent thereof in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Distributions in respect thereof), Restricted Distributions permitted to be made to the Company or any direct or indirect parent thereof in accordance with Section 6.03;

(p) (i) advances of payroll payments to employees in the ordinary course of business and (ii) prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits and advance payments (including retainers) for goods or services paid or provided, in each case in the ordinary course of business;

(q) Investments held by a Person that becomes a Loan Party (or is merged, amalgamated or consolidated with or into a Loan Party) pursuant to this Section 6.07 (and, if applicable, Section 6.05) after the Effective Date to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation;

(r) Investments at any time outstanding not to exceed the Dollar Equivalent of $150,000,000;

(s) to the extent constituting Investments, Restricted Distributions permitted by Sections 6.03 (other than 6.03(f) and 6.03(k)), Debt permitted by Section 6.01 (other than 6.01(d) and 6.01(p) (with respect to any Guarantee by a Loan Party of Debt of a subsidiary that is not a Loan Party)), transactions permitted by Sections 6.05, 6.08 (other than 6.08(a)) and 6.12 and Dispositions permitted pursuant to Section 6.06 (other than 6.06(h)));

(t) additional Investments by the Company and any of the Restricted Subsidiaries so long as the Payment Conditions are satisfied immediately after giving effect to such Investment;

(u) Investments (including in joint ventures, but excluding in any Unrestricted Subsidiaries (in each case unless permitted pursuant to another clause of this Section 6.07)) in connection with any Permitted Reorganization or any Tax Restructuring and, in each case, transactions relating thereto or contemplated thereby;

(v) Investments in connection with any Permitted Receivables Financing permitted under Section 6.01, the contribution, sale or other transfer of Permitted Receivables Financing Assets, cash or Permitted Investments made in connection with a Permitted Receivables Financing permitted under Section 6.01 or repurchases in connection with the foregoing (including the contribution or lending of cash and Permitted Investments to Subsidiaries to finance the purchase of receivables or related assets from a Borrower or any Restricted Subsidiary or to otherwise fund required reserves, the contribution of replacement or substitute assets to a Receivables Subsidiary and Investments of funds held in accounts permitted or required by the arrangements governing such Permitted Receivables Financing or any related Debt);

(w) Investments consisting of extensions of trade credit in the ordinary course of business;

(x) promissory notes and other Investments (including non-cash consideration) received in connection with Dispositions (or any other disposition of assets not constituting a Disposition) not prohibited by Section 6.06;

(y) (i) obligations with respect to Guarantees provided by the Borrower Representative or any Restricted Subsidiary in respect of leases and/or subleases (other than Capital Leases) or of other obligations that do not constitute Debt, (ii) obligations with respect to Guarantees of the lease obligations of suppliers, customers, franchisees and licensees of the Borrower Representative and/or any Restricted Subsidiary, in each case, entered into in the ordinary course of business and (iii) Investments consisting of Guarantees of any supplier's obligations in respect of commodity contracts, including Swap Agreements, solely to the extent such commodities relate to the materials or products to be purchased by the Borrower Representative or any Restricted Subsidiary;

(z) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers, vendors, suppliers, licensors, sublicensors, licensees and sublicencees in the ordinary course of business;

(aa) Investments (including debt obligations and Equity Interests) (i) received in connection with the bankruptcy, work-out, recapitalization or reorganization of any Person, (ii) in satisfaction of judgments against other Persons, (iii) as a result of a foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and (iv) as a result of or in connection with settlement, compromise or resolution of (a) litigation, arbitration or other disputes or (b) obligations of trade creditors, suppliers, licensors, customers and other account debtors that were incurred in the ordinary course of business of the Borrower Representative or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor, supplier, licensor, customer or other account debtor; and

(bb) the conversion to Qualified Capital Stock of any Debt owed by the Company or any Restricted Subsidiary and permitted by Section 6.01(d).

Section 6.08. *Transactions with Affiliates*. Enter into any transaction with any Affiliate of the Company, except transactions between or among Loan Parties and except:

(a) Restricted Distributions permitted by Section 6.03 and Investments permitted by Section 6.07 (other than 6.07(s));

(b) pursuant to the reasonable requirements of the business of the Company or such subsidiary upon fair and reasonable terms no less favorable to the Company or such subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of the Company or such subsidiary;

(c) entering into employment, retention and severance arrangements between the Company (or any direct or indirect parent thereof), any subsidiary of the Company and/or any of their respective officers and employees, as determined in good faith by the board of directors (or committee thereof) or senior management of the relevant Person;

(d) the payment of customary fees and reimbursement of reasonable out-of-pocket costs of, and customary indemnities provided to or on behalf of, Permitted Payees in the ordinary course of business;

(e) the payment of fees, expenses, indemnities or other payments pursuant to, and transactions pursuant to any agreements in existence on the Effective Date and set forth on Schedule 6.08 or any amendment thereto to the extent such an amendment is not materially more disadvantageous to the Lenders than the original agreement in effect on the Effective Date;

(f) (i) transactions between or among the Company and the Restricted Subsidiaries or (ii) Dispositions between or among the Company and its Restricted Subsidiaries (on the one hand) and any Unrestricted Subsidiaries (on the other hand) provided, that, such Dispositions are permitted pursuant to Section 6.06 (other than 6.06(h));

(g) the issuance or transfer of Equity Interests in the Company (other than any Disqualified Equity Interests), or other equity-based incentives with respect to the Company, to any Permitted Payee or net settlement of any such arrangement (or portion thereof);

(h) transactions contemplated by customary shareholders' agreements entered into with holders of the Equity Interests of the Company;

(i) the payment of reasonable out-of-pocket costs and expenses related to registration rights and indemnities provided to shareholders under any shareholders' agreement referred to in clause (h) above;

(j) payments or loans (or cancellation of loans) or advances to Permitted Payees and employment agreements, consulting arrangements, retention arrangements, severance arrangements, stock options and other equity-based incentives (e.g., restricted stock units) or similar arrangements with such Permitted Payees or net settlement of any such arrangement (or portion thereof);

(k) the entering into of any tax sharing agreement or arrangement to the extent payments under such agreement or arrangement would otherwise be permitted under Section 6.06;

(l) transactions permitted under Section 6.04 and/or Section 6.05 solely for the purpose of (a) forming a holding company or (b) reincorporating the Company or any other Borrower in a new jurisdiction;

(m) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(n) transactions for cash management and other management services for Subsidiaries on customary terms;

(o) the issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans, other equity-based incentives (e.g., restricted stock units) or similar benefit plans approved by the board of directors (or committee thereof) or manager of the Company or a Subsidiary of the Company, as appropriate, in good faith, or the net settlement of any such arrangement (or portion thereof);

(p) transactions in connection with any Permitted Receivables Financing and customary transactions with (including any Investment in or relating to) any Receivables Subsidiary as part of any Permitted Receivables Financing; and

(q) transactions in connection with any Permitted Reorganization or any Tax Restructuring.

Section 6.09. *Modification of Organizational Documents*. Amend or otherwise modify any Organizational Documents of any Loan Party in a manner that would materially and adversely affect the Lenders, taken as a whole, hereunder or under any other Loan Document.

Section 6.10. [Reserved].

Section 6.11. [Reserved].

Section 6.12. Prepayment and Amendment of Other Debt.

(a) Voluntarily prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner (it being understood that payments of regularly scheduled interest, principal, fees and expenses shall be permitted) any Permitted Convertible Note or Junior Financing constituting Material Debt or make any payment in violation of any subordination terms of any Junior Financing Documentation in respect thereof (each, a "**Restricted Debt Payment**") except:

(i) any Permitted Refinancing thereof;

(ii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests);

(iii) any Restricted Debt Payment made out of the proceeds of the substantially concurrent sale of Equity Interests or contributions to the equity capital of the Company;

(iv) the Company may (and may permit its Subsidiaries to) make any Restricted Debt Payment in respect of (A) any Permitted Convertible Notes upon any conversion thereof by the holders of such Permitted Convertible Notes, including any Satisfaction of Conversion Obligation, (B) any Permitted Convertible Notes through the exercise of any call option in respect thereof that is settled in Permitted Stock or, in respect of any fractional shares to be issued, in cash and (C) with respect to any payment, prepayment, redemption, repurchase or acquisition for value as a result of any change of control, "fundamental change", "make-whole fundamental change" or similar event, asset sale, insurance or condemnation event, debt issuance, equity issuance, capital contribution or similar required "repurchase" event, any Permitted Convertible Note, as and to the extent required by the terms of the Permitted Convertible Notes Documents;

(v) the applicable Loan Party may (and may permit its Subsidiaries to) make any Restricted Debt Payment in respect of any Permitted Convertible Notes (A) to the extent made with Permitted Stock (whether pursuant to any conversion thereof or otherwise), (B) to the extent made with the net cash proceeds from the incurrence or issuance of any Permitted Convertible Notes if at the time of issuance or incurrence thereof no Event of Default then exists or would result therefrom, (C) to the extent constituting an exchange of such Permitted Convertible Notes (together with any accrued and unpaid interest thereon) for other Permitted Convertible Notes if at the time of such exchange no Event of Default then exists or would result therefrom and (D) to the extent made with any combination of the consideration in clauses (A), (B) and (C);

(vi) the Company and its Restricted Subsidiaries may make additional Restricted Debt Payments so long as the Payment Conditions are satisfied immediately after giving pro forma effect to such Restricted Debt Payment; and

(vii) additional Restricted Debt Payments in an aggregate amount not to exceed, together with the aggregate amount of Restricted Distributions made in reliance on Section 6.03(h), the Dollar Equivalent of $150,000,000.

(b) Amend or otherwise modify any term or condition of (i) any Permitted Convertible Notes Document or any Junior Financing Documentation in any manner materially adverse to the interests of the Lenders, taken as a whole, or having the effect of requiring a prepayment otherwise prohibited by paragraph (a) of this Section 6.12 or (ii) the Permitted Additional Secured Indebtedness Documents or of any instrument or agreement (including, without limitation, any purchase agreement, indenture, loan agreement or security agreement) relating to any such Debt other than in accordance with the terms of any applicable Acceptable Intercreditor Agreement.

Section 6.13. *Minimum Fixed Charge Coverage Ratio*. From and after the occurrence of the FCCR Covenant Trigger Date, and upon the occurrence and during the continuance of a Compliance Period, the Borrowers will not permit the Fixed Charge Coverage Ratio to be less than 1.0 to 1.0 when measured as of the end of (a) the last quarter immediately preceding the occurrence of such Compliance Period for which financial statements have most recently been delivered pursuant to Section 5.01(a) or Section 5.01(b), and (b) each subsequent quarter for which financial statements are delivered or are required to be delivered pursuant to Section 5.01(a) or Section 5.01(b) during such Compliance Period.

Section 6.14. *Minimum Liquidity*. Prior to the occurrence of the FCCR Covenant Trigger Date, the Borrowers will not permit Liquidity at any time to be less than the Dollar Equivalent of $1,000,000,000.

Section 6.15. *Sale and Leaseback Transactions*. Enter into any Sale Leaseback Transaction unless (a) the sale or transfer of such property is permitted by Section 6.06, (b) either (x) the Debt (if any) or lease obligation arising in connection therewith is (or would be, if Debt) permitted pursuant to Section 6.01 or (y) the fair market value of all such assets disposed of pursuant to this clause (b)(y) does not exceed $150,000,000 and (c) any Liens (if any) arising in connection therewith that are permitted by Section 6.02. Further to the foregoing, and not withstanding any other provision hereof, the transactions described on Schedule 6.15 shall be permitted.

Section 6.16. *Intellectual Property*. Notwithstanding anything to the contrary herein, any Investment or Disposition in the form of a transfer of title (or transfer of similar effect) of Material IP (i) by Loan Parties in or to non-Loan Party Restricted Subsidiaries shall not be permitted except to the extent such Investment or other Disposition is made for a bona fide legitimate business purpose of the Company and/or its Restricted Subsidiaries (as determined by the Company in good faith) and (ii) in or to Unrestricted Subsidiaries shall not be permitted; *provided*, that notwithstanding the foregoing, for the avoidance of doubt, the above references to a transfer of title (or transfer of similar effect) with respect to Intellectual Property shall not be deemed or interpreted to include a transfer in the form of a non-exclusive license of Intellectual Property or any Intellectual Property license entered into that is only exclusive with respect to a particular type or field (or types or fields) of usage or a certain territory or group of territories, in each case that does not effectively result in the transfer of beneficial ownership of such Intellectual Property (it being understood that an exclusive licensee's ability to enforce the applicable Intellectual Property within the applicable limited types(s) or field(s) of usage and/or territory(ies) of its exclusive license shall not be construed as a transfer of beneficial ownership).

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) (i) Borrowers shall fail to pay when due any principal payment required hereunder or (ii) Borrowers shall fail to pay any interest, premium or fee under any Loan Document or any other amount payable under any Loan Document within 5 Business Days of when otherwise due;

(b) any Loan Party shall fail to observe or perform (i) Section 5.01(j) and such default is not remedied or waived within 5 Business Days (other than during the occurrence of a Cash Dominion Event, in which case such period shall be 3 Business Days) after receipt by the Borrower Representative of written notice from the Administrative Agent or Required Lenders of such default, (ii) Section 5.15 and such default is not remedied or waived within 5 Business Days after the earlier of (x) receipt by the Borrower Representative of written notice from the Administrative Agent or Required Lenders of such default and (y) actual knowledge of a Responsible Officer of the underlying default or Event of Default or (iii) any covenant contained in Sections 5.01(f)(i), 5.02 (with respect to the Borrowers), 5.07, 5.18 or Article VI of this Agreement; it being understood and agreed that (i) any Event of Default in respect of Section 5.01(f) shall be automatically deemed to be cured upon delivery of the relevant notice required thereunder (unless a Responsible Officer of the Borrower Representative had actual knowledge of the Default or Event of Default or other event with respect to which such notice was required) or cure or waiver of the Default or Event of Default or the remedy of such other event with respect to which such notice was required and (ii) any Event of Default in respect of Section 6.13 (a "**Financial Maintenance Covenant Event of Default**") is subject to cure as provided in Section 7.02 and, so long as the Borrower Representative has a right to exercise the Cure Right, no Financial Maintenance Covenant Event of Default shall occur (other than in respect of determining whether the condition in Section 4.02(b) has been satisfied) until the expiration of the fifteenth (15th) Business Day after the later of (x) the date on which the financial statements for such fiscal quarter are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, and (y) the first date following the end of such fiscal quarter in which a Compliance Period is triggered, and then only to the extent the Cure Amount (in an amount sufficient to comply with the

financial covenant set forth in Section 6.13 for such fiscal quarter) has not been received on or prior to such date in accordance with Section 7.02;

(c) any Loan Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Loan Document (other than occurrences described in other provisions of this Section 7.01 for which a different grace or cure period is specified or which constitute immediate Events of Default) and such default is not remedied or waived within 30 days after the receipt by the Borrower Representative of written notice from the Administrative Agent or Required Lenders of such default;

(d) any representation, warranty or certification made by or on behalf of any Loan Party in any Loan Document or in any certificate, financial statement or other document required to be delivered pursuant to any Loan Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made) and, if such inaccuracy is curable, such representation, warranty or certification shall remain untrue for a period of 30 days after the receipt by the Borrower Representative of written notice from the Administrative Agent or Required Lenders of such default;

(e) failure of any Loan Party or any of their respective Subsidiaries to pay when due any principal, interest or other amount on any Material Debt (beyond the applicable grace period), or the occurrence of any breach, default, condition or event with respect to any Material Debt, if the effect of such failure or occurrence is to cause or to permit (with or without the giving of notice, lapse of time or both) the holder or holders thereof to cause, such Material Debt to become or be declared due prior to its stated maturity; *provided* that this Section 7.01(e) shall not apply to (i) any such Material Debt that becomes due as a result of the voluntary sale or transfer of any property securing such Material Debt (or the Equity Interests of the Subsidiary owning such property) if such sale or transfer is permitted hereunder and such Material Debt is paid at the time of such voluntary sale or other transfer, (ii) any Satisfaction of Conversion Obligation of any Permitted Convertible Notes, (iii) any refinancing of Debt permitted by this Agreement or (iv) any failure, breach, default, condition or event that (A) is remedied by the applicable Loan Party or Subsidiary or (B) waived (including in the form of an amendment) by the holders of the applicable item of Material Debt, in either case prior to the acceleration of the Loans pursuant to this Section 7.01;

(f) the Company, the Borrowers or any Material Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization (by way of voluntary arrangement, administration, scheme of arrangement or otherwise), dissolution or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, administrator, custodian, administrative receiver, compulsory manager or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(g) an involuntary case or other proceeding shall be commenced against the Company, the Borrowers or any Material Subsidiary seeking liquidation, reorganization (by way of voluntary arrangement, administration, scheme of arrangement or otherwise), dissolution or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, administrator, custodian, administrative receiver, compulsory manager or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed, unstayed or not fully bonded for a period of 60 consecutive days; or an order for relief shall be entered against any Loan Party under the federal bankruptcy laws as now or hereafter in effect;

(h) one or more ERISA Events have occurred that would reasonably be expected to result in a Material Adverse Effect;

(i) one or more judgments or orders for the payment of money aggregating in excess of the Threshold Amount shall be rendered against the Company, the Borrowers or any Material Subsidiary and such judgments or orders shall continue undischarged, unvacated, unsatisfied, unstayed or not fully bonded for a period of 60 consecutive days, unless the Borrower Representative provides evidence reasonably acceptable to the Administrative Agent that such judgment(s) are fully insured;

(j) there shall have occurred a Change in Control;

(k) any Lien created by any of the Collateral Documents shall at any time fail to constitute a valid and perfected Lien on a material portion of the ABL Collateral (including, prior to the Fixed Asset Release Date, any Fixed Asset Collateral) and/or on a material portion of any other Collateral purported to be secured thereby, subject to no prior or equal Lien except Permitted Liens, or any Loan Party shall so assert in writing, unless any such Lien (i) terminates or ceases to exist in accordance with and pursuant to the terms of the Loan Documents or (ii) ceases to exist, terminates or ceases to be a perfected security interest as a result of (A) the Administrative Agent's failure to maintain possession of any stock certificate, promissory note or other instrument delivered to it pursuant to the Collateral Documents, (B) the Administrative Agent's failure to file UCC filing statements or continuation statements, forms of which have been delivered to the Administrative Agent for filing by the Loan Parties, or (C) the Administrative Agent's filing of a UCC amendment, termination or release statement or its recording or filing of any termination, release or transfer of any Collateral subject to a filing by the Administrative Agent with the United States Patent and Trademark Office or of any filing or recording therewith, in any case, not made in accordance with this Agreement; or

(l) any of the Loan Documents shall for any reason fail to constitute the valid and binding agreement of any Loan Party thereto (other than the termination or expiration of any such documents by their terms, or as a result of the Payment in Full or the discharge of obligations of such Loan Party in accordance with the terms of the Loan Documents, provided such termination does not result from the occurrence of the default of any Loan Party thereto thereunder), or any such Loan Party shall so assert in writing;

then, and in every such Event of Default (other than an Event of Default with respect to the Borrowers described in clause (f) or (g) of this Article), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower Representative, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, whereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon 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 Borrowers accrued hereunder, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and (iii) require cash collateral for the LC Exposure in accordance with Section 2.06(j) hereof; and in the case of any event with respect to the Borrowers described in clause (f) or (g) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, 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 Borrowers. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under

the UCC. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, the proceeds of any sale of, or other realization upon, all or any part of the Collateral shall be applied in the order specified in the Loan Documents, subject in all respects to the terms of any applicable Acceptable Intercreditor Agreement.

Section 7.02. *Right to Cure*. Notwithstanding anything to the contrary in this Agreement (including Section 7.01), in the event the Borrowers have failed to comply with Section 6.13 for any applicable fiscal quarter ending after the occurrence of the FCCR Covenant Trigger Date, the Borrowers shall have the right (the "**Cure Right**") (at any time during such fiscal quarter or thereafter until the date that is fifteen (15) Business Days after the later of (x) the date on which the financial statements for such fiscal quarter are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, and (y) the first date following the end of such fiscal quarter in which a Compliance Period is triggered, to issue common equity or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) for cash or otherwise receive cash contributions in respect of such equity (the "**Cure Amount**"), and thereupon the Borrowers' compliance with Section 6.13 shall be recalculated giving effect to a pro forma increase in the amount of Consolidated EBITDA by an amount equal to the Cure Amount (notwithstanding the absence of a related addback in the definition of "Consolidated EBITDA") solely for the purpose of determining compliance with Section 6.13 as of the end of such fiscal quarter and for applicable subsequent periods that include such fiscal quarter. If, after giving effect to the foregoing recalculation (but not, for the avoidance of doubt, taking into account any immediate repayment of Debt in connection therewith), the requirements of Section 6.13 would be satisfied, then the requirements of Section 6.13 shall be deemed satisfied as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of Section 6.13 that had occurred (or would have occurred) shall be deemed cured for the purposes of this Agreement. Notwithstanding anything herein to the contrary, (i) in each four consecutive fiscal quarter period there shall be no more than two fiscal quarters (which may, but are not required to be, consecutive) in which the Cure Right is exercised, (ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times, (iii) the Cure Amount shall be no greater than the amount required for the purpose of complying with Section 6.13, (iv) upon the Administrative Agent's receipt of a written notice from the Borrower Representative that the Borrowers intend to exercise the Cure Right (a "**Notice of Intent to Cure**"), until the fifteenth (15th) Business Day following the later of (x) the date on which financial statements for the fiscal quarter to which such Notice of Intent to Cure relates are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, and (y) the first date following the end of such fiscal quarter on which a Compliance Period is triggered, neither the Administrative Agent (nor any sub-agent therefor) nor any Lender shall exercise any right to accelerate the Loans or terminate the Commitments, and none of the Administrative Agent (nor any sub-agent therefor) nor any Lender or Secured Party shall exercise any right to foreclose on or take possession of the Collateral or any other right or remedy under the Loan Documents solely on the basis of the relevant Event of Default in respect of Section 6.13 and (v) during any Test Period in which any Cure Amount is included in the calculation of Consolidated EBITDA as a result of any exercise of the Cure Right, such Cure Amount shall be (A) counted solely as an increase to Consolidated EBITDA (and not as a reduction of Debt) for the purpose of determining compliance with Section 6.13 for the fiscal quarter in respect of which the Cure Right was exercised (other than, with respect to any future period, to the extent of any portion of such Cure Amount that is actually applied to repay Debt) and (B) disregarded for all other purposes, including the purpose of determining basket levels set forth in Article VI of this Agreement.

ARTICLE VIII
THE ADMINISTRATIVE AGENT

Section 8.01. Appointment and Authority.

(a) Each of the Lenders and the Issuing Banks hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VIII are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and neither the Borrower Representative nor any other Loan Party shall 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 Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders and the Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and Issuing Bank for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article VIII and Article IX (including Section 9.03(d), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

Section 8.02. *Rights as a Lender*. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower Representative or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 8.03. *Exculpatory Provisions*. The Administrative Agent or the Joint Lead Arrangers, as applicable, 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 Administrative Agent or the Joint Lead Arrangers, as applicable:

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

(b) 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 Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any Issuing Bank, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Administrative Agent, Joint Lead Arrangers or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.02 and 7.01) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower Representative, a Lender or an Issuing Bank; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral or (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 Administrative Agent.

Section 8.04. *Reliance by Administrative Agent*. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower Representative), 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 8.05. *Delegation of Duties*. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article VIII shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 8.06. Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Banks and the Borrower Representative. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower Representative, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above, *provided* that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower Representative and such Person remove such Person as Administrative Agent and, in consultation with the Borrower Representative, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Banks under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 2.17(f) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 8.06). The fees payable by the Borrower Representative to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower Representative and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article VIII and Section 9.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section 8.06 shall also constitute its resignation as Issuing Bank and Swingline Lender. If Bank of America resigns as an Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all Obligations with respect thereto, including the right to require the Lenders to make ABR Loans or fund risk participations in unreimbursed amounts pursuant to Section 2.06(e). If Bank of America resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Revolving Lenders to acquire participations in outstanding Swingline Loans pursuant to Section 2.24(b). Upon the appointment by the Borrower Representative of a successor Issuing Bank or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or Swingline Lender, as applicable, (ii) the retiring Issuing Bank and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

Section 8.07. *Non-Reliance on the Administrative Agent, the Joint Lead Arrangers and the Other Lenders*. Each Lender and each Issuing Bank expressly acknowledges that none of the Administrative Agent nor the Joint Lead Arrangers has made any representation or warranty to it, and that no act by the Administrative Agent or the Joint Lead Arrangers hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Joint Lead Arrangers to any Lender or each Issuing Bank as to any matter, including whether the Administrative Agent or the Joint Lead Arrangers have disclosed material information in their (or their Related Parties') possession. Each Lender and each Issuing Bank represents to the Administrative Agent and the Joint Lead Arrangers that it has, independently and without reliance upon the Administrative Agent, the Joint Lead Arrangers, 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 of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower Representative hereunder. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Joint Lead Arrangers, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or Issuing Bank for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing. Each Lender and each Issuing Bank represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

Section 8.08. *No Other Duties, Etc*. Anything herein to the contrary notwithstanding, none of the Joint Lead Arrangers or Joint Bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

Section 8.09. *Administrative Agent May File Proofs of Claim; Credit Bidding*. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower Representative) shall be entitled and empowered, 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, Letters of Credit 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, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Sections 2.12 and 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, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12 and 9.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (b)(i) through (b)(ix) of Section 9.02 of this Agreement), (iii) the

Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 8.10. *Collateral and Guaranty Matters*. Without limiting the provisions of Section 8.09, each of the Lenders and the Issuing Banks irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Lien, release any Guarantor or subordinate any Lien as provided in Section 9.24.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guarantee Agreement pursuant to this Section 8.10. In each case as specified in this Section 8.10, the Administrative Agent will, at the Borrower Representative's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the Lien granted under the Collateral Documents or to subordinate its interest in such Lien, or to release such Guarantor from its obligations under the Guarantee Agreement, in each case in accordance with the terms of the Loan Documents and this Section 8.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 8.11. *Banking Services and Swap Agreements*. Except as otherwise expressly set forth herein or in the Collateral Agreement or any other Collateral Document, no Secured Party that is a party to a Banking Services Agreement or Swap Agreement (in each case, the obligations under which constitute Secured Obligations) that obtains the benefits of Section 2.18(b), the Collateral Agreement or any Collateral by virtue of the provisions hereof or of the Collateral Agreement or any other Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article VIII to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under any Banking Services Agreement or Swap Agreement unless the Administrative Agent has received written notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Secured Party, as the case may be.

Section 8.12. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower Representative or any other Loan Party, that at least one of the following is and will be true:

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

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

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

(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 Administrative Agent, each Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower Representative or any other Loan Party, that the Administrative Agent, any Joint Lead Arranger or any of their respective Affiliates 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 Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 8.13. *Recovery of Erroneous Payments*. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any of the Lenders, the Swingline Lender and/or the Issuing Banks (each, a "**Lender Recipient Party**"), whether or not in respect of an Obligation due and owing by the Borrower Representative at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent, within one Business Day of demand, the Rescindable Amount received by such Lender Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by 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 Recipient Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender Recipient Party promptly upon determining that any payment made to such Lender Recipient Party comprised, in whole or in part, a Rescindable Amount. Notwithstanding anything herein to the contrary, nothing in this Section 8.13 shall be interpreted to accelerate the due date for, or increase the amount of, or have the effect of accelerating the due date for, or increasing the amount of, the Obligations of the Loan Parties relative to the timing for payment of the Obligations that would have been payable had such Rescindable Amount not been made by the Administrative Agent. Notwithstanding the foregoing, this Section 8.13 shall not apply to the extent any such Rescindable Amount is, and solely with respect to the amount of such Rescindable Amount that is, comprised of funds received by the Administrative Agent from or on behalf of the Borrower or any other Loan Party for the purpose of making such erroneous payment.

ARTICLE IX
MISCELLANEOUS.

Section 9.01. *Notices*. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to any Loan Party, to the Borrower Representative at:

Lucid Group, Inc.
7373 Gateway Boulevard
Newark, CA 94560
Attn: Mustally Hussain, Global Treasurer
Email: mustallyhussain@lucidmotors.com
Telephone: (341) 345-0074

with a copy to:

Lucid Group, Inc.
Lucid Legal Department
7373 Gateway Boulevard
Newark, CA 94560
Attn: General Counsel
legal@lucidmotors.com

(ii) if to the Administrative Agent, to:

Kindra Mullarky
Senior Vice President
Bank of America Business Capital
Bank of America, N.A.
2600 West Big Beaver Road
Troy, MI 48084
Mail Code: MI8-900-02-70
Desk Phone: (248) 631-0532
Fax: (312) 453-2936
Email: kindra.mullarky@bofa.com

(iv) if to any Issuing Bank or Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (ii) sent by facsimile shall be deemed to have been given when sent, *provided* that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through Electronic Systems to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by Electronic Systems pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to Compliance Certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available". The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems 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 any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrowers or the other Loan Parties, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of communications through an Electronic System. "**Communications**" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section, including through an Electronic System.

Section 9.02. *Waivers; Amendments*. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.09 (with respect to any Incremental Commitments), in Section 1.12 (with respect to any ESG Amendment) and Sections 2.14 and 9.02(e) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (except (1) in connection with the waiver of applicability of any post-default increase in interest rates, which waiver shall be effective with the consent of the Required Lenders and (2) that any adjustment or modification of defined terms used in the determination of the Borrowing Base shall not constitute a reduction in the rate of interest or fees for purposes of this clause

(ii)), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (except (1) in connection with the waiver of applicability of any post-default increase in interest rates, which waiver shall be effective with the consent of the Required Lenders and (2) that any adjustment or modification of defined terms used in the determination of the Borrowing Base shall not constitute a reduction in the rate of interest or fees for purposes of this clause (iii)), (iv) change Section 2.09(d) or (e) or Section 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) amend or modify the definition of the term "**Borrowing Base**" or any component definition thereof (other than adding additional currencies for accounts receivables), or increase the percentage advance rates set forth in the definition of the term "**Borrowing Base**" or any component definition thereof, in each case if as a result thereof the amounts available to be borrowed by any Borrower would be increased, without the written consent of each Revolving Lender (other than any Defaulting Lender) (provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or to adjust, establish or eliminate any eligibility criteria, in each case in accordance with the terms of this Agreement, without the prior written consent of any Lenders), (vi) change any of the provisions of this Section or the definition of "**Required Lenders**" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (vii) change Section 2.20 or the definition of "**Applicable Percentage**", without the consent of each Lender (other than any Defaulting Lender), (viii) except as provided in clause (c) of this Section or in any Collateral Document, release all or substantially all of the value of the Collateral or all or substantially all Guarantees of the Secured Obligations, without the written consent of each Lender (other than any Defaulting Lender) or (ix) subordinate the Obligations or the liens on all or substantially all of the Collateral that secure the Obligations to any other Money Borrowed (such other indebtedness, the "**Subject Indebtedness**") without the written consent of each Lender directly and adversely affected thereby (*provided* that, with respect to Collateral other than ABL Collateral (including, prior to the Fixed Asset Release Date, any Fixed Asset Collateral), only the consent of the Required Lenders (and no other Lenders) shall be required to permit such subordination if all of the Lenders are provided the opportunity to provide such Subject Indebtedness on a pro rata basis on substantially the same terms and conditions as all other providers of such Subject Indebtedness); *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Banks or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Banks or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent, the Issuing Banks and the Swingline Lender and any amendment to the definition of "**Alternative Currencies**" shall require the consent of each Issuing Bank); *provided further* that no such agreement shall amend or modify the provisions of Section 2.07 or any letter of credit application and any bilateral agreement between the Borrower Representative and any Issuing Bank pursuant to clause (e) of the definition of Issuing Bank Sublimit or the respective rights and obligations between any Borrower and the Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of the Administrative Agent and the Issuing Bank, respectively. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, the Administrative Agent and the Loan Parties may amend the Collateral Documents (without the consent of any other Person) in order to (i) effectuate the release or subordination of the Fixed Assets upon the occurrence of the Fixed Asset Release Date and (ii) add assets as Collateral to the extent such assets secure

any Permitted Additional Secured Indebtedness and did not previously secure the Secured Obligations. Further, notwithstanding the foregoing, the Administrative Agent and the Loan Parties may amend Section 5.15 (without the consent of any other Person) to reflect changes in the account structure of the Loan Parties.

(c) The Secured Parties hereby irrevocably authorize the Administrative Agent, and the Administrative Agent for the benefit of the Loan Parties hereby agrees:

(i) to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (A) upon the Payment in Full of all Secured Obligations, (B) constituting property (x) being sold or disposed of to any Person other than a Loan Party if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement, which will be automatically released upon such sale or disposition, or (y) owned by any Subsidiary that is sold or disposed of in a transaction in which such Subsidiary ceases to be a Subsidiary or otherwise ceases to be a Guarantor, in each case, in a transaction permitted under the terms of the Loan Documents, (C) subject to the Release Conditions (as applicable), upon any asset (x) becoming an Excluded Asset or (y) constituting assets of a Subsidiary that has become an Excluded Subsidiary or Unrestricted Subsidiary which, in each case, is released in accordance with clause (ii) below, (D) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, (E) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII and (F) constituting Fixed Assets upon the occurrence of the Fixed Asset Release Date; *provided* that no Fixed Asset Facility is then outstanding or will contemporaneously be outstanding (in which case clause (iv) below shall apply);

(ii) to the extent that any Subsidiary ceases to be a Subsidiary in a transaction permitted under the Loan Documents, or any Subsidiary becomes an Excluded Subsidiary or an Unrestricted Subsidiary, to release any Guarantee of the Secured Obligations provided by such Subsidiary, in each case, in a transaction permitted under the terms of the Loan Documents; provided that the release of any Subsidiary from its obligations under the Loan Documents if such Subsidiary becomes an Excluded Subsidiary of the type described in clause (i) of the definition thereof shall only be permitted if such Subsidiary is or becomes an Excluded Subsidiary for a bona fide legitimate business purpose of the Company and its Subsidiaries and not for the primary purpose of evading the collateral and guarantee requirements of the Loan Documents (as determined by the Company in good faith);

(iii) to subordinate any Lien on property granted to, or held by, the Administrative Agent to the holder of any Lien on such property that is permitted pursuant to Section 6.02(d); and

(iv) to the extent the Fixed Asset Release Date has occurred and a Fixed Asset Facility is then outstanding or will contemporaneously be outstanding, to subordinate any Lien on Fixed Assets to the holder of the Liens securing such Fixed Asset Facility pursuant to the terms of an Acceptable Intercreditor Agreement.

The Administrative Agent and the Secured Parties agree, and the Secured Parties irrevocably authorize and direct, that the Administrative Agent shall promptly take all actions and execute and deliver all documents, in each case, reasonably requested by any Loan Party to effect or otherwise evidence such release or subordination (and, if requested by the Administrative Agent in connection with such execution and delivery, the Loan Party disposing of such property shall certify to the Administrative Agent that the applicable sale or disposition is being made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry)). The Secured Parties agree not to give the Administrative Agent any instruction or direction inconsistent with the provisions of this Section 9.02(c). Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender affected thereby", the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a "**Non-Consenting Lender**"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, *provided* that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrowers, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify, waive or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect, inconsistency, obvious error or error or omission of a technical or administrative nature or to effect any necessary or desirable technical change.

Section 9.03. *Expenses; Limitation of Liability; Indemnity; Etc*. (a) Expenses. The Loan Parties shall, jointly and severally, pay all (i) reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable and documented fees, charges and disbursements of counsel for the Administrative Agent (limited to one primary counsel, one local counsel in each reasonably necessary jurisdiction, one specialty counsel in each reasonably necessary specialty area, and one or more additional counsel if one or more actual conflicts of interest arise), in connection with the syndication and distribution (including, without limitation, via the internet or through an Electronic System) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable and documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender (limited to one primary counsel, one local counsel in each reasonably necessary jurisdiction, one specialty counsel in each reasonably necessary specialty area, and one or more additional counsel if one or more actual conflicts of interest arise), in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

(i) appraisals at the fees charged by a third party retained by the Administrative Agent or the reasonable and documented internally allocated fees for each Person employed by the Administrative Agent with respect to each appraisal (subject to the limitations set forth in Section 5.01(o)) and insurance reviews;

(ii) field examinations and the preparation of Reports at the fees charged by a third party retained by the Administrative Agent or the reasonable and documented internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination (subject to the limitation set forth in Section 5.01(o));

(iii) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the reasonable discretion of the Administrative Agent;

(iv) Taxes, fees and other charges for (A) lien and, to the extent contemplated hereunder, title searches and title insurance and (B) recording the Mortgages to the extent such Mortgages are contemplated hereunder, filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;

(v) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(vi) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in Section 2.18(c).

(b) Limitation of Liability. To the extent permitted by applicable law (i) no Borrower nor any Loan Party shall not assert, and each Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, any Joint Lead Arranger, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "**Lender-Related Person**") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, 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 or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.03(b) shall relieve any Borrower or any Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) Indemnity. The Loan Parties shall, jointly and severally, indemnify the Administrative Agent, each Joint Lead Arranger, the Issuing Bank 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 Liabilities and related expenses, including the reasonable and documented fees, charges and disbursements of counsel (limited to, for each occurrence giving rise to such indemnification event, one primary counsel for Indemnitees taken as a whole, one local counsel in each reasonably necessary jurisdiction, one specialty counsel in each reasonably necessary specialty area, and one or more additional counsel if one or more actual conflicts of interest arise), incurred by or asserted against any Indemnitee by a third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution, enforcement or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any action taken in connection with this Agreement, including, but not limited to, the payment of principal, interest and fees, (iii) any Loan or Letter of Credit (or any document related thereto) or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iv) any actual or alleged presence or Release of Hazardous Materials at, on, under or from any property currently or formerly owned or operated by a Loan Party or a Subsidiary (in the case of formerly owned or operated property, to the extent relating to such Loan Party or such Subsidiary's period of ownership or operation), or any Environmental Liability related in any way to a Loan Party or a Subsidiary, (v) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by a Loan Party for Taxes pursuant to Section 2.17, or (vi) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such Liabilities or related expenses: (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (B) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from a material breach of any Loan Document by such Indemnitee or (C) arise out of any dispute among Indemnitees that do not involve any acts or omissions of the Loan Parties or any of their Affiliates (it being acknowledged and agreed that the indemnification shall extend to Bank of America in its capacity as the Administrative Agent and any Joint Lead Arranger in its capacity as such (but not the Lenders) relative to disputes between or among the Administrative Agent or any Joint Lead Arranger on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand). This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.03(b) applies, such

indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, employees, stockholders or creditors, or an Indemnitee or any other Person.

(d) Lender Reimbursement. Each Lender severally agrees to pay any amount required to be paid by the Borrower under paragraphs (a), (b) or (c) of this Section 9.03 to the Administrative Agent and each Issuing Bank, and each Related Party of any of the foregoing Persons (each, an "**Agent-Related Person**") (to the extent not reimbursed by the Borrowers or the Loan Parties and without limiting the obligation of the Borrowers and the Loan Parties to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought under this Section (or, if such payment is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent-Related Person under or in connection with any of the foregoing; *provided* that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such; *provided* further that no Lender shall be liable for the payment of any portion of such Liabilities, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Person's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(e) Payments. All amounts due under this Section shall be payable within 10 Business Days after written demand therefor.

Section 9.04. *Successors and Assigns*. (a) 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) neither the Company nor any other Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with 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 (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph 9.04(b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower Representative, *provided* that the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received written notice requesting its consent, and *provided further* that no consent of the Borrower Representative shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the Issuing Bank; *provided* that no consent of the Issuing Bank shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund; and

(D) the Swingline Lender; *provided* that no consent of the Swingline Lender shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than the Dollar Equivalent of $5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consent, *provided* that no such consent of the Borrower Representative shall be required if a Specified Event of Default has occurred and is continuing;

(B) 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;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of $3,500 and the tax forms required by Section 2.17(f); and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(iii) No assignment shall be made to (x) any Disqualified Lender or any Lender that has become a Disqualified Lender, (y) any Defaulting Lender or any of its subsidiaries, or (z) any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing persons described in this clause (iii). To the extent any assignment is purported to be made to a Person prohibited by this clause (iii), (A) such Person shall be required to immediately (and in any event within five Business Days) assign all Loans and Commitments then owned by such Person to another Lender (other than a Defaulting Lender) or a Person other than an Ineligible Institution and the Borrowers shall be entitled to seek specific performance in any applicable court of law or equity to enforce this sentence, (B) no Disqualified Lender or Lender who has become a Disqualified Lender shall be permitted to (x) receive any information or reporting provided by the Borrowers, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders, (C) for purposes of voting, any Loans, Commitments or participations held by such Disqualified Lender shall be deemed not to be outstanding and such Disqualified Lender shall have no voting or consent rights notwithstanding the provisions herein, (D) for purposes of any matter requiring the vote or consent of each Lender affected by any amendment or waiver, such Disqualified Lender shall be deemed to have voted or consented to approve such amendment or waiver if a majority of the affected Class so approves and (E) such Disqualified Lender shall not be entitled to any expense reimbursement or indemnification rights ordinarily afforded to Lenders or Participants hereunder or in any Loan Document and such Disqualified Lender shall be treated in all other respects as a Defaulting Lender; *provided,* that if any Lender becomes a Disqualified Lender after the time such Lender initially became a Lender hereunder, and any assignment is made to such Lender after the time such Lender became a Disqualified Lender, the Commitments assigned to such Lender after the time such Lender became a Disqualified Lender (but no other Commitments of such Lender) shall be treated as an assignment to a Disqualified Lender other than with respect to clause (B) above.

For the purposes of this Section 9.04(b), the terms "**Approved Fund**" and "**Ineligible Institution**" have the following meanings:

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

"**Ineligible Institution**" means a (a) natural person, (b) a Defaulting Lender or its parent, (c) a Disqualified Lender, (d) company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; *provided* that, such company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than the Dollar Equivalent of $25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business, or (e) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

(iv) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(v) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of and stated interest on the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent, the Issuing Bank 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, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(vi) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in this subsection (b) and any written consent to such assignment required by this subsection (b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; *provided* that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and

record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of or notice to the Borrowers, the Administrative Agent, the Swingline Lender or the Issuing Banks, sell participations to one or more banks or other entities (a "**Participant**") other than an Ineligible Institution in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. 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 the first proviso to Section 9.02(b) that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and the information and documentation required under Section 2.17(g) will be delivered to the Borrowers and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, 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.

(d) Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(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 such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. If the Borrower Representative reasonably believes that a participation has been sold by a Lender to a Disqualified Lender, the applicable Lender shall provide (upon receipt of written request from the Borrower Representative) written confirmation to the Borrower Representative either (1) confirming that no participations have been sold by such Lender to a Disqualified Lender or (2) if applicable, identifying the applicable Disqualified Lender to which it has sold a participation.

(e) 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 without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall (i) release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto, or (ii) be permitted to be made to a Disqualified Lender.

(f) The Administrative Agent shall have the right, and the Borrower Representative hereby expressly authorizes the Administrative Agent, to provide to any requesting Lender, the Disqualified Institution List and any updates thereto. The Borrower Representative hereby agrees that any such requesting Lender may share the Disqualified Institution List with any potential assignee, transferee or participant. Neither the Administrative Agent nor any of its Related Parties shall be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (ii) have any liability with respect to or arising out of any assignment or participation of Commitments or Loans, or disclosure of confidential information, to any Disqualified Lender.

Section 9.05. *Survival*. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

Section 9.06. *Counterparts; Integration; Effectiveness; Electronic Execution*. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative 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 Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "**Ancillary Document**") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution", "signed", "signature", "delivery" and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided,* further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower and each Loan Party hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrowers and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (ii) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of any Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.07. *Severability*. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate 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 its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party against any of and all the Secured Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The applicable Lender shall notify the Borrower Representative and the Administrative Agent of such set-off or application, *provided* that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. NOTWITHSTANDING THE FOREGOING, AT ANY TIME THAT ANY OF THE SECURED OBLIGATIONS SHALL BE SECURED BY REAL PROPERTY LOCATED IN CALIFORNIA, NO LENDER SHALL EXERCISE A RIGHT OF SETOFF, LENDER'S LIEN OR COUNTERCLAIM OR TAKE ANY COURT OR ADMINISTRATIVE ACTION OR INSTITUTE ANY PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR ANY LOAN DOCUMENT UNLESS IT IS TAKEN WITH THE CONSENT OF THE LENDERS REQUIRED BY SECTION 9.02 OF THIS AGREEMENT, IF SUCH SETOFF OR ACTION OR PROCEEDING WOULD OR MIGHT (PURSUANT TO SECTIONS 580a, 580b, 580d AND 726 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR SECTION 2924 OF THE CALIFORNIA CIVIL CODE, IF APPLICABLE, OR OTHERWISE) AFFECT OR IMPAIR THE VALIDITY, PRIORITY, OR ENFORCEABILITY OF THE LIENS GRANTED TO ADMINISTRATIVE AGENT PURSUANT TO THE COLLATERAL DOCUMENTS OR THE ENFORCEABILITY OF THE SECURED OBLIGATIONS HEREUNDER, AND ANY ATTEMPTED EXERCISE BY ANY LENDER OF ANY SUCH RIGHT WITHOUT OBTAINING SUCH CONSENT OF THE PARTIES AS REQUIRED ABOVE, SHALL BE NULL AND VOID. THIS PARAGRAPH SHALL BE SOLELY FOR THE BENEFIT OF EACH OF THE LENDERS.

Section 9.09. *Governing Law; Jurisdiction; Consent to Service of Process*. (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue

of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10. *WAIVER OF JURY TRIAL*. EACH PARTY HERETO HEREBY 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, 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, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT 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. *Confidentiality*. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (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 requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant (other than a Disqualified Lender) in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations (other than a Disqualified Lender), (g) with the prior written consent of the Borrower Representative, (h) to holders of Equity Interests in the Company or any other Borrower, (i) to any Person providing a Guarantee of all or any portion of the Secured Obligations, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the disclosing party on a non-confidential basis from a source other than the Borrowers or (k) on a confidential basis to credit insurance providers, ratings agencies or the CUSIP Service Bureau. For the purposes of this Section, "**Information**" means all information received from the Borrowers, the Company or any of their subsidiaries relating to the Borrowers, the Company, any of their subsidiaries or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non- confidential basis prior to disclosure by the Borrowers, the Company or their subsidiaries and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry. For the avoidance of doubt, in no event will any disclosure of information be made to any Disqualified Lender. 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.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

Section 9.13. *Several Obligations; Nonreliance; Violation of Law*. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

Section 9.14. *USA PATRIOT Act; Beneficial Ownership*. Each Lender that is subject to the requirements of the USA PATRIOT Act and the requirements of the Beneficial Ownership Regulation hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation.

Section 9.15. *Disclosure*. Each Loan Party, each Lender and the Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.16. *Appointment for Perfection*. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 9.17. *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 which are treated as interest on such Loan under applicable law (collectively the "**Interest Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which 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 Interest Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Interest Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 9.18. *Marketing Consent*. Subject to Section 9.12 with respect to Information, the Borrowers hereby authorize Bank of America and its affiliates, at Bank of America or its affiliates' respective sole expense, to publish such tombstones and give such other publicity to this Agreement without the prior written approval of the Borrower Representative unless and until the Borrower Representative notifies Bank of America in writing that such authorization is revoked.

Section 9.19. *Acknowledgement and Consent to Bail-In of Affected Financial Institutions*. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; o

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 9.20. *No Fiduciary Duty, etc*. Each Borrower acknowledges and agrees, and acknowledges its subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to each Borrower with respect to the Loan Documents and the transaction contemplated therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. Each Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Credit Parties shall have no responsibility or liability to any Borrower with respect thereto. Each Borrower further acknowledges and agrees, and acknowledges its subsidiaries' understanding, that each Credit Party, together with its affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, any Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion. In addition, each Borrower acknowledges and agrees, and acknowledges its subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions

contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

Section 9.21. *Intercreditor Agreement*. Each Lender hereunder (and by its acceptance of the benefits of the Loan Documents, each other Secured Party) authorizes and instructs Administrative Agent to enter into any Acceptable Intercreditor Agreement and acknowledges (or is deemed to acknowledge) that the forms of an Acceptable Intercreditor Agreement attached hereto as Exhibits D-1 and D-2 were delivered, or made available, to such Lender. Each Lender hereby acknowledges that it has received and reviewed such forms of an Acceptable Intercreditor Agreement. Each of the Secured Parties agrees to be bound by any Acceptable Intercreditor Agreement. Any reference in this Agreement or any other Loan Document to "first priority lien" "or second priority" or words of similar effect in describing the Liens created hereunder or under any other Loan Document shall be understood to refer to such priority as set forth in any applicable Acceptable Intercreditor Agreement. Except to the extent set forth in any Acceptable Intercreditor Agreement, nothing in this Section 9.21 shall be construed to provide that any Loan Party is a third party beneficiary of the provisions of any Acceptable Intercreditor Agreement or may assert any rights, defenses or claims on account of any Acceptable Intercreditor Agreement or this Section 9.21 (other than as set forth in the last sentence hereof), and each Loan Party agrees that nothing in any Acceptable Intercreditor Agreement is intended or shall impair the obligation of any Loan Party to pay the obligations under this Agreement, or any other Loan Document as and when the same become due and payable in accordance with their respective terms, or to affect the relative rights of the creditors with respect to any Loan Party or except as expressly otherwise provided in any Acceptable Intercreditor Agreement as to a Loan Party's obligations, such Loan Party's properties. In furtherance of the foregoing, notwithstanding anything to the contrary set forth herein, after the incurrence of any Fixed Asset Facility Obligations and prior to the payment in full of the Fixed Asset Facility Obligations to the extent that any Loan Party is required to (i) give physical possession over any Collateral constituting Fixed Assets to Administrative Agent under this Agreement or the other Loan Documents, such requirement to give possession shall be satisfied if such Fixed Assets are delivered to and held by the Fixed Asset Facility Collateral Agent pursuant to the applicable Acceptable Intercreditor Agreement. and (ii) take any other action with respect to the Collateral constituting Fixed Assets or any proceeds thereof (that under applicable law can be taken only for the benefit of one secured party), including delivery of such Fixed Assets or proceeds thereof to Administrative Agent, such action shall be deemed satisfied to the extent undertaken with respect to the Fixed Asset Facility Collateral Agent.

Section 9.22. *Acknowledgement Regarding Any Supported QFC*. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "**QFC Credit Suppor**t" 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):

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 would be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 9.23. *Judgment Currency*. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower 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 Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

Section 9.24. *Release of Liens and Guarantees*. A Subsidiary Guarantor, and subject to the Release Conditions, any Borrower other than the Borrower Representative or any Loan Party with assets included in the Borrowing Base, shall automatically be released from its obligations under the Loan Documents, and all security interests created by the Collateral Documents in Collateral owned by such Subsidiary Guarantor or, subject to the Release Conditions, such Borrower other than the Borrower Representative or such Loan Party shall be released, automatically upon the consummation of any single transaction or related series of transactions, or the occurrence of any event or circumstance, in each case, permitted by this Agreement as a result of which such Subsidiary Guarantor or, subject to the Release Conditions, such Borrower other than the Borrower Representative or such Loan Party ceases to be a Restricted Subsidiary (including pursuant to a merger with a Person that is not a Loan Party or a designation as an Unrestricted Subsidiary) or otherwise becomes an Excluded Subsidiary with respect to the applicable obligations; *provided* that no Subsidiary Guarantor shall be automatically released from its obligations under the Loan Documents solely by reason of such Subsidiary Guarantor becoming a non-Wholly-Owned Subsidiary unless either (x) it is no longer a direct or indirect Subsidiary of the Borrower Representative or (y) such Subsidiary Guarantor ceases to be a Wholly Owned Subsidiary as a result of a sale, issuance or transfer of Equity Interests to (A) a Person that is not an Affiliate of the Company or (B) an Affiliate of Company if, in the case of this clause (B), such sale or transfer is made for a bona fide business purpose of the Borrower Representative and its Subsidiaries and not for the primary purpose of evading the requirements under Section 5.13 (in each case as determined by the Borrower Representative in good faith). The security interests in any applicable Collateral created by the Collateral Documents shall be automatically released (i) upon any sale or other transfer as part of or in connection with a Disposition (other than a license, sublicense, lease or sublease) by any Loan Party (other than to a Borrower or any other Loan Party (*provided* that, in the case of a transfer among Loan Parties, the applicable Lien may be released with respect to the transferor Loan Party to the extent such asset will be (substantially contemporaneously therewith) pledged (solely to the extent required hereunder) by the transferee Loan Party)) of any Collateral in a transaction permitted under this Agreement (*provided* that in connection with a transfer to any Borrower or any of the Restricted Subsidiaries permitted hereunder, following the

Borrower Representative's request, the Administrative Agent shall deliver (at the Borrower Representative's expense) evidence of the termination of the security interest against such property with respect to the interests of the transferor), (ii) if any property granted to or held by the Administrative Agent under any Loan Documents ceases to constitute Collateral, including by becoming an Excluded Asset (including Equity Interests of a Person that is sold or transferred to a person other than a Loan Party in a transaction permitted hereunder) or (iii) upon the effectiveness of any written consent to the release of the Lien or security interest created under any Collateral Document in any Collateral or the release of any Loan Party from its Guarantee under the Guarantee Agreement pursuant to Section 9.02. Upon Payment in Full, all obligations under the Loan Documents, all Guarantees in respect thereof and all security interests created by the Collateral Documents shall be automatically released. In connection with any termination or release pursuant to this Section 9.24 or in connection with any subordination of its interest as required hereunder, the Administrative Agent shall execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination, release or subordination. Any execution and delivery of documents pursuant to this Section 9.24 shall be without recourse to or warranty by the Administrative Agent. The Lenders irrevocably authorize the Administrative Agent to, and the Administrative Agent shall, release or subordinate any Lien on any property (other than any property included in the Borrowing Base) granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (b), (d), (f), (g)(i), (i), (k), (o), (q), (u), or (v) of Section 6.02 or clause (c), (e), (g) or (h) of the definition of "Permitted Encumbrances", in each case, to the extent required by the terms of the obligations secured by such Liens pursuant to documents reasonably acceptable to the Administrative Agent. Each of the Lenders and the Issuing Banks irrevocably authorizes the Administrative Agent to provide any release or evidence of release, termination or subordination contemplated by this Section 9.24. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under any Loan Document, in each case in accordance with the terms of the Loan Documents and this Section 9.24.

ARTICLE X
[RESERVED].

ARTICLE XI
THE BORROWER REPRESENTATIVE.

Section 11.01. *Appointment; Nature of Relationship*. The Company is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the "**Borrower Representative**") hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Account(s), at which time the Borrower Representative shall promptly disburse such Loans to the appropriate Borrower. The Administrative Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

Section 11.02. *Powers*. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

Section 11.03. *Employment of Agents*. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

Section 11.04. *Notices*. Each Borrower shall promptly notify the Borrower Representative of the occurrence of any Default hereunder referring to this Agreement describing such Default and stating that such notice is a "notice of default". In the event that the Borrower Representative receives such a notice, the Borrower Representative shall, to the extent required by Section 5.01, give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder shall constitute notice to each Borrower on the date received by the Borrower Representative.

Section 11.05. *Successor Borrower Representative*. Upon the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

Section 11.06. *Execution of Loan Documents; Borrowing Base Certificate*. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including, without limitation, the Borrowing Base Certificates and the Compliance Certificates and any incremental amendment. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

(*Signature Pages ~~Follow~~Intentionally Omitted*)

~~**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.**~~

~~**LUCID GROUP, INC.**~~
~~**By:**~~ _____
~~**Name:**~~
~~**Title:**~~

~~**BANK OF AMERICA, N.A., as the Administrative Agent, a Lender, the Swingline Lender and an Issuing Bank**~~

~~**By:**~~ _____

~~**Name:**~~

~~**Title:**~~

~~**[*Signature Page to the Credit Agreement*]**~~

~~[_____], as a Lender [and an Issuing Bank]~~

~~By:~~ _____

~~Name:~~

~~Title:~~

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Peter Rawlinson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Lucid Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 5, 2024

/s/ Peter Rawlinson
Peter Rawlinson
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gagan Dhingra, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Lucid Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 5, 2024

/s/ Gagan Dhingra
Gagan Dhingra
Interim Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002 (FURNISHED HEREWITH)

I, Peter Rawlinson, Chief Executive Officer of Lucid Group, Inc. (the "Company"), certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

a. The Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended June 30, 2024 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and

b. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

Date: August 5, 2024

/s/ Peter Rawlinson
Peter Rawlinson
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002 (FURNISHED HEREWITH)

I, Gagan Dhingra, Interim Chief Financial Officer of Lucid Group, Inc. (the "Company"), certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

a. The Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended June 30, 2024 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and

b. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

Date: August 5, 2024

/s/ Gagan Dhingra
Gagan Dhingra
Interim Chief Financial Officer
(Principal Financial Officer)