

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

Form 10-K

(Mark One)

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

For the fiscal year ended December 31, 2021

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: 001-37523



PURPLE INNOVATION, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

4100 NORTH CHAPEL RIDGE ROAD SUITE 200  
LEHI, UTAH

(Address of principal executive offices)

47-4078206

(I.R.S. Employer  
Identification Number)

84043

(Zip Code)

Registrant's telephone number, including area code: (801) 756-2600

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, par value \$0.0001 per share	PRPL	The NASDAQ Stock Market LLC

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

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

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

As of June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the common stock outstanding, other than shares held by persons who may be deemed affiliates of the registrant, computed by reference to the closing sales price for the common stock as of June 30, 2021, as reported on the NASDAQ Capital Market, was \$1,536.9 million.

As of February 28, 2022, there were 66,520,782 shares of Class A common stock, par value \$0.0001 per share, and 448,279 shares of Class B common stock

of the registrant issued and outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Certain portions of the registrant's definitive proxy statement relating to the Annual Meeting of Shareholders are specifically incorporated by reference in Part III, Items 10, 11, 12, 13 and 14 of this Annual Report on Form 10-K.

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Unless the context otherwise requires, references to (i) “Purple,” “the Company,” “our company,” “we,” “our” and “us,” or like terms, refer to Purple Innovation, Inc. and its subsidiaries, currently Purple Innovation, LLC, (ii) “Purple Inc.” refers to Purple Innovation, Inc. without its subsidiary and (iii) “Purple LLC” refers to Purple Innovation, LLC, an entity of which Purple Inc. acts as the sole managing member and of whose common units we own approximately 99% as of March 1, 2022. “Global Partner Acquisition Corp.” and “GPAC” refer to the Company prior to the closing of the Business Combination, and “Purple before the Business Combination” refers to Purple LLC’s business before it became a wholly owned subsidiary of the Company upon Closing the Business Combination (as defined herein).

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report, including, without limitation, statements under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, or the Exchange Act. Statements in this report that are not descriptions of historical facts are forward-looking statements that are based on management’s current expectations and are subject to risks and uncertainties that could negatively affect our business, operating results, financial condition and stock price. These forward-looking statements relate to expectations for future financial performance, business strategies or expectations for Purple. Specifically, forward-looking statements may include statements relating to the future financial performance of the Company, changes in the markets in which Purple competes, expansion plans and opportunities, expansion of the direct to consumer market, our expectation of opening additional Purple retail showrooms, increases in capital, advertising and operational expenses, and other statements preceded by, followed by or that include the words “estimate,” “plan,” “project,” “forecast,” “intend,” “expect,” “anticipate,” “believe,” “seek,” “target” or similar expressions.

The forward-looking statements contained in this report are made only as of the date hereof. It is routine for our internal projections and expectations to change throughout the year, and any forward-looking statements based upon these projections or expectations may change prior to the end of the next quarter or year. Forward-looking statements are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and 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.” Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no 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. These risks and others described under “Risk Factors” may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this report. In addition, even if our results or operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this report, those results or developments may not be indicative of results or developments in subsequent periods.

## PART I

### Item 1. Business

#### Introduction

Purple's mission is to help "every body" sleep, feel and live better through innovative comfort solutions.

We are a digitally-native vertical brand founded on comfort product innovation with premium offerings. We design and manufacture a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets and more. Our products are the result of decades of innovation and investment in proprietary and patented comfort technologies and the development of our own manufacturing processes. Our proprietary gel technology, Hyper-Elastic Polymer<sup>®</sup>, known as the Purple Grid<sup>®</sup>, underpins many of our comfort products and provides a range of benefits that differentiate our offerings from other competitors' products. Specially engineered for enhanced pressure relief and unwavering support, Purple's patented grid technology has been used and tested rigorously within medical and consumer applications for over 30 years. Originally designed for use in hospital beds and wheelchairs, we adapted this unique pressure-relieving material for our mattresses and other cushion products.

We market and sell our products through direct-to-consumer e-commerce and Purple retail showrooms (collectively "DTC") and retail brick-and-mortar wholesale partners.

The foundation of our business is core competencies in design, development and manufacturing. Decades of accumulated knowledge enable us to create all aspects of our innovative products, including fundamental comfort technologies and machines and processes necessary to bring them to market. We have integrated our operations to include research and development, marketing and manufacturing, resulting in an ability to rapidly test, learn, adapt and scale our product offerings. In order to solve complex manufacturing challenges such as large-format injection molding of our Purple Grid, we designed and produced our own manufacturing equipment including our proprietary and patented Mattress Max<sup>™</sup> machinery. These were and still are fully customized machines unique to Purple that can handle both our size and scale requirements. We believe our combination of patents and intellectual property, proprietary and patented manufacturing equipment, production processes and decades of acquired knowledge create an advantage over our competitors who rely on commoditized materials, such as foam and outsourced manufacturing.

In addition to developing transformative, differentiated products and technologies, we have built a brand that has high customer engagement and avid brand advocates. We have an experienced marketing team, providing efficient customer acquisition and brand demand development. Our marketing strategy enables us to market our full product suite to customers, generate frequent interactions online and drive traffic to all channels offering our products. Evidencing the strength of our brand, our close rate among consumers who are considering a purchase was at an all-time high in the fourth quarter of 2021.

As a native DTC brand, our knowledge of and engagement with consumers across digital and brick and mortar retail channels is advantageous and increasing. To complement our DTC efforts, we have developed multiple wholesale relationships with best-in-class retailers in the furniture, mattress specialty, home décor, and department store spaces. We believe our distinctly differentiated products, marketing strategies, manufacturing capabilities, unique branding and proprietary technologies position us to continue to drive our growth in comfort products. By fourth quarter 2021, we believe we increased our share in the overall mattress category nearly a full percentage point from the previous high in the fourth quarter of 2020 and first quarter of 2021. In 2021, our DTC sales, which includes online and Purple retail showrooms, accounted for 65.3% of our net revenues and wholesale accounted for 34.7% of net revenues, while sales of sleep products accounted for 91.5% of our net revenues and other products accounted for 8.5%.

In 2021, Purple opened and scaled a new facility in McDonough, Georgia to create growth-supporting capacity and a manufacturing footprint that serves our customers in the eastern U.S. We also grew our DTC efforts by adding 19 Purple retail showrooms in 2021 and two thus far in 2022, making a total of 30 Company showroom locations in cities across the United States. We anticipate opening additional Purple retail showrooms throughout 2022 and to eventually have more than 200 showrooms.

## **Industry and Competition**

Our portfolio of products is driven by our commitment to innovating real comfort solutions that meaningfully help “every body” sleep, feel and live better. Whether it’s getting a better night’s rest or elevating the work from home experience, we design and manufacture truly innovative, differentiated products that put our customer’s comfort first.

### ***Sleep Products***

The sleep products category encompasses a variety of products including mattresses, pillows, bases, foundations, sheets, mattress protectors, blankets and duvets. Meaningful innovation in sleep products has remained stagnant and limited over the last 150 years. Coil spring mattresses and memory foam, two of the primary materials underpinning mattress technology today, were invented in the 1860’s and 1990’s. Latex, water and air mattresses followed, emerging in the latter part of the 20<sup>th</sup> century. Since these early inventions, the mattress industry has remained complacent with little meaningful innovation, until the introduction of the Purple Grid. Our Purple Grid, made from our proprietary Hyper-Elastic Polymer, represents a meaningful innovation in pressure relief, temperature neutrality, responsiveness, durability and limited motion transfer. The Purple Grid solves problems that regular mattresses create and has proven that material innovations can have a positive impact on sleep.

Beginning in 2015, the market for sleep products underwent a fundamental transformation with the rise of e-commerce-based brands and direct to consumer distribution, which disrupted the traditional category dynamics and drove the majority of category growth (versus traditional mattress companies) for several years. Today, the U.S. mattress industry has rebalanced to be comprised of vendors that rely on retail distribution as well as a consolidated number of direct-to-consumer retailers who have tried to expand brick and mortar distribution to capture more market share in a category still tied to instore product trials. Amidst this changing category dynamic, Purple’s manufacturing capabilities paired with our strategic mix of showrooms, e-commerce and third-party retailers, has allowed us to gain share and be a leader in the sleep products category.

In general, new direct to consumer mattress companies offer convenience, free shipping and returns, and low prices, while leveraging third-party manufacturing and distribution. Materials used by online mattress retailers include layers of foam cushioning that are assembled, compressed and folded into a box for distribution. This market is highly fragmented, commoditized and competitive, with customer purchase decisions based primarily on price. Prior to Purple, there has been little recent success disrupting the premium market, where the majority of category revenue and profit is realized. Competitors in the premium market include Tempur Sealy and Sleep Number.

While e-commerce home goods purchases have increased over the past five years, traditional brick-and-mortar retailers command a significant part of the market for mattress products. This part of the retail market is also highly fragmented and competitive. The leading brick-and-mortar specialty mattress retailers in the United States and Canada are, respectively, Mattress Firm and Sleep Country Canada, both of which Purple has significant partnerships with. These national retailers compete with both regional and local retailers as well as furniture and department stores. Purple has also expanded into many of these regional furniture retailers.

Across these channels, some key factors that impact competition in our industry include comfort feel, product features, reliable logistics and manufacturing capabilities, marketing efficacy and efficiency, brand differentiation, expertise of sales associates, customer care, pace of innovation and product roadmap, price of products and services, financial stability and ability to invest in innovation.

## What Makes Purple Different?

We believe we have a particular set of competitive strengths that differentiate and position us for continued success:

- **History of innovation that produced new comfort technology**—We are a company built on innovation and licensing, with more than 30 years of expertise in comfort innovation. Purple is founded upon decades of history developing innovative comfort solutions, including the invention of our proprietary and patented Hyper-Elastic Polymer technology. Our breakthrough mattress represents what we believe to be the first substantive innovation in the mattress industry since the introduction of memory foam in 1992. We believe that the unique properties of the Purple Grid enable several improvements to existing sleep products that are not addressed by foam, spring and air mattresses.
- **Pressure Relief**—The Purple Grid is designed around the science of column buckling which enables our mattresses to be both firm and soft. The Purple Grid offers support across the body’s larger surface areas, such as the back, while providing pressure relief at local areas or points of pressure, such as the hips and shoulders. We believe Purple’s founders were the first to leverage this technology in mattresses after its success in licensing its proprietary Purple Grid to medical manufacturers for use in wheelchairs, critical care beds and to this day, hospital beds. The resulting feel is often described as buoyant and responsive.
- **Temperature Neutral**—The Hyper-Elastic Polymer material itself is temperature neutral, with the surface of the Purple Grid comprised mostly of air, made from thousands of open-air channels. The channels allow for high airflow and dissipation of heat and vapor. This is the opposite of foam beds, which absorb heat from the body and then radiate the heat back, constantly increasing the temperature. The Purple Grid allows for continual sleeping without waking up hot.
- **Responsive**—Unlike memory foam, which compresses, gets hard and then takes time to recoil, the Purple Grid is instantly responsive to the body as it moves. It will immediately flex to support your position and spring back into place as you readjust during the night.
- **Durable**—Hyper-Elastic Polymer material is a highly durable gel that we believe outlasts most foams by two to three times. The Hyper-Elastic Polymer technology also has numerous applications beyond mattress products including seat cushions, pillows, pet beds and beyond. The development of the Hyper-Elastic Polymer technology is only one of numerous innovations we have developed to produce a range of unique and effective comfort products across the sleep, seat cushion and other categories.
- **Proprietary technologies and manufacturing expertise provide a significant competitive advantage**—We believe the combination of patent protection, proprietary manufacturing equipment and decades of accumulated knowledge creates a competitive advantage through barriers to imitation. We have hundreds of granted or pending patents and hundreds of patent filings that cover current and future products as well as proprietary manufacturing equipment we have designed and fabricated. In addition to intellectual property protection of key products and manufacturing capabilities, our team has decades of experience and unique insights derived from inventing and refining proprietary comfort technologies, machines and products. Our Mattress Max machine, designed and built by Purple, allows for large-format injection molding of gels at scale. Not commercially available outside of Purple, this machine is essential in producing our proprietary products efficiently and at scale.
- **Growing a brand with a passionate following**—Our brand mirrors our passion for uncompromising performance, quality and durability, and our dedication to improving lives by delivering better sleep and better comfort. We built our brand via a highly engaging digital marketing strategy, which rapidly grew our brand awareness to levels that we believe are very close to premium mattress category leaders in only five years. Our early brand growth was fueled by viral videos that have been seen more than 4.4 billion times across Facebook and YouTube. Our brand has extended beyond awareness of individual products and we have successfully marketed our full suite of products to customers using our DTC strategy. We believe customer satisfaction with our product has continued to drive “word of mouth” recommendation that is one of the most persuasive ways customers learn about our products.

- **Balanced, omni-channel distribution strategy**—We have sought opportunities to expand brand awareness in brick-and-mortar retailers where our beds can be displayed. This is a very different approach from most bed-in-a-box players who seek traditional consumer packaged goods distribution, e.g., boxes on shelves. Our goal is to support the customer wherever and however they want to learn, try, and buy. Whether in wholesale, Purple retail showrooms, or our e-commerce channel, we are a leader in the sleep products market. Our flexible return policies and aggressive expansion of wholesale doors and showrooms allow for more of our targeted customers to feel and experience our products throughout the purchase process. In our wholesale channel, we sell most of our products through select national and regional retailers as well as a variety of independent retail partners throughout the United States and Canada. As a result, we believe we are driving accelerated growth in the sleep products market as compared to the traditional retail sleep product industry.
- **Vertical integration enables nimble design, development and execution**—We design and develop our products in-house and we have extensive research and development capabilities led by a team of engineers, industrial designers and marketing specialists. The ability to develop and test products in this manner enables us to not only prototype and deploy new ideas, but also design and develop corresponding manufacturing equipment and processes. In addition, we continuously refine our production methods to improve product quality and enhance efficiency. The resulting real-time feedback cycle is a key differentiator compared to other competitors that outsource many of these functions and lack an integrated approach.

## Growth Strategies

- **Amplifying Purple Brand Power**—We are building a differentiated brand and investing in brand demand-driving marketing and advertising to create awareness, engagement, and preference for the Purple brand and for our products across all our sales channels. This strategic focus and capability investment will support our growth plans in the wholesale channel, in Purple retail showrooms, and on Purple.com. We'll also harness the evangelism of the ever-growing base of Purple owners whose advocacy of our products is one of the brand's greatest strengths.
- **Further direct-to-consumer growth and penetration**—We believe that we are well positioned to leverage our brand, leading product portfolio, vertical integration and strong marketing capabilities to continue to attract new customers via our e-commerce channel. We have invested in substantial improvements to our website, enhancing the education, shopping, and buying experiences, and we have expanded our contact center, enabling live voice, chat and messaging with our sales associates which has driven higher customer satisfaction, higher average order value, and higher conversion. Continued successful execution on Purple.com supports planned e-commerce growth, and growth in all channels given the importance of the site during the customer decision journey. In addition, we currently operate 30 Company showrooms in cities across the U.S. where consumers can experience our brand, learn about and engage with our technology, and purchase our products. We anticipate continual expansion of our showrooms as we optimize the format.
- **Expanded wholesale retail relationships**—Expanding retail distribution of our products via new and existing arrangements represents an opportunity to tap into the large brick-and-mortar category of the sleep products market. We continue to have discussions with new retail partners to expand our wholesale footprint, as well as with existing retail partners to increase sales.
- **Existing product innovation**—We have a rich history of product innovation and have developed core competencies in design, prototyping and manufacturing. This vertical integration enables us to continuously refine our existing products and manufacturing processes, as well as introduce new offerings, with the potential to attract new customers and drive repeat sales.
- **New product launches**—We have a pipeline of future products we are developing. We are constantly exploring new technologies and ways to expand the benefits of our technologies through new product offerings. This includes innovations in mattresses beyond the Purple Grid, an expanded assortment based on the Harmony Pillow™ that includes new patent-pending technology, other assortment expansion and new products in sleep, comfort and additional categories. In 2020, we added a children's line of products, enabling us to sell to this underserved demographic and providing an additional opportunity to enter the home.
- **International expansion**—We believe there is a substantial opportunity for international expansion, and we expect to find new opportunities as we expand into foreign markets. We entered the Canada market in Q4 2020 via the wholesale retailer Sleep Country Canada and we plan to expand in other foreign markets in the future. We believe that our differentiated products, multi-channel distribution strategy, manufacturing capabilities, vertical integration and marketing expertise will enable us to successfully enter new markets. We are exploring opportunities for international expansion in areas such as marketing, manufacturing, and distribution, as well as increasing franchise and wholesale partners.



## Our Products

Our current product portfolio is as follows:

- **Mattresses**—Our mattresses utilize the unique benefits of the Purple Grid creating a one-of-a-kind sleep solution that is breathable to help regulate body temperature and soft enough to cradle pressure points while also providing support through localized buckling columns. Our Purple Grid is manufactured with non-toxic, food-grade ingredients that are third-party tested and free from carcinogenic chemicals. The patented No Pressure® Purple Grid technology is used in all Purple mattresses. The buckling columns in the Purple Grid instantly adapt to your body to cradle your hips and shoulders while supporting your spine’s natural alignment for uniquely buoyant, supportive comfort. We back up the quality and durability of our mattress with a 100-night comfort guarantee and a ten-year warranty. We currently sell five distinct models of mattresses, ranging from our original Purple foam-core, to our hybrid with premium pocket coil cores, and premier mattresses which include three or four inches of Purple Grid.
- **Pillows**—We currently sell five types of pillows: The Purple Harmony Pillow™, the Purple Pillow™, the Purple Twin Cloud Pillow™, the Purple Cloud Pillow™ and the Kids Pillow. The Purple Harmony Pillow is a hybrid, hypoallergenic pillow featuring the world’s first and only tapered 360° Purple Grid Hex surrounding a soft, responsive Talalay latex core for optimal head and neck support. It has a cool-to-the-touch, moisture-wicking Breeze Mesh cover to enhance the benefits of the Purple Grid Hex. It’s the ultimate balance of soft, cool, and responsive no pressure support. The Purple Pillow utilizes the Purple Grid in a head-specific triangular grid-shape to protect against breaking down or losing shape. The Purple Twin Cloud Pillow is a hypoallergenic down-alternative that features our patented cover construction which includes two chambers filled with gel fibers that double up for better sleep. The Purple Cloud Pillow is filled with hypoallergenic, ultra-fine gel fibers that won’t clump, trap heat, or flatten over time. The result is plush cushioning that molds to support the head and neck. The Kids Pillow is smaller and softer than our original Purple pillow and adjusted to fit smaller sleepers. We believe our pillows are unique, with no other products in the market like them in appearance, design, functionality or comfort. We also back up the quality and durability of our pillows with a 100-night comfort guarantee and a one-year warranty.
- **Sheets**—We sell two types of sheets and pillowcases. Made from stretchy and breathable bamboo-based Viscose, our SoftStretch sheets are designed to maximize the functionality of the Purple Grid in our mattresses and pillows. We developed our own technology to enable customers to experience the full performance potential of our mattress (or any other mattress). We also sell more traditional cotton-based Complete Comfort sheets designed to have cushion enhancing two-way stretch. Our sheet sets include pillowcases that also maximize the unique functionality of our pillows.
- **Mattress Protector**—Like our sheets, our mattress protector is designed to optimize the functionality of the Purple Grid in our mattress. Our mattress protector is stretchy and breathable. Our protector is also stain-resistant and machine-washable, making it easy to clean.
- **Bases**—The Purple® Ascent™ Adjustable Base, Purple® Foundation, and the Purple Platform Bed have been designed to meet the needs of our customers. Our Purple® Ascent™ Adjustable Base complements our mattresses by adding electrically powered functions, such as adjustable head and foot positions, zero-gravity preset for a near weightless feel, a “sitting” preset, under-bed lighting and a remote with cradle that provides additional USB ports for device charging. Our Purple® Foundation is easy to ship and assemble, with no tools required. The bases’ supports are made of high-density polyethylene, so they don’t creak or make noise like wood supports. Plus, the joints of the Purple Foundation are reinforced with nylon buffers to help prevent squeaking. Our Purple Platform Bed is designed specifically for all current Purple bed sizes and offers a high quality, simpler alternative to our more premium offerings. Constructed from lightweight steel, the Purple Platform Bed provides optimal support and prevents the mattress from sagging.
- **Seat Cushions**—The evolution of our portfolio of seat cushions has resulted from decades of in-house manufacturing experience including development of proprietary machines and trade secrets, extending the benefits of our Hyper-Elastic Polymer and Purple Grid technologies. Purple currently sells six types of seat cushions and one back cushion, all in varying sizes and shapes to meet the needs of our customers.

## **Technology**

Technology is key to our unique position within the comfort industry. With our proprietary Hyper-Elastic Polymer material used in the Purple Grid, we have introduced the first major innovation to the mattress category in decades. Mattresses from our competitors are typically manufactured using one or more layers of springs, standard polyurethane foam, memory foam, air chambers or latex foam. These technologies have existed for decades and are undifferentiated from competitors within their product type.

### ***Proprietary Technologies***

The Purple innovation team, through their scientific journey to get to the root causes of pressure sores, designed the Hyper-Elastic Polymer material, Purple Grid structure, and other proprietary comfort technologies in order to improve the lives of “every body.” Each different cushioning product line requires unique molding techniques.

Our Hyper-Elastic Polymer material is non-toxic and hypoallergenic. This proprietary material is also durable and will not develop body impressions (compression set) from use over time. It is elastic and can stretch up to 15 times its original size and return without losing its shape. It sleeps and sits temperature-neutral and has good ventilation to inhibit moisture build-up.

Our Purple Grid structure made with Hyper-Elastic Polymer material is both soft and supportive. While the columns in this structure provide support where it is needed, they also buckle where it is needed to reduce pressure by allowing shoulders and hips to sink into the cushion with reduced force pushing back on those areas of the body unlike other cushion technologies. The soft and flexible columns also return to their original position as forces lessen and are capable of immediately providing support.

### ***Proprietary Machinery***

Internally designed, developed and built, our Mattress Max machines are the only machines able to mold our Hyper-Elastic Polymer material into large-format king-sized mattresses at scale. We have modified other molding machines to manufacture additional products containing Hyper-Elastic Polymer material, such as pillows and seat cushions. The process of molding our Hyper-Elastic Polymer material using our Mattress Max machinery is proprietary, patent-protected and complex, requiring specific knowledge and expertise to successfully execute manufacturing. We have vertically integrated with our own machine shop with mechanics and engineers at each of our factories to maintain our machines and other equipment. Furthermore, we have extensive in-house fabrication capabilities, which enable us to design, manufacture, install and maintain new equipment as well as optimize the performance and efficiency of our existing machinery based on real-time insights gained from our vertically integrated operations.

## **Marketing**

We have developed a brand that resonates with consumers. Our marketing efforts are focused on building awareness of the Purple brand and illustrating the unique way our products deliver better sleep and comfort. We leverage data-driven marketing across all communication channels to engage, acquire, and retain customers. We also amplify the voices of our evangelical product owners, whose word-of-mouth recommendation is one of our most powerful (and ownable) marketing vehicles. Deep engagement with current customers enables us to increase additional product sales across our portfolio of offerings. The success we have achieved through our marketing campaigns has been key to rapidly building our branding and awareness.

## **Our Sales Channels**

Historically, the majority of our sales have been through our e-commerce platform; however, we are growing our Purple retail showrooms, and expanding our wholesale channel distribution.

### ***Direct-to-Consumer Channel***

E-commerce is a primary distribution channel and a critical hub for consumer engagement and education. We have benefitted from the rapid growth of the direct-to-consumer mattress industry in addition to our differentiated product offering and unique marketing campaigns. Consumer willingness to buy sleep products online continues to grow as consumer confidence in online shopping continues to increase. We sell directly to consumers through our website and our growing customer contact center. We help customers easily engage in relevant content, research our solutions, transact online and find support. We believe our online experience expands our brand and connections with consumers, enabling deeper awareness, engagement and brand loyalty. We believe our 100-night trial along with free shipping and free returns provides confidence to consumers in buying a mattress.

We operate 30 Purple retail showrooms in cities across the United States where consumers can experience our brand, learn and engage with our technology and purchase our products. We plan to continue expanding our showroom footprint across the United States.

### ***Wholesale Channel***

We sell our assortment of products through brick-and-mortar wholesale partners. We began selling mattresses and other sleep products through our largest wholesale partner, Mattress Firm, in November 2017 and have continued to expand the number of wholesale partners where our mattresses and other sleep products are sold. We now sell mattresses through Ashley Furniture, Big Sandy, City Furniture, Furniture Row, HOM Furniture, Macy's, Mathis Brothers, Mattress Firm, Raymour& Flanigan, Rooms To Go, Sleep County Canada and Steinhafels, among others. We typically have three to four mattress models on the floor. Sales associates have been trained and we believe are effective in educating consumers regarding our unique benefits as well as shifting the mix upward to our more premium and higher-margin mattresses. We expect to continue expanding brick-and-mortar wholesale partners to give our customers the opportunity to feel the difference of the Purple Grid for themselves.

### **Operations**

#### ***Factories, Supply Chain and Manufacturing***

We operate factories in Alpine, Utah, Grantsville, Utah and McDonough, Georgia, which manufacture and distribute Purple products. Our two factories in Utah have a total of 667,000 square-feet, including approximately 574,000 square-feet at our Grantsville factory and another 93,000 square-feet at our Alpine factory. Our factory in McDonough, Georgia opened in March 2021 and provides 844,000 square-feet to service our customers on the east coast. At these factories we manufacture our proprietary Hyper-Elastic Polymer and Purple Grid cushioning used in our mattress, pillow and seat cushion products. We also assemble, package and ship our products from these facilities. We continually improve our manufacturing processes and create efficiencies in production through new equipment and process designs and resources. We believe these factories will provide ample room to accommodate our future growth and expansion plans for the near term.

We outsource and resell other products, including adjustable bases, platform bases, sheets, mattress protectors, blankets and duvets. These products are either designed in-house or in partnership and are unique to Purple.

We have relationships with multiple suppliers for our outsourced products and components. These suppliers may be interchanged in order to maintain quality, cost and delivery expectations.

#### ***Environmental and Governmental Regulation***

We are subject to numerous federal, state, local and foreign consumer protection and other laws and regulations applicable to the sleep product industry. These laws and regulations vary among the states and countries in which we do and intend to do business. For example, in the United States, we are subject to regulations promulgated by the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration and other federal agencies that restrict the generation, emission, treatment, storage and disposal of materials, substances and waste. We are also subject to laws such as the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the Comprehensive Environmental Response, Compensation and Liability Act. Our mattress products are also subject to fire-retardant standards developed by the State of California, U.S. Consumer Product Safety Commission and other jurisdictions where we sell these products.

As a retailer of sleep and cushioning products, we are also subject to laws and regulations applicable to retailers generally, including those regulations governing the marketing and sale of our products and the operation of our e-commerce activities. We are also subject to import and export laws and regulations to the extent our products and their component parts cross international boundaries. Many of these laws and regulations are consumer-focused and pertain to safety, truth-in-advertising, promotional offers, privacy, "do not call/mail" requirements, warranty disclosure, delivery timing requirements and similar requirements.

It is our policy and practice to comply with all applicable domestic and foreign laws and regulations. We have made and will continue to make capital and other expenditures necessary to comply with these laws and regulations. These expenditures have been immaterial to our financial results. We have not suffered a material adverse effect from non-compliance with federal, state, local or foreign legislation, but there can be no assurance that material costs or liabilities will not be incurred in connection with such legislation in the future.

## Research and Development

Our research and development teams are focused on developing new comfort technologies, manufacturing machines, and improving production processes, as well as developing products. We have an extensive history of innovation that is core to our culture and key to our continued success. Our inventions have culminated over years of persistent research and development. We intend to continue to develop and introduce new comfort technologies and products to improve how people live. Our vertical integration is a key differentiator that enhances the effectiveness of our research and development capabilities. By gaining real-time feedback, we can integrate these insights into our manufacturing process, digital marketing, products and equipment.

## Intellectual Property

We rely on patent and trademark protection laws to protect our intellectual property and maintain our competitive position in the marketplace. We hold various domestic and foreign patents, patent applications, trademarks and trademark applications regarding certain elements of the design, manufacturing and function of our products. We also maintain protections over proprietary trade secrets. Our intellectual property portfolio is integral to our continued success in this industry, with respect to our Hyper-Elastic Polymer and Purple Grid material as well as our Mattress Max machines.

We own or have the exclusive right to use hundreds of granted or pending patents and hundreds of patent filings on inventions and designs pertaining to our machines, processes, mattresses, pillows, seat cushions, packaging techniques and other related existing and future products. Our issued United States patents that are significant to our operations are expected to expire at various dates up to 2041.

We have several trademarks registered with the U.S. Patent and Trademark Office (USPTO), including EquaPressure<sup>®</sup>, WonderGel<sup>®</sup> and EquaGel<sup>®</sup> (for cushions), and Purple<sup>®</sup>, No Pressure<sup>®</sup>, Hyper-Elastic Polymer<sup>®</sup>, Somnigel<sup>®</sup>, and Gel Matrix<sup>®</sup> (for plasticized elastomeric gel and certain types of products including mattresses, seat cushions, bed linen, mattress foundation and others). Additional registered trademarks include Purple Grid<sup>®</sup>, The Purple Mattress<sup>®</sup>, Purple Hybrid<sup>®</sup>, and Purple Hybrid Premier<sup>®</sup>. Applications are pending for registration of additional trademarks and some of these listed trademarks for additional classes of goods both in the U.S. and internationally. Our Purple, No Pressure and Hyper-Elastic Polymer trademarks are also registered and have applications pending for various classes of goods in numerous foreign jurisdictions, some of which include Australia, Canada, China, Europe, United Kingdom, Japan and Korea. Certain international trademark applications previously resided with EdiZONE, LLC, which is an entity owned by our founders and were licensed to Purple LLC, and we have taken the necessary steps to have those trademarks assigned to Purple LLC upon registration.

We also have a number of common law trademarks, including Harmony<sup>™</sup>, Purple Harmony Pillow<sup>™</sup>, Harmony Pillow<sup>™</sup>, Purple +<sup>™</sup>, Purple Plus<sup>™</sup>, Find Comfort<sup>™</sup>, Dreams On Dreams<sup>™</sup>, Reinventing Sleep<sup>™</sup>, Reinventing Comfort<sup>™</sup>, Gelflex<sup>™</sup>, Ascent<sup>™</sup>, Purple Ascent<sup>™</sup>, Comfort Reinvented<sup>™</sup>, Softstretch<sup>™</sup>, Purple Powerbase<sup>™</sup>, Purple Powerbase Premier<sup>™</sup>, Purple Powerbase Plus<sup>™</sup>, Purple Glove<sup>™</sup>, Eidertech<sup>™</sup>, Mattress Max<sup>™</sup>, WonderGel Original<sup>™</sup>, WonderGel Extreme<sup>™</sup>, DoubleGel<sup>™</sup>, DoubleGel Plus<sup>™</sup>, DoubleGel Ultra<sup>™</sup>, Roll n' Go<sup>™</sup>, Fold N' Go<sup>™</sup>, Purple Bed<sup>™</sup>, Purple Top<sup>™</sup>, Purple Pillow<sup>™</sup>, Portable Purple<sup>™</sup>, Everywhere Purple<sup>™</sup>, Simply Purple<sup>™</sup>, Lite Purple<sup>™</sup>, Royal Purple<sup>™</sup>, Double Purple<sup>™</sup>, Deep Purple<sup>™</sup>, Ultimate Purple<sup>™</sup>, Purple Back<sup>™</sup>, EquaGel Straight Comfort<sup>™</sup>, EquaGel General<sup>™</sup>, EquaGel Protector<sup>™</sup>, and EquaGel Adjustable<sup>™</sup>.

Many of the common law marks have registrations pending with the USPTO and other international jurisdictions. Solely for convenience, we may refer to our trademarks in this Annual Report without the <sup>™</sup> or <sup>®</sup> symbol, but such references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights to our trademarks.

In addition, we maintain copyrights, many registered, to past and present versions of purple.com, onpurple.com, equapressure.com, wondergel.com, marketing content, blogs, logos, graphics, videos and other marketing and promotional materials promoting our products.

We protect and enforce our intellectual property rights, including through litigation as necessary.

## **Human Capital**

### ***Employees***

Our most valuable asset at Purple is our people and their learned institutional knowledge. We are mission-driven by our commitment to innovating real comfort solutions that meaningfully help “every body” feel and live better. We are a product innovation company at our core.

In February 2022, we completed a restructuring of our workforce that was necessitated by a realignment of our cost structure. As a result of the realignment and restructuring, we reduced employee headcount by approximately 15% and incurred a restructuring charge of \$1.1 million in the first quarter of 2022. As of March 1, 2022, we have approximately 1,800 employees engaged in manufacturing, research and development, general corporate functions and in Purple retail showrooms.

During 2021, the Company’s top priority has been to take appropriate actions to protect the health and safety of our employees as a result of the COVID-19 pandemic. Our current employee population works primarily within our two factories in Utah, our one factory in Georgia and at our headquarters in Lehi, Utah. However, throughout the COVID-19 pandemic, employees who were working in office settings have been working from home. We also identified new ways to work safely and effectively in our manufacturing areas by creating additional shifts, regularly cleaning common areas, wearing face masks and ensuring employees were practicing safe social distancing. We regularly engage labor contracting agencies and independent contractors to accelerate our progress and to provide support across various functions within our organization. We have no collective bargaining agreements with our employees.

### ***Diversity and Inclusion***

Purple is committed to fostering an environment that respects and encourages individual differences, diversity of thought, and talent. We strive to create a workplace where employees feel that their contributions are welcomed and valued, allowing them to fully engage their talents and training in their work, while generating personal satisfaction in their roles within the Company. We hired a Chief People Officer in 2021, who will facilitate the ways in which Purple can operationalize its commitment to expanding diversity, nurturing the power of difference, and recruiting and retaining diverse talent.

### ***Philanthropy***

Purple is driven to innovate real comfort solutions that help “every body” sleep, feel and live better while we forge real relationships with our customers and communities. We believe in the importance of contributing to the communities that we serve, and we are growing the impact of our philanthropic activities with a purposeful focus on protecting the power of sleep for children and families. We expanded this year our support of the Precious Dreams Foundation to help assure the comfort and sleep of children in foster care. We made product donations to shelters in the communities in which we live and work, and we supported the sleep of refugee families resettling in the United States. We are proud to celebrate student achievement and recognize teacher contributions and to support the local economies in communities that support our workplaces.

## ***Ethical Culture***

Finally, our Code of Ethics promotes an environment of integrity by requiring honest, ethical and fair conduct with a focus on conflicts of interest, compliance, deterrence and internal reporting. It also requires full, fair and accurate disclosure in public filings and communications. All employees are required to complete Code of Ethics training periodically.

Overall, we believe our culture, along with our internal tools and initiatives, enable us to effectively execute our human capital strategy. For discussion on the risks relating to our inability to attract and retain top-performing talent, please see section titled Risk Factors.

## **Our History**

Purple was created by two brothers that set out to revolutionize the comfort space. One in manufacturing and design, and the other an advanced aerospace scientist, the brothers embarked on a partnership in the early 1990s to put together a team to develop cushioning solutions for wheelchairs and medical beds. They later created what we call the Purple Grid—an elastomeric polymer that can stretch up to 15x its resting size and never lose shape or function. The Purple Grid has since been used in mattresses, seat cushions and pillows.

In August of 2020, Purple announced that co-founders Terry and Tony Pearce chose to retire from their positions as Co-Directors of Research & Development of Purple LLC and as directors on Purple Inc.'s Board of Directors ("Board"). Today, Purple's research and development teams are focused on creating innovative comfort solutions for all facets of life.

## **Available Information**

Our website address is [www.purple.com](http://www.purple.com). We make available, free of charge on our Investor Relations website, [investors.purple.com](http://investors.purple.com), our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the U.S. Securities and Exchange Commission ("SEC").

We also use our Investor Relations website, [investors.purple.com](http://investors.purple.com), as a channel of distribution of additional Purple information that may be deemed material. Accordingly, investors should monitor this channel, in addition to following our press releases, SEC filings and public conference calls and webcasts. The contents of our website shall not be deemed to be incorporated herein by reference.

## Information About Our Executive Officers

As of the date of this report, our directors and executive officers are as follows:

Name	Age	Title
Robert T. DeMartini	60	Director, Chief Executive Officer
Bennett L. Nussbaum	74	Interim Chief Financial Officer and Treasurer
Casey K. McGarvey	62	Chief Legal Officer and Secretary
John A. Legg	60	Chief Operating Officer
Verdi R. White III	43	Chief Retail Officer
Patrice A. Varni	60	Chief Marketing Officer
John J. Roddy IV	54	Chief People Officer

### *Executive Officers*

**Robert T. DeMartini** has served as Chief Executive Officer since January 2022. Prior to joining the Company, Mr. DeMartini, age 60, served as president and chief executive officer of USA Cycling, Inc., the official U.S. Olympic & Paralympic Committee governing body for all disciplines of competitive cycling in the United States, from 2019 until 2021. He previously served as president and chief executive officer of New Balance Athletic Shoes (U.K.) Ltd., from 2018 to 2019 and as president and chief executive officer of New Balance Athletics, Inc. from 2007 to 2018, each a business unit of New Balance, Inc. a leading manufacturer and retailer of athletic footwear, apparel and accessories. From 1982 through 2007 Mr. DeMartini held various leadership positions with Procter & Gamble, The Gillette Company, and Tyson Foods, Inc. He also currently serves on the boards of Welch's Foods and Q30 Innovations/Q30 Sports Canada, and formerly served on the boards of American Functional Fabrics of America, The American Apparel & Footwear Association, and Aloha. Mr. DeMartini received a Bachelor of Science degree in Finance from San Diego State University. He is well qualified to serve on our Board due to his extensive operational and management background.

**Bennett L. Nussbaum** has served as our Interim Chief Financial Officer ("CFO") since August 2021. Prior to joining the Company, Mr. Nussbaum served as the Interim Chief Financial Officer of American Megatrends, Inc. from 2019 to 2020. During that period he also served as Operating Partner of HGGC, LLC from 2017 to 2020. He also served as Interim CFO at 4over, Inc. from 2017 to 2018. From 2016 to 2017 he was the Chief Financial Officer of American Apparel, LLC. He currently serves on the advisory board for the W. Edwards Deming Center for Quality, Productivity, and Competitiveness at the Columbia University Graduate School of Business, a position he has held since 2011. Mr. Nussbaum previously served on the boards of directors of The Collected Group, LLC from 2018 to 2019, Charlotte Russe, Inc. from 2018 to 2019, and BCBGMAXAZRIA, LLC during 2017. Mr. Nussbaum has extensive leadership and stakeholder management expertise who has led multibillion-dollar publicly traded and private equity-owned businesses through turnarounds, transitions and accelerated growth. Mr. Nussbaum is a graduate from the Wharton School of Business of the University of Pennsylvania with a BS in Economics and holds an MBA from Columbia University in New York, NY.

**Casey K. McGarvey** has served as the Chief Legal Officer and General Counsel of Purple LLC since its inception in 2010 as WonderGel, LLC. He also has served as Corporate Secretary of Purple Inc. since the Business Combination. From 2008 until the Business Combination, he also has served as General Counsel of various technology companies owned by Terry and Tony Pearce, including EdiZONE, LLC, focused on developing advanced cushioning technology. Mr. McGarvey has a deep knowledge of the Company's technologies and intellectual property. Prior to joining EdiZONE and Purple LLC, Mr. McGarvey was a shareholder, partner or of counsel at several law firms during which, among other things, he litigated and advised businesses on the protection of their patents and trademarks and other business matters. Mr. McGarvey has the following degrees, each from the University of Utah, a Bachelor of Arts and Honors Bachelor in political science with a Certificate in public administration, a Juris Doctor and an Executive Masters of Business Administration.

**John A. Legg** has served as the Chief Operating Officer of the Company since January 2019. Mr. Legg brings to the Company over 20 years of experience in operations and supply chain management in the wholesale, retail and e-commerce/direct-to-consumer sectors. Prior to joining the Company, Mr. Legg served as a partner in the consulting firm of Claris Retail Solutions Group (“Claris”) from September 2017 until he joined the Company in January 2019. Prior to that, he served as Senior Vice President Global Operations for Global Brands Group, providing strategic direction across all operational areas. In addition, prior to joining Global Brands Group, Mr. Legg was the Senior Vice President of Global Logistics and Supply Chain for the Zale Corporation. From 2009 to 2010, he consulted in Supply Chain Management for Tory Burch. From 2007 to 2008, Mr. Legg served as Senior Vice President Global Distribution and Logistics for Warnaco, Inc. Finally, from 1999 to 2007, he worked for Liz Claiborne in the US and in Europe, serving as Vice President International Distribution. Mr. Legg is a graduate of Northeastern University, in Boston, MA, and holds a BS in Business Administration, Transportation and Distribution Management.

**Verdi R. White III** has served as the Chief Retail Officer of the Company since March 2019. Prior to joining the Company, Mr. White served as the General Manager of Downeast Home since 2016. From 2014 to 2016, he served as Vice President of Real Estate and Construction for Hill Country Holdings, then the largest licensee of the Ashley Furniture Homestore concept. In that role, Mr. White oversaw all expansion initiatives for the company including new stores, warehouses, and all construction and maintenance of existing facilities. Prior to joining Hill County Holdings, Mr. White was the Vice President of Real Estate and Strategy at the Larry Miller Group from 2011 to 2014 where he grew their Fanzz and Pro Stop retail business. From 2007 to 2011, he managed design and construction projects at Brookfield Properties, formerly General Growth Properties. From 2001 to 2007, Mr. White was the co-founder of LoveSac where he conceived of, deployed, and operated LoveSac’s direct-to-consumer store strategy as well as new product development. Mr. White holds an MBA from Brigham Young University’s Marriott School of Management.

**Patrice A. Varni** has served as Chief Marketing Officer of the Company since June 2021. Prior to joining Purple, Ms. Varni was the President and Chief Marketing Officer of Dermstore (a subsidiary of Target Corporation), the leading online retailer of professional skincare, from 2020 to joining Purple in 2021. Ms. Varni served as the Chief Customer Officer at Corelle Brands from 2017 to 2019 and as the Chief Customer Officer at Arhaus an omni-channel national premium furniture retailer from 2015 to 2017. Ms. Varni gained deep category experience as Senior Vice President of Marketing at Tempur Sealy International from 2009 to 2015. From 2001 to 2009 she served as the Vice President of Ecommerce and relationship marketing for the Levi’s brand at Levi Strauss & Company. Earlier in her career, from 1991 through 2001, Ms. Varni built her marketing and e-commerce capability in various roles at what is now Digitas agency, The Walt Disney Company and Kenwood Electronics. Ms. Varni holds an MA in English and a BA in European Studies from Loyola Marymount University in Los Angeles.

**John J. Roddy IV** has served as Chief People Officer of the Company since October 2021. Mr. Roddy brings to the Company over 20 years of experience in culture transformation, talent development, organization design and change leadership. Prior to joining the Company, Mr. Roddy served as the Chief People Officer for VASA Fitness since 2018. Prior to that he was the Chief Human Resources Officer for SeaWorld Parks and Entertainment from 2016 to 2018. From 2012 to 2016, Mr. Roddy was the Senior Vice President of Human Resources for Luxottica Group. Prior to joining Luxottica Group, he was the Vice President of Human Resources for Starbucks Corporation from 2004 to 2012. Mr. Roddy holds a master’s degree from Columbia University on Organizational Psychology and a bachelor’s degree in Organizational Behavior from Brigham Young University – Hawaii.



## **Item 1A. Risk Factors**

*The risk factors summarized and detailed below could materially harm our business, operating results and/or financial condition, impair our future prospects and/or cause the price of our common stock to decline. Any defined terms used in the Risk Factor Summary are defined in the full Risk Factors. These are not all of the risks we face and other factors not presently known to us or that we currently believe are immaterial may also affect our business if they occur. Material risks that may affect our business, operating results and financial condition include, but are not necessarily limited to, those relating to:*

### **Risk Factor Summary**

#### ***Risks Related to Our Operations***

- Significant fluctuations in our operating results and growth rate, and our short operating history in an evolving industry;
- Lack of availability and quality of raw materials;
- Significant strain of managing the growth of our business;
- Changes in accounting standards and assumptions, estimates and judgments by management related to complex accounting matters;
- Disruption of operations in manufacturing facilities, including pandemics or natural disasters, and risks associated with use of heavy machinery and equipment;
- Ability to obtain additional capital on acceptable terms or at all;
- Inability to identify, complete or successfully integrate acquisitions, and any acquisitions that we do make may not achieve the anticipated financial benefits;
- Our ability to continue to improve and expand our product line and our expansion into new products, market segments and geographic regions;
- The ongoing COVID-19 pandemic including its effect on our supply chain, workforce, and operations, and the COVID-19 pandemic effect on customer demand;
- The strength of our Purple brand, the effectiveness of our marketing, and our ability to attract and retain customers and our ability to achieve and maintain production capacity to meet customer demands;
- Our significant related-party transactions that may give rise to conflicts of interest;
- Unsuccessful anticipation of consumer trends and demand, and excess inventory susceptible to shrinkage;
- Ability to make, integrate, and maintain commercial agreements, strategic alliances, and other business relationships;
- Competition in a highly competitive comfort industry, and substantial and increasingly intense competition worldwide in e-commerce;
- Any reduction in the availability of credit to consumers;
- Maintaining only the necessary amounts of raw material and product inventory;
- Ability to provide timely delivery to our customers;
- Dependence on a few key employees;
- Failure to maintain internal controls and the potential impact of making material misstatements on financial results and reporting; and
- Need to implement additional finance and accounting systems, and failure of or disruptions to our information technology systems.

#### ***Regulatory and Litigation Risks***

- Regulatory requirements requiring costly expenditures and exposure to liability, some of which are specific to the manufacture and disposal of mattresses;
- Income tax, sales tax or other tax liabilities; and
- The risk of litigation resulting from the impact of the material weakness in our internal controls over financial reporting.

***Risks Relating to our Intellectual Property and Use of Technology***

- Ability to protect our brand, product designs and other proprietary rights both domestically and internationally, and claims that we or our licensors have infringed the proprietary rights of others;
- Purple LLC's license of intellectual property to EdiZONE, LLC; and
- Ability to keep pace with rapid technological developments and failure to protect sensitive employee, customer and consumer data.

***Risks Relating to Our Organizational Structure***

- Volatility of Class A common stock;
- Anti-takeover provisions in Delaware law and our Second Amended and Restated Certificate of Incorporation, provisions in our Second Amended and Restated Certificate of Incorporation making it difficult for investors to bring legal action against us or our directors or officers, and provisions in our Second Amendment and Restated Certificate of Incorporation limiting a stockholders' ability to obtain a favorable judicial forum;
- Future sales of our Class A Common Stock ("Class A Stock") by our existing shareholders that may cause stock prices to fall, and dilution or other impairment of rights as a result of the issuance of additional shares;
- Ownership of Purple LLC as our only significant asset and its effect on our ability to pay dividends or make distributions or loans or satisfy other financial obligations;
- Not anticipating paying any cash dividends in the foreseeable future;
- Level of indebtedness could limit our operational and financial flexibility, and issuance of additional debt or securities without stockholder approval; and
- Warrants accounted for as liabilities and warrant exercises that could result in dilution.

***Tax Risks Relating to Our Structure***

- Requirement to pay InnoHold, LLC ("InnoHold") 80% of the tax benefits under the Tax Receivable Agreement, and possible acceleration or changes in payments under the Tax Receivable Agreement;
- Ability to realize all or a portion of the tax benefits that are expected to result from the acquisition of Units from holders of Purple LLC Class B Units;
- Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns; and
- Ability to utilize our net operating loss carryforwards and certain other tax attributes.

## Risks Related to Our Operations

*We have in the past experienced and may in the future experience significant fluctuations in our operating results and growth rate, which could make our future results of operations difficult to predict or cause our results of operations to fall below analysts' and investors' expectations.*

Our quarterly and annual results of operations have fluctuated in the past and we expect our future results of operations to fluctuate due to a variety of factors, many of which are beyond our control. Fluctuations in our results of operations could cause our performance to fall below the expectations of analysts and investors, and adversely affect the price of our common stock. Because our business is changing and evolving rapidly, our historical results of operations may not be necessarily indicative of our future results of operations. Factors that may cause our results of operations to fluctuate include, but are not limited to, the following:

- disruptions or delays in our production and shipping of our products;
- failures in our manufacturing equipment;
- supply chain constraints, including the availability of raw materials in a timely manner;
- costs of employee recruiting and retention;
- changes in the pricing or availability of advertising;
- changes in our capital expenditures;
- costs related to acquisitions or businesses or technologies and development of new products;
- the introduction of new technologies or products by our competitors;
- changes in demand for our products, whether caused by changes in customer confidence or preferences or a weakening of the U.S. or global economies;
- general political, economic and business conditions worldwide, including political or social unrest;
- disruption of our physical facilities or those of our wholesale partners due to social unrest or other issues; and
- the impact of natural disasters on our manufacturing facilities and supply chain.

In addition, we rely on estimates and forecasts of our expenses and revenues to provide guidance and inform our business strategies, and some of our past estimates and forecasts have not been accurate. The evolving nature of our business makes forecasting operating results difficult. If we fail to accurately forecast our expenses and revenues, our business, prospects, financial condition and results of operations may suffer, and the value of our business may decline. If our estimates and forecasts prove incorrect, we may not be able to adjust our operations quickly enough to respond to lower-than-expected sales which, for example, could result in higher than anticipated inventory levels, or higher-than-expected expenses which, for example, could be the result of building excess capacity.

Based upon the factors above and others beyond our control, we have a limited ability to forecast our future revenue, costs and expenses. If we fail to meet or exceed the operating results expectations of analysts and investors or if analysts and investors have estimates and forecasts of our future performance that are unrealistic or that we do not meet, the market price of our common stock could decline. In addition, if one or more of the analysts who cover us adversely change their recommendation regarding our stock, the market price of our common stock could decline. In the past, companies that have experienced volatility in the market price of their stock have been subject to securities litigation. We may be the target of this type of litigation in the future, which could result in substantial costs and divert our management's attention from other business concerns.

You should consider our business in light of the risks and difficulties we may encounter, as described above and elsewhere in this "Risk Factors" section. If we fail to address the risks and difficulties that we face, our business and operating results will be adversely affected.

***We have a limited operating history in an evolving industry and, as a result, our past results may not be indicative of future operating performance.***

We are a growing business with a limited operating history. Our relatively limited operating history makes it difficult to assess our future performance. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly developing and changing industries, including inconsistent financial results, challenges in forecasting accuracy, determining appropriate investments of our limited resources, market acceptance of our products and services and future products and services, competition from new and established companies, including those with greater financial and technical resources, enhancing our products and services and developing new products and services.

For the year ended December 31, 2021, we had net income of \$3.9 million and in 2020 we incurred a net loss of (\$229.8) million. In 2021, we consumed \$30.9 million of operating cash flow and ended the year with working capital of \$87.5 million and an accumulated deficit of \$261.8 million. In 2020, we generated \$81.3 million of operating cash flow and ended the year with working capital of \$96.9 million and an accumulated deficit of \$265.9 million. We need positive cash flow from operations and additional capital to execute our business plan and growth initiatives. If we are unable to satisfy our liquidity and capital resource requirements our business could become adversely affected.

***Lack of availability and quality of raw materials, labor, components, and shipping services, or increases in the cost of such inputs, could cause and has caused delays that could result in our inability to provide goods to our customers or could increase our costs, either of which could decrease our earnings.***

In manufacturing products, we use various commodity components, such as polyurethane foam, oil, our spring units, ingredients for our Hyper-Elastic Polymer material, our water-based adhesive and other raw materials. Because we are dependent on outside suppliers for our raw materials, lack of availability and quality could have a negative effect on our cost of sales and our ability to meet our customers' demands. Competitive and marketing pressures may prevent us from passing along price increases to our customers, and the inability to meet our customers' demands could cause us to lose sales.

Some components, such as foam and spring units, are widely used in our industry. Shortages in such components, due to any reason including increase in demand, weather events, supply chain difficulties within the supplier or otherwise, could adversely affect our production capacity and financial results. If we were unable to obtain raw materials and components from suppliers, we would have to find replacement suppliers. Any new arrangements for raw materials and components might not be on favorable terms, if we are able to enter into new arrangements at all. If a supplier for a component failed to supply such component in required amounts this could significantly interrupt production and increase costs.

Even if we are able to obtain raw materials and other production inputs in a timely manner, supply chain constraints, inflation, and other factors may increase the costs of shipping, raw materials, labor, and other production and operational resources. We have experienced and expect to continue to experience increases in the cost of core materials and labor needed to manufacture our products. Such cost increases could adversely impact our production capacity and efficiency and reduce our gross margins and earnings.

The ongoing COVID-19 pandemic, including measures taken in response by governments and businesses worldwide to contain its spread, and general economic conditions have adversely impacted and are expected to continue to adversely impact global supply chain, manufacturing, and logistics operations. Shipping and freight costs and delays have also been increasing as port closures, port congestion, and shipping container and ship shortages have increased. To the extent the COVID-19 pandemic and other events result in continuation or worsening of manufacturing and shipping delays and constraints, our suppliers of raw materials and other components may have difficulty obtaining and providing the materials we require to manufacture our products or may increase the costs of such materials, which could adversely affect our earnings and our ability to acquire and maintain adequate inventory and meet demand for our products. Any significant delay or interruption in our supply chain, or our inability to obtain substitute components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and could harm our business. The COVID-19 pandemic also disrupted our relationship with employees as a result of furloughs, government programs that resulted in employees not returning to work, higher wages paid by competing employers incentivizing our employees to leave, and an increased general demand for labor.

***The previous growth of our business placed significant strain on our resources and if we are unable to manage future growth, we may not have profitable operations or sufficient capital resources.***

Historically we have expanded our operations, including expanding our workforce, increasing our product offerings and scaling our infrastructure to support expansion of our manufacturing capacity, our wholesale channel expansion and the opening of Purple retail showrooms. Our planned growth includes increasing our manufacturing efficiencies, developing and introducing new products and developing new and broader distribution channels, including wholesale and Purple retail showrooms, and extending our global reach to other countries. This expansion increases the complexity of our business and places significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions.

Our continued success depends, in part, upon our ability to manage and expand our operations and facilities and production capacity. The growth in our operations has placed, and may continue to place, significant demands on our management and operational and financial infrastructure. If we do not manage growth effectively, the quality of our products and fulfillment capabilities may suffer which could adversely affect our operating results. Our revenue growth may not be sustainable, and our percentage growth rates may decrease. If we are unable to satisfy our liquidity and capital resource requirements, we may have to scale back, postpone or discontinue our growth strategies, which could result in slower growth, no growth, or shrinking, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain our employees. In addition, we may be forced to restructure our obligations to creditors or pursue work-out options.

Our growth depends in part on our ability to manage the opening and operating of new production facilities and Purple retail showrooms, which will require our entering into leases and other obligations. To be successful, we will need to continue developing retail expertise and we will need to hire new employees in states that may have employment laws that could increase our expenses. In general, operating new facilities and opening Purple retail showrooms in new locations exposes us to laws in other states, including California, that may not be as employer-friendly as those in which we currently operate, and may expose us to new liabilities. If we are not able to successfully manage the process of expanding operations geographically, opening Purple retail showrooms and maintaining operations in an expanding number of facilities and Purple retail showrooms, we may have to close Purple retail showrooms or operations facilities and incur sunk costs and continuing obligations that could put a strain upon our resources, damage our brand and reputation and limit our growth.

To manage growth effectively, we would need to continue to implement operational, financial and management controls and reporting systems and procedures and improve the systems and procedures that are currently in place. There is no assurance that we will be able to fulfill our staffing requirements for our business, successfully train and assimilate new employees, or expand our management base and enhance our operating and financial systems. Failure to achieve any of these goals will prevent us from managing our growth in an effective manner and could have a material adverse effect on our business, financial condition or results of operations. In addition, a softening of demand, whether caused by changes in customer preferences or a weakening of the U.S. or global economies, may result in decreased revenue or growth. Further, we may not be able to accurately forecast our growth rate. We base our expense levels and investment plans on sales estimates. A significant portion of our expenses and investments is fixed, and we may not be able to adjust our spending quickly enough if our sales are less than expected.

We have identified the need for improved processes and procedures to avoid delays in the timely delivery of our mattress products and to improve the customer's experience. Also, we have experienced rapid growth in our employee base, and the need to implement processes and procedures for improving employee training and retention. Competition for employees where our production facilities are located also has increased the costs for employee retention. We have implemented improved processes and procedures in an environment of continuous change, but our use of resources may not be as effective as intended or we may need to apply more resources than expected to continue to make changes to improve our employee retention and effectiveness and the quality of our products and services over time. If we are unable to make continuous improvement, achieve greater efficiencies in our operating expenses and improve our products and services, our business could be adversely affected.

***Disruption of operations in our manufacturing facilities, including as a result of, among other things, workplace injuries, pandemics or natural disasters, has and could increase our costs of doing business or lead to delays in shipping our products and could materially adversely affect our operating results and our ability to grow our business.***

We have three manufacturing plants, which are located in Alpine, Utah, Grantsville, Utah, and McDonough, Georgia. In the future we may also enter into leases for additional manufacturing plants.

The disruption of operations of our manufacturing facilities for a significant period of time, or even permanently, or disruptions to the planned further build-out of the Georgia facility such as due to a closure related to the COVID-19 pandemic, the loss or expiration of a lease or mechanical failures in our manufacturing equipment, may increase our costs of doing business and lead to delays in manufacturing and shipping our products to customers and could materially and adversely affect our operating results and our ability to grow our business. In addition, the occurrence of workplace injuries or other industrial accidents at one or more of our manufacturing plants has required, and may require in the future, that we suspend production or modify our operations, which could lead to delays in manufacturing and shipping our products to customers. Likewise, acts of workplace violence may require us to temporarily suspend production or modify our operations. Such delays could adversely affect our sales, customer satisfaction, profitability, cash flows, liquidity and financial condition. Because two of our currently operating manufacturing plants are located within the same geographic region, regional economic downturns, natural disasters, closures due to COVID-19, the unavailability of utilities as a result of climate events or otherwise, or other issues could potentially disrupt a significant portion of our manufacturing and other operating activities, which could adversely affect our business. Our Utah facilities are near earthquake fault lines and our Georgia facility is located in an area that may be subject to hurricanes; such natural disasters in these areas could disrupt manufacturing and other operating activities, which could adversely affect our business.

Any disruption of our operations, and related impacts on our operating results, could also adversely affect the market price of our Class A Stock, which could result in securities litigation. Such litigation could result in substantial costs, divert resources and the attention of management from our core business, and adversely affect our business.

***Our manufacturing processes involve the use of heavy machinery and equipment, which exposes us to potentially significant financial losses and reputational harm due to workplace injuries or industrial accidents that may occur at our facilities.***

Our manufacturing processes involve the use of heavy machinery and equipment and are subject to risks involving workplace injuries, mechanical failures, and industrial accidents, including, among other things, personal injury or death resulting from such incidents at our manufacturing plants. A workplace accident, mechanical failure, industrial accident or any similar problem involving any one or more of our facilities has required, and may require in the future, that we suspend production at one or more of our manufacturing plants, which could lead to delays in manufacturing and shipping our products and adversely affect our business and results of operations. The occurrence of such incidents, or any perceived insufficiency in our response to any such deficiency or problem, could also adversely and materially affect our reputation, and negatively impact the market price of our Class A Stock. If we are unable to meet workplace safety standards or, if our employees or customers perceive us having a poor safety record, it could materially impact our ability to attract and retain new employees and our reputation with our customers could suffer, which could adversely affect our business and results of operations.

In 2021, we experienced an incident involving our manufacturing equipment that resulted in the death of one of our employees. As a result, we shut down our manufacturing equipment while we evaluated the safety of our manufacturing equipment and identified and implemented safety improvements. In addition, once safety improvements were implemented and manufacturing resumed, we experienced unanticipated mechanical and maintenance issues while ramping up to normal production. These delays in production limited our ability to fill customer orders, which has adversely affected our financial results and relationships with customers, including wholesale partners delaying when they started ordering products again and not yet ordering to levels we have anticipated. Other incidents could result in further production delays, which could adversely affect our operating performance and reputation with our customers. While we have lowered our risk of future safety incidents by committing significant financial resources and time to implementing safety improvements, these safety improvements may cause our production output to decrease and could materially adversely affect our operating results and our ability to grow our business.

The occurrence of such incidents has resulted in and could in the future result in investigations by or the imposition of fines from regulatory authorities or require us to implement corrective actions to address the causes of such incidents, which could require the expenditure of significant resources and may adversely affect our financial condition and operations. Further, the occurrence of such incidents may result in litigation, including personal injury or workers' compensation claims, as well as securities litigation resulting from any related impact on the market price of our Class A Stock, which could also adversely affect our financial condition and reputation. While we maintain insurance coverage for certain types of losses, such insurance coverage may be insufficient to cover all losses that may arise.

***We may need additional capital to execute our business plan and fund operations and may not be able to obtain such capital on acceptable terms or at all.***

In connection with the development and expansion of our business, we expect to incur significant capital and operational expenses. We believe that we can increase our sales and net income by implementing a growth strategy that focuses on (i) increasing our manufacturing efficiency; (ii) increasing our e-commerce sales; (iii) expanding our wholesale distribution channel; (iv) opening additional Purple retail showrooms; (v) expanding our global sales; (vi) engaging global partners to improve distribution efficiencies and cost savings; and (vii) product assortment and category expansion.

Our ability to obtain other capital resources and sources of liquidity may not be sufficient to support future growth strategies. If we are unable to satisfy our liquidity and capital resource requirements, we may have to scale back, postpone or discontinue our growth strategies, which could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain our employees. In addition, we may be forced to restructure our obligations to creditors, pursue work-out options or other protective measures.

While we have had access to a \$55 million revolving credit facility under our financing arrangement with KeyBank National Association and a group of financial institutions (as amended, the "2020 Credit Agreement"), our ability to access such funds is subject to certain conditions and we have already drawn the entire amount of the revolving credit facility. Further, our ability to obtain additional or alternative capital on acceptable terms or at all is subject to a variety of uncertainties, including approval from KeyBank National Association and a group of financial institutions (the "Institutional Lenders") under the 2020 Credit Agreement. Adequate financing may not be available or, if available, may only be available on unfavorable terms. The restrictive covenants in the 2020 Credit Agreement may make it difficult to obtain additional capital on terms that are favorable to us, and we may not be able to satisfy the conditions necessary to obtain additional funds pursuant to the revolving credit facility under the 2020 Credit Agreement. There is no assurance we will obtain the capital we require. As a result, there can be no assurance that we will be able to fund our future operations or growth strategies.

Our operating and financial results for the year ended December 31, 2021 did not satisfy our financial and performance covenants required pursuant to the 2020 Credit Agreement. In order to avoid a breach of such covenants and related default, on February 28, 2022, prior to the covenant compliance certification date under the 2020 Credit Agreement, we entered into the first amendment of the 2020 Credit Agreement. The amendment contains a covenant waiver period such that the net leverage ratio and fixed charge coverage ratio will not be tested for the fiscal quarter ended December 31, 2021 through the fiscal quarter ended June 30, 2022. Other changes in the amendment include modification of leverage ratio and fixed charge coverage definitions and thresholds, the addition of minimum liquidity requirements with mandatory prepayments of the revolving loan if cash exceeds \$25.0 million, new weekly and monthly reporting requirements, limits on the amount of capital expenditures, including expenditures for acquisition of other businesses or technologies, the addition of a lease incurrence test for opening additional showrooms, and additional negative covenants during a covenant amendment period that will extend into 2023 until certain conditions are met. In addition, the interest rate on outstanding borrowings under the 2020 Credit Agreement changed from LIBOR to secured overnight financing rate ("SOFR").

To the extent that future or additional waivers and amendments are necessary, there can be no guarantee that we will be able to obtain waivers or further amendments from the lenders under the 2020 Credit Agreement if, in the future, we are unable to comply with the covenants and other terms of the 2020 Credit Agreement. Our failure to satisfy the required conditions under the amendment or maintain compliance with the financial and performance covenants under the 2020 Credit Agreement could result in a default, which would adversely affect our financial condition and results of operations, including as a result of acceleration of our outstanding debt. In addition, any default under the 2020 Credit Agreement would adversely affect our ability to obtain alternative financing.

Future equity or debt financings may require us to also issue warrants or other equity securities that are likely to be dilutive to our existing stockholders. Newly issued securities may include preferences or superior voting rights or may be combined with the issuance of warrants or other derivative securities, which each may have additional dilutive effects. Furthermore, we may incur substantial costs in pursuing future capital and financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses and other costs. We may also be required to recognize non-cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which will adversely impact our financial condition. If we cannot raise additional funds on favorable terms or at all, we may not be able to carry out all or parts of our long-term growth strategy, maintain our growth and competitiveness or continue in business.

***We may not be able to identify, complete or successfully integrate acquisitions and any acquisitions that we do make, if any, may not achieve the anticipated financial benefits, all of which could have a negative impact on our growth, financial condition, and results of operations.***

We may seek to acquire businesses in the future as we encounter acquisition prospects that would complement our current product offerings, increase the size and geographic scope of our operations, or otherwise offer growth and operating efficiency opportunities. We cannot assure investors that we will be able to identify and acquire acceptable acquisition candidates on terms favorable to us in the future, or that any acquisitions will achieve the anticipated financial benefits. Even if we do identify opportunities to acquire businesses, we may not be able to consummate such acquisitions due to a number of factors, including lacking access to sufficient capital to fund such acquisitions and restrictions contained in our Credit Agreement on our ability to make acquisitions.

In addition, acquisitions involve numerous risks and uncertainties and may be of businesses in which we lack operational or market experience. The financing for any of these acquisitions could dilute the interests of our stockholders, result in an increase in our indebtedness or both. Future acquisitions could entail numerous risks, including:

- difficulties in integrating acquired operations or products;
- the difficulties of imposing financial and operating controls on the acquired companies and their management and the potential costs of doing so;
- the potential loss of key employees, customers, suppliers or distributors from acquired businesses and disruption to our direct selling channel;
- diversion of management's attention from our core business;
- the failure to achieve the strategic objectives of these acquisitions;
- increased fixed costs;
- the failure of the acquired businesses to achieve the results we have projected in either the near or long term;
- the assumption of unexpected liabilities, including litigation risks;
- adverse effects on existing business relationships with our suppliers, sales force or consumers; and
- risks associated with entering markets or industries in which we have limited or no prior experience, including limited expertise in running the business, developing the technology, and selling and servicing the products.

Our failure to successfully complete the integration of any acquired business, or a failure to effectively identify and pursue such acquisitions, could have a material adverse effect on our business, financial condition and operating results.

***Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters, including matters relating to our Tax Receivable Agreement, could significantly affect our financial results.***

Generally accepted accounting principles and related accounting pronouncements, implementation guidelines and interpretations with regard to a wide range of matters that are relevant to our business are complex and involve many subjective assumptions, estimates and judgments by our management, including but not limited to estimates that affect our revenue recognition, accounts receivable and allowance for doubtful accounts, valuation of inventories, cost of revenues, sales returns, warranty liabilities, the recognition and measurement of loss contingencies, warrant liabilities, estimates of current and deferred income taxes, deferred income tax valuation allowances and amounts associated with our Tax Receivable Agreement with InnoHold dated February 22, 2018 (the "Tax Receivable Agreement"). Changes in these rules or their interpretation or changes in underlying assumptions, estimates or judgments by our management could significantly change our reported or expected financial performance, and could have a material adverse effect on our business.

***Our future growth and profitability may depend in part on our ability to continue to improve and expand our product line and to successfully execute new product introductions.***

As described in greater detail below, the mattress, pillow, bedding, bed base, cushion and related industries (“Comfort Industry”) are highly competitive, and our ability to compete effectively and to profitably grow our market share depends in part on our ability to continue to improve and expand our product line and related accessory products.

We incur significant research and development and other expenditures in the pursuit of improvements and additions to our product line. If these efforts do not result in meaningful product improvements or new product introductions, or if we are not able to gain widespread consumer acceptance of product improvements or new product introductions, our sales, profitability, cash flows and financial condition may be adversely affected. In addition, if any significant product improvements or new product introductions are not successful, our reputation and brand image may be adversely affected, and our business may be harmed.

A significant portion of our gross profit comes from our mattress products. If we are unable to develop new models of our mattress products or successfully market and sell new mattress models, our profitability may be adversely affected, and our business may be harmed.

***Our expansion into new products, market segments and geographic regions subjects us to additional business, legal, financial, and competitive risks.***

The majority of our sales are made directly to consumers through our website or certain other e-commerce platforms. We have been expanding our business into the wholesale distribution channel through relationships with our wholesale partners but there can be no assurance that we will continue to experience success with our wholesale partners or that anticipated new locations will be successful.

We may be unsuccessful in generating additional sales through wholesale channels. We may extend credit terms in connection with such relationships and such relationships may expose us to the risk of unpaid or late paid invoices. In addition, we may provide fixtures to such partners that may be difficult to recover or re-use. Our wholesale customers may not purchase our products in the volume we expect.

Profitability, if any, from sales to wholesale customers and new product offerings may be lower than from our DTC model and current products, and we may not be successful enough in these newer activities to recoup our investments in them. If any of these issues were to arise, they could damage our reputation, limit our growth, and negatively affect our operating results.

We may be unsuccessful in opening any Purple retail showrooms beyond those already opened in cities across the U.S. Operating Purple retail showrooms includes additional risks. For example, we will incur expenses and accept obligations related to additional leases, insurance, distribution and delivery challenges, increased employee management, and new marketing challenges. If we are not successful in our efforts to profitably operate these new stores, our reputation and brand could be damaged, growth could be limited, and our business may be harmed.

In addition, offerings of new products through our e-commerce, wholesale distribution channel and Purple retail showrooms may present new and difficult challenges, and we may be subject to claims if customers of these offerings experience service disruptions or failures or other quality issues. Expansion of sales channels may require the development of additional, differentiated products to avoid price and distribution conflicts between and within sales channels. Wholesale expansion increases our risk as our wholesale partners will require delaying payments to us on net terms ranging from a few days to 60 or more days, or they may delay paying us beyond the agreed-upon net terms or fail to pay. Our Company showroom expansion increases our risk for inventory shrinkage from destruction, theft, obsolescence and other factors that render such inventory unusable or unsellable.

New products may come with unknown warranty and return risks. New product offerings or expansion into new market channels or geographic regions may subject us to new or additional regulation, which would impose potentially significant compliance and distribution costs.



***The ongoing COVID-19 pandemic and responses thereto have adversely affected and may continue to adversely affect aspects of our business, including, among other things, our supply chain, workforce, and operations.***

The COVID-19 pandemic has resulted in far-reaching economic and financial disruptions that have adversely affected, and are likely to continue to adversely affect, the Company's business, financial condition, capital, liquidity and results of operations.

We continue to monitor our operations and government mandates and may elect or be required to temporarily close our offices, manufacturing plants or Purple retail showrooms to protect our employees, and limit our access to customers and limit customer use of our products as they are required to prioritize resources to address the public healthcare needs arising from the COVID-19 pandemic. The disruptions to our activities and operations may negatively impact our business, operating results and financial condition. There is a risk that government actions, or lack thereof, will not be effective at containing COVID-19, and that government actions or inactions, including the orders and restrictions described above and premature lessening of those restrictions, that are intended to contain the spread of COVID-19 while also minimizing harm to the economy, will have a devastating negative impact on the world economy at large, in which case the risks to our sales, operating results and financial condition described herein would be elevated significantly.

The duration of the COVID-19 pandemic's impact on our business may be difficult to assess or predict. The widespread pandemic has resulted, and may continue to result for an extended period, in significant disruption of global financial markets, supply chain constraints (including, for example, shipping delays, capacity constraints, and supply shortages), and may restrict our ability to access capital, which would negatively affect our liquidity. While we have been able to reverse some previous actions undertaken, such as, among others, temporarily deferring capital expenditures, furloughing certain employees, and temporarily deferring compensation for our senior executives, we may be required to take such actions again, or take additional actions, if there is a resurgence of COVID-19 cases or reinstatement of government restrictions. As a result of such actions or restrictions, we may be unable to complete capital expenditure projects or investments in the future, which would limit our ability to grow our business, and our results of operations and financial condition will be adversely affected.

Further, quarantines or government reaction or shutdowns for COVID-19 could disrupt our supply chain. Travel and import restrictions may also disrupt our ability to manufacture or distribute our products. Any import or export or other cargo restrictions related to our products or the raw materials used to manufacture our products would restrict our ability to manufacture and ship products and harm our business, financial condition and results of operations. We may also experience disputes with our suppliers and/or customers as a result of such difficulties. Our key personnel and other employees could also be affected by COVID-19, potentially reducing their availability. As employees return to work, we may face claims by such employees or regulatory authorities that we have not provided adequate protection to our employees with respect to the spread of COVID-19 at our facilities. In addition, the government responses to COVID-19 or the procedures we take to mitigate its effect on our workforce could reduce the efficiency of our operations or prove insufficient to mitigate the adverse impact of COVID-19 on our business. We may delay or reduce certain capital spending and related projects until the travel and logistical impacts of COVID-19 are lifted, which could delay the completion of such projects.

The global outbreak of COVID-19 continues to evolve. The ultimate impact of the COVID-19 outbreak is highly uncertain and subject to change. We do not yet know the full extent of potential delays or impacts on our business or the global economy as a whole. We do not yet know the full impact that vaccines may have in mitigating or ending the outbreak of COVID-19, or how the future availability of such vaccines may affect our work force. We also do not know the impact that government mandated vaccine policies for employers will have on our workforce. However, these effects could have a continuing material impact on our operations, sales and ability to continue as a going concern. To the extent the COVID-19 pandemic adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in this "Risk Factors" section, such as those relating to our level of indebtedness, our need to generate sufficient cash flows to service our indebtedness and our ability to comply with the covenants contained in the agreements that govern our indebtedness.

***Customer demand for and our ability to sell and market our products has been and may in the future be adversely affected by the COVID-19 pandemic and responses thereto.***

The COVID-19 pandemic has created significant uncertainty in our business, slowed our anticipated wholesale partner and showroom plans and resulted in a temporary contraction of our wholesale and Company showroom businesses due to temporary shutdowns of non-essential businesses, and shelter-at-home and social distancing directives where our products are displayed in physical stores. The future impact to our wholesale partners and consumer demand from the COVID-19 pandemic or a future health epidemic or other outbreak occurring in other locations, particularly in North America, is unknown. If we fail to anticipate changes in demand or consumer behavior resulting from the COVID-19 pandemic or other outbreaks it could adversely affect our business or operating results.

If sales in our channels decline or become more difficult to predict, including as a result of stay-at-home orders, social distancing mandates, temporary closures of or decreased shopping in our wholesale partners' stores or Purple retail showrooms, vaccine mandates, impacts of stimulus payments, or deteriorating general economic conditions, our business may be adversely affected. Moreover, we may be impacted by difficulties experienced by our wholesale partners as a result of the COVID-19 pandemic, including disruptions in their supply chains, their liquidity challenges and their ability to keep open or reopen retail locations. In addition, while we experienced an increase in demand for our products through our e-commerce channel at the beginning of the COVID-19 pandemic, such e-commerce sales have subsequently declined following the end of stimulus payments, the return of consumers to brick and mortar stores, and the general softening of the economy. If we cannot increase demand in all our channels, and plan based on more predictable sales patterns, our business may be adversely affected.

***Our future growth and profitability depend upon the strength of our Purple brand and the effectiveness and efficiency of our marketing programs and our ability to attract and retain customers.***

We are highly dependent on the effectiveness of our marketing messages and the efficiency of our advertising expenditures in generating consumer awareness and sales of our products. We continue to evolve our marketing strategies, adjusting our messages, the amount we spend on advertising and where we spend it. We may not always be successful in developing effective messages and new marketing channels, as consumer preferences and competition change, and in achieving efficiency in our advertising expenditures.

We depend heavily on internet-based advertising to market our products through internet-based media and e-commerce platforms. If we are unable to continue utilizing such platforms, if those media and platforms diminish in importance or size, or if we are unable to direct our advertising to our target consumer groups, our advertising efforts may be ineffective, and our business could be adversely affected. The costs of advertising through these platforms have increased significantly, which has resulted in decreased efficiency in the use of our advertising expenditures, and we expect these costs may continue to increase in the future.

We have relationships with online services, search engines, affiliate marketing websites, directories and other website and e-commerce businesses to provide content, advertising and other links that direct customers to our website. We rely on these relationships as significant sources of traffic to our website and to generate new customers. If we are unable to develop or maintain these relationships or develop and maintain new relationships for newly developed and necessary marketing services on acceptable terms, our ability to attract new customers and our financial condition would suffer. In addition, current or future relationships or agreements may fail to produce the sales that we anticipate. The cost of advertising for web-based platforms, such as Facebook, are increasing. Increasing advertising costs erode the efficiency of our advertising efforts. If we are unable to effectively manage our advertising costs or if our advertising efforts fail to produce the sales that we anticipate, our business could be adversely affected.

On October 20, 2020, the United States Department of Justice brought an antitrust lawsuit against Google claiming that Google improperly uses its monopoly over Internet search to impede competition and harm consumers. Our cost of advertising on Google may remain high if Google's monopoly over internet searches is not prevented and competitive search engines are not allowed to compete. Alternatively, if Google is required because of this lawsuit to split up the company or sell assets, there is no assurance this will decrease advertising costs and it may lead to increased costs due to an increased number of service providers who obtain oligopoly power to control advertising costs or inefficiencies from a reduction in scale. Although this lawsuit may lower our advertising costs, there is risk that it may not and would lead to increased costs which would reduce our profitability and harm our business.

Consumers are increasingly using digital tools as a part of their shopping experience. As a result, our future growth and profitability will depend in part on (i) the effectiveness and efficiency of our online experience for disparate worldwide audiences, including advertising and search optimization programs in generating consumer awareness and sales of our products, (ii) our ability to prevent confusion among consumers that can result from search engines that allow competitors to use or bid on our trademarks to direct consumers to competitors' websites, (iii) our ability to prevent internet publication or television broadcast of false or misleading information regarding our products or our competitors' products, (iv) the nature and tone of consumer sentiment published on various social media sites, and (v) the stability of our website. In recent years, a number of direct to consumer, internet-based retailers, like us, have emerged and have driven up the cost of basic search terms, which has and may continue to increase the cost of our internet-based marketing programs. More recently, the large traditional mattress manufacturers have been increasing their efforts to increase their direct to consumer sales which also is increasing the cost of our internet-based marketing programs and cost of customer conversion.

In the past, we have been the target of publications by purported consumer reviewers who claim to have identified health and safety concerns with our products. While we believe such claims to be baseless, refuting such claims requires us to expend significant resources to educate current and potential customers on the safety of our products. Even if we are able to broadly disseminate factual information to refute such claims and reinforce the safety of our products, such claims and attendant adverse publicity could persist and damage our reputation and brand value and result in lower sales.

The number of third-party review websites is increasing and customers have many platforms on which they can review our products, and such reviews are becoming increasingly influential with consumers. Negative reviews from such sources may receive widespread attention from consumers, which could damage our reputation and brand value and result in lower sales. If we are unable to effectively manage relationships with such reviewers to promote accurate reviews of our products, reviewers may decline to review our products or may post reviews with misleading information, which could damage our reputation and make it more difficult for us to improve our brand value.

If our marketing messages are ineffective or our advertising expenditures, geographic price-points, and other marketing programs, including digital programs, are inefficient in creating awareness and consideration of our products and brand name and in driving consumer traffic to our website, our sales, profitability, cash flows and financial condition may be adversely impacted. In addition, if we are not effective in preventing the publication of confusing, false or misleading information regarding our brand or our products, or if there arises significant negative consumer sentiment on social media regarding our brand or our products, our sales, profitability, cash flows and financial condition may be adversely impacted.

***Our future growth and profitability depend, in part, upon our ability to achieve and maintain sufficient production capacity to meet customer demands.***

We manufacture our mattresses using our proprietary and patented Mattress Max machinery to make our Hyper-Elastic Polymer cushioning material. Because these machines are proprietary and we do not yet have a long history of their maintenance needs, we may not be able to sufficiently maintain them for operation at full capacity or at all when needed. We have experienced unexpected maintenance issues following a shutdown of these machines that took longer to bring them up to full operating capacity than what we expected. Also, because of the unique features of our Mattress Max machines, and due to continuing improvements to these machines, new machines are not readily available and must be constructed which takes time. We also have experienced inefficiencies in sourcing of materials and production of finished products. We have taken steps to improve our processes and capabilities, but if we are unable to maintain our improvements and continue our improvement initiatives to increase efficiencies, we may not be able to keep up with demand which would harm our business. If we are unable to construct new Mattress Max machines and implement them into our production process in a timely manner, if our existing Mattress Max machines are unable to function at the desired capacity, or if we are unable to develop replacements for the existing Mattress Max machines if such replacements should become necessary, our production capacity may be constrained and our ability to respond to customer demand may be adversely impacted. We manufacture mattresses and other products using components provided by third-party suppliers. If those third-party suppliers are unable to provide us with such components or if our assembly capacity is insufficient, our ability to respond to customer demand may be adversely impacted. This would negatively impact our ability to grow our business and achieve profitability.

***We have engaged in significant related-party transactions with affiliates and owners that may give rise to conflicts of interest, result in losses to the Company or otherwise adversely affect our operations and the value of our business.***

We have engaged in numerous related-party transactions involving significant shareholders and directors of the Company, as well as with other entities affiliated with such persons.

For example, prior to the Business Combination, InnoHold, previously a significant stockholder of the Company and an entity owned by the founders, Terry and Tony Pearce, granted equity incentive awards in Purple LLC to certain key employees at that time. As a result of the structure of those awards being granted through a separate entity, the equity incentives were required, because of the structure of the Business Combination, to be exchanged for ownership units in InnoHold, to avoid those equity interests becoming of no value to the participants. Those participants' ownership interests had certain restrictions, including vesting requirements. These equity incentives granted to key employees prior to the Business Combination are forfeited to the extent the grant to an employee is not fully vested at the time that such employee's employment is terminated. Before and for a period of time since the Business Combination, all forfeitures occurring from departing employees have inured to the benefit of only the owners of InnoHold, and not all of our stockholders. This means that the forfeited equity did not increase our currently approved equity incentive pool. Because the forfeited equity resulting from these departures prior to this distribution was held at InnoHold, that forfeited equity did not replenish our equity incentive pool and could not be used for equity grants to those who have replaced and will replace these employees or for other purposes essential to the business. During 2019, to avoid future forfeitures from inuring only to the benefit of InnoHold's owners, InnoHold distributed to the incentive participants their pro rata share of InnoHold's ownership of shares of Class B common stock, par value \$0.0001 ("Class B Stock") in Purple Inc. and Class B Common Units ("Class B Units") in Purple LLC, after which any forfeitures would inure to the benefit of all shareholders. InnoHold distributed additional paired shares of Class B Stock in Purple Inc. and Class B Units in Purple LLC which also will be subject to the same vesting requirements and result in forfeitures inuring to the benefit of all shareholders. Our current equity incentive pool, as approved by the stockholders prior to the Business Combination in the Purple Innovation, Inc. 2017 Equity Incentive Plan ("2017 Equity Incentive Plan"), did not account for the departure, before this distribution by InnoHold, of such key employees who had existing equity grants through InnoHold, and there is a risk that we will have to seek approval from the Board and stockholders to refresh the equity incentive pool earlier than anticipated at the time of the Business Combination because of the unanticipated need to use shares from the existing pool to hire and retain other key employees needed to achieve the Company's growth objectives. If the equity pool is not refreshed, there is a risk that we may not be able to hire and retain such key employees. If the equity pool is refreshed with authorized shares of the Company that are issued in accordance with our 2017 Equity Incentive Plan, our stockholders will be diluted. This distribution by InnoHold to the equity incentive participants has caused us to incur administrative expenses related to the distributions, the management of the differing vesting schedules and compliance with their rights under the distribution agreements. In addition, the calculations of the distributive share and related income tax withholdings with respect to holders of InnoHold's Class B Units, as well as the processes by which such distributions and withholdings are made, are highly complex. As a result, there is a risk that the recipients of such distributions or other third parties may claim that we have miscalculated the distribution or income tax withholding amounts or failed to timely pay the taxes. The cost of responding to such claims, including but not limited to the diversion of management's attention from our operations and defense or settlement costs, could negatively impact our operations and financial results.

In connection with the Business Combination, Purple LLC also entered into that certain Credit Agreement dated February 2, 2018, with the Coliseum Capital Partners, L.P. ("CCP"), Blackwell Partners LLC – Series A ("Blackwell") and Coliseum Co-invest Debt Fund, L.P. ("CDF" and together with CCP and Blackwell, the "Former Lenders"), which was guaranteed by Purple Inc. The Former Lenders also were stockholders and warrant holders of the Company and appointed one director to serve on our Board, Adam Gray, who continues to serve on our Board and is affiliated with the Lenders. Further, on February 26, 2019, the Amended and Restated Credit Agreement between Purple LLC and certain of the Former Lenders (the "Incremental Lenders"), and each of the related documents, including the issuance of additional warrants to the Incremental Lenders, was closed and an incremental loan was funded. In connection with the funding of the incremental loan, we issued to the Incremental Lenders warrants to purchase shares of our Class A Stock. On March 27, 2020, the Amended and Restated Credit Agreement was amended to allow Purple LLC at its election a 5% paid-in-kind interest deferral for the first two quarters of 2020. On May 15, 2020, the Amended and Restated Credit Agreement was further amended to remove a negative covenant so that there would not be an event of default if the Former Lenders acquired 25% or more ownership of the Company. On August 20, 2020, the Company and Purple LLC entered into a Waiver and Consent to Amended and Restated Credit Agreement with the Former Lenders, that, among other things, waives an event of default as a result of InnoHold ceasing to own 25% or more of the aggregate equity interests in the Company, subject to certain conditions as more fully provided in such waiver. On September 3, 2020, we paid off the full amount owed and a prepayment premium to the Former Lenders in the aggregate amount of \$45.0 million and terminated the Amended and Restated Credit Agreement, subject to those provisions that survive termination. The Former Lenders further have continuing rights of first refusal related to indebtedness of the Company as set forth in the Subscription Agreement entered into by them and the Company at the time of the Business Combination. Adam Gray continues to serve on our Board and the Former Lenders, together, hold a significant portion of our outstanding shares of Class A Stock and voting power. The Former Lenders currently own, in the aggregate, approximately 26% of the Company's outstanding shares of Class A Stock and voting power. Future transactions with the Lenders, if any, may give rise to conflicts of interest or otherwise adversely affect our business.

See Note 13, Related-Party Transactions of the Notes to the Consolidated Financial Statements, included in Part II, ITEM 8 of this Report, "Financial Statements and Supplementary Data," and is incorporated herein by reference.

***We may not be able to successfully anticipate consumer trends and demand and our failure to do so may lead to loss of consumer acceptance of the products we sell, resulting in reduced net sales.***

Our success depends in part on our ability to anticipate and respond to changing trends and consumer demands in a timely manner. Changes in consumers' tastes and trends and the resulting change in our product mix, as well as failure to offer our consumers multiple avenues for purchasing our products, could adversely affect our business and operating results. If we fail to identify and respond to emerging trends, consumer acceptance of the products we manufacture and sell and our image with current or potential customers may be harmed, which could reduce our net sales. If we misjudge market trends, we may significantly overstock inventory and be forced to take significant inventory markdowns, which would have a negative impact on our gross profit and cash flow. Conversely, shortages of inventory or time to fulfillment of our products that prove popular could also reduce our sales.

***We have in some instances accumulated excess amounts of raw material inventory and some finished goods inventory, which could be susceptible to shrinkage that may harm our ability to use or sell such inventory and may adversely impact our profitability.***

Although we attempt to maintain only the necessary amounts of raw material inventory on hand, in some instances we have accumulated excess amounts of raw materials and finished goods inventory. All such excess inventory is subject to shrinkage from destruction, theft, obsolescence and factors that render such inventory unusable or unsellable, and we have lost inventory for such reasons. Excessive inventory also takes warehouse space that prevents efficient use for other activities. While we take efforts to right-size all raw materials and finished goods inventory, if our efforts are not successful, we could continue to experience excess amounts of some items of raw materials and finished goods and related shrinkage and inefficiencies that could adversely impact our cash flow, margins and profitability.

As a result of production delays in 2021 that limited our ability to fill customer orders, many of our wholesale partners had to adjust their business plans due to the disruption this caused them and they stopped ordering the volume of products we had anticipated, and has taken longer to ramp to volumes that predated the production delays. Despite our ability to again produce enough products to meet the needs of our wholesale customers, expected orders were not received at the levels we anticipated, and it is unknown when they will be received, which could contribute to a larger than desired inventory of finished mattress products that we are ready to deliver. Until we receive orders and are able to deliver these products, they are subject to the risks associated with holding excess inventory. If this occurs, this also could unfavorably impact our cash flow and available working capital and could increase our accounts receivables when orders are received and filled in accordance with payment terms with our wholesale customers.

***Our business could suffer if we are unsuccessful in making, integrating, and maintaining commercial agreements, strategic alliances, and other business relationships.***

To successfully operate our business, we rely on commercial agreements and strategic relationships with suppliers, service providers and certain wholesale partners and customers. As we grow, we may acquire other businesses to incorporate into our operations. These arrangements can be complex and require substantial infrastructure capacity, personnel, and other resource commitments. Further, our business partners may have disruptions in their businesses or choose to no longer do business with us and the impact of such disruption or choices could be magnified to the extent such business partners represent a significant part of our business. We may not be able to implement, maintain, or develop the components of these commercial relationships. Moreover, we may not be able to enter into additional commercial relationships and strategic alliances on favorable terms or at all.

Our wholesale relationships may from time to time be terminated by us or our partners, or the terms of such relationships may be amended or modified. As a result of such terminations, we would lose sales previously generated through such relationships, which could have a material adverse impact on our net sales, profitability and financial position. Disputes with wholesale partners also may arise related to such relationships, or any terminations of related agreements, which could cause us to incur expenses, delay our receipt of amounts owed to us, interfere with our relationship with other retailers, subject us to liabilities and distract us from our strategic objectives. As our agreements terminate or relationships unwind, we may be unable to renew or replace these agreements on comparable terms, or at all, and the loss of sales from such relationships could harm our business. We may in the future enter into amendments on less favorable terms or encounter parties that have difficulty meeting their contractual obligations to us, which could adversely affect our operating results.

Our present and future services agreements, other commercial agreements, and strategic relationships and acquisitions create additional risks such as:

- failure to effectively integrate acquisitions;
- disruption of our ongoing business, including loss of management focus on existing businesses;
- impairment of other relationships;
- variability in revenue and income from entering into, amending, or terminating such agreements or relationships; and
- difficulty integrating under the commercial agreements.

We have entered into arrangements with wholesale partners through which we sell certain of our products in their retail stores. We anticipate increasing the number of these partnerships. Our relationships with our wholesale partners may not be profitable to us or may impose additional costs that we would not otherwise incur under our DTC operations. Our wholesale partners may choose not to continue doing business with us or may choose to reduce the amount of our products they order, which would result in a corresponding loss of revenue. Our wholesale partners may experience their own business disruptions, including for example bankruptcy, that could affect their ability to continue to do business with us. Our wholesale partners may engage in conduct that could breach the contractual rights we owe other wholesale partners or interfere with their other legal rights. Our wholesale partners may compete against us in DTC or other channels that are important to us and may erode our business in such channels. Further, maintaining these relationships may require the commitment of significant amounts of time, financial resources and management attention, and may result in prohibitions on certain sales channels through exclusivity requirements, which may adversely affect other aspects of our business.

We have opened and plan to continue to open a growing number of Purple retail showrooms in cities across the U.S. Our business is expanding into additional Purple retail showrooms which, like our online e-commerce retail store, may compete more directly with our wholesale partners for customers. In our effort to make our products available to consumers in multiple retail channels, there is the risk that sales may diminish in other channels, costs may be incurred without an increase in overall sales and our wholesale partners may no longer carry our products. Managing an omni-channel distribution strategy, including the relationships with business partners in each channel, may require significant amounts of time, resources and attention which may adversely affect other aspects of our business.

***We operate in a highly competitive Comfort Industry, and if we are unable to compete successfully, we may lose customers and our sales may decline.***

The Comfort Industry market is highly competitive and fragmented. We face competition from many manufacturers (including competitors that primarily manufacture and import from China and other low-cost countries), traditional brick-and-mortar retailers and online retailers, including direct-to-consumer competitors. One domestic competitor has a license to use some of the intellectual property we own but do not use at this time. Participants in the Comfort Industry compete primarily on price, quality, brand name recognition, product availability and product performance and compete across a range of distribution channels. The highly competitive nature of the Comfort Industry means we are continually subject to the risk of loss of market share, loss of significant customers, reductions in margins, and the inability to acquire new customers.

A number of our significant competitors offer products that compete directly with our products. Any such competition by established manufacturers and retailers or new entrants into the market could have a material adverse effect on our business, financial condition and operating results. Comfort Industry manufacturers and retailers are seeking to increase their channels of distribution and are looking for new ways to reach the consumer. Like us, many newer competitors in the mattress industry have begun to offer “bed-in-a-box” or similar products directly to consumers through the Internet and other distribution channels. Some of our established competitors and partners have begun to offer “bed-in-a-box” products as well. Many of our competitors source their products from countries such as China and Vietnam, where the costs may be lower than our costs. Companies providing for the distribution of mattresses online or through retail stores, such as Mattress Firm, Amazon and Walmart, also have begun to offer competing products in their respective channels. In addition, retailers outside the U.S. have integrated vertically in the furniture and sleep product industries, and it is possible that retailers may acquire other retailers or may seek to vertically integrate in the U.S. by acquiring a mattress manufacturer.

Many of our current and potential competitors may have substantially greater financial support, technical and marketing resources, larger customer bases, longer operating histories, greater name recognition, mature distribution methods, and more established relationships in the industry than we do and sell products through broader and more established distribution channels. These competitors, or new entrants into the market, may compete aggressively and gain market share with existing or new products, and may pursue or expand their presence in the Comfort Industry. We cannot be sure we will have the resources or expertise to compete successfully in the future. We have limited ability to anticipate the timing and scale of new product introductions, advertising campaigns or new pricing strategies by our competitors, which could inhibit our ability to retain or increase market share, or to maintain our product margins. Our current and potential competitors may secure better terms from vendors, adopt more aggressive pricing, and devote more resources to technology, infrastructure, fulfillment, and marketing. Also, due to the large number of competitors and their wide range of product offerings, we may not be able to continue to differentiate our products through value, styling or functionality from those of our competitors. Our products are also typically heavier than others and some markets we wish to expand into will not support delivery of our heavy products through parcel services or other affordable home delivery services, limiting our ability to serve the market.

In addition, the barriers to entry into the retail sleep product industry are relatively low. New or existing sleep product retailers could enter our markets and increase the competition we face. Competition in existing and new markets may also prevent or delay our ability to gain relative market share. Any of the developments described above could have a material adverse effect on our planned growth and future results of operations.

We will face different market dynamics and competition as we develop new products to expand our presence in our target markets. In some markets, our future competitors may have greater brand recognition and broader distribution than we currently enjoy. We may not be as successful as our competitors in generating revenues in those markets due to the lack of recognition of our brands, lack of customer acceptance, lack of product quality history and other factors. As a result, any new expansion efforts could be costlier and less profitable than our efforts in our existing markets. If we are not as successful as our competitors are in our target markets, our sales could decline, our margins could be impacted negatively and we could lose market share, any of which could materially harm our business.

If we are unable to effectively compete with other manufacturers and retailers of mattresses, pillows, cushions, and our other products our sales, profitability, cash flows and financial condition may be adversely impacted.

***Substantial and increasingly intense competition worldwide in e-commerce may harm our business.***

Consumers who might purchase our products from us online have a wide variety of alternatives for purchasing competing mattresses, pillows and cushions, including traditional brick and mortar retailers (as well as the online and mobile operations of these traditional retailers), other online direct to consumer retailers and their related mobile offerings, online and offline classified services, online retailer platforms, such as Amazon.com, and other shopping channels, such as offline and online home shopping networks.

The Internet and mobile networks provide new, rapidly evolving and intensely competitive channels for the sale of all types of goods and services, including products that compete directly with our products. Consumers who purchase mattresses, pillows and cushions through us have more and more alternatives, and merchants have more online channels to reach consumers. We expect competition to continue to intensify. Online and offline businesses increasingly are competing with each other and our competitors include a number of online and offline retailers with significant resources, large user communities and well-established brands. Moreover, the barriers to entry into these channels can be low, and businesses easily can launch online sites or mobile platforms and applications at nominal cost by using commercially available software or partnering with any of a number of successful e-commerce companies. As we respond to changes in the competitive environment, we may, from time to time, make pricing, service or marketing decisions or acquisitions that may be controversial with and lead to dissatisfaction among our customers, which could reduce activity on our platform and harm our profitability.

In addition, sellers in our industry are increasingly utilizing multiple sales channels, including the acquisition of new customers by paying for search-related advertisements on horizontal search engine sites, such as Google, Yahoo!, Naver and Baidu. We use product search engines and paid search advertising to help users find our sites, but these services also have the potential to divert users to other online shopping destinations. Consumers may choose to search for products with a horizontal search engine or shopping comparison website, and such sites may also send users to other shopping destinations.

E-commerce customers have come to expect improved user experience, greater ease of buying goods, lower (or no) shipping costs, faster delivery times and more favorable return policies from e-commerce sellers. Also, certain platform businesses, many of whom are larger than us or have greater capitalization, have a dominant and secure position in other industries or certain significant markets, and offer a broader variety of Comfort Industry products to consumers and retailers that we do not offer. If we are unable to change our product offerings in ways that reflect the changing demands of e-commerce and mobile commerce marketplaces, particularly the higher growth of sales of fixed-price items and higher expected service levels or compete effectively with and adapt to changes in larger platform businesses, our business will suffer.

Some of our e-commerce competitors offer a significantly broader range of products and services than we do. Competitors with other revenue sources may be able to devote more resources to marketing and promotional campaigns, adopt more aggressive pricing policies and devote more resources to website, mobile platforms and applications and systems development than we can. Other direct to consumer retailers and e-commerce competitors may offer or continue to offer faster shipping, free shipping, delivery on Sunday, same-day delivery, favorable return policies or other transaction-related services which improve the user experience on their sites and which could be impractical or inefficient for us to match. Competitors may be able to innovate faster and more efficiently, and new technologies may increase competitive pressure by enabling competitors to offer more efficient or lower-cost services.



***A reduction in the availability of credit to consumers generally or under our existing consumer credit programs or the availability of more favorable credit terms with competitors could harm our sales, profitability, cash flows and financial condition.***

We offer financing to consumers through third-party consumer finance companies. During the year ended December 31, 2021, a significant percentage of our sales were financed through third-party consumer finance companies. The amount of credit available to consumers may be adversely impacted by macroeconomic factors that affect the financial position of consumers as suppliers of credit adjust their lending criteria. In addition, changes in federal regulations effective in 2010 placed additional restrictions on all consumer credit programs, including limiting the types of promotional credit offerings that may be offered to consumers.

These third-party consumer finance companies offer consumer financing options to our customers through agreements that may be terminated by us or the companies upon thirty days' prior written notice. These consumer finance companies have discretion to control the content of financing offers to our customers and to set minimum credit standards under which credit is extended to customers. These consumer finance companies may make more favorable terms available to our competitors, or they may offer more favorable terms in channels other than the channels in which we focus our efforts.

Reduction of credit availability due to changing economic conditions, changes in regulatory requirements, or the termination of our agreements with third-party consumer finance companies could harm our sales, profitability, cash flows and financial condition. The availability of more favorable credit terms offered by competitors could harm our sales, profitability, cash flows and financial condition.

***We attempt to maintain only the necessary amounts of raw material inventory and products, which could leave us vulnerable to shortages in supply of components and products that may harm our ability to satisfy consumer demand and may adversely impact our sales and profitability.***

We attempt to maintain only the necessary amounts of products and raw material inventory on hand, which could leave us vulnerable to shortages in supply of products or components that may harm our ability to satisfy consumer demand and may adversely impact our sales and profitability. Lead times for ordered components and products may vary significantly, especially as we source some of our materials and products from China or other countries. Our business may be harmed by legal, regulatory, economic, political, health concerns, military conflict, and unforeseen risks associated with international trade in those countries. For example, we currently source a component for certain products from a factory in the Ukraine where a military action has begun. While we have other suppliers for that component that are not likely to be impacted by such military action, the loss of the Ukrainian supplier could temporarily disrupt production of those products. Moreover, we may experience increased costs in sourcing Chinese materials as a result of the uncertain status of the U.S.-China trade relationship or may experience related disruption if we seek to replace Chinese suppliers with suppliers in other countries. In addition, some components used to manufacture our products are provided on a sole source basis. Any unexpected shortage of products or materials caused by any disruption of supply or an unexpected increase in the demand for our products, could lead to delays in shipping our products to customers. Any such delays could adversely affect our sales, customer satisfaction, profitability, cash flows and financial condition.

We rely upon several key suppliers that are, in some instances, the only source of supply currently used by us for particular products, materials, components or services. A disruption in the supply or substantial increase in cost of any of these products or services could harm our sales, profitability, cash flows and financial condition.

We currently obtain all of the raw materials and components used to produce our mattresses, pillows and cushions from outside sources. In some cases, we have chosen to obtain these materials and components from suppliers who serve as the only source of supply, or who supply the vast majority of our needs of the particular material or component. While we believe that these materials and components, or suitable replacements, could be obtained from other sources, in the event of a disruption or loss of supply of relevant materials or components for any reason, we may not be able to find alternative sources of supply, or if found, may not be found on comparable terms. In addition, a change in the financial condition of some of our suppliers could impede their ability to provide products to us in a timely manner.

If our relationship with the primary supplier of our mineral oil is terminated, we could have short-term difficulty in replacing this source since there are relatively few other suppliers presently capable of supplying the local volume that we would need in a short period of time.

In addition, shipping and freight delays have also been increasing as port closures, port congestion, and shipping container and ship shortages have increased. These events, combined with the impacts of the ongoing COVID-19 pandemic, could result in manufacturing and shipping delays and constraints and limit the ability of our suppliers to provide raw materials and other components in a timely manner, which could adversely affect our ability to acquire and maintain adequate inventory and meet demand for our products. Shipping delays could also adversely affect our ability to deliver products to our customers in a timely manner, which could harm our business.

***Our success is highly dependent on our ability to provide timely delivery on a cost-effective basis to our customers, and any disruption in our delivery capabilities or our related planning and control processes may adversely affect our operating results.***

An important part of our success is due to our ability to deliver our products to our customers in a timely manner. This in turn is due to our successful planning and distribution infrastructure, including ordering, transportation and receipt processing, the ability of our suppliers to meet our distribution requirements and the ability of our contractors to meet our delivery requirements. Our ability to maintain this success depends on the continued identification and implementation of improvements to our planning processes, distribution infrastructure and supply chain. We also need to ensure that our distribution infrastructure and supply chain keep pace with our anticipated growth and increased product output. The cost of these enhanced processes could be significant and any failure to maintain, grow or improve them could adversely affect our operating results.

We rely on common carriers and freight forwarders to deliver our products to customers on a timely, convenient, and cost-effective basis. We also rely on the systems of such carriers to provide us with accurate information about the status and delivery of our products. Any disruption to the business of delivery carriers could cause our business to be adversely affected. Any significant delay in deliveries to our customers could lead to increased cancellations and returns and cause us to lose sales. Any increase in freight charges could increase our costs of doing business and harm our sales, profitability, cash flows and financial condition. Lack of accurate information from such carriers could damage our brand and our relationship with our customers. In some areas, we are testing Company-owned delivery services that have been successful and efficient, and we intend to continue growing such services as demand and volume dictate. If our Company-owned delivery services do not continue to deliver products in a timely or cost-effective manner, we may need to revert to third party carriers and our reputation and business may be adversely affected.

Our business could also be adversely affected if there are delays in product shipments to us due to freight difficulties, supply chain disruptions or delays (including, for example, from port closures or shipping or labor shortages), delays in product shipments clearing U.S. Customs and Border Protection (“CBP”) for reasons of non-compliance or otherwise, challenges with our suppliers or contractors involving strikes or other difficulties at their principal transport providers or otherwise. The adverse effect on our business could include increase in freight costs if we choose to use more air freight. Our business could also be adversely affected if the business of our suppliers is disrupted because of infectious diseases or fear thereof such that quarantines, factory closures, labor disturbances, and transportation delays result. Such delays and events could adversely affect our profitability and reputation, as well as demand for our products.

In addition, if we are unable to deliver our products in a timely manner, our customers, both DTC and wholesale, may choose to limit future orders of our products, or choose to not order products from us at all. If, as a result of production or shipment issues, demand for our products declines or does not increase, our business and results of operations could be materially and adversely affected.

***We depend on executive employees, and if we lose the services of members of the executive team, we may not be able to run our business effectively.***

Our future success depends in part on our ability to attract and retain key executive, merchandising, marketing, sales, finance, operations and engineering personnel. If any of our executives cease to be employed by us, or if our growth or other changes in circumstances require executives with additional skill sets, we would have to hire replacement or additional qualified personnel. Our ability to successfully attract and hire other experienced and qualified executives cannot be assured and may be difficult because we face competition for these professionals from our competitors, our suppliers and other companies operating in our industry and in our geographic locations. Departures and any delay in replacing executives could significantly disrupt our ability to grow and pursue our strategic plans. If we are unable to attract and retain qualified executives and other employees, including through competitive compensation and other incentives, our business may be adversely affected. While we believe our current executives have benefitted and will continue to benefit us, we currently employ several interim or acting executives and finding qualified replacements is time-consuming, takes Company resources, and can disrupt our growth and achievement of strategic plans. We do not maintain key-person insurance for members of our executive management team.

***If we fail to maintain an effective system of internal controls, we may not be able to report our financial results accurately, may make a material misstatement in our financial statements, or may experience a financial loss. Any inability to report and file our financial results accurately and timely could harm our business and adversely affect the value of our business.***

As a public company, we are required to establish and maintain internal controls over financial reporting and disclosure controls and procedures and to comply with other requirements of the Sarbanes-Oxley Act and the rules promulgated by the SEC. Even when such controls are implemented, management, including our Chief Executive Officer and Chief Financial Officer, cannot guarantee that our internal controls and disclosure controls and procedures will prevent all possible errors or loss. Because of the inherent limitations in all control systems, no system of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company or perpetrated against us will be prevented or have been detected. These inherent limitations include the possibility that judgments in decision-making can be faulty and subject to simple error or mistake. Furthermore, controls can be circumvented by individual acts of some persons, by collusion of two or more persons, or by management override of the controls. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, measures of control may become inadequate because of changes in conditions, new fraudulent schemes, or the deterioration of compliance with policies or procedures. Because of inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and/or may not be detected.

The accuracy of our financial reporting depends on the effectiveness of our internal control over financial reporting. Internal control over financial reporting can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements and may not prevent or detect misstatements. Failure to maintain effective internal control over financial reporting, or lapses in disclosure controls and procedures, could undermine the ability to provide accurate disclosure (including with respect to financial information) on a timely basis, which could cause investors to lose confidence in our disclosures (including with respect to financial information), require significant resources to remediate the lapse or deficiency, and expose us to legal or regulatory proceedings. We have in the past identified material weaknesses in our internal controls over financial reporting, some of which resulted in restatements of our financial statements. During 2021, we identified a material weakness in internal control over financial reporting related to ineffective information technology general controls in the areas of user access and segregation of duties related to certain information technology systems that support the Company's financial reporting processes. We believe that these control deficiencies were a result of turnover of critical IT leadership; insufficient training of IT resources; and inadequate risk-assessment processes to identify and assess access in certain IT environments that could impact internal controls over financial reporting. Because the material weakness creates a reasonable possibility that a material misstatement to our consolidated financial statements would not be prevented or detected on a timely basis, the Company's management concluded that at December 31, 2021, the Company's internal control over financial reporting was ineffective.

We continue to evaluate, design and work through the process of implementing controls and procedures under a remediation plan designed to address this material weakness, but there can be no assurance that we will be able to remediate this material weakness in a timely manner or at all. If our remediation measures are insufficient to address the material weaknesses, or if additional material weaknesses or significant deficiencies in our internal control are discovered or occur in the future, our financial statements may contain material misstatements and we could be required to restate our financial results, which could lead to substantial additional costs for accounting and legal fees and stockholder litigation.

Any failure to maintain such internal control could adversely impact our ability to report our financial position and results from operations on a timely and accurate basis. If our financial statements are not accurate, investors may not have a complete understanding of our operations. Likewise, if our financial statements are not filed on a timely basis, we could be subject to sanctions or investigations by the stock exchange on which our common stock is listed, the SEC or other regulatory authorities. In either case, this could result in a material adverse effect on our business. Failure to timely file will cause us to be ineligible to utilize short form registration statements on Form S-3, which may impair our ability to obtain capital in a timely fashion to execute our business strategies or issue shares to effect an acquisition. Ineffective internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our stock. In addition, we may face potential for litigation or other disputes which may include, among others, claims invoking the federal and state securities laws, contractual claims or other claims arising from the restatement and material weaknesses in our internal control over financial reporting and the preparation of our financial statements. Any such litigation or dispute, whether successful or not, could have a material adverse effect on our business, results of operations and financial condition.

***We may need to implement additional finance and accounting systems, procedures and controls as we grow our business and organization and to satisfy new reporting requirements.***

We have a limited operating history, and our systems, procedures and controls are still developing to match the complexity of our business. We are required to comply with a variety of reporting, accounting and other rules and regulations. Compliance with existing requirements is expensive. As a public company, we are required to comply with additional regulations and other requirements. These and future requirements may increase our costs and require additional management time and resources. We may need to implement additional finance and accounting systems, procedures and controls to satisfy our reporting requirements. If our internal control over financial reporting is determined to be ineffective, such failure could cause investors to lose confidence in our reported financial information, negatively affect the value of our business, subject us to regulatory investigations and penalties, and could have a material adverse effect on our business. In addition, as a result of our recent growth we no longer qualify as a smaller reporting company and, therefore, can no longer take advantage of scaled disclosure requirements and are subject to shorter filing deadlines. Complying with such requirements will require us to expend additional resources and to enhance the capabilities of our finance and accounting departments. If we are unable to comply with such requirements, our business and stock price may be adversely affected.

***Our business operations could be disrupted if our information technology systems fail to perform adequately or are disrupted by natural disasters or other catastrophes or if we are unable to protect the integrity and security of our information systems.***

We depend largely upon our information technology systems in the conduct of all aspects of our operations. If our information technology systems fail to perform as anticipated, we could experience difficulties in virtually any area of our operations, including but not limited to receiving orders from customers, replenishing inventories or delivering our products. We may be required to incur significant capital expenditures in the pursuit of improvements or upgrades to our management information systems. These efforts may take longer and may require greater financial and other resources than anticipated, may cause distraction of key personnel, and may cause short-term disruptions to our existing systems and our business. If we experience difficulties in implementing new or upgraded information systems or experience significant system failures, or if we are unable to successfully modify our information systems to respond to changes in our business needs, our ability to run our business could be adversely affected. It is also possible that our competitors could develop better e-commerce platforms than ours, which could negatively impact our sales.

In addition, our systems may experience service interruptions or degradation due to hardware and software defects or malfunctions, computer denial-of-service and other cyberattacks, human error, earthquakes, hurricanes, floods, fires, natural disasters, power losses, disruptions in telecommunications services, fraud, military or political conflicts, terrorist attacks, computer viruses, or other events. Some of our systems are not fully redundant and our disaster recovery planning is not sufficient for all eventualities. Our systems are also subject to break-ins, sabotage, information hijacking or ransom, and intentional acts of vandalism. Any of these or other systems related problems could, in turn, adversely affect our sales and profitability.

### ***Regulatory and Litigation Risks***

***Regulatory requirements, including, but not limited to, trade, customs, environmental, health and safety requirements, may require costly expenditures and expose us to liability.***

Our products and our marketing and advertising programs are subject to regulation in the U.S. by various federal, state and local regulatory authorities, including the Federal Trade Commission and the CBP. In addition, our operations are subject to federal, state and local consumer protection regulations and other laws relating specifically to the sleep product industry. These rules and regulations may conflict and may change from time to time, as a result of changes in the political environment or otherwise. There may be continuing costs of regulatory compliance including continuous testing, additional quality control processes and appropriate auditing of design and process compliance.

In addition, we are subject to federal, state and local laws and regulations relating to pollution, environmental protection, recycling, and occupational health and safety. We may not be in complete compliance with all such requirements at all times, and we have been required in the past to make changes to our facilities in order to comply with these requirements. We have made and will continue to make capital and other expenditures to comply with environmental and health and safety requirements. If a release of harmful or hazardous substances occurs on or from our properties or any associated offsite disposal location, or if contamination from prior activities is discovered at any of our properties, we may be held liable and the amount of such liability could be material. As a manufacturer of mattresses, pillows, cushions and related products, we use and dispose of a number of substances, such as glue, oil, solvents and other petroleum products, as well as certain foam ingredients, that may subject us to regulation under numerous foreign, federal and state laws and regulations governing the environment. Among other laws and regulations, we are subject in the U.S. to the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act and related state and local statutes and regulations.

We are also subject to federal laws and regulations relating to international shipments, customs, and import controls. We may not be in complete compliance with all such requirements at all times, and if we are not in compliance with such requirements, we may be subject to penalties or fines, which could have an adverse impact on our financial condition and results of operations.

Our operations could also be impacted by a number of pending legislative and regulatory proposals to address greenhouse gas emissions in the U.S. and other countries. The U.S. and certain other countries have adopted international agreements such as the Paris Agreement on climate change that include commitments for companies to reduce greenhouse gas emissions. In addition, the potential for federal and state actions could increase costs associated with our manufacturing operations, including costs for raw materials, pollution control equipment and transportation. Because it is uncertain what laws will be enacted, we cannot predict the potential impact of such laws on our future consolidated financial condition, results of operations, or cash flows.

We are also subject to regulations and laws specifically governing the internet, e-commerce, electronic devices, and other services. These regulations and laws may cover taxation, privacy, data protection, pricing, content, copyrights, distribution, mobile communications, electronic device certification, electronic waste, energy consumption, electronic contracts and other communications, competition, consumer protection, trade and protectionist measures, web services, the provision of online payment services, information reporting requirements, unencumbered Internet access to our services or access to our facilities, the design and operation of websites and the characteristics and quality of products and services. It is not clear how existing laws governing issues such as property ownership, libel, and personal privacy apply to the internet, e-commerce, digital content, and web services. Unfavorable regulations and laws could diminish the demand for, or availability of, our products and services and increase our cost of doing business.

Claims have been made against us for alleged violations of the Americans with Disabilities Act (“ADA”) related to accessibility to our website by the blind. The law is unsettled as to which types of websites the ADA covers and what standards are applicable, but courts in certain jurisdictions have recognized these types of ADA claims. While we comply with industry standards and are continuing to significantly enhance our compliance efforts for making our website accessible to the blind, and regularly test our site for this purpose, we may be subject to such claims and, as a result, we may be required to expend resources in defense of these claims that could increase our cost of doing business.

We are also subject to various health and environmental provisions such as California Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986). We have received a claim that one of our products does not have the proper warning label required by California Proposition 65, which requires businesses to provide warnings to Californians about significant exposures to chemicals that are known to the State of California to cause cancer, birth defects or other reproductive harm. While we are investigating this claim and generally make efforts to comply with Proposition 65, we may be subject to such claims and, as a result, we may be required to expend resources in defense of these claims that could increase our cost of doing business. In addition, to the extent we may have violated Proposition 65 we may incur expense associated with complying including but not limited to providing warnings or product recalls.

***Regulatory requirements relating to the manufacture and disposal of mattresses may increase our product costs and increase the risk of disruption to our business.***

The U.S. Consumer Product Safety Commission (“CPSC”) and other jurisdictions have adopted rules relating to fire retardancy standards for the mattress industry. Some states and the U.S. Congress continue to consider fire retardancy regulations that may be different from or more stringent than the current standard. In addition, these regulations require manufacturers to implement quality assurance programs and encourage manufacturers to conduct random testing of products. These regulations also require maintenance and retention of compliance documentation. These quality assurance and documentation requirements are costly to implement and maintain. If any product testing, other evidence, or regulatory inspections yield results indicating that any of our products may not meet the flammability standards, we may be required to temporarily cease production and distribution or to recall products from the field, and we may be subject to fines or penalties, any of which outcomes could harm our business, reputation, sales, profitability, cash flows and financial condition.

The CPSC adopted new flammability standards and related regulations which became effective nationwide in July 2007 for mattresses and mattress and foundation sets. Compliance with these requirements has resulted in higher materials and manufacturing costs for our products and has required modifications to our information systems and business operations, further increasing our costs and negatively impacting our capacity. Some states and the U.S. Congress continue to consider fire retardancy regulations that may be different from or more stringent than the CPSC standard. Adoption of multi-layered regulatory regimes, particularly if they conflict with each other, could increase our costs, alter our manufacturing processes and impair the performance of our products which may have an adverse effect on our business.

Also, California recently enacted laws effective in 2021 requiring mattress retailers delivering mattresses via common carrier in California to offer to pick up their customers’ old mattresses at no cost to the customer. Additionally, California, Rhode Island and Connecticut have all enacted laws requiring the recycling fees for mattresses discarded in their states. State and local sleep product industry regulations and regulatory proposals vary among the states in which we operate but generally impose or propose requirements as to the proper labeling of sleep product merchandise, restrictions regarding the identification of merchandise as “new” or otherwise, controls as to hygiene and other aspects of product handling, packaging, disposal, sales, resales and penalties for violations. We or our suppliers may be required to incur significant expense to the extent that these regulations change and require new and different compliance measures.

New legislation aimed at improving the fire retardancy of mattresses, regulating the handling of mattresses in connection with preventing or controlling the spread of bed bugs could be passed, or requiring the collection or recycling of discarded mattresses, could result in product recalls or in a significant increase in the cost of operating our business. In addition, failure to comply with these various regulations may result in penalties, the inability to conduct business as previously conducted or at all, or adverse publicity, among other things. Adoption of multi-layered regulatory regimes, particularly if they conflict with each other, could increase our costs, alter our manufacturing processes and impair the performance of our products which may have an adverse effect on our business. We are also subject to various health and environmental provisions such as 16 CFR Part 1633 (Standard for the Flammability (Open Flame) of Mattress Sets).

***We could be subject to additional sales tax or other indirect tax liabilities.***

The application of indirect taxes (such as sales and use tax, value-added tax (“VAT”), goods and services tax, business tax and gross receipt tax) to e-commerce businesses and to our users is a complex and evolving issue and we may be unable to timely or accurately determine our obligations with respect to such indirect taxes, if any, in various jurisdictions. Many of the fundamental statutes and regulations that impose these taxes were established before the adoption and growth of the Internet and e-commerce.

An increasing number of states and foreign jurisdictions have considered or adopted laws or administrative practices, with or without notice, that impose additional obligations on remote sellers and online marketplaces to collect transaction taxes such as sales, consumption, value added, or similar taxes. Failure to comply with such laws or administrative practices or a successful assertion by such states or foreign jurisdictions requiring us to collect taxes where we did not, could result in substantial tax liabilities for past sales, as well as penalties and interest.

We are subject to sales tax or other indirect tax obligations as imposed by the various states in the United States. If the tax authorities in these jurisdictions were to challenge our filings or request an audit, our tax liability may increase. We are currently undergoing routine audits in a few states.

We may be subject to laws, regulations, and administrative practices that require us to collect information from our customers, vendors, merchants, and other third parties for tax reporting purposes and report such information to various government agencies. The scope of such requirements continues to expand, requiring us to develop and implement new compliance systems. Failure to comply with such laws and regulations could result in significant penalties.

The U.S. Supreme Court ruling in *South Dakota v. Wayfair, Inc.*, No.17-494, reversed a longstanding precedent that remote sellers are not required to collect state and local sales taxes. We cannot predict the effect of these and other attempts to impose sales, income or other taxes on e-commerce. The Company currently collects and reports on sales tax in all states in which it does business. However, the application of existing, new or revised taxes on our business, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the internet. The application of these taxes on our business could also create significant increases in internal costs necessary to capture data and collect and remit taxes. There have been, and will continue to be, substantial ongoing costs associated with complying with the various indirect tax requirements in the numerous markets in which we conduct or will conduct business.

***We could be subject to additional income tax liabilities.***

We are subject to federal and state income taxes in the U.S. tax laws, regulations, and administrative practices in the U.S. and in various state and local jurisdictions are subject to significant change or increase, and significant judgment is required in evaluating and estimating our provision and accruals for taxes. In addition, some states and cities require additional taxes or fees for the right to sell mattresses in their jurisdiction. While we have established reserves based on assumptions and estimates that we believe are reasonable to cover such taxes and fees, these reserves may prove to be insufficient.

Our determination of our tax liability is always subject to audit and review by applicable tax authorities. Any adverse outcome of any such audit or review could harm our business, and the ultimate tax outcome may differ from the amounts recorded in our financial statements and may materially affect our financial results in the period or periods for which such determination is made. Regardless of the outcome, responding to any such audit or review could cause us to incur significant costs and could divert resources away from our operations.

There are many transactions that occur during the ordinary course of business for which the ultimate tax liability is uncertain. Our effective tax rates could be affected by earnings being lower than anticipated in jurisdictions where we have lower statutory rates and higher than anticipated in jurisdictions where we have higher statutory rates, losses incurred in jurisdictions for which we are not able to realize the related tax benefit, changes in foreign currency exchange rates, entry into new businesses and geographies and changes to our existing businesses, acquisitions (including integrations) and investments, changes in the price of our securities, changes in our deferred tax assets and liabilities and their valuation, and changes in the relevant tax, accounting, and other laws, regulations, administrative practices, principles, and interpretations.

A number of U.S. states have attempted to increase corporate tax revenues by taking an expansive view of corporate presence to attempt to impose corporate income taxes and other direct business taxes on companies that have no physical presence in their state, and taxing authorities in other jurisdictions may take similar actions. Many U.S. states are also altering their apportionment formulas to increase the amount of taxable income or loss attributable to their state from certain out-of-state businesses. Further, we are required to pay sales and other taxes and fees to states where our products are warehoused before shipping or where Purple retail showrooms are located presently or in the future. If more taxing authorities are successful in applying direct taxes to internet companies that do not have a physical presence in their respective jurisdictions, this could increase our effective tax rate.

***We may face litigation and other risks as a result of current and previous material weaknesses in our internal control over financial reporting.***

We have determined that a material weakness exists related to ineffective information technology general controls (“ITGCs”) in the areas of user access and segregation of duties related to certain information technology (“IT”) systems that support the Company’s financial reporting processes. We believe that these control deficiencies were a result of turnover of critical IT leadership; insufficient training of IT personnel; and inadequate risk-assessment processes to identify and assess access in certain IT environments that could impact internal controls over financial reporting. As a result, we determined that we did not have effective controls to prevent or detect a financial statement misstatement on a timely basis.

In addition, we have had previous material weaknesses that have been remediated, some of which resulted in restatements of our previously issued audited financial statements. As a result of such restatements, material weakness, and other matters that may in the future arise, we face potential for litigation or other disputes which may include, among others, claims invoking the federal and state securities laws, contractual claims or other claims arising from the restatement and material weaknesses in our internal control over financial reporting and the preparation of our financial statements. As of the date of this filing, we have no knowledge of any such litigation or dispute. However, we can provide no assurance that such litigation or dispute will not arise in the future. Any such litigation or dispute, whether successful or not, could have a material adverse effect on our business, results of operations and financial condition.

**Risks Relating to our Intellectual Property and Use of Technology**

***We may not be able to protect our product designs, brand, and other proprietary rights adequately, which could adversely affect our competitive position and reduce the value of our products and brands, and litigation to protect our intellectual property rights may be costly.***

We attempt to strengthen and differentiate our product portfolio by developing new and innovative brands, product designs and functionality and materials for use in our products. We regard our trademarks, service marks, copyrights, patents, trade dress, trade secrets, proprietary technology, and similar intellectual property as critical to our success, and we rely on trademark, copyright, and patent law, trade secret protection, and confidentiality agreements and license agreements with our vendors, contractors, employees, customers, and others to protect our proprietary rights.



We own various U.S. and foreign patents and patent applications related to certain elements of the design and function of our products including mattresses, pillows, cushions and related products, as well as related to proprietary formulas and related technology for certain materials used in the manufacturing of our products. We own numerous registered and unregistered trademarks and trademark applications, as well as other intellectual property rights, including trade secrets, trade dress and copyrights, which we believe have significant value and are important to the marketing of our products. Our success will depend in part on our ability to protect our products, methods, processes and other technologies, to preserve our trade secrets, and to operate without infringing on the proprietary rights of third parties.

As we continue to increase our innovations and create new products and technologies, and as we enter new product spaces, we may be limited by the intellectual property rights of others. We respect the intellectual property rights of others; however, our ability to innovate and increase our product footprint may be limited by the intellectual property rights of those other parties.

Despite our efforts, we may not be able to adequately protect or enforce our intellectual property and other proprietary rights. We have seen an increase in the number of counterfeit goods and products that infringe on our patents, trademarks and trade dress. We have increased our proactive policing of these counterfeit goods which has led to an increased cost of intellectual property enforcement. Effective protection or enforcement of intellectual property rights may be unavailable or limited in the jurisdictions in which we do business. We also may be unable to acquire or maintain appropriate trademarks and domain names in all jurisdictions in which we do business. Furthermore, regulations governing domain names may not protect our trademarks and similar proprietary rights. We may be unable to prevent third parties from acquiring domain names that are similar to, infringe upon, or diminish the value of our trademarks and other proprietary rights.

The protection of our intellectual property, such as preventing counterfeit goods from entering the market or defending our patents, may require the expenditure of significant financial and managerial resources. We may not be able to discover or determine the extent of all unauthorized use of our proprietary rights. Policing the unauthorized use of our proprietary technology, trademarks and copyrights can be difficult and expensive. Litigation has been and may continue to be necessary to protect our intellectual property rights, which may be costly and may divert our management's attention away from our core business. Furthermore, there is no guarantee that litigation would result in an outcome favorable to us. Third parties that license our proprietary rights also may take actions that diminish the value of our proprietary rights or reputation. We also cannot be certain that others will not independently develop or otherwise acquire equivalent or superior technology or other intellectual property rights. If we are unable to protect our proprietary rights adequately, it would have a negative impact on our operations.

***We, or the owners of any intellectual property rights licensed to us, may be subject to claims that we or such licensors have infringed the proprietary rights of others, which could require us and our licensors to obtain a license or change designs.***

We have been subject to, and expect to continue to be subject to, claims and legal proceedings regarding alleged infringement by us of the intellectual property rights of third parties. Although we do not believe any of our products infringe upon the proprietary rights of others, there is no assurance that infringement or invalidity claims (or claims for indemnification resulting from infringement claims) will not be asserted or pursued against us or those from whom we have licenses or that any such assertions or prosecutions will not have a material adverse effect on our business. Regardless of whether any such claims are valid or can be asserted successfully, defending against such claims could cause us to incur costs and could divert resources away from our other activities. In addition, assertion of infringement claims could result in injunctions that prevent us from distributing our products. If any claims or actions are asserted against us or those from whom we have licenses, we may seek to obtain a license to the intellectual property rights that are in dispute. Such a license may not be available on reasonable terms, or at all, which could force us to change our designs.

***Purple LLC has licensed certain intellectual property to EdiZONE, LLC, which is owned by Tony and Terry Pearce, former members of our Board, via TNT Holdings, LLC (“TNT Holdings”), for the purpose of enabling EdiZONE to meet its contractual obligations to licensees of EdiZONE under contracts entered into years before the Business Combination, and some of those licensees are competitors of Purple LLC and have exclusivity rights that Purple LLC is required to observe.***

Prior to the Business Combination, we also entered into an Amended and Restated Confidential Assignment and License Back Agreement with EdiZONE, an entity beneficially owned and controlled by the founders, Tony Pearce and Terry Pearce (former employees, directors and beneficial majority shareholders), through their ownership of TNT Holdings, pursuant to which EdiZONE transferred tangible and intellectual property to us and we licensed back to EdiZONE certain intellectual property previously licensed by EdiZONE to third parties prior to the Business Combination in order to enable EdiZONE to continue to meet certain pre-existing license obligations to those third parties. EdiZONE and the Pearces have agreed to not modify or extend these third-party licenses and to not enter new third-party licenses. As these third-party license obligations end, all rights under the license revert to the Company. These third parties include direct competitors to us that at the time of the Business Combination were not selling products through retail channels and in geographical areas in which we were selling our products. One of these third parties is Advanced Comfort Technologies, Inc. dba Intellibed (“Intellibed”) who has been a licensee of EdiZONE for over fifteen years. Intellibed sells mattresses in the U.S. and Canada including now through some of the same retailers through which we also sell our products.

On August 14, 2020, with the approval of our independent directors, Purple LLC entered into a License Transfer and IP Assignment Agreement with EdiZONE (the “EdiZONE Agreement”), pursuant to which EdiZONE assigned to Purple LLC all its interest in and obligations under its license to Intellibed (the “Intellibed License Agreement”) which covers patents, trade secrets as well as the trademarks, including the GEL MATRIX and INTELLIPILLOW trademarks transferred under the EdiZONE Agreement, now owned by Purple LLC. In connection with such assignment, we agreed to indemnify EdiZONE against claims by Intellibed against EdiZONE relating to EdiZONE’s breach under the Intellibed License Agreement, if any, future claims arising out of the execution of the EdiZONE Agreement, or Purple LLC’s ownership, enforcement or breach of the Intellibed License Agreement. As a result of the EdiZONE Agreement, Intellibed pays royalties under the Intellibed License Agreement, and now owes its contractual obligations thereunder to Purple LLC. Should the Intellibed License Agreement end or be terminated, all of Intellibed’s rights thereunder revert to Purple LLC, including the right to continue to sell mattress, topper and pillow products using the same trademarks required by the license to be used with such products and to benefit from all equity in those brands.

Under the Intellibed License Agreement, Intellibed is licensed the right to use some technology we do not use in our products or to make our products. That licensed technology allows Intellibed to make a certain type of hollow buckling cushioning structure from elastomeric material, which Intellibed uses in its own mattress, topper and pillow products, but using only a specific type of elastomeric material and manufacturing process that were developed by EdiZONE years earlier that has long been replaced by the Company with different gel materials and more efficient manufacturing processes that Intellibed has no right to use. Whereas Intellibed’s rights are limited to specific products and has exclusivity to this technology only for mattresses, the Company can use the licensed technologies, should it want to, for any purpose except mattresses, and Intellibed cannot use any of the many other technologies owned by Purple LLC including any of the advanced technologies being used for Purple products. Nevertheless, because of the appearance of Intellibed’s cushioning element, its products may be wrongfully perceived by consumers as being comparable to the Company’s mattress and pillow products. Likewise, because of the novelty of the Company’s technologies, consumers and investors also may conclude incorrectly that Intellibed’s licensed elastomeric material and manufacturing process can produce a cushioning element with the same qualities and at the same scale as the Company’s Hyper-Elastic Polymer material in the Purple Grid cushion used in Purple products. This confusion could lead consumers to purchase Intellibed’s products instead of the Company’s products. The lack of a clear understanding of these differences could result in lower sales that would harm the Company.

Intellibed has been growing its sales over the past years and now distributes a portion of its products through wholesale partners with retail locations where our mattresses are sold. This competitor may continue to increase its sales and expand into additional distribution channels which could erode our sales in those retail locations and channels. This competitor may decide to sell its business to other competitors, which may have implications on the assignment and continuity of the Intellibed License Agreement, including the continuing receipt by Purple LLC of royalties under the Intellibed License Agreement, or it may go out of business. Even with the Company's receipt of royalties from Intellibed and entitlement to the value of the brand being built by Intellibed, pursuant to the Intellibed License Agreement, the continuing growth of this single competitor could adversely affect our business during the time that the license is effective, to the extent lost sales are not offset by royalties, and alternatively the cessation of the Intellibed License Agreement may require the Company to incur the costs of making and selling GEL MATRIX branded products to preserve and monetize the value of the equity in that brand. Although the Company believes there is value in controlling this license covering limited intellectual property owned, but not being used, by Purple LLC, that value may be offset by expenses related to Intellibed's conduct and events outside our control. Purple LLC currently is involved in litigation with Intellibed involving rights of the parties to the Intellibed License Agreement and what we believe to be unlawful conduct by Intellibed outside its licensed rights, as explained more fully in the section on litigation. However, such litigation has been paused pending pursuit by the parties of the dispute resolution provisions in the Intellibed License Agreement. See Note 12, "Commitments and Contingencies," of the Notes to the Consolidated Financial Statements, included in Part II, ITEM 8 of this Report, "Financial Statements and Supplementary Data," which is incorporated herein by reference.

Among EdiZONE's previously entered into licenses of comfort-related intellectual property, as described above, another license includes exclusivity rights that may prohibit us from selling our existing mattresses or potentially new products in the European Union. That risk may be addressed by redesign of the configuration of the Hyper-Elastic Polymer material in that geographic region by either using existing technologies already assigned by EdiZONE to Purple LLC or developing new technologies. Alternatively, that risk may not exist at all to the extent Purple LLC's current mattress products are the subject of expired patent rights licensed by that licensee or because Purple LLC is not the licensor. However, there can be no assurance that our future sales in the European Union, if any, will not be challenged by EdiZONE's licensee as a violation of the license agreement, or that any redesigned mattresses created by us will be successful in that market when we may enter it. If Purple LLC's activities are challenged by a licensee, Purple LLC has an indemnification obligation to EdiZONE and the Pearces, which may be an expense to the Company.

If any of these third parties violate their licenses with EdiZONE or infringe on intellectual property owned by Purple LLC and Purple LLC is unable to take effective action against such violating or infringing parties, we may be unable to protect against this infringement or the effects of such violations and our business could be harmed.

Purple LLC has obtained, with the cooperation of EdiZONE and the Pearces, the right to enforce its intellectual property rights at Purple LLC's option, provided that Purple LLC will indemnify EdiZONE and fund the expense of such enforcement. In addition, as the licensor under the Intellibed License Agreement, the Company now has the ability to enforce its intellectual property rights directly against Intellibed. In the event such enforcement is deemed necessary by Purple LLC, and in the case currently pending against Intellibed, Purple LLC may not be successful in any such efforts to enforce its intellectual property and other rights under the Intellibed License Agreement and this may harm our business.

While the current license back to EdiZONE, as amended following the Business Combination, is much narrower than the license that existed at the time of the Business Combination, EdiZONE's third-party licenses may lead to conflicts between us and EdiZONE. The EdiZONE Agreement pertaining to the Intellibed License Agreement also may lead to conflicts with EdiZONE. Although only the current conflict with Intellibed exists at this time and other conflicts are not foreseen, if additional conflicts do arise and are not properly addressed, disputes may occur which may be detrimental to the Company.

***If we cannot keep pace with rapid technological developments to provide new and innovative programs, products and services, the use of our products and our revenues could decline.***

Rapid, significant technological changes continue to confront the industries in which we operate. We cannot predict the effect of technological changes on our business. We expect that new services and technologies applicable to the industries in which we operate will continue to emerge. These new services and technologies may be superior to, or render obsolete, the technologies we currently use in our products and services. Incorporating new technologies into our products and services may require substantial expenditures and take considerable time, and ultimately may not be successful. In addition, our ability to adopt new services and develop new technologies may be inhibited by industry-wide standards, new laws and regulations, resistance to change from clients or merchants, or third parties' intellectual property rights. Our success will depend on our ability to develop new technologies and adapt to technological changes and evolving industry standards.

***Our business and our reputation could be adversely affected by the failure to protect sensitive employee, customer and consumer data, or to comply with evolving regulations relating to our obligation to protect such data.***

In the ordinary course of our business, we collect and store certain personal information from individuals, such as our customers and suppliers, and we process customer payment card and check information for purchases via our website. In addition, we may share with third-parties personal information we have collected. Cyber-attacks designed to gain access to sensitive information by breaching security systems of large organizations leading to unauthorized release of confidential information have occurred at a number of major U.S. companies despite widespread recognition of the cyber-attack threat and improved data protection methods. Computer hackers may attempt to penetrate our computer system or the systems of third-parties with which we have shared personal information and, if successful, misappropriate personal information, payment card or check information or confidential Company business information. In addition, a Company employee, contractor or other third party with whom we do business may attempt to circumvent our security measures in order to obtain such information and may purposefully or inadvertently cause a breach involving such information. Breaches involving any such information could be more likely to the extent we have any material weakness in internal control over financial reporting related to ITGCs in the areas of user access and segregation of duties related to certain IT systems that support the Company's financial reporting processes.

We and third-parties with which we have shared personal information have been subject to attempts to breach the security of networks, IT infrastructure, and controls through cyber-attack, malware, computer viruses, social engineering attacks, ransomware attacks, and other means of unauthorized access. In the past, we have been a victim of a spear-phishing attack and we anticipate that we may, in the future, continue to be subject to these and similar cyber threats. A breach of systems that resulted in the unauthorized release of sensitive data could adversely affect our reputation and lead to financial losses from remedial actions or potential liability, possibly including punitive damages. An electronic security breach resulting in the unauthorized release of sensitive data from information systems could also materially increase the costs we already incur to protect against these risks. In addition, cyber-attacks, such as ransomware attacks, if successful, could interfere with our ability to access and use systems and records that are necessary to operate our business. Such attacks could materially adversely affect our reputation, relationships with customers, and operations and could require us to expend significant resources to resolve such issues. We continue to balance the additional risk with the cost to protect us against a breach. Additionally, while losses arising from a breach may be covered in part by insurance that we carry, such coverage may not be adequate for liabilities or losses actually incurred.

We may be subject to data privacy and data breach laws in the states in which we do business, and as we expand into other countries, we may be subject to additional data privacy laws and regulations. In many states, state data privacy laws (such as the California Consumer Privacy Act), including application and interpretation, are rapidly evolving. The rapidly evolving nature of state and federal privacy laws, including potential inconsistencies between such laws and uncertainty as to their application, adds additional compliance costs and increases our risk of non-compliance. While we attempt to comply with such laws, we may not be in compliance at all times in all respects. Failure to comply with such laws may subject us to fines, administrative actions, and reputational harm.

## Risks Relating to our Organizational Structure

*The market price of our Class A Stock may be volatile or may decline regardless of our operating performance, and you may not be able to resell your shares at or above your purchase price.*

The market price of our stock has historically experienced high levels of volatility. If you purchase shares of our Class A Stock, you may not be able to resell those shares at or above your purchase price. The market price of our Class A Stock has fluctuated and may fluctuate significantly in response to numerous factors, some of which are beyond our control and may not be related to our operating performance, including but not limited to:

- announcements of new offerings, products, services or technologies, commercial relationships, acquisitions, or other events by us or our competitors;
- price and volume fluctuations in the overall stock market from time to time;
- significant volatility in the market price and trading volume of companies in our industry;
- fluctuations in the trading volume of our shares or the size of our public float;
- actual or anticipated changes or fluctuations in our results of operations;
- whether our results of operations meet the expectations of securities analysts or investors;
- actual or anticipated changes in the expectations of investors or securities analysts;
- litigation involving us, our industry, or both;
- regulatory developments in the United States, foreign countries, or both;
- general economic conditions and trends;
- terrorist attacks, political upheaval, natural disasters, public health crises, or other major catastrophic events;
- sales of large blocks of our common stock;
- departures of key employees; or
- an adverse impact on us from any of the other risks cited herein.

In addition, if the stock market for companies in our industry or related industries, or the stock market generally, experiences a loss of investor confidence, the trading price of our Class A Stock could decline for reasons unrelated to our business, financial condition or results of operations. Stock prices of many companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. The trading price of our Class A Stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. In the past, stockholders have filed securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our core business, and adversely affect our business.

*Delaware law and our Second Amended and Restated Certificate of Incorporation contain anti-takeover provisions, any of which could delay or discourage a merger, tender offer, or assumption of control of the Company not approved by our Board of Directors that some stockholders may consider favorable.*

Provisions of Delaware law and our Second Amended and Restated Certificate of Incorporation could hamper a third party's acquisition of us, or discourage a third party from attempting to acquire control of us. You may not have the opportunity to participate in these transactions. These provisions could also limit the price that investors might be willing to pay in the future for equity interests in the Company. These provisions include:

- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the right of our Board to elect a director to fill a vacancy created by the expansion of our Board or the resignation, death or removal of a director in certain circumstances, which prevents stockholders from being able to fill vacancies on our Board;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- a prohibition on stockholders calling a special meeting and the requirement that a meeting of stockholders may only be called by members of our Board, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- the requirement that changes or amendments to certain provisions of our certificate of incorporation or bylaws must be approved by holders of at least two-thirds of our common stock; and

- advance notice procedures that stockholders must comply with in order to nominate candidates to our Board or to propose matters to be acted upon at a meeting of stockholders, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain transactions with stockholders owning 15% or more of our outstanding voting stock or require us to obtain stockholder approval prior to engaging in such transactions. CCP and certain of its affiliates collectively hold approximately 26% of our outstanding voting stock. Any delay or prevention of a change in control transaction or changes in our board of directors could adversely affect our ability to execute transactions that are needed to carry out our operations and growth strategies and cause the market price of our common stock to decline.

***Provisions in our Second Amended and Restated Certificate of Incorporation could make it very difficult for an investor to bring any legal actions against us and our directors or officers and could require us to pay any amounts incurred by our directors or officers in any such actions.***

Our Second Amended and Restated Certificate of Incorporation provides that, to the fullest extent permitted by law, our directors shall not be personally liable for monetary damages for breach of fiduciary duties. Our Second Amended and Restated Certificate of Incorporation also allows us to indemnify our directors and officers from and against any and all costs, charges and expenses resulting from their acting in such capacities with us. This means that if you were able to enforce an action against our directors or officers, in all likelihood, we would be required to pay any expenses they incurred in defending the lawsuit and any judgment or settlement they otherwise would be required to pay. Accordingly, our indemnification obligations could divert needed financial resources and may adversely affect our business, financial condition, results of operations and cash flows, and adversely affect the value of our business.

***Provisions in our Second Amended and Restated Certificate of Incorporation may limit our stockholders' ability to obtain a favorable judicial forum.***

Our Second Amended and Restated Certificate of Incorporation provides that the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents. It also provides that, unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a claim for or based on a breach of duty or obligation owed by any current or former director, officer or employee of ours to us or to our stockholders, including any claim alleging the aiding and abetting of such a breach; any action asserting a claim against us or any current or former director, officer or employee of ours arising pursuant to any provision of the Delaware General Corporation Law or our certificate of incorporation or bylaws; or any action asserting a claim related to or involving us that is governed by the internal affairs doctrine. This exclusive forum provision would not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. To the extent that any such claims may be based upon federal law claims, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Furthermore, 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. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or employees, which may discourage such lawsuits against us and our directors, officers or employees. Alternatively, if a court were to find the choice of forum provision contained in our certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

***Future sales of our Class A Stock by our existing stockholders may cause our stock price to fall.***

The market price of our Class A Stock could decline as a result of sales by a few large stockholders, including CCP and Blackwell, in the market, or the perception that these sales could occur. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

***Our stockholders may experience substantial dilution in the value of their investment or may otherwise have their interests impaired if we issue additional shares of our capital stock.***

Our charter allows us to issue up to 300 million shares of our Common Stock, including 210 million shares of Class A Stock and 90 million shares of Class B Stock, and up to five million shares of undesignated preferred stock, par value \$0.0001 per share. To raise additional capital, we may in the future sell additional shares of our Class A Stock or other securities convertible into or exchangeable for our Class A Stock at prices that are lower than the prices paid by existing stockholders, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders, which could result in substantial dilution to the interests of existing stockholders.

Pursuant to our Second Amended and Restated Certificate of Incorporation, the Board has the ability to authorize the issuance of up to five million shares of preferred stock at any time and from time to time, with such terms and preferences as the Board determines and without any stockholder approval other than as may be required by NASDAQ Global Market rules. The issuance of such shares of preferred stock could dilute the interest of, or impair the voting power of, our common stockholders. The issuance of such preferred stock could also be used as a method of discouraging, delaying, or preventing a change of control.

***Our only significant asset is our ownership of Purple LLC and such ownership may not be sufficient to pay dividends or make distributions or loans to enable us to pay any dividends on our Class A Stock or satisfy our other financial obligations, including our obligations under the Tax Receivable Agreement.***

We are a holding company and do not directly own any operating assets other than our ownership of interests in Purple LLC. We depend on Purple LLC for distributions, loans and other payments to generate the funds necessary to meet our financial obligations, including our expenses as a publicly traded company, to pay any dividends, and to satisfy our obligations under the Tax Receivable Agreement. The earnings from, or other available assets of, Purple LLC may not be sufficient to make distributions or pay dividends, pay expenses or satisfy our other financial obligations, including our obligations under the Tax Receivable Agreement. Moreover, our debt covenants may not allow us to pay dividends.

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

We intend to retain future earnings, if any, for use in the business or for other corporate purposes and do not anticipate that cash dividends with respect to our Class A Stock will be paid in the foreseeable future. Any decision as to the future payment of dividends will depend on our results of operations, financial position and such other factors as our Board, in its discretion, deems relevant. As a result, capital appreciation, if any, of our Class A Stock will be a stockholder's sole source of gain for the foreseeable future. Moreover, our debt covenants may not allow us to pay dividends.

***Our level of indebtedness and related covenants could limit our operational and financial flexibility and significant adversely affect our business if we breach such covenants and default on such indebtedness.***

As of December 31, 2021, Purple LLC had total debt of \$97.2 million outstanding under the 2020 Credit Agreement. While any amounts are outstanding under the 2020 Credit Agreement, we are subject to a number of affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, subject to certain exceptions. In particular, we are (i) subject to annual capital expenditure limits that can be adjusted based on the Company achieving certain Net Leverage Ratio thresholds as provided in the 2020 Credit Agreement, (ii) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the Credit Agreement, and (iii) maintain minimum Consolidated Net Leverage Ratio and Fixed Charge Coverage Ratio (as those terms are defined in the Credit Agreement) thresholds at certain measurement dates. Purple LLC is also restricted from paying dividends or making other distributions or payments on its capital stock, subject to limited exceptions.

These restrictions may prevent us from taking actions that we believe would be in the best interests of the business and may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted. If we determine that we need to take any action that is restricted under the 2020 Credit Agreement, we will need to first obtain a waiver from the Institutional Lenders. Obtaining such waivers, if needed, may impose additional costs on the Company or we may be unable to obtain such waivers. Our ability to comply with these restrictive covenants in future periods will largely depend on our ability to successfully implement our overall business strategy. The breach of any of these covenants or restrictions could result in a default, which could result in the acceleration of our outstanding debt. In the event of an acceleration of such debt, we could be forced to apply all available cash flows to repay such debt, which could also force us into bankruptcy or liquidation.

On February 28, 2022, prior to the covenant compliance certification date under the 2020 Credit Agreement, we entered into the first amendment of the 2020 Credit Agreement. The amendment contains a covenant waiver period such that the net leverage ratio and fixed charge coverage ratio will not be tested for the fiscal quarter ended December 31, 2021 through the fiscal quarter ended June 30, 2022. Other changes in the amendment include modification of leverage ratio and fixed charge coverage definitions and thresholds, the addition of minimum liquidity requirements with mandatory prepayments of the revolving loan if cash exceeds \$25.0 million, new weekly and monthly reporting requirements, limits on the amount of capital expenditures, including expenditures for acquisitions of other business or technologies, the addition of a lease incurrence test for opening additional showrooms, and additional negative covenants during a covenant amendment period that will extend into 2023 until certain conditions are met. The additional negative covenants during the covenant amendment period include additional restrictions on certain consolidations, mergers, acquisitions, asset sales, statutory divisions, liens, indebtedness, investments, guaranty obligations, and restricted payments

Our failure to satisfy the required conditions under the amendment or maintain compliance with the financial and performance covenants under the 2020 Credit Agreement could result in a default, including acceleration of our outstanding debt, which would adversely affect our financial condition and results of operations, and significantly limit our ability to execute on our business strategies.

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

Included on our consolidated balance sheets as of December 31, 2021 and 2020 contained in our Annual Report on Form 10-K for the year ended December 31, 2021 are derivative liabilities related to embedded features contained within our warrants. Financial Accounting Standards Board Accounting Codification 815 provides for the remeasurement of the fair value of such derivatives at each balance sheet date, with a resulting non-cash gain or loss related to the change in the fair value being recognized in earnings in the statement of operations. As a result of the recurring fair value measurement, our consolidated financial statements and results of operations may fluctuate quarterly, based on factors, which are outside of our control. Due to the recurring fair value measurement, we expect that we will recognize non-cash gains or losses on our warrants each reporting period and that the amount of such gains or losses could be material.

***Certain outstanding warrants could be exercised and result in dilution of all shareholders without any concurrent payment or other benefit to the Company.***

Certain outstanding warrants held by former members of Global Partner Sponsor, LLC (the sponsor for GPAC) and its permitted transferees are not redeemable and may be exercised on a cashless basis. As of February 28, 2022, approximately 1.9 million sponsor warrants remain outstanding, which are exercisable for an aggregate of less than one million shares of Class A Stock. If the holders of the sponsor warrants choose to exercise their warrants on a cashless basis, we would be required to issue shares of Class A Stock without any further consideration paid to us, resulting in dilution to our existing stockholders.

***We may issue debt and equity securities or securities convertible into equity securities, any of which may be senior to our Class A Stock as to distributions and in liquidation, which could negatively affect the value of our Class A Stock.***

In the future, we may attempt to increase our capital resources by entering into additional debt or debt-like financing that is unsecured or secured by up to all of our assets, or by issuing additional debt or equity securities, which could include issuances of secured or unsecured notes, preferred stock, hybrid securities or securities convertible into or exchangeable for equity securities. In the event of our liquidation, our lenders and holders of our debt would receive distributions of our available assets before distributions to holders of our Class A Stock, and holders of preferred securities would receive distributions of our available assets before distributions to the holders of our Class A Stock. Because our decision to incur debt and issue securities in future offerings may be influenced by market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings or debt financings. Further, market conditions could require us to accept less favorable terms for the issuance of our securities in the future.

#### **Tax Risks Relating to our Structure**

***Although we may be entitled to tax benefits relating to additional tax depreciation or amortization deductions as a result of the tax basis step-up we receive in connection with the exchanges of Class B Units and shares of Class B Stock into our Class A Stock and related transactions, we will be required to pay InnoHold 80% of these tax benefits under the Tax Receivable Agreement.***

Owners of Class B Units and shares of Class B Stock may, subject to certain conditions and transfer restrictions, exchange their Class B Units and shares of Class B Stock (together with an equal number of Class B Units, the “Paired Securities”) for shares of Class A Stock pursuant to an exchange agreement, dated February 2, 2018, with Purple LLC, InnoHold and the Class B Unit holders who became a party thereto (the “Exchange Agreement”). The deemed exchanges in the Business Combination and any exchanges pursuant to the Exchange Agreement are expected to result in increases in our allocable share of the tax basis of the tangible and intangible assets of Purple LLC. These increases in tax basis may increase (for tax purposes) depreciation and amortization deductions and therefore reduce the amount of income or franchise tax that we would otherwise be required to pay in the future, although the Internal Revenue Service or any applicable foreign, state or local tax authority may challenge all or part of that tax basis increase, and a court could sustain such a challenge. As of December 31, 2021, there have been 43.6 million exchanges of Class B Units and shares of Class B Stock for shares of Class A Stock, in addition to the deemed exchanges that occurred in connection with the Business Combination.



In connection with the Business Combination, we entered into the Tax Receivable Agreement, which generally provides for the payment by us to InnoHold of 80% of certain tax benefits, if any, that we realize as a result of these increases in tax basis and of certain other tax benefits related to entering into the Tax Receivable Agreement, including income or franchise tax benefits attributable to payments under the Tax Receivable Agreement. These payment obligations pursuant to the Tax Receivable Agreement are the obligation of the Company and not of Purple LLC. The actual increase in our allocable share of the Company's tax basis in its assets, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors, including the timing of exchanges, the market price of shares of our common stock at the time of the exchange, the extent to which such exchanges are taxable and the amount and timing of our income. As of December 31, 2021, the Company's preliminary estimate of the liability under the Tax Receivable Agreement resulting from the deemed exchanges that occurred in connection with the Business Combination and subsequent exchanges of 43.6 million Paired Securities as of December 31, 2021 was approximately \$168.1 million, of which \$172.0 was recorded through 2020. To the extent the Company realizes tax benefits in future years, or in the event of a change in future tax rates, or if payments under the Tax Receivable Agreement are required to be accelerated, this liability may exceed the estimated liability.

Because not all of the relevant factors described above are known at this time with respect to the exchanges that have occurred, and none of the relevant factors are known with respect to 0.4 million future exchanges (whether this year or in subsequent years), except as estimated above, we cannot yet with certainty determine the final amounts that will be payable under the Tax Receivable Agreement. However, as a result of the size and frequency of the exchanges and the resulting increases in the tax basis of the tangible and intangible assets of Purple LLC, the payments under the Tax Receivable Agreement will be substantial and could have a material adverse effect on our financial condition. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of the Company by the holders of Class B Units.

InnoHold will not be required to reimburse us for any excess payments that may previously have been made under the Tax Receivable Agreement, for example, due to adjustments resulting from examinations by taxing authorities. Rather, excess payments made to such holders will be netted against payments otherwise to be made, if any, after the determination of such excess. As a result, in certain circumstances we could make payments under the Tax Receivable Agreement in excess of our actual income or franchise tax savings, if any, and we may not be able to recoup such excess, which could materially impair our financial condition and adversely affect our liquidity.

If all of the 0.5 million Paired Securities outstanding as of December 31, 2021 were exchanged for shares of Class A Stock pursuant to the Exchange Agreement, and the fair market value of the Class A Stock at the time of such exchange were equal to \$6.01 per share (the closing price of a share of our Class A Stock on February 18, 2022), our aggregate liability under the Tax Receivable Agreement would not increase from the estimated \$168.1 million liability described above, with the amount payable in estimated annual amounts ranging from \$0.3 million to \$14.6 million over a 16-year period. The foregoing estimate of our aggregate liability is based on certain assumptions, including that there are no changes in relevant tax law, that we are able to fully depreciate or amortize our assets, and that we recognize taxable income sufficient to realize the full benefit of the increased depreciation and amortization of our assets in each of the tax years. These assumptions may not be accurate with respect to all or any exchanges of Paired Securities for Class A Stock. As a result, the amount and timing of our actual aggregate liability under the Tax Receivable Agreement may differ materially from our estimates depending on a number of factors, including those described above and elsewhere in this Annual Report on Form 10-K.

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

The Tax Receivable Agreement provides that, in the event that we exercise our right to early termination of the Tax Receivable Agreement, or in the event of a change of control of the Company or we are more than 90 days late in making of a payment due under the Tax Receivable Agreement, the Tax Receivable Agreement will terminate, and we will be required to make a lump-sum payment to InnoHold equal to the present value of all forecasted future payments that would have otherwise been made under the Tax Receivable Agreement, which lump-sum payment would be based on certain assumptions, including those relating to our future taxable income. The change of control payment to InnoHold and the other owners could be substantial and could exceed the actual tax benefits that we receive as a result of acquiring units from other owners of Purple LLC because the amounts of such payments would be calculated assuming that we would have been able to use the potential tax benefits each year for the remainder of the amortization periods applicable to the basis increases, and that tax rates applicable to us would be the same as they were in the year of the termination. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control due to the additional transaction cost a potential acquirer may attribute to satisfying such obligations. There can be no assurance that we will be able to finance our obligations under the Tax Receivable Agreement.

Decisions made in the course of running our business, such as with respect to mergers, asset sales, other forms of business combinations or other changes in control, may influence the timing and amount of payments that are received by InnoHold under the Tax Receivable Agreement. For example, the earlier disposition of assets following an exchange or acquisition transaction will generally accelerate payments under the Tax Receivable Agreement and increase the present value of such payments, and the disposition of assets before an exchange or acquisition transaction will increase an existing owner's tax liability without giving rise to any rights of InnoHold to receive payments under the Tax Receivable Agreement.

Even in the absence of an early termination of the Tax Receivable Agreement, change of control of the Company or a payment that is more than 90 days late under the Tax Receivable Agreement, there may be a material negative effect on our liquidity if the payments under the Tax Receivable Agreement exceed the actual income or franchise tax savings that we realize in respect of the tax attributes subject to the Tax Receivable Agreement or if distributions to us by Purple LLC are not sufficient to permit us to make payments under the Tax Receivable Agreement after we have paid taxes and other expenses. Furthermore, our obligations to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are deemed realized under the Tax Receivable Agreement. We may need to incur additional indebtedness to finance payments under the Tax Receivable Agreement to the extent our cash resources are insufficient to meet our obligations under the Tax Receivable Agreement as a result of timing discrepancies or otherwise which may have a material adverse effect on our financial condition. There can be no assurance that we will be able to finance our obligations under the Tax Receivable Agreement.

***We may not be able to realize all or a portion of the tax benefits that are expected to result from the acquisition of Units from Purple LLC Class B Unitholders.***

Pursuant to the Tax Receivable Agreement, the Company will share tax savings resulting from (A) the amortization of the anticipated step-up in tax basis in Purple LLC's assets as a result of (i) the Business Combination and (ii) the exchange of (a) the Class B Units and (b) the Class B Stock, in each case that were received in connection with the Business Combination, for shares of Class A Stock pursuant to the Exchange Agreement and (B) certain other related transactions with InnoHold in connection with the Business Combination. The amount of any such tax savings attributable to the payment of cash to InnoHold in connection with the Business Combination and the exchanges contemplated by the Exchange Agreement will be paid 80% to InnoHold and other owners of such securities and retained 20% by the Company. Our ability to realize, and benefit from, these tax savings depends on a number of assumptions, including that we will earn sufficient taxable income each year during the period over which the deductions arising from any such basis increases and payments are available and that there are no adverse changes in applicable law or regulations. If our actual taxable income were insufficient to fully utilize such tax benefits or there were adverse changes in applicable law or regulations, we may be unable to realize all or a portion of these expected benefits and our cash flows and stockholders' equity could be negatively affected.

***Unanticipated changes in effective tax rates, including as a result of new tax jurisdictions, or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our financial condition and results of operations.***

Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of stock-based compensation;
- costs related to intercompany restructurings; and
- the addition of new tax jurisdictions or changes in tax laws, regulations or interpretations thereof.

In addition, we may be subject to audits of our income, sales and other transaction taxes by U.S. federal and state authorities. Outcomes from these audits could have an adverse effect on our financial condition and results of operations.

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

Under Section 382 and related provisions of the Internal Revenue Code of 1986, as amended (the “Code”), if a corporation undergoes an “ownership change” generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a three-year period), the corporation’s ability to use its pre-change net operating loss carryforwards (“NOLs”) and other pre-change tax attributes to offset its post-change income may be limited. If finalized, Treasury Regulations currently proposed under Section 382 of the Code may further limit our ability to utilize our pre-change NOLs or other tax attributes if we undergo a future ownership change. We may have experienced ownership changes in the past, and we may experience ownership changes in the future and/or subsequent shifts in our stock ownership (some of which may be outside our control). Thus, our ability to utilize carryforwards of our net operating losses and other tax attributes to reduce future tax liabilities may be substantially restricted. At this time, we have not completed a study to assess the impact, if any, of ownership changes on our NOLs under Section 382 of the Code.

The amount of our deferred tax assets considered realizable could be adjusted if projections of future taxable income are reduced or objective negative evidence in the form of a three-year cumulative loss is present or both. Should we no longer have a level of sustained profitability, excluding nonrecurring charges, we will have to rely more on our future projections of taxable income to determine if we have an adequate source of taxable income for the realization of our deferred tax assets, namely NOL carryforwards. This may result in the need to record a valuation allowance against all or an additional portion of our deferred tax assets, which could adversely affect our results of operations.

#### **Item 1B. Unresolved Staff Comments**

None.

#### **Item 2. Properties**

We lease three manufacturing facilities in Alpine, Utah, Grantsville, Utah and McDonough, Georgia, which manufacture and distribute Purple products. These factories have a total of 1.5 million square-feet (35 acres under roof), including approximately 574,000 square-feet at our Grantsville, Utah facility, 844,000 square feet at our McDonough, Georgia facility and approximately 93,000 square-feet at our Alpine, Utah facility (which comprises two buildings). The Georgia location, our first manufacturing plant outside of Utah, will serve our customers on the east coast more efficiently. We also lease approximately 58,000 square-feet of office space in Lehi, Utah for our corporate headquarters. In addition to the properties described, we have other facilities and Purple retail showrooms in the United States all of which are under lease.

#### **Item 3. Legal Proceedings**

Information regarding legal proceedings can be found in Note 12, “Commitments and Contingencies,” of the Notes to the Consolidated Financial Statements, included in Part II, ITEM 8 of this Report, “Financial Statements and Supplementary Data,” and is incorporated herein by reference.

#### **Item 4. Mine Safety Disclosures**

Not applicable.

## PART II

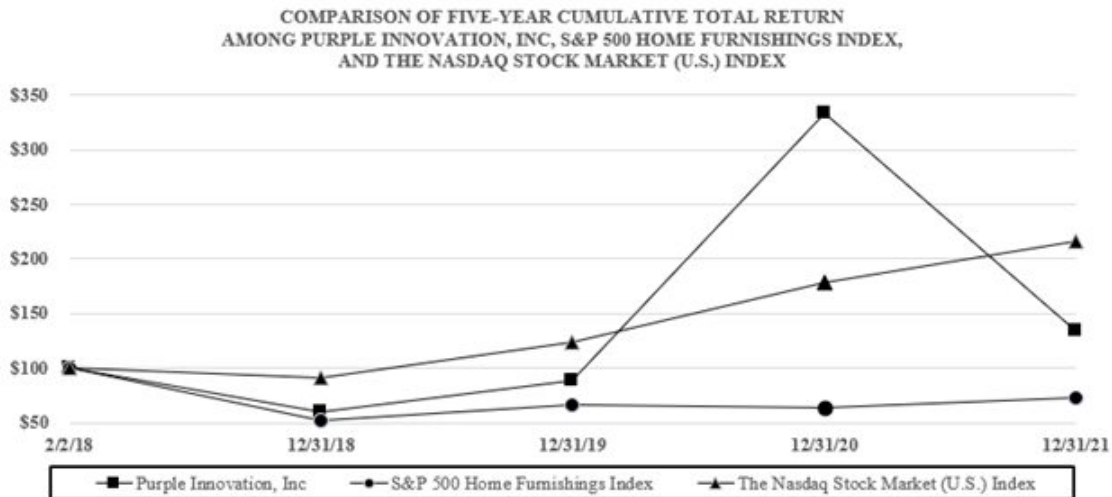
### Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters, and Issuer Purchases of Equity Securities

Our Class A Stock is listed on the Nasdaq Global Market under the symbol “PRPL”. As of February 28, 2022, there were approximately 20 holders of record of shares of our Class A Stock and 14 holders of record of shares of our Class B Stock. Our Class B Stock is not listed or quoted on any exchange and is not transferrable by the holders, subject to certain limited exceptions. This number does not include stockholders for which shares are held in “nominee” or “street” name.

We have not paid any cash dividends on our common stock to date. The payment of cash dividends in the future will be dependent upon our revenues and earnings, if any, capital requirements, general financial condition, our compliance with restrictive covenants in the 2020 Credit Agreement and other future indebtedness that we may incur, opportunities to invest in future growth initiatives, and the discretion of our Board of Directors at such time. Our Board of Directors is not currently contemplating and does not anticipate declaring any stock dividends in the foreseeable future.

#### Comparative Stock Performance

The following graph illustrates the cumulative total return from February 2, 2018 through December 31, 2021, for (i) our Class A Stock, (ii) the Standard and Poor’s (S&P) 500 Home Furnishings Index, and (iii) the Nasdaq Stock Market (U.S.) Index. The graph assumes \$100 was invested on February 2, 2018 in each of our common stock, the S&P 500 Home Furnishings Index, and the Nasdaq Stock Market (U.S.) Index, and that any dividends were reinvested. The comparisons reflected in the graph are not intended to forecast the future performance of our stock and may not be indicative of our future performance. The graph and related information shall not be deemed to be "soliciting material" or to be "filed" with the Securities and Exchange Commission, nor shall such information be incorporated by reference into any future filing under the Securities Act or Exchange Act, except to the extent that the Company specifically incorporates it by reference into such filing.



	02/02/18	12/31/18	12/31/19	12/31/20	12/31/21
Purple Innovation, Inc.	\$ 100.00	\$ 59.49	\$ 87.98	\$ 332.73	\$ 134.04
S&P 500 Home Furnishings Index	100.00	52.53	66.51	63.65	72.53
The Nasdaq Stock Market (U.S.) Index	100.00	91.64	123.91	177.99	216.06

#### Recent Sales of Unregistered Securities

None.

#### Issuer Purchases of Equity Securities

None.

#### Item 6. [Reserved]

## **Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

### **Forward-Looking Statements**

This Annual Report on Form 10-K, including this Management’s Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements regarding future events and our future results that are subject to the safe harbors created under the Securities Act of 1933, as amended (the “Securities Act”) and the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical facts are statements that could be deemed forward-looking statements. These statements are based on current expectations, estimates, forecasts, and projections about the industries in which we operate and the beliefs and assumptions of our management. Words such as “expects,” “anticipates,” “targets,” “goals,” “projects,” “intends,” “plans,” “believes,” “momentum,” “seeks,” “estimates,” “continues,” “endeavors,” “strives,” “may,” variations of such words, and similar expressions are intended to identify such forward-looking statements. In addition, any statements that refer to projections of our future financial performance, our anticipated growth and trends in our businesses (including the discussion under the heading “Outlook for Growth”), and other characterizations of future events or circumstances are forward-looking statements. Readers are cautioned that these forward-looking statements are only predictions and are subject to risks, uncertainties, and assumptions that are difficult to predict, including those under “Part I, Item 1A. Risk Factors,” and elsewhere herein. Therefore, actual results may differ materially and adversely from those expressed in any forward-looking statements. We undertake no obligation to revise or update any forward-looking statements for any reason.

The following discussion is intended to provide a more comprehensive review of the operating results and financial condition of Purple than can be obtained from reading the Consolidated Financial Statements alone. The discussion should be read in conjunction with the Consolidated Financial Statements and the notes thereto included in “Part II Item 8. Financial Statements.”

### **Overview of Our Business**

Our mission is to help people feel and live better through innovative comfort solutions.

We are a digitally-native vertical brand founded on comfort product innovation with premium offerings. We design and manufacture a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets, and other products. Our products are the result of over 30 years of innovation and investment in proprietary and patented comfort technologies and the development of our own manufacturing processes. Our proprietary gel technology, Hyper-Elastic Polymer, underpins many of our comfort products and provides a range of benefits that differentiate our offerings from other competitors’ products. We market and sell our products through direct-to-consumer e-commerce and Purple retail showrooms and retail brick-and-mortar wholesale partners.

### **Organization**

The Company consists of Purple Inc. and its consolidated subsidiary, Purple LLC. Purple Inc. was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of GPAC. On February 2, 2018, the Company consummated a transaction structured similar to a reverse recapitalization (the “Business Combination”) pursuant to which Purple Inc. acquired an equity interest in Purple LLC and became its sole managing member. As the sole managing member of Purple LLC, Purple Inc., through its officers and directors, is responsible for all operational and administrative decision making and control of the day-to-day business affairs of Purple LLC without the approval of any other member. At December 31, 2021, Purple Inc. had a 99% economic interest in Purple LLC while other Class B unit holders had the remaining 1%.

### **COVID-19 Pandemic Developments**

The COVID-19 pandemic has impacted many aspects of our operations, directly and indirectly, including disruption of our employees, consumer behavior, distribution and logistics, our suppliers, and the market overall. The scope and nature of these impacts continue to evolve. Because of the COVID-19 pandemic, we have taken precautionary measures recommended by the appropriate national and state health agencies to manage our resources and mitigate the adverse impact of the pandemic, which is intended to help minimize the risk to our Company, employees, customers, and the communities in which we operate.

Although we have taken measures to protect our business, we cannot predict the specific duration for which precautionary measures relating to COVID-19 will stay in effect. We may elect or be required to take additional measures as the information available to us continues to develop, including with respect to our employees, manufacturing facilities and distribution centers, and relationships with our suppliers and customers. Based on our current projections, subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and government, consumer, and our responses thereto, we believe our cash on hand and ongoing cash generated from our e-commerce, wholesale and retail showroom sales channels will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months.

While most state and local governments have eased restrictions on commercial retail activity, it is possible that a recent resurgence in cases of COVID-19 or one of its future variants could prompt a return to tighter restrictions in certain areas of the country. Furthermore, while the sleep product industry has fared much better during the pandemic than certain other sectors of the economy, continued economic weakness may eventually have an adverse impact upon the industry and our business. Therefore, significant uncertainty remains regarding the ongoing impact of the COVID-19 outbreak upon our financial condition and future results of operations, as well as upon the significant estimates and assumptions we utilize in reporting certain assets and liabilities.

### **Recent Developments in Our Business**

#### *Production and Demand Developments*

During the second quarter of 2021, following an accident that resulted in the death of an employee and subsequent safety improvements involving the Mattress Max machines, we encountered isolated production challenges caused by unanticipated mechanical and maintenance issues when bringing the machines

back online. As a result, we experienced significantly reduced production levels causing shipment backlogs that unfavorably affected both second and third quarter net revenues. We exited the month of July with production from our existing machines back at planned levels and emerged from our backlog position at the end of August. With our production back at planned levels, we were able to increase our finished goods inventory to adequate stock levels that enabled us to resume timely shipments to our customers during the latter part of the third quarter.

Even though we were able to return to planned production capacity in the third quarter, our results of operations did not return to expected levels, which we believe was primarily due to slower than expected acceleration back to prior trending demand levels. We also believe that the production challenges experienced in the second and third quarters adversely affected the confidence of consumers and our wholesale partners in our ability to timely deliver our products, which resulted in reduced orders and increased cancellations from e-commerce, wholesale and Purple retail showroom customers. Further, in an effort to manage costs as we worked to resolve the production issues described above, we initiated a reduction in marketing spend late in the second quarter that carried through most of the third quarter, which further negatively affected demand for our products, particularly in our e-commerce sales channel. In addition to adversely impacting immediate demand, these issues also interrupted our momentum in growth for future periods. Although we did generate net revenue growth of 7.2% in the fourth quarter compared to the prior year fourth quarter, we experienced an operating loss in the quarter due to lower gross margins, higher marketing costs and an increase in general and administrative expenses. While our production and marketing efforts returned to planned levels in the fourth quarter, post-pandemic demand is shifting away from e-commerce and back towards retail brick-and-mortar. We believe this shift will continue through 2022.

In addition to a slower recovery to expected demand levels following our return to full production capacity and shift in demand from e-commerce to physical stores, our business has also been adversely impacted by increases in raw material, labor and freight costs. While we are still able to obtain necessary materials when needed, the costs of such materials have increased significantly, consistent with general macroeconomic trends. In addition, as experienced in other industries, in order to remain competitive in hiring the labor necessary to maintain our production, we have had to increase wages and other compensation. These increases in materials and labor costs have resulted in higher cost of goods sold and lower margins. We believe that raw material, labor and freight costs will continue to remain at elevated levels or increase further in the foreseeable future. In order to offset the impact of these costs on our gross margins, we have taken a number of pricing actions in the fourth quarter and early 2022. In February 2022, we completed a restructuring of our workforce that was necessitated by a realignment of our cost structure. As a result of the realignment and restructuring, we reduced employee headcount by approximately 15%. In addition, we have initiated a number of other projects to improve efficiencies and reduce costs. Following several years of hyper growth and increased investments to support current and future expansion, we are now focusing on right-sizing our operations, improving our execution and refining our strategies to drive profitable growth in the current market environment.

We are also closely monitoring the impacts of COVID-19 and general economic conditions on global supply chain, manufacturing, and logistics operations. As inflationary pressures increase, we anticipate that our production and operating costs will similarly increase. In addition, COVID-19 and other events, including port closures or labor shortages, have resulted in the continuation or worsening of manufacturing and shipping costs, delays and constraints. While most of our domestic suppliers have been able to continue operations and provide necessary materials when needed, we have experienced some constraints from certain suppliers, with respect to both the availability and cost of materials. We have also experienced some delays in shipments from our suppliers. Any significant delay or interruption in our supply chain could impair our ability to meet the demands of our customers and could negatively impact our business.

#### *Mattress Firm Relationship*

On November 8, 2021, Purple LLC and Mattress Firm agreed to terminate the September 2018 retailer agreement and replace it with a new agreement that has terms consistent with the Company's standard retailer agreement. This new agreement provides opportunity for continued partnership and growth with Mattress Firm while also eliminating the prior exclusivity arrangements. With the constraints on entering markets in which Mattress Firm conducts business no longer in place, this creates opportunities to partner with new specialty retailers that were previously not available to us.

#### *Revolving Line of Credit*

In September 2020, Purple LLC entered into a financing arrangement with KeyBank National Association and a group of financial institutions that provided for a \$45.0 million term loan and a \$55.0 million revolving line of credit. In November 2021, the Company executed a \$55.0 million draw on its revolving line of credit, which represented the full amount available under the line. The outstanding balance on the revolving line of credit was classified as long-term debt in the Company's consolidated balance sheet as of December 31, 2021.

## *First Amendment to 2020 Credit Agreement*

Our operating and financial results for the year ended December 31, 2021 did not satisfy our financial and performance covenants required pursuant to the 2020 Credit Agreement. In order to avoid a breach of such covenants and related default, on February 28, 2022, prior to the covenant compliance certification date under the 2020 Credit Agreement, we entered into the first amendment of the 2020 Credit Agreement. The amendment contains a covenant waiver period such that the net leverage ratio and fixed charge coverage ratio will not be tested for the fiscal quarter ended December 31, 2021 through the fiscal quarter ended June 30, 2022. Other changes in the amendment include modification of leverage ratio and fixed charge coverage definitions and thresholds, the addition of minimum liquidity requirements with mandatory prepayments of the revolving loan if cash exceeds \$25.0 million, new weekly and monthly reporting requirements, limits on the amount of capital expenditures, the addition of a lease incurrence test for opening additional showrooms, and additional negative covenants during a covenant amendment period that will extend into 2023 until certain conditions are met. In addition, the interest rate on outstanding borrowings under the 2020 Credit Agreement changed from LIBOR with a floor of 0.5% plus an applicable margin (historically at 3.0%) to an initial rate of SOFR with a floor of 0.5% plus 4.75%, for a total rate of 5.25% as long as the applicable liquidity threshold is met. If it is not met, then the interest rate goes to SOFR with a floor of 0.5% plus 9.00%. Once the consolidated leverage ratio is below 3.00 to 1.00, the interest rate will be based on SOFR with a floor of 0.5% plus a 3.00% to 3.75% depending on the consolidated leverage ratio. Pursuant to the amendment, the Company paid fees and expenses of \$0.9 million and prepaid all principal payments due in 2022 of \$2.5 million.

### **Outlook for Growth**

To support our plans for future growth, we are initially focusing on the following immediate opportunities:

- Right-size labor force and effectively manage labor
- Manage capacity utilization to promote efficient use of production facilities as we grow into production footprint
- Develop and execute on strategies to meaningfully expand our wholesale presence
- Build premium brand position to deliver 20% market share of the premium mattress category, from current approximately 11% market share
- Manage input costs, operating efficiencies, and pricing to offset gross margin erosion, with a goal to return gross margins to approximately the levels achieved in 2020 by the end of 2022
- Strengthen research and development disciplines and go-to-market processes in order to expand our current categories and position our business to eventually expand to adjacent categories

There is no guarantee that we will be able to effectively execute on these opportunities, which are subject to risks, uncertainties, and assumptions that are difficult to predict, including the risks described under “Part I, Item 1A. Risk Factors” and elsewhere herein. Therefore, actual results may differ materially and adversely from those described above. In addition, we may, in the future, adapt these focuses in response to changes in the market or our business.

### **Critical Accounting Estimates**

In connection with the preparation of our consolidated financial statements in conformity with U.S. generally accepted accounting principles (“GAAP”), we are required to make estimates and assumptions about future events and apply judgments that affect the reported amounts of assets, liabilities, sales, expenses and the related disclosures. Predicting future events is inherently an imprecise activity and as such requires the use of judgment. We base our assumptions, estimates and judgments on historical experience, current trends and other factors that management believes to be relevant at the time our consolidated financial statements are prepared. On a regular basis, management reviews the accounting policies, assumptions, estimates and judgments to ensure that our consolidated financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

Management believes the accounting estimates discussed below are the most critical because they require management’s most difficult, subjective or complex judgments, resulting from the need to make estimates about the effect of matters that are inherently uncertain.

#### *Revenue Recognition*

The Company’s revenue recognition accounting methodology contains uncertainties because it requires management to make assumptions and to apply judgment to estimate the amount and timing of future sales returns and uncollectible accounts. The Company’s estimates of the amount and timing of sales returns and uncollectible accounts are based primarily on historical transaction experience. The Company’s sales return liability decreased from \$8.4 million at December 31, 2020 million to \$7.1 million as of December 31, 2021. The Company’s allowance for doubtful accounts as of December 31, 2021 and 2020 was not material. The Company does not believe there is a reasonable likelihood that there will be any material changes in the accounting methodology, future estimates or assumptions used to measure the estimated liability for sales returns and exchanges or credit losses. However, if actual results are not consistent with the Company’s estimates or assumptions, it may be exposed to losses or gains that could be material.



### *Warranty Liabilities*

The Company provides a limited warranty on most of the products it sells. The estimated warranty costs, which are expensed at the time of sale and included in cost of revenues, are based on the results of product testing, industry and historical trends and warranty claim rates incurred and are adjusted for any current or expected trends as appropriate. The Company regularly assesses and adjusts the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs. The Company classifies as non-current those estimated warranty costs expected to be paid out in greater than one year. As of December 31, 2021, the current and non-current portions of the Company's warranty liabilities were \$3.9 million and \$11.1 million, respectively, compared to \$2.8 million and \$5.6 million, respectively, at December 31, 2020. We have not made any material changes in the warranty liability assessment methodology used and we do not believe there is a reasonable likelihood that a material change in the estimates or assumptions we use to calculate our warranty liability will occur. However, if actual results are not consistent with our estimates or assumptions, we may be exposed to losses or gains that could be material.

### *Warrant Liability*

The Company accounts for the sponsor warrants issued in connection with its initial public offering and simultaneous private placement as liabilities. The liability for these warrants was initially measured at fair value on the date of the Business Combination and is subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings. The Company uses the Black-Scholes model to determine the fair value of the liability associated with the sponsor warrants. The model uses key assumptions and inputs such as exercise price, fair market value of common stock, risk free interest rate, warrant life and expected volatility. This liability generally increases or decreases based upon changes in the fair value of sponsor warrants outstanding at the end of a respective period and decreases as sponsor warrants are exercised during the respective periods. During 2021, this liability decreased from \$92.7 million at December 31, 2020 to \$4.3 million at December 31, 2021 due to \$64.3 million related to the fair value of warrants exercised and \$24.1 million associated with changes in the valuation inputs. We have not made any material changes in the valuation methodology used. Although we do not believe there is a reasonable likelihood there will be a material change in the estimates or assumptions used to calculate this liability, a 10% increase in our stock price at December 31, 2021 would have increased the warrant liability by \$0.9 million.

### *Income Taxes*

Accounting for income taxes requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that the deferred tax assets will be realized. During fiscal 2020, the Company achieved three-year cumulative income for the first time and determined that it would likely generate sufficient taxable income to utilize some of its deferred tax assets. Based on this and other positive evidence, the Company concluded it was more likely than not that some of its deferred tax assets would be realized and that a full valuation allowance for its deferred tax assets was no longer appropriate. The Company recognized deferred tax benefits of \$3.6 million and \$45.8 million in its consolidated statements of operations for the years ended December 31, 2021 and 2020, respectively.

Deferred tax assets and liabilities are calculated by applying existing tax laws and the rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the year of the enacted rate change. Our effective tax rate is primarily impacted by the allocation of income taxes to the noncontrolling interest and changes in our valuation allowance. In certain cases, we also base this estimate on business plan forecasts and other expectations about future outcomes. Changes in positive and negative evidence, including differences between our future operating results and estimates, could result in the establishment of an additional valuation allowance against our deferred tax assets. Accounting for deferred taxes is based upon estimates of future results. Judgment is required in determining the future tax consequences of events that have been recognized in our consolidated financial statements and/or tax returns. Differences between the anticipated and actual outcomes of these future results could have a material impact on our consolidated financial statements. Also, changes in existing federal and state tax laws and corporate income tax rates could affect future tax results and the realization of deferred tax assets over time.

The Company accounts for uncertainty in income taxes using a recognition and measurement threshold for tax positions taken or expected to be taken in a tax return, which are subject to examination by federal and state taxing authorities. The tax benefit from an uncertain tax position is recognized when it is more likely than not that the position will be sustained upon examination by taxing authorities based on technical merits of the position. The amount of the tax benefit recognized is the largest amount of the benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The effective tax rate and the tax basis of assets and liabilities reflect management's estimates of the ultimate outcome of various tax uncertainties. Judgment is required in evaluating uncertain tax positions. We evaluate our uncertain tax positions quarterly based on various factors, including changes in facts or circumstances, tax laws or the status of audits by tax authorities. Changes in the recognition or measurement of uncertain tax positions could have a material impact on our consolidated financial statements in the period in which we make the change. As of December 31, 2021 and 2020, no uncertain tax positions were recognized as liabilities in the consolidated financial statements.

#### *Tax Receivable Agreement*

In connection with the Business Combination, the Company entered into an agreement with InnoHold LLC (InnoHold), which provides for the payment by the Company to InnoHold of 80% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the closing of the Business Combination as a result of (i) any tax basis increases in the assets of Purple LLC resulting from the distribution to InnoHold of the cash consideration, (ii) the tax basis increases in the assets of Purple LLC resulting from the redemption by Purple LLC or the exchange by the Company, as applicable, of Class B Paired Securities or cash, as applicable, and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, payments it makes under the agreement.

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of its Class B Units, a liability under the Tax Receivable Agreement may be recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. The amount of the increase in asset basis, the related estimated cash tax savings and the attendant tax receivable agreement liability to be recorded will depend on the price of the Company's Class A Stock at the time of the relevant redemption or exchange.

As a result of the initial merger transaction and subsequent exchanges of Class B Units for Class A Stock, the potential future tax receivable agreement liability was \$168.1 million as of December 31, 2021 compared to \$172.0 million as of December 31, 2020. In addition, we estimated the amount of payments expected to be paid within the next 12 months to be \$5.8 million and classified this amount as a current liability in our 2021 Consolidated Balance Sheet, which was paid in January 2022. To the extent our estimate differs from actual results, we may be required to reclassify portions of our liabilities under this agreement between current and non-current.

We are currently unable to determine the total future amount of these payments due to the unpredictable nature of several factors, including the timing of future exchanges, the market price of shares of Class A Stock at the time of the exchanges, the extent to which such exchanges are taxable and the amount and timing of future taxable income sufficient to utilize tax attributes that give rise to the payments under the tax receivable agreement.

## Results of Operations

A discussion regarding our financial condition and results of operations for the year ended December 31, 2021 compared to the year ended December 31, 2020 is presented below. A separate discussion regarding our financial condition and results of operations for the year ended December 31, 2020 compared to the year ended December 31, 2019 can be found under [Item 7 of Part II of our Annual Report on Form 10-K/A for the fiscal year ended December 31, 2020, filed with the SEC on May 10, 2021.](#)

### Operating Results for the Year Ended December 31, 2021 compared to the year ended December 31, 2020

The following table sets forth for the periods indicated, our results of operations and the percentage of total net revenues represented in our consolidated statements of operations:

	Year Ended December 31,			
	2021	% Net Revenues	2020	% Net Revenues
Revenues, net	\$ 726,227	100.0%	\$ 648,471	100.0%
Cost of revenues	431,253	59.4	343,374	53.0
Gross profit	294,974	40.6	305,097	47.0
Operating expenses:				
Marketing and sales	239,290	33.0	187,991	29.0
General and administrative	72,095	9.9	39,925	6.2
Research and development	6,939	1.0	5,955	0.9
Total operating expenses	318,324	43.8	233,871	36.1
Operating income (loss)	(23,350)	(3.2)	71,226	11.0
Other income (expense):				
Interest expense	(1,872)	(0.3)	(4,654)	(0.7)
Other income (expense), net	(194)	—	(91)	—
Loss on extinguishment of debt	—	—	(5,782)	(0.9)
Change in fair value – warrant liabilities	24,054	3.3	(300,073)	(46.3)
Tax receivable agreement income (expense)	4,016	0.6	(34,155)	(5.3)
Total other income (expense), net	26,004	3.6	(344,755)	(53.2)
Net income (loss) before income taxes	2,654	0.4	(273,529)	(42.2)
Income tax benefit (expense)	1,217	0.2	43,749	6.7
Net income (loss)	3,871	0.5	(229,780)	(35.4)
Net income (loss) attributable to noncontrolling interest	(160)	—	7,087	1.1
Net income (loss) attributable to Purple Innovation, Inc.	\$ 4,031	0.6	\$ (236,867)	(36.5)

### Revenues, Net

Net revenues increased \$77.8 million, or 12.0%, to \$726.2 million for the year ended December 31, 2021 compared to \$648.5 million for the year ended December 31, 2020. This increase primarily consisted of wholesale net revenues growing \$88.8 million, or 54.5% and Purple retail showroom net revenues increasing \$21.9 million, or 207.9%. These increases were offset in part by e-commerce net revenues decreasing \$33.0 million, or 6.9%. Our wholesale business was favorably impacted by wholesale partner expansion coupled with wholesale partner doors being open all of 2021 while the prior year was negatively impacted by the pandemic and the temporary shutdown of wholesale partner operations during 2020. Net revenue growth associated with the Purple retail showrooms was primarily due to the opening of new showrooms. Net revenue growth overall was negatively affected by the production issues we experienced in the second and third quarters of 2021, as our ability to manufacture and deliver our products was adversely impacted, which resulted in reduced orders and increased cancellations. Also, in response to these production delays, we initiated a reduction in marketing spend late in the second quarter that carried through most of the third quarter, which further impacted demand for our products, particularly with respect to our e-commerce channel. The growth in net revenues from a product perspective, reflected a \$42.4 million increase in mattress sales, a \$24.1 million increase in other sleep product sales and an \$11.3 million increase in other product sales, was primarily driven by an increase in wholesale and Purple retail showroom revenues. We believe that sales of our products are typically subject to seasonality corresponding to different periods of the consumer spending cycle, holidays and other seasonal factors. Our sales may also vary with the performance of the broader economy consistent with the market.

### *Cost of Revenues*

The cost of revenues increased \$87.9 million, or 25.6%, to \$431.3 million for the year ended December 31, 2021 compared to \$343.4 million for the year ended December 31, 2020. This increase, which was comprised of a \$50.9 million increase in direct material costs, a \$31.8 million increase in labor and overhead costs, and a \$5.2 million increase in other costs, was primarily due to increased sales volume and higher raw material, labor and freight costs. Our gross profit percentage, which decreased to 40.6% of net revenues in 2021 from 47.0% in 2020, was adversely impacted by the elevated level of our material, labor and freight costs, the unfavorable impact of inefficiencies realized as we worked to resolve the production issues described above (see Production and Demand Developments above) and a higher proportion of wholesale channel revenue, which carries a lower gross margin than revenue from the e-commerce channel. While we have returned to planned production capacity, we anticipate that raw material, labor and freight costs will continue to remain at elevated levels.

### *Marketing and Sales*

Marketing and sales expense increased \$51.3 million, or 27.3%, to \$239.3 million for the year ended December 31, 2021 compared to \$188.0 million for the year ended December 31, 2020. This increase reflected a \$19.4 million increase in advertising costs due in part to higher advertising rates in 2021, a \$22.3 million increase in marketing costs related primarily to planned expansion of our workforce, an \$8.4 million increase in showroom-related expenses associated with our continued showroom expansion, and a \$1.2 million increase in wholesale-related marketing and selling costs. Marketing and sales expense as a percentage of net revenues was 33.0% in 2021 compared to 29.0% in 2020. This increase was primarily due to demand levels and net revenue growth being lower than expected relative to the increase in marketing and sales costs we incurred in 2021.

### *General and Administrative*

General and administrative expense increased \$32.2 million, or 80.6%, to \$72.1 million for the year ended December 31, 2021 compared to \$39.9 million for the year ended December 31, 2020. This increase was primarily due to a \$18.8 million increase in legal and professional fees, a \$6.6 million increase related to payroll costs attributed to planned increases in our workforce, and a \$6.8 million increase in all other expenses consistent with the growth of the Company. The increase in legal and professional fees was primarily due to underwriting commissions we paid related to shares sold by Coliseum Capital Partners coupled with higher consulting, professional and recruiting expenses.

### *Research and Development*

Research and development costs increased \$1.0 million, or 16.5%, to \$6.9 million for the year ended December 31, 2021 from \$6.0 million for the year ended December 31, 2020. This increase was primarily due to an increase in payroll costs related to planned increases in our research and development workforce.

### *Operating Income (Loss)*

Operating income (loss) decreased \$94.6 million to an operating loss of \$23.4 million for the year ended December 31, 2021 compared to operating income of \$71.2 million for the year ended December 31, 2020. This decrease was primarily due to net revenues being unfavorably impacted by production issues in the second and third quarters of 2021, lower than expected demand, reduced gross margins due in part to elevated raw material, labor and freight costs, increased marketing and sales expenses, and higher general and administrative costs.

### *Interest Expense*

Interest expense totaled \$1.9 million for the year ended December 31, 2021 as compared to \$4.7 million for the year ended December 31, 2020. The \$2.8 million decrease was due in part to \$1.0 million of interest capitalized during 2021. The remaining decrease was due to a \$35.0 million loan, which carried an interest rate of 12.00%, being refinanced in the third quarter of 2020 with a \$45.0 million term loan at an initial interest rate of 3.50%. In November 2021, the Company executed a \$55.0 million draw on its revolving line of credit at an initial borrowing rate of 3.50%, which resulted in \$0.3 million of interest expense in 2021. Interest expense in 2021 also included a full year of amortization of deferred loan costs associated with the term loan and fees related to the revolving line of credit.

### *Loss on Extinguishment of Debt*

On September 3, 2020, the Company paid \$45.0 million to retire, in full, all indebtedness related to Purple LLC's 2018 credit agreement. The payment included \$25.0 million for the original loan under the agreement, \$10.0 million for a subsequent incremental loan, \$6.6 million for paid-in-kind interest, \$2.5 million for a prepayment fee and \$0.9 million for accrued interest. As a result of paying off this loan, the Company recognized a \$5.8 million loss on extinguishment of debt in its 2020 consolidated statement of operations.

### *Change in Fair Value – Warrant Liabilities*

There were 15.5 million public warrants issued in connection with GPAC's formation and initial public offering and 12.8 million sponsor warrants issued pursuant to a simultaneous private placement with the initial public offering. The Company has accounted for these warrants as liabilities and recorded them at fair value on the date of the transaction and subsequently re-measured them to fair value at each reporting date with changes in fair value included in earnings. The 1.9 million sponsor warrants outstanding at December 31, 2021 had a fair value of \$4.3 million. The fair value of the sponsor warrants outstanding at December 31, 2020 was \$92.7 million. All of the public warrants were exercised in 2020. During the year ended December 31, 2021, we recognized a gain of \$24.1 million in our consolidated statement of operations related to a decrease in the fair value of the sponsor warrants exercised in 2021 or that were outstanding at December 31, 2021. During the year ended December 31, 2020, we recognized a loss of \$240.7 million in our consolidated statement of operations related to increases in the fair value of the public and sponsor warrants exercised during 2020 or that were outstanding at December 31, 2020.

On February 26, 2019, two of the three lenders involved with the original loan under the 2018 credit arrangement also funded a \$10.0 million incremental loan and received 2.6 million warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of \$5.74 per share, subject to certain adjustments. The Company accounted for these warrants as liabilities and recorded them at fair value on the date of the transaction and subsequently re-measured them to fair value at each reporting date with changes in the fair value included in earnings. On November 9, 2020, the Company issued 2.6 million shares of Class A Stock pursuant to the exercise of these warrants held by the lenders who funded the incremental loan. The Company determined the fair value of these warrants to be \$81.0 million at the time of the exercise. During the year ended December 31, 2020, the Company recorded a loss related to increases in the fair value of the warrants of \$59.4 million.

### *Tax Receivable Agreement Income (Expense)*

In connection with the Business Combination, we entered into an agreement which generally provides for the payment by us to InnoHold of 80% of certain tax benefits, if any, that we realize as a result of increases in our allocable share of the tax basis of the tangible and intangible assets of Purple LLC. The tax receivable agreement liability totaled \$168.1 million and \$172.0 million at December 31, 2021 and 2020, respectively. During 2021, we realized \$4.0 million of tax receivable agreement income due to the impact of a change in tax rates and recording the 2020 provision to return adjustments. The \$3.9 million reduction in the 2021 tax receivable agreement liability reflected \$4.0 million that was recorded as tax receivable agreement income coupled with a payment of \$0.6 million made during the year. These decreases in the liability were offset in part by \$0.8 million that related to current year exchanges and was recorded as a decrease to additional paid-in capital in the 2021 consolidated statement of stockholders' equity.

### *Income Tax Benefit (Expense)*

Our income tax benefit was \$1.2 million for the year ended December 31, 2021 compared to an income tax benefit of \$43.7 million for the year ended December 31, 2020. This decrease was primarily due to \$35.5 million of the valuation allowance associated with the Company's federal and state deferred tax assets being released and recorded as an income tax benefit during 2020.

### *Noncontrolling Interest*

The Company calculates net income or loss attributable to noncontrolling interests on a quarterly basis using their weighted average ownership percentage. Net loss attributed to noncontrolling interests was \$0.2 million in 2021 compared to net income of \$7.1 million in 2020. The decrease in the level of net income (loss) attributed to noncontrolling interests primarily resulted from the noncontrolling interest ownership percentage being significantly lower in 2021.

## **Liquidity and Capital Resources**

Our principal sources of funds are cash flows from operations, supplemented with borrowings made pursuant to our credit facilities and cash and cash equivalents on hand. Principal uses of funds consist of payments of principal and interest on our debt facilities, capital expenditures and working capital needs as well as other contractual obligations described below. Our working capital needs depend largely upon the timing of cash receipts from product sales, payments to vendors and others, changes in inventories, and operating lease payment obligations. Our cash and working capital positions were \$91.6 million and \$87.5 million, respectively, as of December 31, 2021 compared to \$123.0 million and \$96.9 million, respectively, as of December 31, 2020. Cash used for capital expenditures increased from \$39.1 million in 2020 to \$57.1 million in 2021. This increase primarily resulted from ongoing investments in our business that included building out our new manufacturing facility in Georgia that became fully operational in 2021, enhancing our manufacturing and safety capabilities at our manufacturing facility in Utah, scaling our infrastructure to support the growth of our workforce, and continued opening of new Purple retail showrooms throughout 2021.

As described above, we experienced production and demand issues in the second and third quarters of 2021 that adversely affected net revenues and we have also experienced increases in raw material, labor and freight costs. While we have returned to planned production levels, we currently anticipate that the impact of lower-than-expected demand and higher material, labor and freight costs will continue to adversely affect our business and results of operations into the first quarter of 2022. These issues have also adversely affected our ability to comply with covenants under the 2020 credit agreement. In order to offset the impact of these costs on our gross margins, we have taken a number of pricing actions in the fourth quarter and early 2022. In February 2022, we reduced employee headcount by approximately 15%. In addition, we have initiated a number of other projects to improve efficiencies and reduce costs.

In the event our cash flow from operations or other sources of financing are less than anticipated, we believe we will be able to fund operating expenses based on our ability to scale back operations, reduce marketing spend and postpone or discontinue our growth strategies. In such event, this could result in slower growth or no growth, and we may run the risk of losing key suppliers, we may not be able to timely satisfy customer orders, and we may not be able to retain all of our employees. In addition, we may be forced to restructure our obligations to current creditors, pursue work-out options or seek additional funding sources including new debt or equity capital. Our ability to obtain additional debt or alternative capital on acceptable terms or at all is subject to a variety of uncertainties, including instability in the credit and financial markets resulting from macroeconomic factors and approval from the lenders under the 2020 Credit Agreement. Adequate financing may not be available or, if offered, may only be available on unfavorable terms. The restrictive covenants in the 2020 Credit Agreement, as amended, may make it difficult to obtain additional capital on terms that are favorable to us and to execute on our growth strategies, including the acquisition of other businesses or technologies. There is no assurance we would be able to obtain the capital we could potentially require. As a result, there can be no assurance that we will be able to fund our future operations or growth strategies. In addition, future equity or debt financings may require us to also issue warrants or other equity securities that are likely to be dilutive to our existing stockholders. Newly issued securities may include preferences or superior voting rights or, as described above, may be combined with the issuance of warrants or other derivative securities, which each may have additional dilutive effects. Furthermore, we may incur substantial costs in pursuing future capital and financing, including investment banking fees, legal fees, accounting fees, printing and distribution expenses and other costs. We may also be required to recognize non-cash expenses in connection with certain securities we may issue, such as convertible notes and warrants, which will adversely impact our financial condition. If we cannot raise additional funds on favorable terms or at all, we may not be able to carry out all or parts of our long-term growth strategy, maintain our growth and competitiveness or continue in business.

In response to the COVID-19 pandemic, we took a number of precautionary measures to manage our resources and mitigate its adverse effect. Given the initial difficulty in predicting how long the pandemic would persist and its full impact, we managed our business and opportunities to preserve liquidity. In the second half of 2020, we ended most of the cash preservation programs and returned to full production to meet increased demand. During 2021, we have increased our inventory levels and invested in our manufacturing capacity and showroom expansion. Subject to certain assumptions regarding the duration and severity of the COVID-19 pandemic, and our responses thereto, based on our current projections we believe our cash on hand, cash generated from our e-commerce and wholesale channels, and continued ramp up of Purple retail store operations will be sufficient to cover our working capital requirements and anticipated capital expenditures for the next 12 months.

During 2021, 6.6 million sponsor warrants were exercised on a cash and cashless basis resulting in the issuance of 2.3 million shares of Class A Stock. The proceeds received for the cash exercise was \$0.1 million. At December 31, 2021, there were 1.9 million sponsor warrants outstanding. During 2020, 15.5 million public warrants and 4.3 million sponsor warrants were exercised resulting in the issuance of 7.6 million shares of Class A Stock and cash proceeds to the Company of \$46.4 million.

#### *Debt*

On September 3, 2020, the Company paid \$45.0 million to retire, in full, all indebtedness related to Purple LLC's 2018 credit agreement. The payment included \$25.0 million for the original loan under the agreement, \$10.0 million for a subsequent incremental loan, \$6.6 million for paid-in-kind interest, \$2.5 million for a prepayment fee and \$0.9 million for accrued interest.

Also on September 3, 2020, Purple LLC entered into the 2020 Credit Agreement that provided for a \$45.0 million term loan and a \$55.0 million revolving line of credit. The agreement has a five-year term and borrowing rates for both the term loan and revolving line of credit and were initially based on Purple LLC's leverage ratio and ranged from LIBOR plus a 3.00% to 3.75% margin with a LIBOR minimum of 0.50%. Pursuant to the first amendment of the 2020 Credit Agreement, the interest rates have changed from LIBOR to SOFR with new interest rate amounts and thresholds as noted below. Proceeds from the term loan were used to retire all indebtedness associated with the 2018 credit agreement.

In November 2021, the Company executed a \$55.0 million draw on its revolving line of credit, which represented the full amount available under the line. The outstanding balance on the revolving line of credit was classified as long-term debt in the Company's consolidated balance sheet as of December 31, 2021.

Our operating and financial results for the year ended December 31, 2021 did not satisfy our financial and performance covenants required pursuant to the 2020 Credit Agreement. In order to avoid a breach of such covenants and related default, on February 28, 2022, prior to the covenant compliance certification date under the 2020 Credit Agreement, we entered into the first amendment of the 2020 Credit Agreement. The amendment contains a covenant waiver period such that the net leverage ratio and fixed charge coverage ratio will not be tested for the fiscal quarter ended December 31, 2021 through the fiscal quarter ended June 30, 2022. Other changes in the amendment include modification of leverage ratio and fixed charge coverage definitions and thresholds, the addition of minimum liquidity requirements with mandatory prepayments of the revolving loan if cash exceeds \$25.0 million, new weekly and monthly reporting requirements, limits on the amount of capital expenditures, the addition of a lease incurrence test for opening additional showrooms, and additional negative covenants during a covenant amendment period that will extend into 2023 until certain conditions are met. In addition, the interest rate on outstanding borrowings under the 2020 Credit Agreement changed from LIBOR with a floor of 0.5% plus an applicable margin (historically at 3.0%) to an initial rate of SOFR with a floor of 0.5% plus 4.75%, for a total rate of 5.25% as long as the applicable liquidity threshold is met. If it is not met, then the interest rate goes to SOFR with a floor of 0.5% plus 9.00%. Once the consolidated leverage ratio is below 3.00 to 1.00, the interest rate will be based on SOFR with a floor of 0.5% plus a 3.00% to 3.75% depending on the consolidated leverage ratio. Pursuant to the amendment, the Company paid fees and expenses of \$0.9 million and prepaid all principal payments due in 2022 of \$2.5 million.

#### *Tax Receivable Agreement*

We are required to make certain payments to InnoHold under the tax receivable agreement, which may have a material adverse effect on our liquidity and capital resources. We are currently unable to determine the total future amount of these payments due to the unpredictable nature of several factors, including the timing of future exchanges, the market price of shares of Class A Stock at the time of the exchanges, the extent to which such exchanges are taxable and the amount and timing of future taxable income sufficient to utilize tax attributes that give rise to the payments under the agreement. As of December 31, 2021, the tax receivable agreement liability reflected in the Company's consolidated balance sheet is \$168.1 million of which \$5.8 million is presented as other current liabilities.

#### *Other Contractual Obligations*

In addition, we have other material contractual obligations, which primarily consist of operating lease obligations. See Note 6 of the consolidated financial statements for additional information.

#### *Cash Flows for the year ended December 31, 2021 compared to the year ended December 31, 2020*

The following summarizes our cash flows for the years ended December 31, 2021 and 2020 as reported in our consolidated statements of cash flows (in thousands):

	<b>Years Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Net cash provided by (used in) operating activities	\$ (30,903)	\$ 81,257
Net cash used in investing activities	(57,059)	(39,139)
Net cash provided by financing activities	56,623	47,359
Net increase (decrease) in cash	(31,339)	89,477
Cash, beginning of the period	122,955	33,478
Cash, end of the period	<u>\$ 91,616</u>	<u>\$ 122,955</u>



Cash used in operating activities was \$30.9 million during the year ended December 31, 2021 compared to \$81.3 million of cash provided by operating activities during the year ended December 31, 2020. The decrease in cash flows from operations primarily resulted from an \$83.6 million decrease in cash provided by operating income items which was mainly driven by net revenues being unfavorably impacted by production and demand issues experienced in the second and third quarters of 2021, increased material, labor and shipping costs, higher marketing and sales expenses, increased legal and professional fees and planned increases in our workforce. The decrease in cash provided by operations was further impacted by a \$28.5 million decrease in operating cash flows related to net changes in operating assets and liabilities for the year ended December 31, 2021 compared to the prior year. This decrease consisted of decreased cash from changes in period-over-period fluctuations in inventories, accounts payable and accrued liabilities, offset in part by an increase in cash related to changes in the year-over-year fluctuations in accounts receivable and prepaid inventory and other assets.

Cash used in investing activities was \$57.1 million for the year ended December 31, 2021 compared to \$39.1 million for the year ended December 31, 2020. This increase primarily resulted from continuing to invest in our business by building out our new manufacturing facility in Georgia that became fully operational in 2021, enhancing our manufacturing and safety capabilities at our manufacturing facility in Utah, scaling our infrastructure to support the growth of our workforce, and continued opening of new Purple retail showrooms during 2021.

Cash provided by financing activities during the year ended December 31, 2021 was \$56.6 million, an increase of \$9.3 million from cash provided by financing activities of \$47.4 million during the year ended December 31, 2020. Financing activities in 2021 included \$55.0 million in proceeds from the Company's revolving line of credit, \$4.1 million in proceeds from an InnoHold indemnification payment and \$1.5 million of proceeds from warrant and stock option exercises. The cash received from these financing activities was offset in part by \$2.3 million in principal payments on the term loan, member tax distributions of \$1.2 million and a \$0.6 million payment for the tax receivable agreement.

### **Recent Accounting Pronouncements**

For a description of recently adopted and issued accounting standards, including the respective dates of adoption and expected effects on our results of operations and financial condition, refer to Note 2 to our financial statements included in this Annual Report on Form 10-K.

## Item 7A. Quantitative and Qualitative Disclosures About Market Risk

### Interest Rate Risk

Our operating results are subject to risk from interest rate fluctuations on our \$42.2 million term loan and our \$55.0 million revolving line of credit. Our term loan and revolving line of credit both bear interest at variable rates, which exposes us to market risks relating to changes in interest rates. Interest rate risk is highly sensitive due to many factors, including U.S. monetary and tax policies, U.S. and international economic factors and other factors beyond our control. As of December 31, 2021, we had \$97.2 million of variable rate debt outstanding under our term loan and revolving line of credit combined. Based on these debt levels, an increase of 100 basis points in the effective interest rate on our outstanding debt at December 31, 2021 would result in an increase in interest expense of approximately \$1.0 million over the next 12 months. We do not use derivative financial instruments for speculative or trading purposes, but this does not preclude our adoption of specific hedging strategies in the future.

## Item 8. Financial Statements and Supplementary Data

Reference is made to Pages F-1 through F-40 comprising a portion of this Annual Report on Form 10-K.

	<b>Page</b>
<a href="#">Report of Independent Registered Public Accounting Firm (BDO USA, LLP; Salt Lake City, Utah; PCAOB ID#243)</a>	F-2
<a href="#">Consolidated Balance Sheets as of December 31, 2021 and 2020</a>	F-4
<a href="#">Consolidated Statements of Operations for the years ended December 31, 2021, 2020 and 2019</a>	F-5
<a href="#">Consolidated Statements of Stockholders' Equity (Deficit) for the years ended December 31, 2021, 2020 and 2019</a>	F-6
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2021, 2020 and 2019</a>	F-7
<a href="#">Notes to Consolidated Financial Statements</a>	F-8

## **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

### **Item 9A. Controls and Procedures**

#### **Evaluation of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our Chief Executive Officer (“CEO”) and Interim Chief Financial Officer (“CFO”), we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act). Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance of achieving their control objectives. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our certifying officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Based upon this evaluation and the above criteria, our CEO and CFO concluded that due to the previously reported material weakness described below, the Company’s disclosure controls and procedures were not effective as of December 31, 2021.

#### **Management’s Annual Report on Internal Controls Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021, based on the criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management concluded that due to the previously reported material weakness described below, our internal controls over financial reporting were not effective as of December 31, 2021.

The effectiveness of the Company’s internal control over financial reporting as of December 31, 2021 has been audited by BDO USA, LLP, an independent registered public accounting firm, as stated in their report which appears herein.

#### **Previously Reported Material Weakness**

As previously reported, we determined a material weakness existed relating to ineffective information technology general controls (“ITGCs”) in the areas of user access and segregation of duties related to certain information technology (“IT”) systems that support the Company’s financial reporting processes. We believe that these control deficiencies were a result of turnover of critical IT leadership; insufficient training of IT personnel; and inadequate risk-assessment processes to identify and assess user access in certain IT systems that could impact internal controls over financial reporting. As a result, we determined that we did not have effective controls to prevent or detect a material financial statement misstatement on a timely basis.

In response to this material weakness, management, with oversight of the Audit Committee of the Board of Directors, has identified and is in the process of implementing steps to remediate the material weakness. The Company has allocated resources to remediate user access related control and segregation of duties deficiencies. Our remediation efforts also include providing training to personnel associated with reviewing IT user access. In addition, we continue to engage consultants to advise us on making further improvements to our ITGCs. Although we intend to complete the remediation process as promptly as possible, we cannot at this time estimate how long it will take to remediate this material weakness. Until this material weakness is remediated, we plan to continue to perform additional analyses and other procedures to ensure that our consolidated financial statements are prepared in accordance with GAAP.

#### **Changes in Internal Control over Financial Reporting**

Other than the remediation efforts related to the design and implementation of sufficient controls and processes around ITGCs, there were no changes in our internal control over financial reporting during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors  
Purple Innovation, Inc.  
Lehi, Utah

### Opinion on Internal Control over Financial Reporting

We have audited Purple Innovation, Inc.'s (the "Company's") internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). In our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on the COSO criteria.

We do not express an opinion or any other form of assurance on management's statements referring to any corrective actions taken by the Company after the date of management's assessment.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets of the Company as of December 31, 2021 and 2020, the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as "the financial statements") and our report dated March 1, 2022 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Item 9A, Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of internal control over financial reporting in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. A material weakness regarding management's failure to design and maintain effective information technology general controls ("ITGCs") in the areas of user access and segregation of duties related to certain information technology ("IT") systems that support the Company's financial reporting processes has been identified and described in management's assessment. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2021 financial statements, and this report does not affect our report dated March 1, 2022 on those financial statements.

### Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ BDO USA, LLP

Salt Lake City, Utah  
March 1, 2022

## **Item 9B. Other Information**

### **Amendment to 2020 Credit Agreement**

On February 28, 2022, the Company entered into a First Amendment to 2020 Credit Agreement (the “Amendment”).

The Amendment changes LIBOR to SOFR with a floor of 0.50%. Until a compliance certificate is delivered showing a consolidated leverage ratio of less than 3.00 to 1.00, the borrowing rates are set at term SOFR plus (a) 4.75% if the Company is greater than or equal to the then applicable liquidity threshold and (b) 9.00% if the Company’s liquidity is less than the then applicable liquidity threshold. Once a compliance certificate is delivered showing a consolidated leverage ratio of less than 3.00 to 1.00, pricing will range from SOFR plus a 3.00% to 3.75% margin based upon a consolidated leverage ratio, unless there have been no outstanding revolving loans for a specified period of time, in which case pricing will be based upon a consolidated net leverage ratio. The amount of the excess cash flow mandatory prepayment is now based upon a consolidated leverage ratio, unless there have been no outstanding revolving loans for a specified period of time, in which case it will be based on a consolidated net leverage ratio.

The Amendment also adds a covenant amendment period that starts on the Amendment effective date and lasts until the later of (a) delivery of the June 30, 2023 compliance certificate and (b) the 5th business day after a compliance certificate is delivered showing a consolidated leverage ratio of less than 2.00x for two consecutive quarters. Monthly, during the covenant amendment period and quarterly thereafter, the Company must provide to the lenders reports containing showroom sales performance and bi-weekly a rolling 13-week cash flow forecast. Incremental term loan commitments and incremental revolving loan commitments are not available during the covenant amendment period.

The Amendment adds a new mandatory prepayment requirement, providing that if any revolving loans are outstanding and the aggregate amount of cash and cash equivalents exceed \$25.0 million, the Company must prepay the revolving loans in the amount of the lesser of (i) the outstanding revolving loans and (ii) the amount of cash and cash equivalents in excess of \$25.0 million. The Amendment also adds a limitation on borrowings under the revolver, prohibiting additional borrowings under the revolver if after giving effect to any borrowing and any transactions to be consummated therewith, the aggregate amount of cash and cash equivalents exceeds \$25.0 million. In addition, swing loans are now discretionary rather than mandatory even if all conditions have been satisfied.

The Amendment provides that the consolidated net leverage ratio and fixed charge coverage ratio financial covenants will not be tested for the fiscal quarter ended December 31, 2021 through the fiscal quarter ending June 30, 2022, and beginning with the fiscal quarter ending September 30, 2022 a consolidated leverage ratio financial covenant goes into effect at a level of 5.75 to 1.00, stepping down to 3.00 to 1.00 at December 31, 2022 and 2.50 to 1.00 thereafter. The Amendment also adds an additional financial covenant relating to minimum liquidity which is applicable during the covenant amendment period and a negative covenant restricting the Company from entering into new leases unless certain financial tests are satisfied. The covenant limiting certain capital expenditures is not being tested for the fiscal year ending December 31, 2021, total capital expenditures are capped at \$17.5 million for the fiscal quarter ending June 30, 2022 and growth capital expenditures are capped at \$37.5 million for the fiscal year ending December 31, 2022, \$41.0 million for the fiscal year ending December 31, 2023, and \$41.5 million for the fiscal year ending December 31, 2024.

The Amendment also eliminates the availability of certain baskets under certain negative covenants during the covenant amendment period, including but not limited to consolidations, mergers, acquisitions, asset sales, statutory divisions, liens, indebtedness, investments, guaranty obligations, and restricted payments.

Pursuant to the Amendment, the Company paid fees and expenses of \$0.9 million and prepaid all principal payments due in 2022 of \$2.5 million.

The foregoing summary of the Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Amendment, a copy of which is attached as Exhibit 10.60 to this 10-K and is incorporated by reference herein.

### **Appointment of Permanent Chief Executive Officer**

On March 1, 2022, the Board appointed Robert DeMartini as the Company’s permanent Chief Executive Officer, effective upon the execution of an amended and restated employment agreement. Mr. DeMartini has served as the Company’s Acting CEO since January 2022. There are no related party transactions between Mr. DeMartini and the Company as defined in Item 404(a) of Regulation S-K. There are no family relationships between Mr. DeMartini and any other director, executive officer or person nominated or chosen to be a director or executive officer of the Company. Mr. DeMartini’s biographical information is included under Part I, Item 1, “Information About our Executive Officers” above.

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

Not applicable.

## PART III

### **Item 10. Directors, Executive Officers and Corporate Governance**

The information required under the captions “Directors” and “Corporate Governance” is incorporated herein by reference to the Company’s definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the Securities and Exchange Commission not later than 120 days after the close of the Company’s fiscal year ended December 31, 2021. Information concerning our executive officers is included in Part I of this report under the caption “Information About Our Executive Officers.”

### **Item 11. Executive Compensation**

The information required under this item is incorporated herein by reference to the Company’s definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the Securities and Exchange Commission not later than 120 days after the close of the Company’s fiscal year ended December 31, 2021.

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

The information required under this item is incorporated herein by reference to the Company’s definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the Securities and Exchange Commission not later than 120 days after the close of the Company’s fiscal year ended December 31, 2021.

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

The information required under this item is incorporated herein by reference to the Company’s definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the Securities and Exchange Commission not later than 120 days after the close of the Company’s fiscal year ended December 31, 2021.

### **Item 14. Principal Accountant Fees and Services**

The information required under this item is incorporated herein by reference to the Company’s definitive proxy statement pursuant to Regulation 14A, which proxy statement will be filed with the Securities and Exchange Commission not later than 120 days after the close of the Company’s fiscal year ended December 31, 2021.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as part of this Report:

(1) Financial Statements

The following financial statements are included in Part II, Item 8 of this Form 10-K:

<a href="#">Report of Independent Registered Public Accounting Firm (BDO USA, LLP; Salt Lake City, Utah; PCAOB ID#243)</a>	F-2
<a href="#">Consolidated Balance Sheets</a>	F-4
<a href="#">Consolidated Statements of Operations</a>	F-5
<a href="#">Consolidated Statements of Stockholders' Equity (Deficit)</a>	F-6
<a href="#">Consolidated Statements of Cash Flows</a>	F-7
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(2) Financial Statements Schedule

All other financial statement schedules are omitted because they are not applicable or the amounts are immaterial and not required, or the required information is presented in the consolidated financial statements and notes thereto in Item 15 of Part IV below.

(3) Exhibits

We hereby file as part of this report the exhibits listed in the attached Exhibit Index. Exhibits which are incorporated herein by reference can be inspected and copied at the public reference facilities maintained by the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549 at prescribed rates or on the SEC website at [www.sec.gov](http://www.sec.gov).

## EXHIBIT INDEX

Exhibit No.	Description
2.1#	<a href="#"><u>Agreement and Plan of Merger, dated November 2, 2017, by and among Global Partner Acquisition Corp., PRPL Acquisition, LLC, Purple Innovation, LLC, InnoHold, LLC and Global Partner Sponsor I LLC (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on November 3, 2017)</u></a>
2.2	<a href="#"><u>Amendment No. 1 to Agreement and Plan of Merger, dated January 8, 2018, by and among Global Partner Acquisition Corp., Purple Innovation, LLC, PRPL Acquisition, LLC and other parties named therein (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on January 8, 2018)</u></a>
2.3	<a href="#"><u>Amendment No. 2 to Agreement and Plan of Merger, dated May 14, 2018, by and among Purple Innovation, Inc., Purple Innovation, LLC, Global Partner Sponsor I LLC and InnoHold, LLC (incorporated by reference to Exhibit 2.2 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018)</u></a>
2.4	<a href="#"><u>Amendment No. 3 to Agreement and Plan of Merger, dated June 14, 2018, by and among Purple Innovation, Inc., Purple Innovation, LLC, Global Partner Sponsor I LLC and InnoHold, LLC (incorporated by reference to Exhibit 2.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on August 9, 2018)</u></a>
3.1	<a href="#"><u>Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on November 6, 2019)</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</u></a>
3.3	<a href="#"><u>Amendment No. 1 to the Amended and Restated Bylaws (incorporated by reference into Exhibit 3.3 to the Annual Report on Form 10-K (File No. 001-37523) filed with the SEC on March 11, 2021)</u></a>
4.1	<a href="#"><u>Form of Class A Common Stock certificate (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</u></a>
4.2	<a href="#"><u>Form of Class B Common Stock certificate (incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</u></a>
4.3	<a href="#"><u>Specimen Warrant Certificate (incorporated by reference to Exhibit 4.3 to the Registration Statement on Form S-1/A (File No. 333-204907) filed with the SEC on July 13, 2015)</u></a>
4.4	<a href="#"><u>Warrant Agreement dated July 29, 2015, between Continental Stock Transfer &amp; Trust Company and the Company (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on August 4, 2015)</u></a>
4.5	<a href="#"><u>Form of Class A Common Stock Purchase Warrant (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 27, 2019)</u></a>
4.6	<a href="#"><u>Description of Registered Securities (incorporated by reference into Exhibit 4.6 to the Annual Report on Form 10-K (File No. 001-37523) filed with the SEC on March 11, 2021)</u></a>
10.1+	<a href="#"><u>Form of Option Award Agreement (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018)</u></a>
10.2+	<a href="#"><u>Form of Restricted Stock Award Agreement (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018)</u></a>
10.3+	<a href="#"><u>Form of Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018)</u></a>
10.4+	<a href="#"><u>Form of Stock Appreciation Right Award Agreement (incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018)</u></a>
10.5+	<a href="#"><u>Form of Stock Bonus Award Agreement (incorporated by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 15, 2018)</u></a>
10.6	<a href="#"><u>Exchange Agreement, dated February 2, 2018, by and between Purple Innovation, Inc., Purple Innovation, LLC and InnoHold, LLC (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</u></a>



- 10.7 [Tax Receivable Agreement, dated February 2, 2018, by and between Purple Innovation, Inc. and InnoHold, LLC \(incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.8 [Registration Rights Agreement, dated February 2, 2018, by and among Purple Innovation, Inc., InnoHold, LLC and Global Partner Sponsor I LLC \(incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.9 [Non-Competition and Non-Solicitation Agreement, dated February 2, 2018, by and among Purple Innovation, Inc., InnoHold, LLC, Purple Innovation, LLC, Terry Pearce and Tony Pearce \(incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.10+ [Employment Agreement, dated February 2, 2018, between Purple Innovation, Inc. and Tony Pearce \(incorporated by reference to Exhibit 10.6 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.11+ [Employment Agreement, dated February 2, 2018, between Purple Innovation, Inc. and Terry Pearce \(incorporated by reference to Exhibit 10.7 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.12+ [Purple Innovation, Inc. 2017 Equity Incentive Plan \(incorporated by reference to Exhibit 10.8 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.13 [Subscription and Backstop Agreement, dated January 29, 2018, between Global Partner Acquisition Corp., Global Partner Sponsor I LLC, Baleen Capital Investors II LLC, Baleen Capital Fund LP, Greenhaven Road Capital Fund 1, L.P., Royce Value Trust, Inc., David Capital Partners Fund, LP, Pleiades Investment Partners – DC, L.P. and Dane Capital Fund LP \(incorporated by reference to Exhibit 10.12 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.14 [Agreement to Assign Sponsor Warrants, dated February 2, 2018, between Global Partner Acquisition Corp., Global Partner Sponsor I LLC, Continental Stock Transfer and Trust Company, Baleen Capital Investors II LLC, Baleen Capital Fund LP, Greenhaven Road Capital Fund 1, L.P., Royce Value Trust, Inc., David Capital Partners Fund, LP, Pleiades Investment Partners – DC, L.P. and Dane Capital Fund LP \(incorporated by reference to Exhibit 10.13 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.15 [Registration Rights Agreement, dated February 2, 2018, between Global Partner Acquisition Corp., Baleen Capital Investors II LLC, Baleen Capital Fund LP, Greenhaven Road Capital Fund 1, L.P., Royce Value Trust, Inc., David Capital Partners Fund, LP, Pleiades Investment Partners – DC, L.P. and Dane Capital Fund LP \(incorporated by reference to Exhibit 10.14 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.16 [Subscription Agreement, dated February 1, 2018, between Global Partner Acquisition Corp., Global Partner Sponsor I LLC, Coliseum Capital Partners, L.P. and Blackwell Partners LLC – Series A \(incorporated by reference to Exhibit 10.15 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.17 [Agreement to Assign Sponsor Warrants, dated February 2, 2018, between Global Partner Acquisition Corp., Global Partner Sponsor I LLC, Continental Stock Transfer and Trust Company, Coliseum Capital Partners, L.P., Blackwell Partners, LLC and Coliseum Co-Invest Debt Fund, L.P. \(incorporated by reference to Exhibit 10.16 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.18 [Agreement to Assign Founder Shares, dated February 2, 2018, between Global Partner Acquisition Corp., Global Partner Sponsor I LLC, Continental Stock Transfer and Trust Company and Coliseum Capital Partners, L.P., Blackwell Partners, LLC \(incorporated by reference to Exhibit 10.17 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)
- 10.19 [Registration Rights Agreement, dated February 2, 2018, between Global Partner Acquisition Corp., Coliseum Capital Partners, L.P., Blackwell Partners, LLC and Coliseum Co-Invest Debt Fund, L.P. \(incorporated by reference to Exhibit 10.18 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on February 8, 2018\)](#)

10.20+	<a href="#"><u>Employment Agreement with the Company and Joseph B. Megibow (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on September 25, 2018)</u></a>
10.21+	<a href="#"><u>Offer Letter between the Company and Mark A. Watkins (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on October 4, 2018)</u></a>
10.22+	<a href="#"><u>Amended and Restated Option Grant Agreement between the Company and Mark A. Watkins (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K/A (File No. 001-37523) filed with the SEC on November 9, 2018)</u></a>
10.23†	<a href="#"><u>Second Amended and Restated Confidential Assignment and License Back Agreement between the Company and EdiZONE (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on November 14, 2018)</u></a>
10.24+	<a href="#"><u>Offer Letter between Purple Innovation, LLC and John Legg dated January 12, 2019 (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on January 14, 2019)</u></a>
10.25+	<a href="#"><u>Option Grant Agreement dated February 21, 2019 between Purple Innovation, Inc. and John Legg (incorporated by reference to Exhibit 10.7 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 27, 2019)</u></a>
10.26	<a href="#"><u>Registration Rights Agreement dated February 26, 2019 between and among Purple Innovation, Inc., Coliseum Capital Partners, L.P., Blackwell Partners LLC – Series A and Coliseum Co-Invest Debt Fund, L.P. (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 27, 2019)</u></a>
10.27	<a href="#"><u>Statement of Work agreement dated March 1, 2019 by and between Purple Innovation, Inc. and FTI Consulting, Inc. (incorporated by reference to Exhibit 10.9 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 7, 2019)</u></a>
10.28	<a href="#"><u>Master Retailer Agreement dated September 18, 2018 by and between Purple Innovation LLC and Mattress Firm, Inc. (incorporated by reference to Exhibit 10.10 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 7, 2019)</u></a>
10.29+	<a href="#"><u>Purple Innovation, Inc. 2019 Long-Term Equity Incentive Plan (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on May 14, 2019)</u></a>
10.30+	<a href="#"><u>Purple Innovation, Inc. 2019 Short-Term Cash Incentive Plan (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on May 14, 2019)</u></a>
10.31	<a href="#"><u>Lease Agreement dated June 10, 2019 between Purple Innovation, LLC and North Slope One, LLC (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on August 13, 2019)</u></a>
10.32+	<a href="#"><u>Settlement and General Release of Claims Agreement dated May 28, 2019 between Purple Innovation, Inc. and Mark Watkins (incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on August 13, 2019)</u></a>
10.33+	<a href="#"><u>Employment Agreement between the Company and Craig L. Phillips (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on October 4, 2019)</u></a>
10.34+	<a href="#"><u>Option Grant Agreement between the Company and Craig L. Phillips (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on October 4, 2019)</u></a>
10.35	<a href="#"><u>First Amendment to Lease dated November 19, 2019 between the Company and North Slope One, LLC (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on November 25, 2019)</u></a>
10.36	<a href="#"><u>Amendment to TNT Holdings Amended and Restated Lease Agreement dated April 23, 2020 (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q (File No. 001-37523) filed with the SEC on May 11, 2020)</u></a>

- 10.37 [Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated July 21, 2020 \(incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q \(File No. 001-37523\) filed with the SEC on August 13, 2020\)](#)
- 10.38 [Credit Agreement dated September 3, 2020 between and among Purple Innovation, LLC, Purple Innovation, Inc., KeyBank National Association, and the other lenders party thereto \(incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on September 3, 2020\)](#)
- 10.39 [Pledge and Security Agreement dated September 3, 2020 \(incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on September 3, 2020\)](#)
- 10.40 [Guaranty dated September 3, 2020 \(incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on September 3, 2020\)](#)
- 10.41 [Collateral Assignment of Patents dated September 3, 2020 \(incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on September 3, 2020\)](#)
- 10.42 [Collateral Assignment of Trademarks dated September 3, 2020 \(incorporated by reference to Exhibit 10.5 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on September 3, 2020\)](#)
- 10.43 [Collateral Assignment of Copyrights dated September 3, 2020 \(incorporated by reference to Exhibit 10.6 to the Current Report on Form 8-K \(File No. 001-37523\) filed with SEC on September 3, 2020\)](#)
- 10.44+ [Purple Innovation, Inc. 2020 Short-Term Cash Incentive Plan \(incorporated by reference to Exhibit 10.11 to the Quarterly Report on Form 10-Q \(File No. 001-37523\) filed with the SEC on November 10, 2020\)](#)
- 10.45 [License Transfer and IP Assignment Agreement between Purple Innovation, LLC and EdiZONE, LLC dated August 14, 2020 \(incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q \(File No. 001-37523\) filed with the SEC on November 10, 2020\)](#)
- 10.46+ [Indemnification Agreement between Purple Innovation, Inc. and Paul Zepf dated August 18, 2020 \(incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q \(File No. 001-37523\) filed with the SEC on November 10, 2020\)](#)
- 10.47 [First Amendment to Amended and Restated Credit Agreement by and among Purple Innovation, LLC, Purple Innovation, Inc., Coliseum Capital Partners, L.P., Blackwell Partners LLC-Series A, and Coliseum Co-Invest Debt Fund, L.P. dated March 27, 2020 \(incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on March 30, 2020\)](#)
- 10.48 [Second Amendment to Amended and Restated Credit Agreement by and among Purple Innovation, LLC, Purple Innovation, Inc., Coliseum Capital Partners, L.P., Blackwell Partners LLC-Series A, and Coliseum Co-Invest Debt Fund, L.P. dated May 15, 2020 \(incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K \(File No. 37523\) filed with the SEC on May 18, 2020\)](#)
- 10.49 [Waiver and Consent to Amended and Restated Credit Agreement by and among Purple Innovation, LLC, Purple Innovation, Inc., Coliseum Capital Partners, L.P., Blackwell Partners LLC-Series A, and Coliseum Co-Invest Debt Fund, L.P. dated August 20, 2020 \(incorporated by reference into Exhibit 10.1 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on August 21, 2020\)](#)
- 10.50 [Amendment to Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated March 4, 2021 \(incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q \(File No. 001-37523\) filed with the SEC on May 17, 2021\)](#)
- 10.51 [Second Amendment to Lease Agreement between Purple Innovation, LLC and PNK S2, LLC dated March 26, 2021 \(incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q \(File No. 001-37523\) filed with the SEC on May 17, 2021\)](#)
- 10.52+ [Amendment to Purple Innovation, Inc. 2017 Equity Incentive Plan dated July 12, 2021 \(incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K \(File No. 001-37523\) filed with the SEC on July 12, 2021\)](#)

10.53+	<a href="#">Restated and Amended Purple Innovation, Inc. 2019 Long-Term Equity Incentive Plan dated July 12, 2021 (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on July 12, 2021)</a>
10.54+	<a href="#">Form of Restricted Share Unit Agreement (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on July 12, 2021)</a>
10.55+	<a href="#">Form of Performance-Based Share Unit Agreement (incorporated by reference to Exhibit 99.4 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on July 12, 2021)</a>
10.56+	<a href="#">Purple Innovation, Inc. 2021 Short-Term Cash Incentive Plan dated July 12, 2021 (incorporated by reference to Exhibit 99.5 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on July 12, 2021)</a>
10.57+	<a href="#">Separation Agreement and General Release, dated December 13, 2021, by and between Purple Innovation, Inc. and Joseph B. Megibow (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on December 13, 2021)</a>
10.58+	<a href="#">Employment Agreement, dated December 13, 2021, by and between Purple Innovation, Inc. and Robert T. DeMartini (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on December 13, 2021)</a>
10.59+	<a href="#">Amended and Restated Consultancy Agreement, dated December 13, 2021, by and between Purple Innovation, Inc. and Bennett Nussbaum (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on December 13, 2021)</a>
10.60*	<a href="#">First Amendment to the 2020 Credit Agreement dated February 28, 2022 between and among Purple Innovation, LLC, Purple Innovation, Inc., KeyBank National Association, and the other lenders party thereto</a>
14.1	<a href="#">Code of Ethics of Purple Innovation, Inc. (incorporated by reference into Exhibit 14.1 to the Annual Report on Form 10-K (File No. 001-37523) filed with the SEC on March 11, 2021)</a>
21.1	<a href="#">List of Subsidiaries of the Registrant (incorporated by reference to Exhibit 21.1 to the Current Report on Form 8-K (File No. 001-37523) filed with the SEC on February 8, 2018)</a>
23.1*	<a href="#">Consent of Independent Registered Public Accounting Firm</a>
31.1*	<a href="#">Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a)</a>
31.2*	<a href="#">Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a)</a>
32.1*	<a href="#">Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350</a>
32.2*	<a href="#">Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350</a>
101.INS	Inline XBRL Instance Document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

\* Filed herewith

# Schedules and exhibits to the Merger Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplementally a copy of any omitted schedules and exhibits to the Securities and Exchange Commission upon request.

+ Indicates management contract or compensatory plan.

† Confidential treatment of certain provisions has been granted by the Securities and Exchange Commission.

#### Item 16. Form 10-K Summary

Not applicable.

PURPLE INNOVATION, INC.

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## Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors  
Purple Innovation, Inc.  
Lehi, Utah

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Purple Innovation, Inc. (the “Company”) as of December 31, 2021 and 2020, the related consolidated statements of operations, stockholders’ equity (deficit), and cash flows for each of the three years in the period ended December 31, 2021, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) and our report dated March 1, 2022 expressed an adverse opinion thereon because of a material weakness.

### Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

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

### Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

#### *Deferred Tax Asset Valuation Allowance*

As described in Notes 2 and 19 to the Company’s consolidated financial statements, the Company has approximately \$217.8 million of net deferred income tax assets. In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that the deferred tax assets will be realized.

We identified the Company’s evaluation of whether certain of its deferred tax assets are realizable as a critical audit matter. Significant management judgments are required in evaluating and weighting the collective positive and negative evidence that are used to assess the realizability of deferred tax assets. This evidence includes various assumptions surrounding cumulative income in recent years, projected future taxable income, and the rate of expected growth. Auditing these elements involved especially complex auditor judgment due to the nature and extent of audit effort required to address these matters, including the need to involve personnel with specialized skill and knowledge.

The primary procedures we performed to address this critical audit matter included:

- Assessing the reasonableness of the Company’s ability to generate future income and utilize the deferred tax assets by evaluating forecasts of future income and the rate of expected growth against the Company’s historical performance and performing independent estimates of the expected rate of continued growth to evaluate the changes in realizability of deferred tax assets that would result from changes in those assumptions.
- Utilizing personnel with specialized knowledge and skill in income taxes to assist in the evaluation of the Company’s assessment of positive and negative evidence, and whether the estimated future sources of taxable income were sufficient to utilize the deferred tax assets in the relevant time period.

### *Warranty Accrual*

At December 31, 2021, the Company's accrued warranty liability was \$15.0 million. As discussed in Note 2 to the consolidated financial statements, the Company provides a limited warranty on most of its products sold. Warranty costs are estimated based on the results of product testing, industry and historical trends and warranty claim rates incurred, and are adjusted for any current or expected trends. These costs are recognized at the time of sale in cost of revenues.

We identified the Company's evaluation of the completeness and valuation of the warranty accrual as a critical audit matter. Specifically, the evaluation includes various management assumptions, including estimated future warranty claims and estimated costs to remedy warranty claims. Auditing the accrued warranty liability involved especially complex and subjective auditor judgment due to significant management judgment required in evaluating the warranty liability.

The primary procedures we performed to address this critical audit matter included:

- Obtaining an understanding, evaluating the design and testing the operating effectiveness of controls over the completeness and valuation of the warranty liability. Specifically, we tested controls over management's review of inputs into the warranty calculation (historical returns by year, actual warranty costs incurred and estimated warranty costs on products sold), as well as their review of mathematical calculation of the warranty liability.
- Testing a sample of key inputs to the warranty liability, including actual claims made and actual warranty costs incurred.
- Assessing the accuracy of management's estimation by performing a lookback analysis, which compared the amount of claims accrued in prior years to actual claims made in subsequent periods.
- Comparing the Company's warranty expense as a percentage of revenues to available public information to determine if the Company's warranty expense was consistent with peer companies.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2017.

Salt Lake City, Utah

March 1, 2022

**PURPLE INNOVATION, INC.**  
**Consolidated Balance Sheets**  
(In thousands, except for par value)

	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 91,616	\$ 122,955
Accounts receivable, net	25,430	29,111
Inventories, net	98,690	65,726
Prepaid expenses	8,064	6,718
Other current assets	5,702	4,561
<b>Total current assets</b>	<b>229,502</b>	<b>229,071</b>
Property and equipment, net	112,614	61,486
Operating lease right-of-use assets	68,037	41,408
Intangible assets, net	13,204	9,945
Deferred income taxes	217,791	211,244
Other long-term assets	1,322	1,578
<b>Total assets</b>	<b>\$ 642,470</b>	<b>\$ 554,732</b>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 79,752	\$ 69,594
Accrued sales returns	7,116	8,428
Accrued compensation	8,928	14,209
Customer prepayments	10,854	6,253
Accrued sales tax	4,672	6,015
Accrued rebates and allowances	10,169	10,891
Operating lease obligations – current portion	7,053	3,235
Other current liabilities	13,470	13,583
<b>Total current liabilities</b>	<b>142,014</b>	<b>132,208</b>
Debt, net of current portion	94,113	41,410
Operating lease obligations, net of current portion	81,159	48,936
Warrant liabilities	4,343	92,708
Tax receivable agreement liability, net of current portion	162,239	165,426
Other long-term liabilities, net of current portion	12,061	6,503
<b>Total liabilities</b>	<b>495,929</b>	<b>487,191</b>
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Class A common stock; \$0.0001 par value, 210,000 shares authorized; 66,493 issued and outstanding at December 31, 2021 and 63,914 issued and outstanding at December 31, 2020	7	6
Class B common stock; \$0.0001 par value, 90,000 shares authorized; 448 issued and outstanding at December 31, 2021 and 536 issued and outstanding at December 31, 2020	—	—
Additional paid-in capital	407,591	333,047
Accumulated deficit	(261,825)	(265,856)
<b>Total stockholders' equity attributable to Purple Innovation, Inc.</b>	<b>145,773</b>	<b>67,197</b>
Noncontrolling interest	768	344
<b>Total stockholders' equity</b>	<b>146,541</b>	<b>67,541</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 642,470</b>	<b>\$ 554,732</b>

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



**PURPLE INNOVATION, INC.**  
**Consolidated Statements of Operations**  
(In thousands, except per share amounts)

	<b>Year Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Revenues, net	\$ 726,227	\$ 648,471	\$ 428,358
Cost of revenues	431,253	343,374	239,387
Gross profit	294,974	305,097	188,971
Operating expenses:			
Marketing and sales	239,290	187,991	141,975
General and administrative	72,095	39,925	26,918
Research and development	6,939	5,955	3,864
Total operating expenses	318,324	233,871	172,757
Operating income (loss)	(23,350)	71,226	16,214
Other income (expense):			
Interest expense	(1,872)	(4,654)	(5,180)
Other income (expense), net	(194)	(91)	545
Loss on extinguishment of debt	—	(5,782)	(6,299)
Change in fair value – warrant liabilities	24,054	(300,073)	(35,304)
Tax receivable agreement income (expense)	4,016	(34,155)	(501)
Total other income (expense), net	26,004	(344,755)	(46,739)
Net income (loss) before income taxes	2,654	(273,529)	(30,525)
Income tax benefit (expense)	1,217	43,749	(400)
Net income (loss)	3,871	(229,780)	(30,925)
Net income (loss) attributable to noncontrolling interest	(160)	7,087	(8,352)
Net income (loss) attributable to Purple Innovation, Inc.	\$ 4,031	\$ (236,867)	\$ (22,573)
Net income (loss) per share:			
Basic	\$ 0.06	\$ (6.04)	\$ (2.26)
Diluted	\$ (0.30)	\$ (6.04)	\$ (2.26)
Weighted average common shares outstanding:			
Basic	65,928	39,219	10,006
Diluted	67,302	39,219	10,006

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

**PURPLE INNOVATION, INC.**  
**Consolidated Statements of Stockholders' Equity (Deficit)**  
(In thousands)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity attributable to Purple Innovation, Inc. (Deficit)	Noncontrolling Interest	Total Equity (Deficit)
	Shares	Par Value	Shares	Par Value					
<b>Balance — December 31, 2018</b>	9,731	\$ 1	44,071	\$ 4	\$ 487	\$ (6,416)	\$ (5,924)	\$ (1,349)	\$ (7,273)
Net loss	—	—	—	—	—	(22,573)	(22,573)	(8,352)	(30,925)
Stock-based compensation	—	—	—	—	10,063	—	10,063	—	10,063
Repurchase of stock option	—	—	—	—	(97)	—	(97)	—	(97)
Issuance of stock	96	—	—	—	—	—	—	—	—
Exchange of stock	12,670	1	(12,670)	(1)	—	—	—	—	—
Forfeiture of unvested stock	(3)	—	(7)	—	—	—	—	—	—
Accrued tax distributions	—	—	—	—	(308)	—	(308)	—	(308)
Impact of transactions affecting NCI	—	—	—	—	(7,323)	—	(7,323)	7,323	—
<b>Balance – December 31, 2019</b>	22,494	\$ 2	31,394	\$ 3	\$ 2,822	\$ (28,989)	\$ (26,162)	\$ (2,378)	\$ (28,540)
Net income (loss)	—	—	—	—	—	(236,867)	(236,867)	7,087	(229,780)
Stock-based compensation	—	—	—	—	2,185	—	2,185	—	2,185
Exchange of stock	30,858	3	(30,858)	(3)	—	—	—	—	—
Exercise of warrants	7,621	1	—	—	218,113	—	218,114	—	218,114
Exercise of incremental loan warrants	2,613	—	—	—	81,040	—	81,040	—	81,040
Exercise of stock options	281	—	—	—	2,007	—	2,007	—	2,007
Tax receivable agreement liability	—	—	—	—	(137,314)	—	(137,314)	—	(137,314)
Deferred income taxes	—	—	—	—	165,676	—	165,676	—	165,676
Accrued tax distributions	—	—	—	—	(5,847)	—	(5,847)	—	(5,847)
Issuance of stock	83	—	—	—	—	—	—	—	—
Forfeiture of unvested stock	(36)	—	—	—	—	—	—	—	—
Impact of transactions affecting NCI	—	—	—	—	4,365	—	4,365	(4,365)	—
<b>Balance – December 31, 2020</b>	63,914	\$ 6	536	\$ —	\$ 333,047	\$ (265,856)	\$ 67,197	\$ 344	\$ 67,541
Net income (loss)	—	—	—	—	—	4,031	4,031	(160)	3,871
Stock-based compensation	—	—	—	—	3,366	—	3,366	—	3,366
Exchange of stock	88	—	(88)	—	—	—	—	—	—
Exercise of warrants	2,298	1	—	—	64,426	—	64,427	—	64,427
Exercise of stock options	171	—	—	—	1,418	—	1,418	—	1,418
Tax receivable agreement liability	—	—	—	—	(760)	—	(760)	—	(760)
Deferred income taxes	—	—	—	—	2,937	—	2,937	—	2,937
Accrued tax distributions	—	—	—	—	(401)	—	(401)	—	(401)
Issuance of common stock	22	—	—	—	—	—	—	—	—
InnoHold indemnification payment	—	—	—	—	4,142	—	4,142	—	4,142
Impact of transactions affecting NCI	—	—	—	—	(584)	—	(584)	584	—
<b>Balance – December 31, 2021</b>	66,493	\$ 7	448	\$ —	\$ 407,591	\$ (261,825)	\$ 145,773	\$ 768	\$ 146,541

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

**PURPLE INNOVATION, INC.**  
**Consolidated Statements of Cash Flows**  
(In thousands)

	Years Ended December 31,		
	2021	2020	2019
Cash flows from operating activities:			
Net income (loss)	\$ 3,871	\$ (229,780)	\$ (30,925)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	9,473	7,899	4,308
Non-cash interest	517	3,105	3,313
Paid-in-kind interest	—	(6,616)	—
Loss on extinguishment of debt	—	5,782	6,299
Change in fair value – warrant liabilities	(24,054)	300,073	35,304
Tax receivable agreement (income) expense	(4,016)	34,155	501
Stock-based compensation	3,366	2,185	10,063
Non-cash lease expense	4,938	3,128	—
Deferred income taxes	(3,608)	(45,812)	—
Changes in operating assets and liabilities:			
Accounts receivable	3,681	(419)	(18,451)
Inventories	(32,964)	(18,098)	(24,688)
Prepaid expenses and other assets	1,744	(5,047)	(2,557)
Accounts payable	6,796	16,049	25,132
Accrued sales returns	(1,312)	1,157	1,814
Accrued compensation	(5,482)	6,255	5,263
Customer prepayments	4,601	(5)	(1,264)
Accrued rebates and allowances	(722)	5,580	4,881
Operating lease obligations	(2,779)	(1,732)	—
Other accrued liabilities	5,047	3,398	3,887
Net cash provided by (used in) operating activities	<u>(30,903)</u>	<u>81,257</u>	<u>22,880</u>
Cash flows from investing activities:			
Purchase of property and equipment	(53,938)	(27,878)	(10,459)
Investment in intangible assets	(3,121)	(11,261)	(320)
Net cash used in investing activities	<u>(57,059)</u>	<u>(39,139)</u>	<u>(10,779)</u>
Cash flows from financing activities:			
Proceeds from related-party loan	—	—	10,000
Proceeds from term loan	—	45,000	—
Payments on related-party loan	—	(37,497)	—
Payments on term loan	(2,250)	(563)	—
Proceeds from revolving line of credit	55,000	—	—
Proceeds from exercise of warrants	116	46,359	—
Proceeds from exercise of stock options	1,418	2,007	—
Repurchase of stock options	—	—	(97)
Payments for debt issuance costs	—	(2,460)	(758)
Tax receivable agreement payments	(628)	—	—
Proceeds from InnoHold indemnification payment	4,142	—	—
Distributions to members	(1,175)	(5,487)	—
Net cash provided by financing activities	<u>56,623</u>	<u>47,359</u>	<u>9,145</u>
Net increase (decrease) in cash	(31,339)	89,477	21,246
Cash and cash equivalents, beginning of the year	122,955	33,478	12,232
Cash and cash equivalents, end of the year	<u>\$ 91,616</u>	<u>\$ 122,955</u>	<u>\$ 33,478</u>
Supplemental disclosures of cash flow information:			
Cash paid during the year for interest, net of amounts capitalized	<u>\$ 999</u>	<u>\$ 8,167</u>	<u>\$ 1,869</u>
Cash paid during the year for income taxes	<u>\$ 4,645</u>	<u>\$ 2,060</u>	<u>\$ 122</u>
Supplemental schedule of non-cash investing and financing activities:			
Property and equipment included in accounts payable	<u>\$ 6,443</u>	<u>\$ 3,305</u>	<u>\$ 743</u>
Issuance of liability warrants	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 4,864</u>
Non-cash leasehold improvements	<u>\$ 3,238</u>	<u>\$ 5,147</u>	<u>\$ 1,938</u>
Accrued tax distributions	<u>\$ 401</u>	<u>\$ 668</u>	<u>\$ 308</u>
Tax receivable agreement liability	<u>\$ 760</u>	<u>\$ 137,314</u>	<u>\$ —</u>
Deferred income taxes	<u>\$ 2,937</u>	<u>\$ 165,676</u>	<u>\$ —</u>

Exercise of liability warrants

<u>\$</u>	<u>64,311</u>	<u>\$</u>	<u>252,796</u>	<u>\$</u>	<u>—</u>
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The accompanying notes are an integral part of these consolidated financial statements.

**PURPLE INNOVATION, INC.**  
**Notes to the Consolidated Financial Statements**

**1. Organization**

The Company's mission is to help people feel and live better through innovative comfort solutions.

Purple Innovation, Inc., collectively with its subsidiary (the "Company" or "Purple Inc.") is a digitally-native vertical brand founded on comfort product innovation with premium offerings. The Company designs and manufactures a variety of innovative, branded and premium comfort products, including mattresses, pillows, cushions, bases, sheets, and other products. The Company markets and sells its products through its e-commerce online channels, retail brick-and-mortar wholesale partners, Purple retail showrooms, and third-party online retailers.

The Company was incorporated in Delaware on May 19, 2015 as a special purpose acquisition company under the name of Global Partnership Acquisition Corp ("GPAC"). On February 2, 2018, the Company consummated a transaction structured similar to a reverse recapitalization (the "Business Combination") pursuant to which the Company acquired a portion of the equity of Purple Innovation, LLC ("Purple LLC"). At the closing of the Business Combination (the "Closing"), the Company became the sole managing member of Purple LLC, and GPAC was renamed Purple Innovation, Inc.

As the sole managing member of Purple LLC, Purple Inc. through its officers and directors is responsible for all operational and administrative decision making and control of the day-to-day business affairs of Purple LLC without the approval of any other member.

**2. Summary of Significant Accounting Policies**

This summary of significant accounting policies is presented to assist in understanding the Company's consolidated financial statements. The consolidated financial statements and notes are representations of the Company's management, which is responsible for their integrity and objectivity.

***Basis of Presentation and Principles of Consolidation***

The consolidated financial statements include the accounts of Purple Inc. and its controlled subsidiary Purple LLC. All intercompany balances and transactions have been eliminated in consolidation. As of December 31, 2021, Purple Inc. held approximately 99% of the common units of Purple LLC and other Purple LLC Class B Unit holders held approximately 1% of the common units in Purple LLC.

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") and reflect the financial position, results of operations and cash flows of the Company. On December 31, 2020, the Company ceased to be an emerging growth company ("EGC") and was no longer exempt from certain reporting requirements that apply to public companies. As an EGC prior to this date, Purple Inc. had elected to use extended transition periods available to private companies for complying with new or revised accounting standards. These accounting policies have been consistently applied in the preparation of the consolidated financial statements.

### ***Variable Interest Entities***

Purple LLC is a variable interest entity. The Company determined that it is the primary beneficiary of Purple LLC as it is the sole managing member and has the power to direct the activities most significant to Purple LLC's economic performance as well as the obligation to absorb losses and receive benefits that are potentially significant. At December 31, 2021, Purple Inc. had approximately a 99% economic interest in Purple LLC and consolidated 100% of Purple LLC's assets, liabilities and results of operations in the Company's consolidated financial statements contained herein. The holders of Purple LLC Class B Units (the "Class B Units") held approximately 1% of the economic interest in Purple LLC as of December 31, 2021. For further discussion see Note 14—*Stockholders' Equity*.

### ***Reclassification***

Certain prior year amounts in the consolidated financial statements have been reclassified to conform to the current year presentation with no effect on previously reported net income (loss), cash flows or stockholders' equity. Prepaid expenses, previously included in the consolidated balance sheet within other current assets, are now presented separately. Also, the change in accrued rebates and allowances, previously reflected in the consolidated statement of cash flows within the change in other accrued liabilities, is now presented separately.

### ***Use of Estimates***

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles requires the Company to establish accounting policies and to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect revenue recognition, accounts receivable and allowance for doubtful accounts, valuation of inventories, sales returns, warranty returns, warrant liabilities, stock based compensation, the recognition and measurement of loss contingencies, estimates of current and deferred income taxes, deferred income tax valuation allowances, and amounts associated with the Company's tax receivable agreement with InnoHold, LLC ("InnoHold"). Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. Actual results could differ materially from those estimates.

### ***Cash and Cash Equivalents***

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. The carrying value of cash and cash equivalents approximates fair value because of the short-term maturity of those instruments.

### ***Accounts Receivable and Allowance for Doubtful Accounts***

Accounts receivable are recorded net of an allowance for expected losses and consist primarily of receivables from wholesale customers and receivables from third-party consumer financing partners and credit card processors. The allowance is recognized in an amount equal to anticipated future write-offs. Management estimates the allowance for doubtful accounts based on delinquencies, aging trends, industry risk trends, historical experience and current trends. Account balances are charged off against the allowance when management believes it is probable the receivable will not be recovered. The allowance for doubtful accounts as of December 31, 2021 and 2020 was not material.

### ***Inventories***

Inventories are comprised of raw materials, work-in-process and finished goods and are stated at the lower of cost or net realizable value. Manufactured inventory consists of raw material, direct labor and manufacturing overhead costs. Inventory cost is calculated using a method that approximates average cost. The Company reviews the components of its inventory on a regular basis for excess and obsolete inventory and makes appropriate adjustments when necessary. Once established, the original cost of the inventory less the related inventory allowance represents the new cost basis of such products.

### **Property and Equipment**

Property and equipment are stated at cost, net of depreciation. Property and equipment are depreciated using the straight-line method over the estimated useful lives of the respective assets, ranging from 1 to 16 years, as follows:

	<b>Years</b>
Equipment	10
Furniture and fixtures	7
Office equipment	3
Leasehold improvements	1 -16

Major renewals and betterments that increase value or extend useful life are capitalized. The Company records depreciation and amortization in cost of sales for long-lived assets used in the manufacturing process, and within each line item of operating expenses for all other long-lived assets. Leasehold improvements are amortized over the shorter of the useful life of the leasehold improvements or the contractual term of the lease, with consideration of lease renewal options if exercise is reasonably certain. The cost and related accumulated depreciation of assets sold or retired is removed from the accounts with any resulting gain or loss included in the consolidated statement of operations.

The Company capitalizes interest on borrowings during the active construction period of major capital projects. Interest capitalization ceases once a project is substantially complete or no longer undergoing construction activities to prepare it for its intended use. Capitalized interest is added to the cost of the underlying assets and is amortized over the useful lives of the assets. When no debt is specifically identified as being incurred in connection with a construction project, the Company capitalizes interest on amounts expended on the project using the weighted average cost of the Company's outstanding borrowings.

### **Leases**

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-02, *Leases* ("ASC 842"), which required an entity to recognize lease liabilities and assets on the balance sheet and to disclose key information about an entity's leasing arrangements. Because the Company ceased being an EGC on December 31, 2020, the standard became effective for the Company for its annual reporting period beginning January 1, 2020. The adoption of ASC 842 and all related amendments using the modified retrospective transition approach effective for the Company's annual reporting period beginning January 1, 2020 resulted in the initial recognition of operating lease right-of-use ("ROU") assets of \$27.9 million and operating lease liabilities of \$33.0 million in the Company's consolidated balance sheet. Pre-existing liabilities for deferred rent and various lease incentives totaling \$5.1 million were reclassified to operating lease ROU assets in connection with the adoption. The adoption of ASC 842 did not have a material impact on the Company's consolidated results of operations or cash flows and had no impact on retained earnings. At January 1, 2020, the effective date of adoption, the Company's finance ROU assets and lease liabilities were not material.

The Company determines if an agreement contains a lease at the inception of a contract. For leases with an initial term greater than 12 months, a related lease liability is recorded on the balance sheet at the present value of future payments discounted at the estimated fully collateralized incremental borrowing rate (discount rate) corresponding with the lease term. In addition, a ROU asset is recorded as the initial amount of the lease liability, plus any lease payments made to the lessor before or at the lease commencement date and any initial direct costs incurred, less any tenant improvement allowance incentives received. The Company elected not to separate lease and non-lease components for all real estate leases.

The Company calculates the present value of future payments using its incremental borrowing rate when the discount rate implicit in the lease is not known. The incremental borrowing rate is the rate of interest that a lessee would have to pay to borrow on a collateralized basis over a similar term at an amount equal to the lease payments in a similar economic environment. The Company determines the applicable incremental borrowing rate at the lease commencement date based on the rates of its secured borrowings, which is then adjusted for the appropriate lease term and risk premium. In determining the Company's ROU assets and operating lease liabilities, the Company applies these incremental borrowing rates to the minimum lease payments within each lease agreement.

Operating lease expense is recognized on a straight-line basis over the lease term. Tenant incentive allowances received from the lessor are amortized through the right-of-use asset as a reduction of rent expense over the lease term. Any variable lease costs are expensed as incurred. Leases with an initial term of 12 months or less (short-term leases) are not recorded as ROU assets and corresponding lease liabilities. Short-term lease expense is recognized on a straight-line basis over the lease term. ROU assets are assessed for impairment as part of long-lived assets, which is performed whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable.

Prior to fiscal 2020, total lease payments over the non-cancellable term of a lease were recognized as rent expense on a straight-line basis over the lease term, with the excess of expense recognized over lease payments made recorded as a deferred rent liability on the balance sheet. Any lease incentive payments received from lessors were recorded as a liability on the balance sheet and amortized as a reduction of rent expense over the term of the lease.

### ***Intangible Assets***

Intangible assets include developed technologies and trade names / trademarks, internal-use software, domain name costs, license fees and other patent and trademark related costs. Definite-lived intangible assets are being amortized using the straight-line method over their estimated lives, ranging from three to 15 years.

For software developed or obtained for internal use, the Company capitalizes direct external costs associated with developing or obtaining internal-use software. In addition, the Company capitalizes certain payroll and payroll-related costs for employees who are directly involved with the development of such applications. Capitalized costs related to internal-use software under development are treated as construction-in-progress until the program, feature or functionality is ready for its intended use, at which time amortization commences. Capitalized software costs are amortized on a straight-line basis over three years.

### ***Asset Impairment Charges***

*Definite-lived Intangible Assets* – Definite-lived intangible assets are reviewed for impairment annually or whenever events or changes in circumstances indicate impairment may have occurred. Any identified impairment would result in an adjustment to the Company’s results of operations. There were no impairment charges realized on definite-lived intangible assets during the years ended December 31, 2021 and 2019. During the year ended December 31, 2020, an impairment charge of \$0.6 million was recorded to write-off the unamortized portion of license costs related to a vendor supply and services agreement. For further discussion see Note 7—*Intangible Assets*.

*Indefinite-lived Intangible Assets* – Intangible assets that have indefinite lives are not amortized but are reviewed for impairment annually or when events or changes in circumstances indicate the carrying value of these assets might exceed their current fair values. Impairment testing is based upon the best information available including estimates of fair value which incorporate assumptions marketplace participants would use in making their estimates of fair value. Accounting guidance provides for the performance of either a quantitative assessment or a qualitative assessment before calculating the fair value of an asset. For its indefinite lived intangibles assets, the Company assessed qualitative factors to determine whether any events or circumstances existed which indicated that it was more likely than not that the fair value of its indefinite lived assets did not exceed their carrying values. The Company concluded no such events or circumstances existed which would require an impairment test be performed beyond the qualitative assessment. In the future, if events or market conditions affect the estimated fair value to the extent that an asset is impaired, the Company will adjust the carrying value of these assets in the period in which the impairment occurs.

*Long-Lived Assets* – Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of long-lived assets is assessed by a comparison of the carrying amount of the asset to the estimated future undiscounted net cash flows expected to be generated by the asset or group of assets. If estimated future undiscounted net cash flows are less than the carrying amount of the asset or group of assets, the asset is considered impaired and an expense is recorded in an amount required to reduce the carrying amount of the asset to its then fair value. Fair value generally is determined from estimated discounted future net cash flows (for assets held for use) or net realizable value (for assets held for sale). The Company did not record any impairment losses on long-lived assets during the years ended December 31, 2021, 2020 or 2019.

### ***Cooperative Advertising, Rebate and Other Promotion Programs***

The Company enters into programs with certain wholesale partners to provide funds for advertising and promotions as well as volume and other rebate programs. When sales are made to these customers, the Company records liabilities pursuant to these programs. The Company periodically assesses these liabilities based on actual sales to determine whether all of the cooperative advertising earned will be used by the customer or whether the customer will meet the requirements to receive rebate funds. Significant estimates are required at any point in time with regard to the ultimate reimbursement to be claimed by the customers. Subsequent revisions to the estimates are recorded and charged to earnings in the period in which they are identified. Rebates and certain cooperative advertising amounts are classified as a reduction of revenue and presented within net revenues in the accompanying consolidated statements of operations. Cooperative advertising expenses that can be identified as a distinct good or service and for which the fair value can be reasonably estimated are recorded, when incurred, as components of marketing and sales expenses in the accompanying consolidated statements of operations.



## **Advertising Costs**

The Company incurs advertising costs associated with print, digital and broadcast advertisements. Advertising costs are expensed when the advertisements are run for the first time and included in marketing and selling expenses in the accompanying consolidated statements of operations. Advertising expense was \$149.8 million, \$130.3 million and \$112.1 million for the years ended December 31, 2021, 2020 and 2019, respectively. Advertising costs in 2021 and 2020 included \$2.7 million and \$1.2 million, respectively, related to shared advertising costs that the Company incurred under its cooperative advertising programs to the extent the fair value of the distinct good or service were reasonably estimable. There were no cooperative advertising costs in 2019.

## **Revenue Recognition**

The Company markets and sells its products through e-commerce online channels, retail brick-and-mortar wholesale partners, Purple retail showrooms, and third-party online retailers. Revenue is recognized when the Company satisfies its performance obligations under the contract which involves transferring the promised products to the customer. This principle is achieved in the following steps:

*Identify the contract with the customer.* A contract with a customer exists when (i) the Company enters into an enforceable contract with a customer that defines each party's rights regarding the goods to be transferred and identifies the payment terms related to these goods, (ii) the contract has commercial substance and, (iii) the Company determines that collection of substantially all consideration for the goods that are transferred is probable based on the customer's intent and ability to pay the promised consideration. The Company does not have significant costs to obtain contracts with customers.

*Identify the performance obligations in the contract.* The Company's contracts with customers do not include multiple performance obligations to be completed over a period of time. The performance obligations generally relate to delivering products to a customer, subject to the shipping terms of the contract. The Company has made an accounting policy election to account for shipping and handling activities performed after a customer obtains control of the goods, including "white glove" delivery services, as activities to fulfill the promise to transfer the goods. The Company does not offer extended warranty or service plans. The Company does not provide an option to its customers to purchase future products at a discount and therefore there are no material option rights.

*Determine the transaction price.* Payment for sale of products through the e-commerce online channel, Purple retail showrooms and third-party online retailers is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Payment by traditional wholesale customers is due under customary fixed payment terms. None of the Company's contracts contain a significant financing component. Revenue is recorded at the net sales price, which includes estimates of variable consideration such as product returns, volume rebates, and other adjustments. The estimates of variable consideration are based on historical return experience, historical and projected sales data, and current contract terms. Variable consideration is included in revenue only to the extent that it is probable that a significant reversal of the revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Taxes collected from customers relating to product sales and remitted to governmental authorities are excluded from revenues.

*Allocate the transaction price to performance obligations in the contract.* The Company's contracts with customers do not include multiple performance obligations. Therefore, the Company recognizes revenue upon transfer of the product to the customer's control at contractually stated pricing.

*Recognize revenue when or as we satisfy a performance obligation.* The Company satisfies performance obligations at a point in time upon either shipment or delivery of goods, in accordance with the terms of each contract with the customer. With the exception of third-party "white glove" delivery and certain wholesale partners, revenue generated from product sales is recognized at shipping point, the point in time the customer obtains control of the products. Revenue generated from sales through third-party "white glove" delivery is recognized at the point in time when the product is delivered to the customer. Revenue generated from certain wholesale partners is recognized at a point in time when the product is delivered to the wholesale partner's warehouse. The Company does not have service revenue.

### **Cost of Revenues**

Costs associated with net revenues are recorded in cost of revenues in the same period in which related sales have been recorded. Cost of revenues includes the costs of receiving, producing, inspecting, warehousing, insuring, and shipping goods during the period, as well as depreciation and amortization of long-lived assets used in these processes. Cost of sales also includes shipping and handling costs associated with the delivery of goods to customers.

### **Sales Returns**

The Company's policy provides customers up to 100-days to return a mattress, pet bed or pillow and up to 30-days to return all other products (except power bases) for a full refund. Estimated sales returns, which are recorded as a reduction of revenue at the time of sale and recorded as a liability on the balance sheet, are based on historical trends and product return rates and are adjusted for any current or expected trends as appropriate. Actual sales returns could differ from these estimates. The Company regularly assesses and adjusts the estimate of accrued sales returns by updating the return rates for actual trends and projected costs. The Company classifies the estimated sales returns as a current liability as they are expected to be paid out in less than one year. As of December 31, 2021 and 2020, \$7.1 million and \$8.4 million, respectively, were included as accrued sales returns in the accompanying consolidated balance sheets.

The Company had the following activity for sales returns:

<b>(in thousands)</b>	<b>Years Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Balance at beginning of period	\$ 8,428	\$ 7,271	\$ 5,457
Additions that reduced net revenue	45,561	50,504	34,390
Deduction from reserves for current year returns	(46,873)	(49,347)	(32,576)
Balance at end of period	<u>\$ 7,116</u>	<u>\$ 8,428</u>	<u>\$ 7,271</u>

### **Warranty Liabilities**

The Company provides a limited warranty on most of the products sold. The estimated warranty costs, which are expensed at the time of sale and included in cost of revenues, are based on the results of product testing, industry and historical trends and warranty claim rates incurred, and are adjusted for any current or expected trends as appropriate. Actual warranty claim costs could differ from these estimates. The Company regularly assesses and adjusts the estimate of accrued warranty claims by updating claims rates for actual trends and projected claim costs. The Company classifies estimated warranty costs expected to be paid beyond a year as a long-term liability. As of December 31, 2021 and 2020, \$3.9 million and \$2.8 million of warranty liabilities are included in other current liabilities and \$11.1 million and \$5.6 million of warranty liabilities are included in other long-term liabilities on the accompanying consolidated balance sheets, respectively.

The Company had the following activity for warranty liabilities:

<b>(in thousands)</b>	<b>Years Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Balance at beginning of period	\$ 8,397	\$ 4,621	\$ 2,009
Additions charged to expense for current year sales	9,234	6,399	4,185
Deduction from reserves for current year claims	(2,618)	(2,623)	(1,573)
Balance at end of period	<u>\$ 15,013</u>	<u>\$ 8,397</u>	<u>\$ 4,621</u>

### **Debt Issuance Costs and Discounts**

Debt issuance costs and discounts that relate to borrowings are presented in the consolidated balance sheet as a direct reduction from the carrying amount of the related debt liability and are amortized into interest expense using an effective interest rate over the duration of the debt. Debt issuance costs that relate to revolving lines of credit are carried as an asset in the consolidated balance sheet and amortized to interest expense on a straight-line basis over the term of the related line of credit facility. Refer to Note 9 – *Debt*.

## ***Warrant Liabilities***

The Company accounted for its incremental loan warrants as liability warrants under the provisions of ASC 480, *Distinguishing Liabilities from Equity*. ASC 480 requires the recording of certain liabilities at their fair value. Changes in the fair value of these liabilities are recognized in earnings. These warrants contained a repurchase provision which, upon an occurrence of a fundamental transaction as defined in the warrant agreement, could have given rise to an obligation of the Company to pay cash to the warrant holders. In addition, other provisions may have led to a reduction in the exercise price of the warrants. The Company determined the fundamental transaction provisions required the warrants to be accounted for as a liability at fair value on the date of the transaction, with changes in fair value recognized in earnings in the period of change. The Company used the Monte Carlo Simulation of a Geometric Brownian Motion stock path model to determine the fair value of the liability. The model uses key assumptions and inputs such as exercise price, fair market value of common stock, risk free interest rate, warrant life, expected volatility and the probability of a warrant re-price. All of the incremental loan warrants were exercised during fiscal 2020.

The Company accounted for its public warrants in accordance with ASC 815, *Derivatives and Hedging—Contracts in Entity's Own Equity*, under which these warrants did not meet the criteria for equity classification and were recorded as liabilities. Since the public warrants met the definition of a derivative as contemplated in ASC 815, these warrants were measured at fair value at inception and at each reporting date in accordance with ASC 820, *Fair Value Measurement*, with changes in fair value recognized in earnings in the period of change. The Company determined the fair value of the public warrants based on their public trading price. All of the public warrants were exercised during fiscal 2020.

The Company accounts for its sponsor warrants in accordance with ASC 815, under which these warrants do not meet the criteria for equity classification and must be recorded as liabilities. Since the sponsor warrants meet the definition of a derivative as contemplated in ASC 815, these warrants are measured at fair value at inception and at each reporting date in accordance with ASC 820 with changes in fair value recognized in earnings in the period of change. The Company uses the Black Scholes model to determine the fair value of the liability associated with the sponsor warrants. The model uses key assumptions and inputs such as exercise price, fair market value of common stock, risk free interest rate, warrant life and expected volatility. At December 31, 2021, there were 1.9 million sponsor warrants outstanding.

## ***Fair Value Measurements***

The Company uses the fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, essentially an exit price, based on the highest and best use of the asset or liability. The levels of the fair value hierarchy are:

Level 1—Quoted market prices in active markets for identical assets or liabilities;

Level 2—Significant other observable inputs (e.g., quoted prices for similar items in active markets, quoted prices for identical or similar items in markets that are not active, inputs other than quoted prices that are observable, such as interest rate and yield curves, and market-corroborated inputs); and

Level 3—Unobservable inputs in which there is little or no market data, which require the reporting unit to develop its own assumptions.

The classification of fair value measurements within the established three-level hierarchy is based upon the lowest level of input that is significant to the measurements. Financial instruments, although not recorded at fair value on a recurring basis include cash and cash equivalents, receivables, accounts payable, and the Company's debt obligations. The carrying amounts of cash and cash equivalents, receivables and accounts payable approximate fair value because of the short-term nature of these accounts. The fair value of the Company's debt instruments is estimated to be face value based on the contractual terms of the debt arrangements and market-based expectations.

The public warrant liabilities are Level 1 instruments as they have quoted market prices in an active market. The sponsor and incremental loan warrant liabilities are Level 3 instruments and use internal models to estimate fair value using certain significant unobservable inputs which requires determination of relevant inputs and assumptions. Accordingly, changes in these unobservable inputs may have a significant impact on fair value. Such inputs include risk free interest rate, expected average life, expected dividend yield, and expected volatility. These Level 3 liabilities generally decrease (increase) in value based upon an increase (decrease) in risk free interest rate and expected dividend yield. Conversely, the fair value of these Level 3 liabilities generally increase (decrease) in value if the expected average life or expected volatility were to increase (decrease).

The following table presents information about the Company's liabilities that are measured at fair value on a recurring basis and indicates the fair value hierarchy of the valuation inputs the Company utilized to determine such fair value:

(In thousands)	Level	December 31,	
		2021	2020
Sponsor warrants	3	\$ 4,343	\$ 92,708

All of the public warrants (a Level 1 fair value liability) and all of the incremental loan warrants (a Level 3 fair value liability) were exercised during 2020.

The following table summarizes the Company's total Level 3 liability activity for the years ended December 31, 2021, 2020 and 2019:

(In thousands)	Sponsor Warrants	Incremental Loan Warrants	Total Level 3 Liabilities
Fair value as of December 31, 2018	\$ 2,673	\$ —	\$ 2,673
Initial measurement	—	4,864	4,864
Fair value transfer to Level 1 measurement	(321)	—	(321)
Change in valuation inputs <sup>(1)</sup>	5,337	16,758	22,095
Fair value as of December 31, 2019	\$ 7,689	\$ 21,622	\$ 29,311
Fair value transfer to Level 1 measurement	(1,275)	—	(1,275)
Fair value of warrants exercised	(3,690)	(81,040)	(84,730)
Change in valuation inputs <sup>(1)</sup>	89,984	59,418	149,402
Fair value as of December 31, 2020	\$ 92,708	\$ —	\$ 92,708
Fair value transfer to Level 1 measurement	—	—	—
Fair value of warrants exercised	(64,311)	—	(64,311)
Change in valuation inputs <sup>(1)</sup>	(24,054)	—	(24,054)
Fair value as of December 31, 2021	\$ 4,343	\$ —	\$ 4,343

(1) Changes in valuation inputs are recognized as the change in fair value – warrant liabilities in the consolidated statement of operations.

### Stock Based Compensation

The Company accounts for stock-based compensation under the provisions of ASC 718, *Compensation—Stock Compensation*. This standard requires the Company to record an expense associated with the fair value of stock-based compensation over the requisite service period.

During 2021, 2020 and 2019, the Company granted stock options under the Company's 2017 Equity Incentive Plan to certain officers, executives and employees of the Company. The fair value for these awards was determined using the Black-Scholes option valuation model at the date of grant. Stock based compensation on these awards is expensed on a straight-line basis over the vesting period. Option pricing models require the input of subjective assumptions including the expected term of the stock option, the expected price volatility of the Company's common stock over the period equal to the expected term of the grant, and the expected risk-free rate. Changes in these assumptions can materially affect the fair value estimate. The Company recognizes forfeitures of stock option awards as they occur.

During 2021, 2020 and 2019, the Company granted stock awards under the 2017 Equity Incentive Plan to members of the Company's Board of Directors and Board advisor for services performed. Stock based compensation for these stock awards was determined on the grant date based on the publicly quoted closing price of our common stock and was expensed on the grant date since all the awards were immediately vested.

During 2021, the Company granted restricted stock units under the Company's 2017 Equity Incentive Plan to certain employees of the Company. Approximately one-third of the restricted stock units granted included a market vesting condition. The estimated fair value of the restricted stock units that do not have the market vesting condition is recognized on a straight-line basis over the vesting period. The estimated fair value of the stock units that included a market vesting condition was measured on the grant date using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model and incorporated the probability of vesting occurring. The estimated fair value of these awards is recognized over the derived service period (as determined by the valuation model), with such recognition occurring regardless of whether the market condition is met.

In May and June 2020, the Company granted restricted stock awards under the Company's 2017 Equity Incentive Plan to certain employees of the Company. The stock awards vest over 3 to 4 years. The estimated fair value of restricted stock is measured on the grant date and is recognized as expense over the vesting period.

In March 2020, the Company granted a restricted stock award under the Company's 2017 Equity Incentive Plan to the Company's independent Board advisor and GPAC observer. The stock award vested in March 2021. As this award included a service condition, the estimated fair value of the restricted stock was measured on the grant date and recognized over the service period. The Company determined that the fair value of the restricted stock on the grant date was immaterial.

During 2019, the Company granted a restricted stock award that had certain vesting conditions which could be met at the earliest in the twelve months ended March 31, 2022. All of the vesting conditions were satisfied on September 30, 2021 and all of the shares became unrestricted on that date. As this award included a market vesting condition, stock-based compensation was determined as the estimated fair value of the restricted stock measured on the grant date using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model which incorporated the probability of vesting occurring. The fair value of the restricted stock was expensed over the derived service period which ended when all of the shares became issuable.

### ***Income Taxes***

Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that the deferred tax assets will be realized. Deferred tax assets and liabilities are calculated by applying existing tax laws and the rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in the year of the enacted rate change. The Company's effective tax rate is primarily impacted by the allocation of income taxes to the noncontrolling interest and changes in our valuation allowance.

The Company accounts for uncertainty in income taxes using a recognition and measurement threshold for tax positions taken or expected to be taken in a tax return, which are subject to examination by federal and state taxing authorities. The tax benefit from an uncertain tax position is recognized when it is more likely than not that the position will be sustained upon examination by taxing authorities based on technical merits of the position. The amount of the tax benefit recognized is the largest amount of the benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The effective tax rate and the tax basis of assets and liabilities reflect management's estimates of the ultimate outcome of various tax uncertainties. The Company recognizes penalties and interest related to uncertain tax positions within the provision (benefit) for income taxes line in the accompanying consolidated statements of operations.

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

### ***Tax Receivable Agreement***

In connection with the Business Combination, the Company entered into the Tax Receivable Agreement with InnoHold, which provides for the payment by the Company to InnoHold of 80% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Closing as a result of (i) any tax basis increases in the assets of Purple LLC resulting from the distribution to InnoHold of the cash consideration, (ii) the tax basis increases in the assets of Purple LLC resulting from the redemption by Purple LLC or the exchange by the Company, as applicable, of Class B Paired Securities or cash, as applicable, and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, payments it makes under the Tax Receivable Agreement.

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of its Class B Units, a liability under the Tax Receivable Agreement (a "TRA Liability") may be recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. The amount of the increase in asset basis, the related estimated cash tax savings and the attendant TRA Liability to be recorded will depend on the price of the Company's Class A Stock at the time of the relevant redemption or exchange. The estimation of liability under the Tax Receivable Agreement is by its nature imprecise and subject to significant assumptions regarding the amount and timing of future taxable income.

## ***Segment Information***

Operating segments are defined as components of an enterprise for which separate financial information is evaluated regularly by the chief operating decision maker (“CODM”). The role of the CODM is to make decisions about allocating resources and assessing performance. The Company’s operations are based on an omni-channel distribution strategy that allows the Company to offer a seamless shopping experience to its customers across multiple sales channels. The Company concluded its business operates in one operating segment as all of the Company’s sales channels are complimentary and analyzed in the same manner. Also, the CODM reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. Since the Company operates in one operating segment, all required financial segment information can be found throughout the consolidated financial statements. The Company’s chief executive officer has been identified as its CODM.

## ***Net Income (Loss) Per Share***

Basic net income (loss) per common share is calculated by dividing net income (loss) attributable to common stockholders by the weighted average number of shares of Class A stock outstanding during each period. Diluted net income (loss) per share reflects the weighted-average number of common shares outstanding during the period used in the basic net income (loss) computation plus the effect of common stock equivalents that are dilutive. The Company uses the “if-converted” method to determine the potential dilutive effect of conversions of its outstanding Class B Stock, and the treasury stock method to determine the potential dilutive effect of its outstanding warrants, share-based payment awards and the vesting of unvested Class A Stock.

## ***Recent Accounting Pronouncements***

### *Reference Rate Reform*

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting* (ASU 2020-04), which provides guidance to alleviate the burden in accounting for reference rate reform by allowing certain expedients and exceptions in applying generally accepted accounting principles to contracts, hedging relationships, and other transactions impacted by reference rate reform. The provisions of ASU 2020-04 apply only to those transactions that reference LIBOR or another reference rate expected to be discontinued due to reference rate reform. This standard is currently effective and upon adoption may be applied prospectively to contract modifications made on or before December 31, 2022, when the reference rate replacement activity is expected to be completed. The interest rates on the Company’s term loan and revolving line of credit are based on LIBOR. In February 2022 the Company entered into an amendment to the 2020 Credit Agreement that changed the interest reference rate from LIBOR to SOFR. See Note 20 —*Subsequent Events* for discussion of the amendment to the 2020 Credit Agreement. The Company plans to apply the amendments in this update to account for this and any contract modifications that result from changes in the reference rate used. The Company does not expect these amendments to have a material impact on its consolidated financial statements and related disclosures.

### *Simplifying the Accounting for Income Taxes*

In December 2019, the FASB issued ASU No. 2019-12, *Simplifying the Accounting for Income Taxes* (ASU No. 2019-12). The new guidance eliminates certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences. The new guidance also simplifies aspects of the accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. The guidance became effective for fiscal years beginning after December 15, 2020 and for interim periods within those fiscal years. Early adoption was permitted. The adoption of this standard by the Company on January 1, 2021 did not have a material impact on the Company’s financial position, results of operations, or cash flows.

### *Measurement of Credit Losses*

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (ASU 2016-13), which was further updated and clarified by the FASB through issuance of additional related ASUs. This guidance replaces the existing incurred loss impairment guidance and establishes a single allowance framework for financial assets carried at amortized cost based on expected credit losses. The estimate of expected credit losses requires the incorporation of historical information, current conditions, and reasonable and supportable forecasts. These updates are effective for public companies, excluding Smaller Reporting Companies (“SRC”), for annual periods beginning after December 15, 2019, including interim periods therein. The standard is effective for all other entities for annual periods beginning after December 15, 2022, including interim periods therein. The standard is effective for the Company’s interim and annual financial periods beginning January 1, 2023. This standard is to be applied utilizing a modified retrospective approach. The Company is currently evaluating the impact of this standard on its accounts receivable, cash and cash equivalents, and any other financial assets measured at amortized cost and does not expect that adoption will have a material impact on its consolidated financial statements or related disclosures.

### 3. Revenue from Contracts with Customers

Revenue is recognized when the Company satisfies its performance obligations under the contract which involves transferring the promised products to the customer as described in Note 2 – *Summary of Significant Accounting Policies*.

#### *Disaggregated Revenue*

The Company classifies revenue into two categories: DTC and Wholesale. The DTC category is comprised of the e-commerce channel that sells directly to consumers who purchase online and through our contact center, and the Purple retail showrooms channel that sells directly to consumers who purchase at a showroom location. The wholesale channel includes all product sales to our retail brick and mortar wholesale partners where consumers make purchases at their retail locations or their online channels. The Company classifies products into two major categories: sleep products and other. Sleep products include mattresses, platforms, adjustable bases, mattress protectors, pillows and sheets. Other products include cushions and various other products.

The following tables present the Company's revenue disaggregated by sales channel and product category (in thousands):

Channel	Years Ended December 31,		
	2021	2020	2019
Direct-to-consumer	\$ 474,217	\$ 485,305	\$ 265,205
Wholesale	252,010	163,166	163,153
Revenues, net	<u>\$ 726,227</u>	<u>\$ 648,471</u>	<u>\$ 428,358</u>

Product	Years Ended December 31,		
	2021	2020	2019
Sleep products	\$ 664,484	\$ 598,046	\$ 401,499
Other	61,743	50,425	26,859
Revenues, net	<u>\$ 726,227</u>	<u>\$ 648,471</u>	<u>\$ 428,358</u>

#### *Contract Balances*

Payment for sale of products through the e-commerce online channel, third-party online retailers, Purple retail showrooms and contact center is collected at point of sale in advance of shipping the products. Amounts received for unshipped products are recorded as customer prepayments. Customer prepayments totaled \$10.9 million and \$6.3 million at December 31, 2021 and 2020, respectively. During the years ended December 31, 2021, 2020 and 2019, the Company recognized all of the revenue that was deferred in customer prepayments at December 31, 2020, 2019 and 2018, respectively.

### 4. Inventories

Inventories consisted of the following:

(in thousands)	As of December 31,	
	2021	2020
Raw materials	\$ 33,609	\$ 26,372
Work-in-process	4,023	3,593
Finished goods	63,419	36,280
Inventory obsolescence reserve	(2,361)	(519)
Inventories, net	<u>\$ 98,690</u>	<u>\$ 65,726</u>

## 5. Property and Equipment

Property and equipment consisted of the following:

(in thousands)	As of December 31,	
	2021	2020
Equipment	\$ 58,094	\$ 30,508
Equipment in progress	19,840	18,648
Leasehold improvements	38,098	15,758
Furniture and fixtures	12,482	5,160
Office equipment	4,843	3,185
Total property and equipment	133,357	73,259
Accumulated depreciation	(20,743)	(11,773)
Property and equipment, net	\$ 112,614	\$ 61,486

Equipment in progress reflects equipment, primarily related to mattress manufacturing, which is being constructed and was not in service at December 31, 2021 or 2020. Interest capitalized on borrowings during the active construction period of major capital projects totaled \$1.0 million during the year ended December 31, 2021. There was no interest capitalized during 2020 or 2019. Depreciation expense was \$9.2 million, \$5.5 million and \$3.6 million for the years ended December 31, 2021, 2020 and 2019, respectively.

## 6. Leases

The Company leases its manufacturing and distribution facilities, corporate offices, Purple retail showrooms and certain equipment under non-cancelable operating leases with various expiration dates through 2036. The Company's office and manufacturing leases provide for initial lease terms up to 16 years, while Purple retail showrooms have initial lease terms of up to ten years. Certain leases may contain options to extend the term of the original lease. The exercise of lease renewal options is at the Company's discretion. Any lease renewal options are included in the lease term if exercise is reasonably certain at lease commencement. The Company also leases vehicles and other equipment under both operating and finance leases with initial lease terms of three to five years. The ROU asset for finance leases was \$0.7 million and \$0.6 million as of December 31, 2021 and 2020, respectively.

The following table presents the Company's lease costs (in thousands):

	Years Ended December 31,	
	2021	2020
Operating lease costs	\$ 8,910	\$ 5,736
Variable lease costs	2,207	317
Short-term lease costs	224	34
Total lease costs	\$ 11,341	\$ 6,087

In 2019, the Company recorded rent expense on lease payments, including those with rent escalations and rent-free periods, on a straight-line basis over the expected lease term. During the year ended December 31, 2019, the Company recognized rent expense of \$3.9 million.

The table below reconciles the undiscounted cash flows for each of the first five years and total remaining years to the operating lease liabilities recorded on the consolidated balance sheet at December 31, 2021 (in thousands):

Year ended December 31,	
2022 <sup>(1)</sup>	\$ 8,453
2023	11,475
2024	11,514
2025	11,408
2026	11,286
Thereafter	63,360
Total operating lease payments	117,496
Less – lease payments representing interest	(29,284)
Present value of operating lease payments	\$ 88,212

(1) – Amount consists of \$11.6 million of undiscounted cash flows offset by \$3.2 million of tenant improvement allowances which are expected to be fully utilized in fiscal 2022.



As of December 31, 2021 and 2020, the weighted-average remaining term of operating leases was 10.7 years and 11.8 years, respectively, and the weighted-average discount rate was 5.30% and 6.18%, respectively, for operating leases recognized on the consolidated balance sheet.

The following table provides supplemental information related to the Company's consolidated statement of cash flows (in thousands):

	<b>Years Ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Cash paid for amounts included in present value of operating lease liabilities	\$ 2,779	\$ 1,732
Right-of-use assets obtained in exchange for operating lease liabilities	31,567	17,216

At the inception of a lease entered into in fiscal 2020, the Company recorded \$0.9 million for the present value of an asset retirement obligation (ARO) to cover costs associated with the future restoration of the leased property. During the year ended December 31, 2021, the Company recorded accretion of the ARO liability totaling \$0.1 million. The Company recorded a minimal amount of accretion in 2020. The ARO liability at both December 31, 2021 and 2020 was \$0.9 million.

## 7. Intangible Assets

The following table provides the components of intangible assets:

(in thousands, except useful life)	Useful life (years)	<b>As of December 31, 2021</b>			<b>As of December 31, 2020</b>		
		<b>Gross Cost</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Value</b>	<b>Gross Cost</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Value</b>
Indefinite-lived non-amortizing:							
License agreement		\$ 8,456	\$ —	\$ 8,456	\$ 8,456	\$ —	\$ 8,456
Trademarks		30	—	30	30	—	30
Definite-lived amortizing:							
Internet domain	15	900	(250)	650	900	(190)	710
License agreement	1	2,220	(2,220)	—	2,220	(2,220)	—
Internal-use software	3	4,467	(399)	4,068	921	(172)	749
<b>Intangible assets, net</b>		<b>\$ 16,073</b>	<b>\$ (2,869)</b>	<b>\$ 13,204</b>	<b>\$ 12,527</b>	<b>\$ (2,582)</b>	<b>\$ 9,945</b>

Prior to the Business Combination, Purple LLC entered into an agreement pursuant to which EdiZONE transferred tangible and intellectual property to Purple LLC that was then licensed back to EdiZONE to enable them to continue to meet certain preexisting license obligations it had with various third parties. On August 14, 2020, Purple LLC entered into a separate agreement whereby EdiZONE, for consideration of \$8.5 million, assigned a license agreement with Advanced Comfort Technologies, Inc. dba Intellibed ("ACTI"), and related royalties payable thereunder, to Purple LLC, along with the trademarks GEL MATRIX and INTELLIPILLOW. The payment made to EdiZONE was recorded in the Company's consolidated balance sheet at December 31, 2020 as an indefinite-lived non-amortizing license because the agreement with ACTI is perpetual.

On January 13, 2020, Purple LLC entered into a supply and services agreement with Responsive Surface Technology, LLC (“ReST”) whereby the Company acquired a license and made a prepayment for future products and services to be provided by the third party. The \$4.0 million paid upon execution of the contract was allocated to a license for certain technologies (\$2.2 million), inventory to be utilized by the third party in the production of goods (\$0.8 million) and future professional services to be delivered by the third party (\$1.0 million). On October 13, 2020, Purple LLC filed suit against ReST and its parent company for alleged violations under the contract. In response, ReST filed a counter lawsuit against Purple LLC. These lawsuits effectively ended any future performance under the contract. As a result, during the third quarter of fiscal 2020, the Company recorded as cost of revenues in its consolidated statement of operations an impairment charge of \$0.6 million for unamortized license costs. The Company also recorded write-offs of \$0.8 million, and \$0.3 million for prepaid professional services and prepaid inventory, respectively. Refer to Note 12 — *Commitments and Contingencies* — *Legal Proceedings* for additional information. There were no impairment charges related to intangible assets in 2021 or 2019.

Amortization expense for intangible assets was \$0.3 million, \$2.4 million and \$0.7 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Estimated amortization expense for definite-lived intangible assets is expected to be as follows for the next five years:

(in thousands)

Year ended December 31,

2022	\$	1,039
2023		1,233
2024		1,304
2025		533
2026		259
Thereafter		350
Total future amortization for definite-lived intangible assets	\$	<u>4,718</u>

## 8. Other Current Liabilities

The Company’s other current liabilities consisted of the following:

(in thousands)	As of December 31,	
	2021	2020
Warranty accrual - current portion	\$ 3,914	\$ 2,806
Long-term debt and unamortized issuance costs - current portion	2,297	2,004
Insurance financing	1,043	910
Tax receivable agreement liability – current portion	5,847	6,545
Other	369	1,318
Total other current liabilities	<u>\$ 13,470</u>	<u>\$ 13,583</u>

## 9. Debt

Debt consisted of the following (in thousands):

	December 31, 2021	December 31, 2020
Term loan	\$ 42,188	\$ 44,438
Revolving line of credit	55,000	—
Less: unamortized debt issuance costs	(778)	(1,024)
Total debt	<u>96,410</u>	<u>43,414</u>
Less: current portion of debt and unamortized issuance costs	(2,297)	(2,004)
Debt, net of current portion	<u>\$ 94,113</u>	<u>\$ 41,410</u>

### ***Term Loan and Revolving Line of Credit***

On September 3, 2020, Purple LLC entered into a financing arrangement with KeyBank National Association and a group of financial institutions (the “2020 Credit Agreement”). The 2020 Credit Agreement provides for a \$45.0 million term loan and a \$55.0 million revolving line of credit.

The borrowing rates for the term loan are based on Purple LLC’s leverage ratio, as defined in the 2020 Credit Agreement, and can range from LIBOR plus a 3.00% to 3.75% margin with a LIBOR minimum of 0.50%. The current borrowing rate of 3.50% is based on LIBOR plus 3.00%. The term loan will be repaid in accordance with a five-year amortization schedule and may be prepaid in whole or in part at any time without premium or penalty, subject to reimbursement of certain costs. There may be mandatory prepayment obligations based on excess cash flow. As of December 31, 2021, there was no mandatory prepayment obligation.

Pursuant to a Pledge and Security Agreement between Purple LLC, KeyBank and the Company (the “Security Agreement”), the 2020 Credit Agreement is secured by a perfected first-priority security interest in the assets of Purple LLC and the Company, including a security interest in all intellectual property. Also, the Company agreed to an unconditional guaranty of the payment of all obligations and liabilities of Purple LLC under the 2020 Credit Agreement. The Security Agreement contains a pledge, as security for the Company’s guaranty, of all its ownership interest in Purple LLC. The 2020 Credit Agreement also provides for standard events of default, such as for non-payment and failure to perform or observe covenants, and contains standard indemnifications benefitting the lenders.

The 2020 Credit Agreement includes representations, warranties and certain covenants of Purple LLC and the Company. While any amounts are outstanding under the 2020 Credit Agreement, Purple LLC is subject to several affirmative and negative covenants, including covenants regarding dispositions of property, investments, forming or acquiring subsidiaries, business combinations or acquisitions, incurrence of additional indebtedness, and transactions with affiliates, among other customary covenants, subject to certain exceptions. In particular, Purple LLC is (i) subject to annual capital expenditure limits that can be adjusted based on the Company achieving certain net leverage ratio thresholds as provided in the 2020 Credit Agreement, (ii) restricted from incurring additional debt up to certain amounts, subject to limited exceptions, as set forth in the 2020 Credit Agreement, and (iii) maintain minimum consolidated net leverage and fixed charge coverage ratio thresholds at certain measurement dates (as defined in the 2020 Credit Agreement). Purple LLC is also restricted from paying dividends or making other distributions or payments on its capital stock, subject to limited exceptions. If the Company or Purple LLC fail to perform their obligations under these and other covenants, or should any event of default occur, the revolving loan commitments under the 2020 Credit Agreement may be terminated and any outstanding borrowings, together with accrued interest, could be declared immediately due and payable. The Company was unable to meet certain financial and performance covenants required pursuant to the 2020 Credit agreement for the year ended December 31, 2021. The Company was granted a waiver and entered into an amendment of the 2020 Credit Agreement. See Note 20—*Subsequent Events* for a discussion of the amendment.

The \$55.0 million revolving credit facility established under the 2020 Credit Agreement has a term of five years and carries the same interest provisions as the term debt. A commitment fee is due quarterly based on the applicable margin applied to the unused total revolving commitment. The agreement for this revolving credit facility contains customary covenants and events of default. In November 2021, pursuant to the 2020 Credit Agreement, the Company executed a \$55.0 million draw on its revolving line of credit, which represents the full amount available under the revolving credit facility. The initial borrowing rate of 3.50% was based on the LIBOR floor of 0.5% plus 3.00%.

The Company incurred \$2.5 million in debt issuance costs for the 2020 Credit Agreement. These costs relate to the entire credit arrangement and therefore were allocated between the term loan and the revolving line of credit. The Company determined \$1.1 million of the debt issuance costs related to the term debt and are presented in the consolidated balance sheet as a direct reduction from the carrying amount of the debt liability. This amount is being amortized into interest expense using an effective interest rate over the duration of the debt. The remaining \$1.4 million of debt issuance costs were allocated to the revolving line of credit. This amount is classified as other assets and is being amortized to interest expense on a straight-line basis over the term of the revolving credit facility.

The interest rate for both the term loan and revolving credit facility throughout the year ended December 31, 2021 was 3.5% based on the LIBOR floor of 0.5% plus 3.0%. Interest expense under the 2020 Credit Agreement totaled \$2.4 million and \$0.7 million for the years ended December 31, 2021 and 2020, respectively.

### ***Related Party Loan***

On February 2, 2018, Purple LLC entered into a financing arrangement with Coliseum Capital Partners, L.P. (“CCP”), Blackwell Partners LLC – Series A (“Blackwell”) and Coliseum Co-invest Debt Fund, L.P. (“CDF”) and together with CCP and Blackwell, the “Lenders”), pursuant to which the Lenders agreed to make a loan (the “2018 Credit Agreement”) in an aggregate principal amount of \$25.0 million (the “Original Loan”).

On January 28, 2019, Purple LLC entered into a First Amendment to the 2018 Credit Agreement (the “First Amendment”) whereby Purple LLC agreed to enter into the Amended and Restated Credit Agreement, under which two of the Lenders (“Incremental Lenders”) agreed to provide an incremental loan of \$10.0 million (the “Incremental Loan”) such that the total amount of principal indebtedness provided to Purple LLC was increased to \$35.0 million. Upon funding the \$10.0 million Incremental Loan on February 26, 2019, the Company issued to the Incremental Lenders 2.6 million warrants (“Incremental Loan Warrants”) to purchase 2.6 million shares of the Company’s Class A Stock at a price of \$5.74 per share, subject to certain adjustments.

In February 2019, the Company accounted for the debt restructuring under the Amended and Restated Credit Agreement in accordance with ASC 470 - *Debt*. The Company concluded there were separate lenders for purposes of determining if there was an extinguishment or modification. The amended debt terms with CDF were not determined to be substantial and therefore the existing debt attributable to CDF was accounted for as a modification of debt. The amended debt terms with the Incremental Lenders were determined to be substantially different terms from the existing debt agreement and therefore required to be accounted for as an extinguishment of existing debt. Accordingly, the Company recognized a loss on the extinguishment of its existing debt of \$6.3 million during 2019. This was a non-cash expense primarily associated with the recognition of related unamortized debt discount and debt issuance costs and the \$4.9 million fair value of the incremental warrants at the time of issuance.

On March 27, 2020, the Company entered into the First Amendment to the Amended and Restated Credit Agreement with the Lenders. Pursuant to the Amendment, the Company deferred and capitalized the full amount of interest payments due on March 31, 2020 and June 30, 2020 to reduce cash disbursements during the COVID-19 pandemic. The Company accounted for this amendment as a modification of existing debt in accordance with ASC 470 - *Debt*.

On September 3, 2020, the Company paid \$45.0 million to retire, in full, all indebtedness related to Purple LLC’s 2018 Credit Agreement and all its related amendments and agreements. The payment included \$25.0 million for the Original Loan, \$10.0 for the Incremental Loan, \$6.6 million of paid-in-kind interest, \$2.5 million for a prepayment fee and \$0.9 million for accrued interest. The Company accounted for the pay off of the 2018 Credit Agreement and all its subsequent agreements and amendments as an extinguishment of debt in accordance with ASC 470 - *Debt*. Accordingly, the Company recognized a \$5.8 million loss in 2020 that consisted of \$2.5 million in prepayment fees and \$3.3 million in the recognition of related unamortized debt discount and debt issuance costs.

Interest expense under the 2018 Credit Agreement was \$4.0 million and \$4.4 million for the years ended December 31, 2020 and 2019, respectively.

As of December 31, 2021, the scheduled maturities of debt outstanding for each of the next five years and thereafter are as follows (in thousands):

<b>Year ended December 31,</b>	<b>Total</b>
2022	\$ 2,532
2023	3,375
2024	3,656
2025	87,625
2026	—
Thereafter	—
<b>Total</b>	<b>\$ 97,188</b>

## 10. Warrant Liabilities

On February 26, 2019, the Incremental Lenders funded the \$10.0 million Incremental Loan and received 2.6 million Incremental Loan Warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of \$5.74 per share, subject to certain adjustments. In May 2020, Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company. As a result, the exercise price of the warrants was reduced to zero based on the formula established in the agreement. The Company accounted for the Incremental Loan Warrants as liabilities in accordance with ASC 480 - *Distinguishing Liabilities from Equity* and recorded them at fair value on the date of the transaction and subsequently re-measured to fair value at each reporting date with changes in the fair value included in earnings.

On November 9, 2020, the Company issued 2.6 million shares of Class A Stock pursuant to the exercise of all of the warrants held by the Incremental Lenders. The Company determined the fair value of the Incremental Loan Warrants to be \$81.0 million at the time of exercise. The fair value of the Incremental Loan Warrants was \$21.6 million at December 31, 2019. The Company recorded losses of \$59.4 million and \$16.8 million related to increases in the fair value of the Incremental Loan Warrants for the years ended December 31, 2020 and 2019, respectively.

The fair value of the Incremental Loan Warrants was calculated using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model. The following are the assumptions used in calculating fair value on the date of the exercise:

Trading price of common stock on measurement date	\$	31.00
Exercise price		—
Risk free interest rate		0.90%
Warrant life in years		0.07
Expected volatility		45.46%
Expected dividend yield		—
Probability of an event causing a warrant re-price		100.00%

The following are the assumptions used in calculating fair value on December 31, 2019:

Trading price of common stock on measurement date	\$	8.71
Exercise price	\$	5.74
Risk free interest rate		1.69%
Warrant life in years		4.2
Expected volatility		36.82%
Expected dividend yield		—
Probability of warrant re-price		95%

The public and sponsor warrants that were issued in connection with the Company's initial public offering and a simultaneous private placement contain certain provisions that do not meet the criteria for equity classification and therefore must be recorded as liabilities. The liability for the warrants was recorded at fair value on the date of the Business Combination and subsequently re-measured to fair value at each reporting date or exercise date with changes in the fair value included in earnings.

In 2021, 6.6 million sponsor warrants were exercised resulting in the issuance of 2.3 million shares of Class A common stock and cash proceeds to the Company of \$0.1 million. During the year ended December 31, 2020, 15.5 million public warrants and 4.3 million sponsor warrants were exercised resulting in the issuance of 7.6 million shares of Class A Stock and cash proceeds to the Company of \$46.4 million. There were no public warrants or sponsor warrants exercised during 2019. The 1.9 million sponsor warrants outstanding at December 31, 2021 had a fair value of \$4.3 million, while the 8.5 million sponsor warrants outstanding at December 31, 2020 had a fair value of \$92.7 million. All of the public warrants were exercised during fiscal 2020. The fair value of the public and sponsor warrants outstanding at December 31, 2019 was \$23.8 million.

The Company determined the fair value of the public warrants based on their public trading price. The Company determined the fair value of the sponsor warrants using a Black Scholes model with the following assumptions:

	December 31,		
	2021	2020	2019
Trading price of common stock on measurement date	\$ 13.27	\$ 32.94	\$ 8.71
Exercise price	\$ 5.75	\$ 5.75	\$ 5.75
Risk free interest rate	0.39%	0.13%	1.62%
Warrant life in years	1.1	2.1	3.1
Expected volatility	73.78%	50.64%	38.06%
Expected dividend yield	—	—	—

During the year ended December 31, 2021, the Company recognized a gain of \$24.1 million in its consolidated statement of operations related to decreases in the fair value of the sponsor warrants exercised during the respective periods or that were outstanding at the end of the respective period. During the years ended December 31, 2020 and 2019, the Company recognized losses of \$240.7 million and \$18.5 million, respectively, in its consolidated statement of operations related to increases in the fair value of the public and sponsor warrants exercised during the respective periods or that were outstanding at the end of the respective periods.

## 11. Other Long-Term Liabilities

Other long-term liabilities consisted of the following (in thousands):

	As of December 31,	
	2021	2020
Warranty accrual	\$ 15,013	\$ 8,397
Other	962	912
Total	15,975	9,309
Less: current portion of warranty accrual	(3,914)	(2,806)
Other long-term liabilities, net of current portion	\$ 12,061	\$ 6,503

## 12. Commitments and Contingencies

### *Required Member Distributions*

Prior to the Business Combination and pursuant to the then applicable First Amended and Restated Limited Liability Company Agreement (the “First Purple LLC Agreement”), Purple LLC was required to distribute to its members an amount equal to 45 percent of Purple LLC’s net taxable income following the end of each fiscal year. The First Purple LLC Agreement was amended and replaced by the Second Amended and Restated Limited Liability Company Agreement (the “Second Purple LLC Agreement”) on February 2, 2018 as part of the Business Combination. The Second Purple LLC Agreement was amended and replaced by the Third Amended and Restated Limited Liability Company Agreement (the “Third Purple LLC Agreement”) on September 3, 2020. The Second Purple LLC Agreement and the Third Purple LLC Agreement do not include any mandatory distributions, other than tax distributions. During the years ended December 31, 2021 and 2020, the Company paid \$1.2 million and \$5.5 million, respectively, in tax distributions under these agreements. At December 31, 2021, the Company’s consolidated balance sheet had a \$0.1 million net asset associated with these tax distributions due to overpayments. At December 31, 2020, the Company’s consolidated balance sheet had \$0.7 million of accrued tax distributions included in other current liabilities. No distributions were made under these agreements in 2019.

### *Service Agreement*

In October 2017, the Company entered into an electric service agreement with the local power company in Grantsville, Utah. The agreement provided for the construction and installation of certain utility improvements to provide increased power capacity to the manufacturing and warehouse facility there. The Company prepaid \$0.5 million related to the improvements and agreed to a minimum contract billing amount over a 15-year period based on regulated rate schedules and changes in actual demand during the billing period. The agreement includes an early termination clause that requires the Company to pay a pro-rata termination charge if the Company terminates within the first 10-years of the service start date. The original early termination charge was \$1.3 million and is reduced annually on a straight-line basis over the 10-year period. During 2018, the utility improvements construction was completed and were made available to the Company. As of December 31, 2021, the early termination penalty was \$0.7 million and the Company expects to fulfill its commitments under the agreement in the normal course of business, and as such, no liability has been recorded.

### ***Indemnification Obligations***

From time to time, the Company enters into contracts that contingently require it to indemnify parties against claims. These contracts primarily relate to provisions in the Company's services agreements with related parties that may require the Company to indemnify the related parties against services rendered; and certain agreements with the Company's officers and directors under which the Company may be required to indemnify such persons for liabilities. In connection with the Business Combination, to secure the payment of a certain portion of specified post-closing indemnification rights of the Company, 0.5 million shares of Class B Stock and 0.5 million Class B Units otherwise issuable to InnoHold as equity consideration were deposited in an escrow account for up to three years from the date of the Business Combination pursuant to a contingency escrow agreement. In September 2020, an amendment to the escrow agreement was signed whereby the 0.5 million shares of Class B Stock and 0.5 million Class B Units held in escrow were exchanged for \$5.0 million. On February 3, 2021 the Company received \$4.1 million from InnoHold as reimbursement for amounts that qualified for indemnification from the \$5.0 million being held in escrow. The remaining \$0.9 million in escrow was returned to InnoHold. The amount received from InnoHold was recorded as additional paid-in capital in the fiscal 2021 consolidated balance sheet.

### ***Subscription Agreement and Preemptive Rights***

In February 2018, in connection with the Business Combination, the Company entered into a subscription agreement with CCP and Blackwell, pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of \$10.00 per share (the "Coliseum Private Placement"). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A Stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A Stock to CCP, Blackwell, and CDF. The subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company's securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A Stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A Stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

### ***Rights of Securities Holders***

The holders of certain warrants exercisable into Class A Stock, including CCP, Blackwell and CDF, were entitled to registration rights pursuant to certain registration rights agreements of the Company as of the Business Combination date. In March 2018, the Company filed a registration statement registering the warrants (and any shares of Class A Stock issuable upon the exercise of the warrants), and certain unregistered shares of Class A Stock. The registration statement was declared effective on April 3, 2018. Under the Registration Rights Agreement dated February 2, 2018 between the Company and CCP, Blackwell, and CDF (the "Coliseum Investors"), the Coliseum Investors have the right to make written demands for up to three registrations of certain warrants and shares of Class A Stock held by them, including in underwritten offerings. In an underwritten offering of such warrants and shares of Class A Stock by the Coliseum Investors, the Company will pay underwriting discounts and commissions and certain expenses incurred by the Coliseum Investors.

On May 21, 2021, 7.3 million shares of Class A common stock were sold in a secondary offering by the Coliseum Investors at a price of \$30.00 per share. The Company did not receive any of the proceeds from the secondary offering. The underwriting discount, commission and other related costs incurred by the Company for the secondary offering totaled \$7.9 million and was recorded by the Company as general and administrative expense in the consolidated statement of operations for the year ended December 31, 2021.

The holders of the Incremental Loan Warrants exercisable into Class A Stock were entitled to registration rights pursuant to the registration rights agreement of the Company in connection with the Amended and Restated Credit Agreement. In March 2019, the Company filed a registration statement registering the Warrants (and any shares of Class A Stock issuable upon the exercise of the Warrants). The registration statement was declared effective on May 17, 2019. On November 9, 2020, the Company issued 2.6 million shares of Class A common stock in exchange for the exercised Incremental Loan Warrants.

On February 2, 2018, in connection with the closing of the Business Combination, the Company entered into a Registration Rights Agreement with InnoHold and the Parent Representative (the "InnoHold Registration Rights Agreement"). Under the InnoHold Registration Rights Agreement, InnoHold holds registration rights that obligate the Company to register for resale under the Securities Act, all, or any portion, of the Equity Consideration (including Class A Stock issued in exchange for the equity consideration received in the Business Combination) (the "Registrable Securities"). InnoHold is entitled to make a written demand for registration under the Securities Act of all or part of its Registrable Securities (up to a maximum of three demands in total). Pursuant to the InnoHold Registration Rights Agreement, the Company filed a registration statement on Form S-3 that was declared effective on November 8, 2019, pursuant to which InnoHold, Tony Pearce and Terry Pearce sold 11.5 million shares of Class A Stock. The Company filed a second registration statement on Form S-3 that was declared effective on May 14, 2020, pursuant to which InnoHold sold 12.4 million shares of Class A Stock. The Company filed a third and final registration statement on Form S-3 that was declared effective on September 9, 2020, pursuant to which InnoHold sold 16.8 million shares of Class A Stock.

### ***Purple LLC Class B Unit Exchange Right***

On February 2, 2018, in connection with the closing of the Business Combination, the Company entered into an exchange agreement with Purple LLC, InnoHold and Class B Unit holders who become a party thereto (the “Exchange Agreement”), which provides for the exchange of Purple LLC Class B Units (the “Class B Units”) and shares of Class B Stock (together with an equal number of Class B Units, the “Paired Securities”) for, at the Company’s option, either (A) shares of Class A Stock at an initial exchange ratio equal to one Paired Security for one share of Class A Stock or (B) a cash payment equal to the product of the average of the volume-weighted closing price of one share of Class A Stock for the ten trading days immediately prior to the date InnoHold or other Class B Unit holders deliver a notice of exchange multiplied by the number of Paired Securities being exchanged. In December 2018, InnoHold distributed Paired Securities to Terry Pearce and Tony Pearce who also agreed to become parties to the Exchange Agreement. In June 2019, InnoHold distributed Paired Securities to certain current and former employees who also agreed to become parties to the exchange agreement. Holders of Class B Units may elect to exchange all or any portion of their Paired Securities as described above by delivering a notice to Purple LLC.

In certain cases, adjustments to the exchange ratio will occur in case of a split, reclassification, recapitalization, subdivision or similar transaction of or relating to the Class B Units or the shares of Class A Stock and Class B Stock or a transaction in which the Class A Stock is exchanged or converted into other securities or property. The exchange ratio will also adjust in certain circumstances when the Company acquires Class B Units other than through an exchange for its shares of Class A Stock.

The right of a holder of Paired Securities to exchange may be limited by the Company if it reasonably determines in good faith that such restrictions are required by applicable law (including securities laws), such exchange would not be permitted under other agreements of such holder with the Company or its subsidiaries, including the Third Purple LLC Agreement, or if such exchange would cause Purple LLC to be treated as a “publicly traded partnership” under applicable tax laws.

The Company and each holder of Paired Securities shall bear its own expense regarding the exchange except that the Company shall be responsible for transfer taxes, stamp taxes and similar duties.

During the years ended December 31, 2021 and 2020, 0.1 million and 30.9 million, respectively, of Paired Securities were exchanged for shares of Class A Stock.

### ***Maintenance of One-to-One Ratios.***

The Third Purple LLC Agreement includes provisions intended to ensure that the Company at all times maintains a one-to-one ratio between (a) (i) the number of outstanding shares of Class A Stock and (ii) the number of Class A Units owned by the Company (subject to certain exceptions for certain rights to purchase equity securities of the Company under a “poison pill” or similar stockholder rights plan, if any, certain convertible or exchangeable securities issued under the Company’s equity compensation plan and certain equity securities issued pursuant to the Company’s equity compensation plan (other than a stock option plan) that are restricted or have not vested thereunder) and (b) (i) the number of other outstanding equity securities of the Company (including the warrants exercisable for shares of Class A Stock) and (ii) the number of corresponding outstanding equity securities of Purple LLC. These provisions are intended to result in non-controlling interest holders having a voting interest in the Company that is identical to their economic interest in Purple LLC.

### ***Non-Income Related Taxes***

The U.S. Supreme Court ruling in *South Dakota v. Wayfair, Inc.*, No.17-494, reversed a longstanding precedent that remote sellers are not required to collect state and local sales taxes. The Company cannot predict the effect of these and other attempts to impose sales, income or other taxes on e-commerce. The Company currently collects and reports on sales tax in all states in which it does business. However, the application of existing, new or revised taxes on the Company’s business, in particular, sales taxes, VAT and similar taxes would likely increase the cost of doing business online and decrease the attractiveness of selling products over the internet. The application of these taxes on the Company’s business could also create significant increases in internal costs necessary to capture data and collect and remit taxes. There have been, and will continue to be, substantial ongoing costs associated with complying with the various indirect tax requirements in the numerous markets in which the Company conducts or will conduct business.



## *Legal Proceedings*

On September 20, 2020, Purple LLC filed a complaint in the U.S. Court of International Trade seeking to recover approximately \$7.0 million of Section 301 duties paid at the time of importation on certain Chinese-origin goods. More than 4,000 other complaints have been filed by other companies seeking similar refunds. On March 12, 2021, the United States filed a master answer that applies to all the Section 301 cases, including Purple LLC's. On July 6, 2021, the court granted a preliminary injunction against liquidation of any unliquidated entries. If successful, this litigation could result in a refund of some or all of the Section 301 duties.

On October 13, 2020, Purple LLC filed a lawsuit against Responsive Surface Technology, LLC and its parent company, PatienTech, LLC (collectively referred to as "ReST") in the U.S. District Court for the District of Utah. The lawsuit arises from ReST's multiple breaches of its obligations to Purple LLC, including infringing upon Purple LLC's trademarks, patents, and trade dress, among other claims. Purple seeks monetary damages, injunctive relief, and declaratory judgment based on certain conduct by ReST ("Case I"). On October 21, 2020, shortly after the complaint was filed in Case I, ReST filed a retaliatory lawsuit against Purple LLC, Gary DiCamillo, Adam Gray, Joseph Megibow, Terry Pearce, and Tony Pearce, also in the United States District Court for the District of Utah ("Case II"). Subsequently, the two cases were consolidated into one case because Case II involves many of the same facts and transactions as Case I. On January 19, 2021, ReST filed a motion to compel arbitration of the claims in Case I. Purple LLC opposed the motion to compel arbitration, arguing that ReST waived any rights they may have had to arbitration and that all the claims in both cases should stay in the courts. However, the Court granted ReST's motion to compel arbitration, and stayed the proceedings in the United States District Court for the District of Utah. Additionally, the Court ruled that ReST's claims against the Purple board members were not subject to arbitration, and the Court stayed ReST's claims against those individuals. Pursuant to the Court's order, Purple filed a demand for arbitration with the American Arbitration Association (the "AAA") on September 1, 2021. ReST filed its counterclaim with the AAA on September 21, 2021. The parties have selected an arbitrator, and they have proposed a scheduling order for the arbitrator. The proposed scheduling order contemplates an arbitration hearing to occur during the fourth quarter of 2022. Purple LLC seeks \$5.5 million in damages from ReST, whereas ReST claims that Purple is liable to it for tens of millions of dollars. The outcome of this litigation cannot be predicted at this early stage. However, Purple intends to vigorously pursue its claims and defend against the claims made by ReST.

On November 19, 2020, Purple LLC sued Advanced Comfort Technologies, Inc., dba Intellibed ("Intellibed") in the U.S. District Court for the District of Utah for patent infringement, trademark infringement, trade secret misappropriation, and a number of related state law based claims. The principal allegations are that Intellibed has manufactured and sold unauthorized, infringing products under the Sleepy's brand name owned by third-party Mattress Firm. Purple LLC also requested declaratory relief related to certain assignment terms of a license agreement in which Purple LLC is the licensor and Intellibed is the licensee. On December 14, 2020, Intellibed filed a motion to dismiss Counts I through XI of Purple LLC's Complaint on the ground that these Counts fail to state a claim upon which relief can be granted. On December 15, 2020, Intellibed filed an Answer to Purple LLC's complaint and also asserted against Purple LLC a total of eight counterclaims, including a number of declaratory judgment claims, breach of contract, and tortious interference claims. Intellibed's main allegations are that its use of Purple LLC's patents, trademark, and trade secrets in connection with Mattress Firm's Sleepy's products is authorized under the license agreement. On January 19, 2021, Purple LLC filed a motion to dismiss Intellibed's fifth, sixth, seventh, and eighth counterclaims on the ground that these counterclaims fail to state a claim upon which relief can be granted. Briefing on Purple LLC's partial motion to dismiss was completed on March 2, 2021. On January 19, 2021, Purple LLC also filed an Answer to Intellibed's counterclaims, which were not subject to Purple LLC's motion to dismiss. On January 27, 2021, Purple LLC filed a First Amended Complaint in response to Intellibed's initial motion to dismiss. On February 10, 2021, Intellibed filed a motion to dismiss Counts I through XI of Purple LLC's First Amended Complaint. Briefing on Intellibed's partial motion to dismiss was completed on March 24, 2021. On September 28, 2021, the District Court dismissed Purple's complaint without prejudice, and also dismissed ACTI's counterclaim without prejudice, while the parties pursued dispute-resolution procedures set out in the license agreement. Because the Court found that the license agreement required the parties to follow the contractual dispute-resolution procedures prior to filing a lawsuit, Purple initiated those procedures in accordance with the license agreement and intends to continue to vigorously pursue its claims.

On June 8, 2021, Serta Simmons Bedding, LLC ("SSB") filed a Complaint against the Company in the Superior Court of Gwinnett County, Georgia, Case No. 21-A-04413-1 (the "Georgia Litigation"). SSB's Complaint alleges that the Company intentionally interfered with SSB's business and contractual relations and violated the Georgia Trade Secrets Act by hiring one of SSB's former employees in the face of an allegedly valid 2015 noncompete agreement. SSB sought compensatory damages, punitive damages, equitable relief, and attorneys' fees as a result of the conduct alleged in the Complaint. SSB also initiated arbitration proceedings against its former employee who Purple LLC agreed to indemnify, subject to certain conditions. On July 12, 2021, the Company filed an Answer to SSB's Complaint in the Georgia Litigation, denying all allegations of unlawful conduct, and further moved to dismiss the Georgia Litigation on the grounds that Georgia is an inconvenient forum and the parties' dispute should instead be litigated in Utah. On July 9, 2021, the Company filed its own Complaint in the Fourth Judicial District Court of Salt Lake County, Utah, Case No. 21040011 (the "Utah Litigation"), seeking: (1) a declaratory judgment that the arbitration clause in the former employee's 2015 noncompete agreement is unenforceable, (2) a declaratory judgment that the restrictive covenants in the former employee's 2015 noncompete agreement are unenforceable, and (3) an order enjoining arbitration proceedings initiated by SSB and currently pending against the former employee. The Company filed a motion for summary judgment on these claims on August 16, 2021. SSB filed an answer on August 18, 2021. After attending a mediation, the parties entered into a settlement agreement on December 31, 2021 resolving all claims in the Georgia Litigation and Utah Litigation. The Company did not pay any monetary consideration to SSB in connection with the settlement agreement. On January 12, 2022, pursuant to the terms of the settlement agreement, SSB dismissed the Georgia Litigation without prejudice and the Company dismissed the Utah Litigation without prejudice.

The Company is from time to time involved in various other claims, legal proceedings and complaints arising in the ordinary course of business. The Company does not believe that adverse decisions in any such pending or threatened proceedings, or any amount that the Company might be required to pay by reason thereof, would have a material adverse effect on the financial condition or future results of the Company.

### 13. Related-Party Transactions

The Company had various transactions with entities or individuals which are considered related parties.

#### *Coliseum Capital Management LLC*

Immediately following the Business Combination, Adam Gray was appointed to the Company's Board. Mr. Gray is a manager of Coliseum Capital, LLC, which is the general partner of CCP and CDF, and he is also a managing partner of Coliseum Capital Management, LLC ("CCM"), which is the investment manager of Blackwell. Mr. Gray has voting and dispositive control over securities held by CCP, CDF and Blackwell which were also the Lenders under the Amended and Restated Credit Agreement. In 2018, the Lenders agreed to make the Original Loan in an aggregate principal amount of \$25.0 million pursuant to the 2018 Credit Agreement entered into as part of the Business Combination. In conjunction with the 2018 Credit Agreement, the Sponsor agreed to assign to the Lenders an aggregate of 2.5 million warrants to purchase 1.3 million shares of its Class A Stock.

In 2019, the Incremental Lenders agreed to provide the \$10.0 million Incremental Loan and were granted 2.6 million warrants to purchase 2.6 million shares of the Company's Class A Stock at a price of \$5.74 per share, subject to certain adjustments. In May 2020, the exercise price of the Incremental Loan Warrants was adjusted to zero pursuant to the terms of the warrant agreement. On November 9, 2020, the Company issued 2.6 million shares of Class A common stock in exchange for the Incremental Loan Warrants held by the Incremental Lenders (See Note 10 — *Warrant Liabilities*).

In accordance with the First Amendment to the Amended and Restated Credit Agreement, the Company did not make any cash interest payments to the Lenders during the first and second quarters of 2020. On September 3, 2020, the Company paid \$45.0 million to retire, in full, all indebtedness related to Purple LLC's 2018 Credit Agreement. The payment included the \$25.0 million Original Loan, the \$10.0 Incremental Loan, \$6.6 million of paid-in-kind interest, \$2.5 million in a prepayment fee and \$0.9 million in accrued interest (See Note 9 — *Debt*).

In connection with the Business Combination, the Company entered into a subscription agreement with CCP and Blackwell, pursuant to which CCP and Blackwell agreed to purchase from the Company an aggregate of 4.0 million shares of Class A Stock at a purchase price of \$10.00 per share (the "Coliseum Private Placement"). In connection with the Coliseum Private Placement, the Sponsor assigned (i) an aggregate of 1.3 million additional shares of Class A Stock to CCP and Blackwell and (ii) an aggregate of 3.3 million warrants to purchase 1.6 million shares of Class A Stock to CCP, Blackwell, and CDF. The subscription agreement provides CCP and Blackwell with preemptive rights with respect to future sales of the Company's securities. It also provides them with a right of first refusal with respect to certain debt and preferred equity financings by the Company. The Company also entered into a registration rights agreement with CCP, Blackwell, and CDF, providing for the registration of the shares of Class A Stock issued and assigned to CCP and Blackwell in the Coliseum Private Placement, as well as the shares of Class A Stock underlying the warrants received by CCP, Blackwell and CDF. The Company has filed a registration statement with respect to such securities.

### ***Purple Founder Entities***

TNT Holdings, LLC (herein “TNT Holdings”), EdiZONE, LLC, (herein EdiZONE an entity wholly owned by TNT Holdings) and InnoHold (collectively the “Purple Founder Entities”) were entities under common control with Purple LLC prior to the Business Combination. TNT Holdings and InnoHold are majority owned and controlled by Terry Pearce and Tony Pearce (the “Purple Founders”), who were appointed to the Company’s Board following the Business Combination. InnoHold was a majority shareholder of the Company until it sold a portion of its interests in a secondary public offering in May 2020 and the remainder of its interests in a secondary public offering in September 2020. The Purple Founders also resigned as employees of Purple LLC and retired from the Board in August 2020.

TNT Holdings owned the Alpine facility Purple LLC has been leasing since 2010, and the Purple Founders informed Purple LLC that TNT Holdings recently transferred ownership to 123E LLC, an entity controlled by the Purple Founders. Effective as of October 31, 2017, Purple LLC entered into an Amended and Restated Lease Agreement with TNT Holdings. The Company determined that neither TNT Holdings nor 123E LLC are a VIE as neither the Company nor Purple LLC hold any explicit or implicit variable interest in TNT Holdings or 123E LLC and do not have a controlling financial interest in TNT Holdings or 123E LLC. Purple LLC incurred \$0.9 million, \$0.9 million and \$1.0 million in rent expense to 123E LLC or TNT Holdings for the building lease of the Alpine facility for the years ended December 31, 2021, 2020 and 2019, respectively. Purple LLC continues to lease the Alpine facility that was formerly the Company headquarters, for use in production, research and development and video production. In accordance with the terms of that lease, on September 1, 2021, Purple LLC gave notice to 123E LLC that it intended to exercise its right to an early termination of the lease to occur on September 30, 2022.

During the years ended December 31, 2021 and 2020, 0.1 million and 30.9 million Paired Securities, respectively, have been exchanged for Class A Stock by InnoHold and certain current and former employees of the Company who received distributions of such Paired Securities from InnoHold.

On November 9, 2018, Purple LLC and EdiZONE executed the Second Amended and Restated Confidential Assignment and License Back Agreement (the “Revised License Agreement”), pursuant to which EdiZONE assigned all of its comfort and cushioning intellectual property to Purple LLC and further limited the subset of such intellectual property licensed back to EdiZONE to only those uses that enabled EdiZONE to comply with its obligations under previously existing contracts, agreements and licenses. On August 14, 2020, Purple LLC entered into a separate agreement whereby EdiZONE, for consideration of \$8.5 million, assigned a license agreement with Advanced Comfort Technologies, Inc., dba Intellibed (“Intellibed”), and related royalties payable thereunder, to Purple LLC, along with the trademarks GEL MATRIX and INTELLIPILLOW. In connection with such assignment, the Company agreed to indemnify EdiZONE against claims by Intellibed relating to EdiZONE’s breach under the agreement.

During the year ended December 31, 2021, Purple LLC paid InnoHold through withholding payments directly to various states, an aggregate of \$0.6 million in required tax distributions pursuant to the Third Purple LLC Agreement. During the year ended December 31, 2020, Purple LLC paid InnoHold either directly or through withholding payments directly to various states, an aggregate of \$4.6 million in required tax distributions pursuant to the Second Purple LLC Agreement.

### **14. Stockholders’ Equity**

Prior to the Business Combination, GPAC was a shell company with no operations, formed as a vehicle to effect a business combination with one or more operating businesses. After the Closing, the Company became a holding company whose sole material asset consists of its interest in Purple LLC.

#### ***Class A Common Stock***

The Company has 210.0 million shares of Class A Stock authorized at a par value of \$0.0001 per share. Holders of the Company’s Class A Stock are entitled to one vote for each share held on all matters to be voted on by the stockholders and participate in dividends, if declared by the Board, or receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock. Holders of the Class A Stock and holders of the Class B Stock voting together as a single class, have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Holders of Class A Stock and Class B Stock are entitled to one vote per share on matters to be voted on by stockholders. At December 31, 2021, 66.5 million shares of Class A Stock were outstanding.

In accordance with the terms of the Business Combination, approximately 1.3 million shares of Class A Stock were subject to vesting and forfeiture. The shares of Class A Stock subject to vesting will be forfeited eight years from the Closing, unless any of the following events (each a “Triggering Event”) occurs prior to that time: (i) the closing price of the Class A Stock on the principal exchange on which it is listed is at or above \$12.50 for 20 trading days over a thirty trading day period (subject to certain adjustments), (ii) a change of control of the Company, (iii) a “going private” transaction by the Company pursuant to Rule 13e-3 under the Exchange Act or such other time as the Company ceases to be subject to the reporting obligations under Section 13 or 15(d) of the Exchange Act, or (iv) the time that the Company’s Class A Stock ceases to be listed on a national securities exchange. During fiscal 2020, a Triggering Event occurred as the closing price of the Class A Stock on the principal exchange on which it is listed was at or above \$12.50 for 20 trading days over a thirty-trading day period. Accordingly, these shares of Class A Stock are no longer subject to vesting or forfeiture.

#### ***Class B Common Stock***

The Company has 90.0 million shares of Class B Stock authorized at a par value of \$0.0001 per share. Holders of the Company’s Class B Stock will vote together as a single class with holders of the Company’s Class A Stock on all matters properly submitted to a vote of the stockholders. Shares of Class B Stock may be issued only to InnoHold, their respective successors and assigns, as well as any permitted transferees of InnoHold. A holder of Class B Stock may transfer shares of Class B Stock to any transferee (other than the Company) only if such holder also simultaneously transfers an equal number of such holder’s Purple LLC Class B units to such transferee in compliance with the Second Purple LLC Agreement. The Class B Stock is not entitled to receive dividends, if declared by the Board, or to receive any portion of any such assets in respect of their shares upon liquidation, dissolution, distribution of assets or winding-up of the Company in excess of the par value of such stock.

In connection with the Business Combination, approximately 44.1 million shares of Series B Stock were issued to InnoHold as part of the equity consideration. InnoHold subsequently transferred a portion of its shares to permitted transferees and exchanged its remaining shares for Class A Stock that it sold. All of the 0.4 million shares of Class B Stock outstanding at December 31, 2021 were held by other parties.

#### ***Preferred Stock***

The Company has 5.0 million shares of preferred stock authorized at a par value of \$0.0001 per share. The preferred stock may be issued from time to time in one or more series. The directors are expressly authorized to provide for the issuance of shares of the preferred stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the voting rights, designations and other special rights or restrictions. At December 31, 2021, there were no shares of preferred stock outstanding.

#### ***Public and Sponsor Warrants***

There were 15.5 million public warrants issued in connection with GPAC’s formation and initial public offering and 12.8 million warrants issued pursuant to a private placement simultaneously with the initial public offering. Each of the Company’s warrants entitled the registered holder to purchase one-half of one share of the Company’s Class A Stock at a price of \$5.75 per half share (\$11.50 per full share), subject to adjustment pursuant the terms of the warrant agreement. In accordance with the warrant agreement, a warrant holder may exercise its warrants only for a whole number of shares of the Class A Stock. In no event will the Company be required to net cash settle any warrant. The warrants have a five-year term which commenced on March 2, 2018, 30 days after the completion of the Business Combination, and will expire on February 2, 2023, or earlier upon redemption or liquidation.

The sponsor warrants are not redeemable by the Company so long as they are held by the sponsor or its permitted transferees. In addition, with respect to the sponsor warrants, so long as such sponsor warrants are held by the sponsor or its permitted transferee, the holder may elect to exercise the sponsor warrants on a cashless basis, by surrendering their sponsor warrants for that number of shares of Class A Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Class A Stock underlying the sponsor warrants, multiplied by the difference between the exercise price of the sponsor warrants and the “fair market value” (defined below), by (y) the fair market value. The “fair market value” means the average reported last sale price of the Class A Stock for the 10 trading days ending on the third trading day prior to the date on which the notice of warrant exercise is sent to the warrant agent. All other terms, rights and obligations of the sponsor warrants remain the same as the public warrants.

On October 27, 2020, the Company provided notice to the holders of the public warrants that the Company was exercising its right under the terms of the public warrants to redeem such warrants by paying to the warrant holders the redemption price of \$0.01 per warrant on November 30, 2020. Any exercise of the warrants prior to that date was to be done on a cashless basis, in accordance with the terms of the warrants. All of the public warrants were exercised or redeemed by November 30, 2020.

In 2021, 6.6 million sponsor warrants were exercised resulting in the issuance of 2.3 million shares of Class A common stock and cash proceeds to the Company of \$0.1 million. During the year ended December 31, 2020, 15.5 million Public Warrants and 4.3 million Sponsor Warrants were exercised or redeemed resulting in the issuance of 7.6 million shares of Class A common stock and cash proceeds to the Company of \$46.4 million. There were no public warrants or sponsor warrants exercised during 2019. At December 31, 2021 and 2020, there were 1.9 million and 8.5 million sponsor warrants outstanding, respectively. All of the public warrants were exercised during fiscal 2020.

#### ***Incremental Loan Warrants***

In connection with the Amended and Restated Credit Agreement, the Company issued to the Incremental Lenders 2.6 million Incremental Loan Warrants to purchase 2.6 million shares of the Company’s Class A Stock. Each Incremental Loan Warrant entitled the registered holder to purchase one share of the Company’s Class A Stock at a price of \$5.74 per share, subject to adjustment pursuant to the terms of the warrant agreement. In May 2020, Tony Pearce or Terry Pearce individually or together ceased to beneficially own at least 50% of the voting securities of the Company. As a result, the exercise price of the warrants was reduced to zero based on the formula established in the agreement.

On October 27, 2020, the Company provided notice to the holders of the Incremental Loan Warrants that the Company was exercising its right to redeem such warrants by paying to the warrant holders the redemption price of \$0.01 per warrant on November 30, 2020. Any exercise of the warrants prior to that date was to be done on a cashless basis, in accordance with the terms of the warrants. On November 9, 2020, upon the exercise of all the Incremental Loan Warrants, the Company issued 2.6 million shares of Class A common stock in exchange for the Incremental Loan Warrants held by the Incremental Lenders.

## Noncontrolling Interest

Noncontrolling interest (“NCI”) is the membership interest in Purple LLC held by holders other than the Company. At December 31, 2021 and 2020, the combined NCI percentage in Purple LLC was approximately 1%. The Company has consolidated the financial position and results of operations of Purple LLC and reflected the proportionate interest held by all such Purple LLC Class B Unit holders as NCI.

## 15. Net Income (Loss) Per Common Share

The following table sets forth the calculation of basic and diluted weighted average shares outstanding and earnings (loss) per share for the periods presented (in thousands, except per share amounts):

	Years Ended December 31,		
	2021	2020	2019
Numerator:			
Net income (loss) attributable to Purple Innovation, Inc. – basic	\$ 4,031	\$ (236,867)	\$ (22,573)
Less: Dilutive effect of change in fair value – warrant liabilities	(24,054)	—	—
Less: Net loss attributable to noncontrolling interest	(160)	—	—
Net loss attributable to Purple Innovation, Inc. – diluted	\$ (20,183)	\$ (236,867)	\$ (22,573)
Denominator			
Weighted average shares – basic	65,928	39,219	10,006
Add: Dilutive effect of equity awards	920	—	—
Add: Dilutive effect of Class B shares	454	—	—
Weighted average shares – diluted	67,302	39,219	10,006
Net income (loss) per common share:			
Basic	\$ 0.06	\$ (6.04)	\$ (2.26)
Diluted	\$ (0.30)	\$ (6.04)	\$ (2.26)

For the year ended December 31, 2021, the Company excluded 2.6 million shares of Class A Stock issuable upon conversion of certain stock options, restricted stock and Class A shares subject to vesting as the effect was anti-dilutive. For the year ended December 31, 2020, the Company excluded 0.1 million shares of issued Class A Stock subject to vesting, 6.5 million shares of Class A Stock issuable upon conversion of the Company’s warrants and options, and 0.5 million Paired Securities convertible into shares of Class A Stock as the effect was anti-dilutive. For the year ended December 31, 2019, the Company excluded 1.4 million shares of issued Class A Stock subject to vesting, 18.9 million shares of Class A Stock issuable upon conversion of the Company’s warrants and options, and 31.4 million Paired Securities convertible into shares of Class A Stock as the effect was anti-dilutive.

## 16. Equity Compensation Plans

### 2017 Equity Incentive Plan

The Purple Innovation, Inc. 2017 Equity Incentive Plan (the “2017 Incentive Plan”) provides for grants of stock options, stock appreciation rights, restricted stock and other stock-based awards. Directors, officers and other employees and subsidiaries and affiliates, as well as others performing consulting or advisory services for the Company and its subsidiaries, will be eligible for grants under the 2017 Incentive Plan. The aggregate number of shares of Common Stock which may be issued or used for reference purposes under the 2017 Incentive Plan or with respect to which awards may be granted may not exceed 4.1 million shares. As of December 31, 2021, 2.1 million shares remain available for issuance under the 2017 Incentive Plan. During the years ended December 31, 2021, 2020 and 2019, stock-based compensation associated with equity awards issued under the 2017 Incentive Plan totaled \$3.4 million, \$2.2 million and \$10.1 million, respectively, while the related tax benefits recognized on these awards were \$1.7 million, \$5.6 million and \$6.8 million, respectively.

### Class A Stock Awards

In May 2021, the Company granted stock awards under the Company’s 2017 Equity Incentive Plan to independent directors on the Board. The stock awards vested immediately and the Company recognized \$0.6 million in expense during year ended December 31, 2021, which represented the fair value of the stock award on the grant date.

In March 2020, the Company granted a restricted stock award under the Company’s 2017 Equity Incentive Plan to the Company’s Board advisor and GPAC observer. The stock award vested in March 2021. As this award included a service condition, the estimated fair value of the restricted stock was measured on the grant date and recognized over the service period. The Company determined that the fair value of the restricted stock on the grant date was immaterial.

During 2020 and 2019, the Company granted stock awards under the Company’s 2017 Equity Incentive Plan to independent directors on the Board and to the Board advisor and GPAC observer. The stock awards vested immediately and the Company recognized \$0.5 million and \$0.3 million in expense during the years ended December 31, 2020 and 2019, respectively, which represented the fair value of the stock awards on the grant date.

In May and June 2020, the Company granted restricted stock awards under the Company’s 2017 Equity Incentive Plan to certain employees of the Company. The stock awards vest over 3 to 4 years. The estimated fair value of the restricted stock is measured on the grant date and is recognized over the vesting period. The Company determined that the fair value of the restricted stock on the grant dates was \$0.7 million.

In May 2019, the Company granted a restricted stock award to the Company’s CEO at that time pursuant to the terms of his employment agreement. The restricted stock award was for 0.1 million shares and had certain vesting conditions which at the earliest could be met during the twelve months ended March 31, 2022. As this award included a market vesting condition, stock-based compensation was determined as the estimated fair value of the restricted stock measured on the grant date using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model which incorporated the probability of vesting occurring. The Company determined the fair value of the restricted stock on the grant date to be \$0.2 million and the derived service period to be 2.58 years. All of the vesting conditions were satisfied on September 30, 2021 and all of the shares became issuable on that date. The fair value of the restricted stock was expensed over the derived service period which ended when all of the shares became issuable.

### ***Employee Stock Options***

During the year ended December 31, 2021, the Company granted 0.2 million stock options under the Company’s 2017 Equity Incentive Plan to certain management of the Company. These stock options have exercise prices ranging from \$22.57 to \$32.28. The stock options expire in five years and vest over a four-year period. The estimated fair value of the stock options is amortized over the options vesting period on a straight-line basis. The Company determined the fair value of the 0.2 million options granted during the year ended December 31, 2021 to be \$2.0 million which will be expensed over the vesting period. Included in that amount were 0.2 million stock options with a fair value of \$1.4 million that were subsequently forfeited in December 2021.

During the year ended December 31, 2020, the Company granted 0.5 million stock options under the Company’s 2017 Equity Incentive Plan to certain management of the Company. These stock options have exercise prices ranging from \$12.76 to \$21.70. The stock options expire in five years and vest over a four-year period. The estimated fair value of the stock options is amortized over the options vesting period on a straight-line basis. The Company determined the fair value of the 0.5 million options granted during the year ended December 31, 2020 to be \$3.4 million which will be expensed over the vesting period.

During the year ended December 31, 2019, the Company granted 1.6 million stock options under the Company’s 2017 Equity Incentive Plan to certain management of the Company. These stock options have exercise prices that range from \$5.75 to \$8.55 per option. The stock options expire in five years and vest over a four-year period. The estimated fair value of the stock options is being amortized over the options vesting period on a straight-line basis. The Company determined the fair value of the 1.6 million options granted during the year ended December 31, 2019 to be \$2.9 million which will be expensed over the vesting period.

The following are the weighted average assumptions used in calculating the fair value of the total stock options granted in 2021, 2020 and 2019 using the Black-Scholes method:

	<b>Year Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Fair market value	\$ 8.71	\$ 6.93	\$ 6.83
Risk free rate	0.58%	0.25%	1.88%
Dividend yield	—	—	—
Expected volatility	52.43%	50.34%	36.79%
Expected term in years	3.55	3.41	3.47

In December 2021, 0.6 million of vested stock options related to the former Chief Executive Officer had the post-termination exercise period extended from 90 days to 352 days upon his resignation and departure from the Company. The \$0.5 million of additional cost associated with this modification was recorded as stock-based compensation expense in the 2021 consolidated statement of operations.

During the year ended December 31, 2019, 0.3 million of unvested stock options were forfeited by a former Chief Financial Officer (“CFO”) of the Company upon his resignation and departure from the Company. As the CFO, he was not permitted to exercise and sell all of his 0.1 million vested options during the limited 90-day exercise time period under the terms of his option grant. The Company entered into an agreement whereby the Company paid this former CFO \$0.1 million for the difference between the closing price of the stock on the date of the settlement and the exercise strike price of \$5.95.

The following table summarizes the Company's total stock option activity for the years ended December 31, 2021, 2020 and 2019:

	Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term in Years	Intrinsic Value \$ (in thousands)
Options outstanding as of January 1, 2019	933	\$ 5.96	4.8	\$ —
Granted	1,598	7.29	—	—
Exercised	—	—	—	—
Forfeited/expired	(395)	5.97	—	—
Options outstanding as of December 31, 2019	2,136	6.95	4.3	3,752
Granted	488	16.26	—	—
Exercised	(281)	7.68	—	—
Forfeited/expired	(109)	10.80	—	—
Options outstanding as of December 31, 2020	2,234	8.71	3.5	54,133
Granted	234	24.85	—	—
Exercised	(171)	8.26	—	—
Forfeited/expired	(745)	14.02	—	—
Options outstanding as of December 31, 2021	1,552	8.65	1.9	8,667

Outstanding and exercisable stock options as of December 31, 2021 are as follows:

Exercise Prices	Options Outstanding		Options Exercisable		
	Number of Options Outstanding (in thousands)	Weighted Average Remaining Life (Years)	Number of Options Exercisable (in thousands)	Weighted Average Remaining Life (Years)	Intrinsic Value (in thousands)
\$ 5.75	210	2.14	137	2.14	\$ 1,031
5.95	426	0.91	426	0.91	3,118
6.51	224	2.39	137	2.38	925
6.65	173	2.36	102	2.36	676
7.99	19	2.92	10	2.92	52
8.32	147	1.89	88	1.47	433
8.55	97	0.91	97	0.91	459
12.76	10	0.08	10	0.08	5
13.12	136	2.95	71	2.55	11
15.12	3	3.38	1	3.38	—
21.70	52	0.91	52	0.91	—
32.28	55	4.20	5	4.20	—
	1,552	1.86	1,136	1.54	\$ 6,710

The following table summarizes the Company's unvested stock option activity for the years ended December 31, 2021, 2020 and 2019:

	Options (in thousands)	Weighted Average Grant Date Fair Value
Nonvested options as of January 1, 2019	845	\$ 1.37
Granted	1,598	1.83
Vested	(157)	1.39
Forfeited	(307)	1.33
Nonvested options as of December 31, 2019	1,979	1.75
Granted	488	6.93
Vested	(790)	1.82
Forfeited	(109)	3.65
Nonvested options as of December 31, 2020	1,568	3.20
Granted	234	8.71
Vested	(641)	2.97
Forfeited	(745)	4.90
Nonvested options as of December 31, 2021	416	\$ 3.60





The Company recognized \$2.1 million, \$1.3 million and \$0.7 million in stock-based compensation expenses related to stock options during the years ended December 31, 2021, 2020 and 2019, respectively.

For stock options outstanding as of December 31, 2021, there was \$1.3 million of total unrecognized stock compensation cost with a remaining recognition period of 1.6 years. As of December 31, 2020, there was \$4.6 million of total unrecognized stock compensation cost with a remaining recognition period of 2.5 years.

Cash received from the exercise of stock options was \$1.4 million and \$2.0 million for the years ended December 31, 2021 and 2020, respectively. The tax benefit associated with the exercise of stock options was \$1.6 million and \$4.5 million for the years ended December 31, 2021 and 2020, respectively. There were no stock option exercises in 2019.

### ***Employee Restricted Stock Units***

During the year ended December 31, 2021, the Company granted 0.2 million of restricted stock units under the Company's 2017 Equity Incentive Plan to certain management of the Company. Approximately one-third of the restricted stock units granted included a market vesting condition. The restricted stock awards that do not have the market vesting condition had a weighted average grant date fair value of \$19.25 per share. The estimated fair value of these awards is recognized on a straight-line basis over the vesting period. For those awards that include a market vesting condition, the estimated fair value of the restricted stock was measured on the grant date and incorporated the probability of vesting occurring. The estimated fair value is recognized over the derived service period (as determined by the valuation model), with such recognition occurring regardless of whether the market condition is met. The Company determined the weighted average grant date fair value of the awards with the market vesting condition to be \$16.28 per share using a Monte Carlo Simulation of a Geometric Brownian Motion stock path model with the following weighted average assumptions:

Trading price of common stock on measurement date	\$	24.88
Risk free interest rate		0.43%
Expected life in years		2.7
Expected volatility		77.0%
Expected dividend yield		—

The following table summarizes the Company's restricted stock unit activity for the year ended December 31, 2021:

	<b>Number Outstanding (in thousands)</b>	<b>Weighted Average Grant Date Fair Value</b>
Nonvested restricted stock units as of January 1, 2021	—	\$ —
Granted	177	18.18
Vested	—	—
Forfeited	(12)	22.96
Nonvested restricted stock units as of December 31, 2021	<u>165</u>	<u>17.84</u>

The Company recorded restricted stock unit expense of \$0.5 million during the year ended December 31, 2021. There was no restricted stock unit expense recorded in 2020 or 2019.

For restricted stock units outstanding as of December 31, 2021, there was \$2.4 million of total unrecognized stock compensation cost with a remaining recognition period of 1.9 years.

### ***InnoHold Incentive Units***

In January 2017, pursuant to the 2016 Equity Incentive Plan approved by InnoHold and Purple LLC that authorized the issuance of 12.0 million incentive units, Purple LLC granted 11.3 million incentive units to Purple Team LLC, an entity for the benefit of certain employees who were participants in that plan. In conjunction with the Business Combination, Purple Team LLC was merged into InnoHold with InnoHold being the surviving entity and the Purple Team LLC incentive units were cancelled and new incentive units were issued by InnoHold under its own limited liability company agreement (the “InnoHold Agreement”). On February 8, 2019, InnoHold initiated a tender offer to each of these incentive unit holders, some of which are current employees of Purple LLC, to distribute to each a pro rata number of 2.5 million Paired Securities held by InnoHold in exchange for the cancellation of their ownership interests in InnoHold. All InnoHold incentive unit holders accepted the offer, and the terms and distribution of each transaction were finalized and closed on June 25, 2019. At the closing of the tender offer, those incentive unit holders received, based on their pro rata holdings of InnoHold Class B Units, a portion of 2.5 million Paired Securities held by InnoHold. The distribution by InnoHold to current employees of Purple LLC as of the distribution date resulted in the recognition of non-cash stock compensation expense for Purple LLC in the amount of \$9.0 million which represented the fair value of the Paired Securities as of the distribution date in 2019. As of December 31, 2021, 0.4 million of the Paired Securities remain to be exchanged for Class A Stock by the incentive unit holders. A small number of Paired Securities remain subject to vesting contingent upon such current employees’ continued employment with the Company.

### ***Aggregate Non-Cash Stock Compensation***

The Company has accounted for all stock-based compensation under the provisions of ASC 718 Compensation—Stock Compensation. This standard requires the Company to record a non-cash expense associated with the fair value of stock-based compensation over the requisite service period. The table below summarizes the aggregate non-cash stock compensation recognized in the statement of operations for stock awards, employee stock options and the distribution by InnoHold of Paired Securities.

<b>(in thousands)</b>	<b>Years Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
<b>Non-Cash Stock Compensation</b>			
Cost of revenues	\$ 303	\$ 169	\$ 663
Marketing and sales	541	302	4,285
General and administrative	2,472	1,353	4,356
Research and development	50	361	759
<b>Total non-cash stock compensation</b>	<b>\$ 3,366</b>	<b>\$ 2,185</b>	<b>\$ 10,063</b>

### **17. Employee Retirement Plan**

In 2018 the Company established a 401(k) plan that qualifies as a deferred compensation arrangement under Section 401 of the IRS Code. All eligible employees over the age of 18 and with 4 months’ service are eligible to participate in the plan. The plan provides for Company matching of employee contributions up to 5% of eligible earnings. Company contributions immediately vest. The Company matching contribution expense was \$3.2 million, \$2.3 million and \$1.3 million for the years ended December 31, 2021, 2020 and 2019, respectively.

### **18. Concentrations**

The Company had the following revenues by product:

<b>(in thousands)</b>	<b>Years Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
Sleep products	\$ 664,484	\$ 598,046	\$ 401,499
Other	61,743	50,425	26,859
<b>Total revenue, net</b>	<b>\$ 726,227</b>	<b>\$ 648,471</b>	<b>\$ 428,358</b>

The following disaggregates net revenues by geographic region:

<b>(in thousands)</b>	<b>Years Ended December 31,</b>		
	<b>2021</b>	<b>2020</b>	<b>2019</b>
United States	\$ 710,204	\$ 642,718	\$ 426,494
International	16,023	5,753	1,864
<b>Total revenue, net</b>	<b>\$ 726,227</b>	<b>\$ 648,471</b>	<b>\$ 428,358</b>

The Company had one individual customer that accounted for approximately 41% and 79% of accounts receivable at December 31, 2021 and 2020, respectively, and approximately 15%, 15% and 26% of net revenue during the years ended December 31, 2021, 2020 and 2019, respectively.

The Company currently obtains materials and components used in production from outside sources. As a result, the Company is dependent upon suppliers that in some instances, are the sole source of supply. The Company is continuing efforts to dual-source key components. The failure of one or more of the Company's suppliers to provide materials or components on a timely basis could significantly impact the results of operations. The Company believes that it can obtain these raw materials and components from other sources of supply in the ordinary course of business, although an unexpected loss of supply over a short period of time may not allow for the replacement of these sources in the ordinary course of business.

The Company maintains its cash balances in financial institutions based in the United States that are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 for each financial institution per entity. At times, the Company's cash balance deposited at financial institutions exceed the federally insured deposit limits. The Company has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk related to these deposits.

## 19. Income Taxes

The Company's income before income taxes of \$2.7 million and losses before income taxes of \$273.5 million and \$30.5 million during the years ended December 31, 2021, 2020 and 2019, respectively, consisted entirely of income earned in the United States.

Income tax (benefit) expense for the years ended December 31, 2021, 2020 and 2019 consist of the following (in thousands):

	Year ended December 31,		
	2021	2020	2019
Current:			
Federal	\$ 1,692	\$ 1,112	\$ 88
State	699	951	312
Total current	<u>2,391</u>	<u>2,063</u>	<u>400</u>
Deferred:			
Federal	(6,436)	(35,747)	—
State	2,828	(10,065)	—
Total deferred	<u>(3,608)</u>	<u>(45,812)</u>	<u>—</u>
Income tax (benefit) expense	<u>\$ (1,217)</u>	<u>\$ (43,749)</u>	<u>\$ 400</u>

Income tax (benefit) expense differs from the amount computed at the federal statutory corporate income tax rate as follows (in thousands):

	Year ended December 31,		
	2021	2020	2019
Tax expense (benefit) at Federal statutory rate	\$ 557	\$ (57,441)	\$ (6,410)
State income tax provision (benefit), net of federal benefit	(771)	499	3
Noncontrolling interest	(420)	(117)	1,754
Tax receivable agreement liability	(843)	(1,518)	—
Change in fair value – warrant liabilities	(5,051)	50,537	3,894
Change in valuation allowance	—	(35,531)	1,565
Remeasurement due to rate change	3,287	40	(477)
Remeasurement of investment in Purple LLC	1,834	—	—
Nondeductible compensation	531	—	—
Stock-based compensation	(330)	—	—
Other	(11)	(218)	71
Income tax (benefit) expense	<u>\$ (1,217)</u>	<u>\$ (43,749)</u>	<u>\$ 400</u>

Deferred income taxes at December 31, 2021 and 2020 consisted of the following (in thousands):

	<b>2021</b>	<b>2020</b>
Basis difference in Purple LLC investment	\$ 203,393	\$ 210,480
Tax over book basis in capital contributions	69,859	51,995
Start-up costs	478	529
Accruals and reserves	—	38
Stock-based compensation	722	191
Interest carryforwards	548	—
Net operating losses	12,650	6
Total net deferred income tax asset	287,650	263,239
Less: Valuation allowance	(69,859)	(51,995)
Net deferred income tax asset	<u>\$ 217,791</u>	<u>\$ 211,244</u>

The Company's sole material asset is Purple LLC, which is treated as a partnership for U.S. federal income tax purposes and for purposes of certain state and local income taxes. Purple LLC's net taxable income and any related tax credits are passed through to its members and is included in the members' tax returns, even though such net taxable income or tax credits may not have actually been distributed. While the Company consolidates Purple LLC for financial reporting purposes, the Company will be taxed on its share of earnings of Purple LLC not attributed to the noncontrolling interest holders, which will continue to bear their share of income tax on its allocable earnings of Purple LLC. The income tax burden on the earnings taxed to the noncontrolling interest holders is not reported by the Company in its consolidated financial statements under GAAP. As a result, the Company's effective tax rate differs from the statutory rate. The primary factors impacting expected tax are the change in fair value of the warrant liabilities and remeasurement of deferred taxes primarily as a result of the change in the estimated state tax rate.

At December 31, 2019, the Company maintained a full valuation allowance on its deferred tax assets which were more likely than not realizable at the time. During fiscal 2020, the Company achieved three-year cumulative income for the first time and determined that it would likely generate sufficient taxable income to utilize some of its deferred tax assets. Based on this and other positive evidence, the Company concluded it was more likely than not that some of its deferred tax assets would be realized and that a full valuation allowance for its deferred tax assets was no longer appropriate. As a result, \$35.5 million of the valuation allowance associated with the Company's federal and state deferred tax assets was released and recorded as an income tax benefit in 2020.

Deferred tax assets at December 31, 2021 were \$217.8 million, which is net of \$69.9 million of valuation allowance that was recorded against the residual outside partnership basis for the amount the Company believes is not more likely than not realizable. As a result, the valuation allowance at December 31, 2021 increased \$17.9 million compared to December 31, 2020.

The Company remains subject to income tax examinations for its U.S. federal income taxes for 2017 through 2021. The Company also remains subject to income tax examinations for U.S. state and local income taxes generally for 2016 through 2021.

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law in March 2020. The CARES Act lifts certain deduction limitations originally imposed by the Tax Cuts and Jobs Act of 2017 (2017 Tax Act). Corporate taxpayers may carryback net operating losses (NOLs) originating during 2018 through 2020 for up to five years, which was not previously allowed under the 2017 Tax Act. The CARES Act also eliminates the 80% of taxable income limitations by allowing corporate entities to fully utilize NOL carryforwards to offset taxable income in 2018, 2019 or 2020. Taxpayers may generally deduct interest up to the sum of 50% of adjusted taxable income plus business interest income (30% limit under the 2017 Tax Act) for tax years beginning January 1, 2019 and 2020. The CARES Act allows taxpayers with alternative minimum tax credits to claim a refund in 2020 for the entire amount of the credits instead of recovering the credits through refunds over a period of years, as originally enacted by the 2017 Tax Act.

In addition, the CARES Act raises the corporate charitable deduction limit to 25% of taxable income and makes qualified improvement property generally eligible for 15-year cost-recovery and 100% bonus depreciation. The enactment of the CARES Act resulted in two adjustments to our income tax provision, relating to increased 2019 NOL utilization and tax benefits from NOL carrybacks. We have recorded \$0.2 million in our income tax provision for the year ended December 31, 2020 related to the CARES Act.

In connection with the Business Combination, the Company entered into the tax receivable agreement with InnoHold, which provides for the payment by the Company to InnoHold of 80% of the net cash savings, if any, in U.S. federal, state and local income tax that the Company actually realizes (or is deemed to realize in certain circumstances) in periods after the Closing as a result of (i) any tax basis increases in the assets of Purple LLC resulting from the distribution to InnoHold of the cash consideration, (ii) the tax basis increases in the assets of Purple LLC resulting from the redemption by Purple LLC or the exchange by the Company, as applicable, of Class B Paired Securities or cash, as applicable, and (iii) imputed interest deemed to be paid by the Company as a result of, and additional tax basis arising from, payments it makes under the agreement.

As noncontrolling interest holders exercise their right to exchange or cause Purple LLC to redeem all or a portion of their Class B Units, a tax receivable agreement liability may be recorded based on 80% of the estimated future cash tax savings that the Company may realize as a result of increases in the basis of the assets of Purple LLC attributed to the Company as a result of such exchange or redemption. The amount of the increase in asset basis, the related estimated cash tax savings and the attendant liability to be recorded will depend on the price of the Company's Class A Stock at the time of the relevant redemption or exchange.

The estimation of liability under the tax receivable agreement is by its nature imprecise and subject to significant assumptions regarding the amount and timing of future taxable income. As a result of the initial merger transaction, the subsequent exchanges of 43.6 million Class B Units for Class A Stock as of December 31, 2021 and changes in estimates relating to the expected tax benefits associated with the liability under the agreement, the potential future tax receivable agreement liability was \$168.1 million, of which \$172.0 million was recorded in the year ended December 31, 2020, offset in part by a \$3.9 million benefit recorded in 2021. The \$3.9 million reduction in the 2021 tax receivable agreement liability reflected \$4.0 million that was recorded as tax receivable agreement income coupled with a payment of \$0.6 million made during the year. These decreases in the liability were offset in part by \$0.8 million that related to current year exchanges and was recorded as a decrease to additional paid-in capital in the 2021 consolidated statement of stockholders' equity. Of the total liability recorded during 2020, \$137.3 million related to current year exchanges and was recorded as an adjustment to equity and \$34.2 million was recorded as tax receivable agreement expense in the 2020 consolidated statement of operations to re-establish the liability related to prior year exchanges.

The Company estimates federal net operating loss ("NOL") carryforwards will be approximately \$10.0 million as of December 31, 2021. The federal NOL carryforward does not have an expiration date. The Company also had approximately \$2.7 million of NOL carryforwards to reduce future state taxable income at December 31, 2021, which have various carryforward periods and begin to expire in 2026, if unused.

The effects of uncertain tax positions are recognized in the consolidated financial statements if these positions meet a "more-likely-than-not" threshold. For those uncertain tax positions that are recognized in the consolidated financial statements, liabilities are established to reflect the portion of those positions it cannot conclude "more-likely-than-not" to be realized upon ultimate settlement. The Company's policy is to recognize interest and penalties related to unrecognized tax benefits on the income tax expense line in the accompanying consolidated statement of operations. Accrued interest and penalties would be included on the related tax liability line in the consolidated balance sheet. As of December 31, 2021 and 2020, no uncertain tax positions were recognized as liabilities in the consolidated financial statements.

## 20. Subsequent Events

On January 27, 2022, the Company paid InnoHold \$5.8 million pursuant to the terms of the tax receivable agreement. This amount was reflected as a current liability in the December 31, 2021 consolidated balance sheet.

In connection with lower-than-expected demand and higher material, labor and freight costs that impacted results in the second half of 2021, and are expected to adversely affect results of operations into the first quarter of 2022, in February 2022, the Company completed a restructuring of its workforce that was necessitated by a realignment of the Company's cost structure. As a result of the realignment and restructuring, the Company reduced its employee headcount by approximately 15% and incurred a restructuring charge of \$1.1 million in the first quarter of 2022. In addition, in order to improve operating margins, the Company has taken a pricing action in early 2022 and initiated a number of other projects to improve efficiencies and reduce costs.

In February 2022 the Company entered into the first amendment of the 2020 Credit Agreement. The operating and financial results for the year ended December 31, 2021 did not satisfy the financial and performance covenants required pursuant to the 2020 Credit Agreement. In order to avoid a breach of such covenants and related default and prior to the covenant compliance certification date under the 2020 Credit Agreement, the Company entered into the first amendment of the 2020 Credit Agreement. The amendment contains a covenant waiver period for certain ratios that will not be tested for the fiscal quarter ended December 31, 2021 through the fiscal quarter ended June 30, 2022. Other changes in the amendment include modification of leverage ratio and fixed charge coverage definitions and thresholds, the addition of minimum liquidity requirements with mandatory prepayments of the revolving loan if cash exceeds \$25.0 million, new weekly and monthly reporting requirements, limits on the amount of capital expenditures, the addition of a lease incurrence test for opening additional showrooms, additional negative covenants during a covenant amendment period that will extend into 2023 until certain conditions are met, and increase in the interest rate on outstanding borrowings under the 2020 Credit Agreement changed to an initial rate of SOFR with a floor of 0.5% plus 4.75%, for a total rate of 5.25% as long as the applicable liquidity threshold is met. If the liquidity test is not met, then the interest rate goes to SOFR with a floor of 0.5% plus 9.00%. Once the consolidated leverage ratio is below 3.00 to 1.00, the interest rate will be based on SOFR with a floor of 0.5% plus a 3.00% to 3.75% depending on the consolidated leverage ratio. Pursuant to the amendment, the Company paid fees and expenses of \$0.9 million and prepaid all principal payments due in 2022 of \$2.5 million. The Company expects to meet the covenants included in the first amendment of the 2020 Credit Agreement. In the event our cash flow from operations or other sources of financing are less than anticipated, we believe we will be able to fund operating expenses based on our ability to scale back operations, reduce marketing spend and postpone or discontinue our growth strategies.

## Signatures

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

### Purple Innovation, Inc.

March 1, 2022

By: /s/ Robert T. DeMartini  
Name: Robert T. DeMartini  
Title: Chief Executive Officer  
(Principal Executive Officer)

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

<u>Name</u>	<u>Position</u>	<u>Date</u>
<u>/s/ Robert T. DeMartini</u> Robert T. DeMartini	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 1, 2022
<u>/s/ Bennett L. Nussbaum</u> Bennett L. Nussbaum	Interim Chief Financial Officer <i>(Principal Financial Officer)</i>	March 1, 2022
<u>/s/ George T. Ulrich</u> George T. Ulrich	Vice President, Accounting and Financial Reporting <i>(Principal Accounting Officer)</i>	March 1, 2022
<u>/s/ Paul J. Zepf</u> Paul J. Zepf	Chairman of the Board of Directors	March 1, 2022
<u>/s/ Pano T. Anthos</u> Pano T. Anthos	Director	March 1, 2022
<u>/s/ Gary T. DiCamillo</u> Gary T. DiCamillo	Director	March 1, 2022
<u>/s/ Adam L. Gray</u> Adam L. Gray	Director	March 1, 2022
<u>/s/ Claudia Hollingsworth</u> Claudia Hollingsworth	Director	March 1, 2022
<u>/s/ Gary A. Kiedaisch</u> Gary A. Kiedaisch	Director	March 1, 2022
<u>/s/ Dawn M. Zier</u> Dawn M. Zier	Director	March 1, 2022

**FIRST AMENDMENT TO CREDIT AGREEMENT**

FIRST AMENDMENT TO CREDIT AGREEMENT (this “*First Amendment*”), dated as of February 28, 2022, among **PURPLE INNOVATION, INC.**, a Delaware corporation (“*Holdings*”), **PURPLE INNOVATION, LLC**, a Delaware limited liability company (the “*Borrower*”), the **LENDERS** (as defined below) party hereto (the “*First Amendment Lenders*”) and **KEYBANK NATIONAL ASSOCIATION**, as administrative agent (in such capacity, the “*Administrative Agent*”). Unless otherwise indicated, all capitalized terms used herein and not otherwise defined shall have the respective meanings provided such terms in the Credit Agreement or the Amended Credit Agreement (each as defined below), as applicable.

**PRELIMINARY STATEMENTS**

WHEREAS, the Borrower, Holdings, the Administrative Agent, the lenders from time to time party thereto (each, a “*Lender*” and, collectively, the “*Lenders*”) and the other parties thereto from time to time have entered into that certain Credit Agreement, dated as of September 3, 2020 (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time prior to the date hereof, the “*Credit Agreement*”; and the Credit Agreement as amended by this First Amendment, the “*Amended Credit Agreement*”);

WHEREAS, the Borrower has requested that the First Amendment Lenders (which constitute the Required Lenders) make certain amendments to the Credit Agreement as provided herein; and

WHEREAS, the parties hereto have agreed, subject to the satisfaction of the conditions precedent to effectiveness set forth in Section 4 hereof, to amend certain terms of the Credit Agreement as hereinafter provided to give effect to the amendments contemplated hereby.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by each party hereto, it is agreed that:

**SECTION 1. AMENDMENTS.**

(a) The Credit Agreement is hereby amended by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~), and (ii) adding the double underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the Amended Credit Agreement attached hereto as Annex I.

(b) Exhibit B-1 (Form of Notice of Borrowing) of the Credit Agreement is hereby amended and restated in its entirety with Exhibit B-1 attached hereto as Annex II.

(c) Exhibit B-2 (Form of Notice of Continuation or Conversion) of the Credit Agreement is hereby amended and restated in its entirety with Exhibit B-2 attached hereto as Annex III.

(d) Exhibit E (Form of Compliance Certificate) of the Credit Agreement is hereby amended and restated in its entirety with Exhibit E attached hereto as Annex IV.

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(e) A new Schedule 7.16 (Permitted Leases) is hereby added to the Credit Agreement as attached hereto as Annex V.

**SECTION 2. REFERENCE TO AND EFFECT ON THE CREDIT AGREEMENT; REPLACING THE EURODOLLAR RATE.**

(a) On and after the First Amendment Effective Date, (i) each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof” or text of like import referring to the Credit Agreement shall mean and be a reference to the Amended Credit Agreement and (ii) all references in the Credit Agreement and each of the other Loan Documents shall be deemed to be references to the Amended Credit Agreement. On and after the effectiveness of this First Amendment, this First Amendment shall for all purposes constitute a “Loan Document” under and as defined in the Amended Credit Agreement and the other Loan Documents.

(b) Notwithstanding anything to the contrary in the Amended Credit Agreement or in any other Loan Document, to the extent any Eurodollar Rate Loan (as defined immediately before giving effect to this First Amendment) is outstanding on the First Amendment Effective Date, such Loan shall continue to bear interest at the Eurodollar Rate (as defined immediately before giving effect to this First Amendment) plus the Applicable Margin until the end of the current Interest Period (as defined immediately before giving effect to this First Amendment) applicable to such Eurodollar Rate Loan.

**SECTION 3. REPRESENTATIONS & WARRANTIES.** Each Credit Party hereby represents and warrants to the Lenders and the Administrative Agent that (a) the representations and warranties contained in the Amended Credit Agreement and in the other Loan Documents are true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, Material Adverse Effect or dollar amount threshold, which are true and correct in all respects) on and as of the First Amendment Effective Date to the same extent as though made on and as of the First Amendment Effective Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, Material Adverse Effect or dollar amount threshold, were true and correct in all respects) on and as of such earlier date; (b) such Credit Party has the legal power and authority to execute and deliver this First Amendment; (c) the officers executing this Amendment on behalf of such Credit Party have been duly authorized to execute and deliver the same and bind such Credit Party with respect to the provisions hereof; (d) the execution and delivery hereof by such Credit Party and the performance and observance by such Credit Party of the provisions hereof do not violate or conflict with the Organizational Documents of such Credit Party or any law applicable to such Credit Party or result in a breach of any provision of or constitute a default under any Material Contract, or any other promissory note, bond, debenture, indenture, mortgage, deed of trust, credit or loan agreement, or any other agreement or other instrument related to Indebtedness, to which such Credit Party is a party or by which it or any of its property or assets are bound or to which it may be subject; (e) both immediately before and after giving effect to this First Amendment, no Default or Event of Default exists under the Credit Agreement, nor will any occur immediately after the execution and delivery of this First Amendment or by the performance or observance of any provision hereof; (f) as of the date hereof, neither the Borrower nor Holdings has any claim or offset against, or defense or counterclaim to, any obligations or liabilities of the Borrower or Holdings under the Credit Agreement or any other Loan Document; and (g) this First Amendment constitutes a valid and binding obligation of such Credit Party in every respect, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors’ rights or by general principles of equity limiting the availability of equitable remedies (regardless of whether enforcement is sought in equity or at law).

SECTION 4. CONDITIONS PRECEDENT. This First Amendment shall become effective as of the first date (the “*First Amendment Effective Date*”) when each of the conditions set forth in this Section 4 shall have been satisfied to the satisfaction of the Administrative Agent:

(a) the Administrative Agent’s receipt of the following:

(i) counterparts of this First Amendment executed by the Borrower, Holdings, the Administrative Agent and the First Amendment Lenders;

(ii) a certificate of the Secretary or an Assistant Secretary of each Credit Party dated as of the First Amendment Effective Date and certifying that attached thereto is (A) an original certified copy of the Certificate or Articles of Incorporation or equivalent formation document of each Credit Party and any and all amendments and restatements thereof, certified as of a recent date by the relevant Secretary of State; (B) the bylaws or governing documents of each Credit Party as in effect on the First Amendment Effective Date; (C) an original “long-form” good standing certificate or certificate of existence from the Secretary of State of the state of incorporation, dated as of a recent date, listing all charter documents affecting such Credit Party and certifying as to the good standing of such Credit Party; (D) the names and true signatures of the officers of such Credit Party authorized to sign the Loan Documents to which such Credit Party is a party and any other documents to which such Credit Party is a party that may be executed and delivered in connection herewith, and (E) copies of the resolutions of the Board of Directors (or similar governing body) of each Credit Party approving this First Amendment and any other Loan Documents to which such Credit Party is or may become a party, and of all documents evidencing other necessary corporate or other organizational action, as the case may be, and governmental approvals, if any, with respect to the execution, delivery and performance by such Credit Party of this First Amendment, all of which documents to be in form and substance reasonably satisfactory to the Administrative Agent and certifying as to the matters set forth in paragraph (c) and (d) of this Section 4;

(iii) the results of UCC and other search reports, including intellectual property searches, from one or more commercial search firms acceptable to the Administrative Agent, listing all of the effective financing statements filed against any Credit Party, together with copies of such financing statements and each of the liens filed against any registered intellectual property of the Credit Parties;

(iv) a revised Perfection Certificate providing updates, if any, to the information provided therein on the Closing Date; and

(v) such other documents or deliverables as the Administrative Agent or any First Amendment Lender may reasonably request;

(b) the Borrower shall have paid to the Administrative Agent (x) those fees and amounts as set forth in the fee letters dated as of the date hereof between Holdings, the Borrower and the Administrative Agent, (y) all other fees and expenses, including all reasonable out-of-pocket costs, fees and expenses owing to them and the fees and expenses of counsel thereto, in each case, pursuant to the terms of the Credit Agreement, and (z) \$2,531,250 to the Administrative Agent, for the benefit of the Lenders, which such payment will be applied to the next four Scheduled Repayments to occur after the First Amendment Effective Date pursuant to Section 2.13(b)(i) of the Amended Credit Agreement;

(c) no Default or Event of Default exists or would result immediately after giving effect to the transactions contemplated hereby; and

(d) the representations and warranties of the Credit Parties set forth in Section 3 of this Amendment are true and correct.

#### SECTION 5. REAFFIRMATION.

By executing and delivering a copy hereof, (i) each Credit Party hereby (A) agrees that all Loans shall be guaranteed pursuant to the Guaranty in accordance with the terms and provisions thereof and shall be secured pursuant to the Security Documents in accordance with the terms and provisions thereof, and (ii) each Credit Party hereby (A) agrees that, after giving effect to this First Amendment, the Guaranty and the Liens created pursuant to the Security Documents for the benefit of the Secured Creditors continue to be in full force and effect and (B) affirms, acknowledges and confirms all of its obligations and liabilities under the Amended Credit Agreement and each other Loan Document to which it is a party, in each case after giving effect to this First Amendment.

#### SECTION 6. WAIVER; RELEASE.

(a) As of the date of this First Amendment, each Credit Party on behalf of itself and each of their respective Subsidiaries (collectively, the “Releasers”), to the fullest extent permitted by law, hereby releases, and forever discharges the Administrative Agent, each Lender and each of its or their respective trustees, officers, directors, participants, beneficiaries, agents, attorneys, affiliates and employees, and the successors and assigns of the foregoing (collectively, the “Released Parties”), from any and all claims, actions, causes of action, suits, defenses, set-offs against the Obligations, and liabilities of any kind or character whatsoever, known or unknown, contingent or matured, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, claimed or unclaimed, in contract or in tort, at law or in equity, or otherwise, including, without limitation, any claims, causes of action or defenses based on the negligence of any of the Released Parties or on any “lender liability” theories of, among others, unfair dealing, control, misrepresentation, omissions, misconduct, overreaching, unconscionability, disparate bargaining position, reliance, equitable subordination, or otherwise, and any claim based upon illegality and any claims or defenses relating to allegations of usury, which relate, in whole or in part, directly or indirectly, to the Loans, the Loan Documents, the Obligations, the Collateral or this First Amendment, in each case, which existed, arose or occurred at any time prior to the date of this First Amendment, including, without limitation, the negotiation, execution, performance or enforcement of the Loan Documents and this First Amendment, (collectively, the “Released Claims”). No Releaser shall intentionally, willfully or knowingly commence, join in, prosecute, or participate in any suit or other proceeding in a position which is adverse to any of the Released Parties, arising directly or indirectly from any of the Released Claims. The Released Claims include, but are not limited to, any and all unknown, unanticipated, unsuspected or misunderstood claims and defenses which existed, arose or occurred at any time prior to the date of this First Amendment, all of which are released by the provisions hereof in favor of the Released Parties.

(b) Each Releaser acknowledges and agrees that as of the First Amendment Effective Date, it has no defenses, counterclaims, offsets, cross-complaints, causes of action, rights, claims or demands of any kind or nature whatsoever, including, without limitation, any usury or lender liability claims or defenses, arising out of the Loan Documents or this First Amendment, that can be asserted either to reduce or eliminate all or any part of any of the Releasers’ liability to the Administrative Agent and the Lenders under the Loan Documents, or to seek affirmative relief or damages of any kind or nature from the Administrative Agent or the Lenders, for or in connection with the Loans or any of the Loan Documents. Each Releaser further acknowledges that, to the extent that any such claim does in fact exist as of the First Amendment Effective Date, it is being fully, finally and irrevocably released by them as provided in this First Amendment.

(c) Each Releasor hereby waives the provisions of any applicable laws restricting the release of claims which the releasing parties do not know or suspect to exist as of the date of this First Amendment, which, if known, would have materially affected the decision to agree to these releases. Accordingly, each Releasor hereby agrees, represents and warrants to the Administrative Agent and each Lender that it understands and acknowledges that factual matters now unknown may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and each Releasor further agrees, represents and warrants that the releases provided herein have been negotiated and agreed upon, and in light of, that realization and that each Releasor nevertheless hereby intends to release, discharge and acquit the parties set forth hereinabove from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are in any manner set forth in or related to the Released Claims and all dealings in connection therewith.

(d) In making the releases set forth in this First Amendment, each Releasor acknowledges that it has not relied upon any representation of any kind made by any Released Party.

(e) It is understood and agreed by the Releasors and the Released Parties that the acceptance of delivery of the releases set forth in this First Amendment shall not be deemed or construed as an admission of liability by any of the Released Parties and the Administrative Agent, on behalf of itself and the other Released Parties, hereby expressly denies liability of any nature whatsoever arising from or related to the subject of such releases.

#### SECTION 7. MISCELLANEOUS PROVISIONS.

(a) Ratification. This First Amendment is limited to the matters expressly specified herein and shall not constitute a modification, acceptance or waiver of any other provision of the Credit Agreement or any other Loan Document. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Credit Agreement or any other Loan Document or instruments securing the same, which shall remain in full force and effect as modified hereby or by instruments executed concurrently herewith.

(b) Governing Law; Submission to Jurisdiction, Etc. **THIS FIRST AMENDMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS FIRST AMENDMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.** SECTION 11.08 OF THE CREDIT AGREEMENT ARE INCORPORATED BY REFERENCE HEREIN AS IF SUCH SECTION APPEARED HEREIN, *MUTATIS MUTANDIS*.

(c) Severability. Section 11.21 of the Credit Agreement is incorporated by reference herein as if such Section appeared herein, *mutatis mutandis*.

(d) Counterparts; Headings. This First Amendment may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this First Amendment by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," and words of like import in this First Amendment shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar applicable state laws based on the Uniform Electronic Transactions Act. Section headings herein are included for convenience of reference only and shall not affect the interpretation of this First Amendment.

*[Remainder of page intentionally blank; signatures begin next page]*

**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized officers to execute and deliver this First Amendment as of the date first above written.

PURPLE INNOVATION, LLC,  
as the Borrower

By: \_\_\_\_\_  
Name:  
Title:

PURPLE INNOVATION, INC.,  
as Holdings

By: \_\_\_\_\_  
Name:  
Title:

[Purple – Signature Page to First Amendment]

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KEYBANK NATIONAL ASSOCIATION,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[Purple – Signature Page to First Amendment]

---

[\_\_\_\_], as a Lender

By: \_\_\_\_\_  
Name:  
Title:

[Purple – Signature Page to First Amendment]

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ANNEX I

**Amended Credit Agreement**

Attached

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**CREDIT AGREEMENT**  
dated as of  
September 3, 2020,  
[as amended by the First Amendment, dated as of February 28, 2022](#)

among

**PURPLE INNOVATION, LLC,**  
*as Borrower,*

**PURPLE INNOVATION, INC.,**  
*as Holdings,*

**THE LENDING INSTITUTIONS NAMED HEREIN,**  
*as Lenders,*

and

**KEYBANK NATIONAL ASSOCIATION,**  
*as an LC Issuer, Swing Line Lender and as the Administrative Agent*

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**KEYBANC CAPITAL MARKETS INC.,**  
**BMO CAPITAL MARKETS CORP.,**  
**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**  
**SILICON VALLEY BANK,**  
**TRUIST SECURITIES, INC.**

AND

**WELLS FARGO SECURITIES, LLC,**  
*each as a Joint Lead Arranger and a Joint Bookrunner*

**BANK OF MONTREAL,**  
**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**  
**SILICON VALLEY BANK,**  
**TRUIST BANK**  
AND  
**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
*each as a Syndication Agent*

**\$100,000,000 Senior Secured Credit Facility**

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## EXHIBITS

Exhibit A-1	Form of Revolving Facility Note
Exhibit A-2	Form of Swing Line Note
Exhibit A-3	Form of Term Note
Exhibit B-1	Form of Notice of Borrowing
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Exhibit D	Form of Solvency Certificate
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Schedule 7.04	Indebtedness
Schedule 7.05	Investments
<a href="#">Schedule 7.16</a>	<a href="#">Permitted Leases</a>

This CREDIT AGREEMENT is entered into as of September 3, 2020 among Purple Innovation, LLC, a Delaware limited liability company, as the borrower (the "Borrower"), Purple Innovation, Inc., a Delaware corporation ("Holdings"), the lenders from time to time party hereto (each a "Lender" and collectively, the "Lenders"), and KeyBank National Association, as the administrative agent (in such capacity, the "Administrative Agent").

PRELIMINARY STATEMENTS:

(1) The Borrower has requested that the Lenders, the Swing Line Lender and each LC Issuer extend credit to the Borrower (a) to repay the obligations under the Existing Credit Agreement (as hereinafter defined), and (b) for working capital, capital expenditures, investments in or purchase of assets or entities in support of the existing business of the Credit Parties (as hereinafter defined) and other general corporate purposes, including, without limitation, to pay fees and expenses incurred in connection with the Transactions and for Permitted Acquisitions, in each case, as permitted hereunder.

(2) Subject to and upon the terms and conditions set forth herein, the Lenders, the Swing Line Lender and each LC Issuer are willing to extend credit and make available to the Borrower the credit facilities provided for herein for the foregoing purposes.

AGREEMENT:

In consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.01 Certain Defined Terms. As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires:

"1934 Act" means the Securities Exchange Act of 1934, as amended.

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (i) the acquisition of all or substantially all of the assets of any Person, or any business or division of any Person, (ii) the acquisition or ownership of in excess of 50% of the Equity Interests of any Person, or (iii) the acquisition of another Person by a merger, consolidation, amalgamation or any other combination with such Person.

"Additional Security Documents" has the meaning provided in Section 6.10(a).

---

~~“Adjusted Eurodollar Rate” means for any Interest Period with respect to a Eurodollar Loan, the greater of (a) 0.50% and (b) (i) the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published by Reuters or Bloomberg (or such other commercially available source providing such quotations as may be reasonably designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period divided (and rounded to the nearest 1/16th of 1%) by (ii) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including, without limitation, any marginal, emergency, supplemental, special or other reserves and without benefit of credits for proration, exceptions or offsets that may be available from time to time) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D); provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith and in accordance with the provisions of this Agreement, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied as otherwise reasonably determined by the Administrative Agent.~~

“Adjusted Term SOFR” means for any Available Tenor and Interest Period with respect to a Term SOFR Loan, the sum of (a) Term SOFR for such Interest Period and (b) the applicable SOFR Index Adjustment; provided that if Adjusted Term SOFR as so determined would be less than the Term SOFR Floor, then Adjusted Term SOFR shall be deemed to be the Term SOFR Floor.

“Administrative Agent” has the meaning provided in the first paragraph of this Agreement and includes any successor to the Administrative Agent appointed pursuant to Section 9.11.

“Affected Financial Institution” means (i) any EEA Financial Institution or (ii) any UK Financial Institution.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person, or, in the case of any Lender that is an investment fund, the investment advisor thereof and any investment fund having the same investment advisor. A Person shall be deemed to control a second Person if such first Person possesses, directly or indirectly, the power (i) to vote 10% or more of the securities having ordinary voting power for the election of directors or managers of such second Person or (ii) to direct or cause the direction of the management and policies of such second Person, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall in any event be considered an Affiliate of Holdings, the Borrower or any of its Subsidiaries.

“Aggregate Credit Facility Exposure” means, at any time, the sum of (i) the Aggregate Revolving Facility Exposure at such time, (ii) the principal amount of Swing Loans outstanding at such time, and (iii) the aggregate principal amount of the Term Loans outstanding at such time.

“Aggregate Revolving Facility Exposure” means, at any time, the sum of (i) the aggregate principal amount of all Revolving Loans made by all Lenders and outstanding at such time and (ii) the aggregate amount of the LC Outstandings at such time.

“Agreement” means this Credit Agreement, including any exhibits or schedules, as the same may from time to time be amended, restated, amended and restated, supplemented or otherwise modified.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Holdings, the Borrower or any Subsidiary from time to time concerning or relating to anti-money laundering, bribery or corruption, including the United States Foreign Corrupt Practices Act of 1997 and the UK Bribery Act 2010.

“Anti-Terrorism Law” means the USA Patriot Act or any other law pertaining to the prevention of future acts of terrorism, in each case as such law may be amended from time to time.



“Applicable Lending Office” means, with respect to each Lender, the office designated by such Lender to the Administrative Agent as such Lender’s lending office for all purposes of this Agreement. A Lender may have a different Applicable Lending Office for Base Rate Loans and ~~Eurodollar~~ Term SOFR Loans.

“Applicable Margin” means:

(i) On the First Amendment Effective Date and thereafter, until changed in accordance with clause (ii) below,

(a) the Administrative Agent shall determine the Applicable Margin and the Commitment Fee in accordance with the following matrix, based on Liquidity:

<u>Liquidity Amount</u>	<u>Applicable Margin for Base Rate Loans</u>	<u>Applicable Margin for Term SOFR Loans</u>	<u>Commitment Fee</u>
<u>Greater than or equal to the Liquidity Threshold</u>	<u>3.75%</u>	<u>4.75%</u>	<u>0.50%</u>
<u>Less than the Liquidity Threshold</u>	<u>8.00%</u>	<u>9.00%</u>	<u>0.50%</u>

~~(i) On the Closing Date and thereafter, until changed in accordance with the following provisions, the Applicable Margin shall be (A) 2.00% for Loans that are Base Rate Loans, (B) 3.00% for Loans that are Eurodollar Loans and (C) 0.25% for the Commitment Fee;~~

As used in this clause (i)(a), Liquidity Threshold for the applicable period shall mean the amounts opposite such dates in the matrix below:

<u>Month Ending</u>	<u>Minimum Liquidity</u>
<u>March 31, 2022</u>	<u>\$15,000,000</u>
<u>April 30, 2022</u>	<u>\$10,000,000</u>
<u>May 31, 2022</u>	<u>\$35,000,000</u>
<u>June 30, 2022</u>	<u>\$35,000,000</u>
<u>July 31, 2022 and thereafter</u>	<u>\$40,000,000</u>

(b) Changes in the Applicable Margin and the Commitment Fee based upon changes in the Liquidity shall become effective on the third Business Day following the receipt by the Administrative Agent of each Liquidity Certificate in accordance with Section 6.01(k), demonstrating the computation of Liquidity for the applicable month. Notwithstanding the foregoing provisions, during any period when (A) the Borrower has failed to timely deliver a Liquidity Certificate in accordance with Section 6.01(k), or (B) an Event of Default has occurred and is continuing, the Applicable Margin and the Commitment Fee shall be the highest percentage indicated therefor in the above matrix, regardless of Liquidity at such time. The above matrix does not modify or waive, in any respect, the rights of the Administrative Agent and the Lenders to charge any default rate of interest or any of the other rights and remedies of the Administrative Agent and the Lenders in accordance with the terms hereunder.

(c) In the event that any certificate delivered pursuant to Section 6.01(k) is shown to be inaccurate (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin or Commitment Fee for any period (any such period, an “Applicable Period (Liquidity)”) than the Applicable Margin and the Commitment Fee actually applied for such Applicable Period (Liquidity), then (i) the Borrower shall immediately deliver to the Administrative Agent a corrected Liquidity Certificate for such Applicable Period (Liquidity), (ii) the Applicable Margin and the Commitment Fee shall be determined as if such corrected, higher Applicable Margin and Commitment Fee were applicable for such period, and (iii) the Borrower shall immediately pay to the Administrative Agent the accrued additional interest and fees owing as a result of such higher Applicable Margin and Commitment Fee for such Applicable Period (Liquidity).

(ii) Commencing with the fiscal quarter of the Borrower ~~ended on December 31, 2020~~ for which the Borrower provides a Compliance Certificate in accordance with Section 6.10(c), demonstrating a Consolidated Leverage Ratio of less than 3.00:1.00, and continuing with each fiscal quarter thereafter, ~~the~~:

(a) The Administrative Agent shall determine the Applicable Margin and the Commitment Fee in accordance with the following matrix, based on the Consolidated ~~Leverage Ratio~~; *provided that, the Applicable Margin and the Commitment Fee shall be determined based on the Consolidated* Net Leverage Ratio if no Revolving Borrowings were outstanding for the 30-day period immediately prior to the end of such applicable Testing Period:

<del>Consolidated Net</del> <b>Applicable Leverage Ratio</b>	<b>Applicable Margin for Base Rate Loans</b>	<del>Eurodollar</del> <b>Applicable Margin for Term SOFR Loans</b>	<b>Commitment Fee</b>
Greater than or equal to 2.50 to 1.00	2.75%	3.75%	0.50%
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	2.50%	3.50%	0.375%
Less than 2.00 to 1.00	2.00%	3.00%	0.25%

(~~iii~~b) Changes in the Applicable Margin and the Commitment Fee based upon changes in the Consolidated ~~Net~~ Leverage Ratio shall become effective on the third Business Day following the receipt by the Administrative Agent pursuant to Section 6.01(a) or Section 6.01(b), as the case may be, of the financial statements of the Borrower for the Testing Period most recently ended, accompanied by a Compliance Certificate in accordance with Section 6.01(c), demonstrating the computation of the Consolidated ~~Net~~ Leverage Ratio. Notwithstanding the foregoing provisions, during any period when (A) the Borrower has failed to timely deliver its consolidated financial statements referred to in Section 6.01(a) or Section 6.01(b), as applicable, accompanied by a Compliance Certificate in accordance with Section 6.01(c), or (B) an Event of Default has occurred and is continuing, the Applicable Margin and the Commitment Fee shall be the highest percentage indicated therefor in the above matrix, regardless of the Consolidated ~~Net~~ Leverage Ratio at such time. The above matrix does not modify or waive, in any respect, the rights of the Administrative Agent and the Lenders to charge any default rate of interest or any of the other rights and remedies of the Administrative Agent and the Lenders in accordance with the terms hereunder.

(~~iv~~c) In the event that any financial statement or certificate, as applicable, delivered pursuant to Section 6.01(a), (b) or (c) is shown to be inaccurate (regardless of whether this Agreement or the Commitments are in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of (~~A~~) a higher Applicable Margin or Commitment Fee for any period (any such period, an “Applicable Period”) than the Applicable Margin and the Commitment Fee actually applied for such Applicable Period, then (i) the Borrower shall immediately deliver to the Administrative Agent a corrected certificate for such Applicable Period, (ii) the Applicable Margin and the Commitment Fee shall be determined as if such corrected, higher Applicable Margin and Commitment Fee were applicable for such period, and (iii) the Borrower shall immediately pay to the Administrative Agent the accrued additional interest and fees owing as a result of such higher Applicable Margin and Commitment Fee for such Applicable Period.

“Applicable Period” has the meaning provided to such term in subpart (~~iv~~i)(c) of the definition of “Applicable Margin.”

“Approved Bank” has the meaning provided in subpart (ii) of the definition of “Cash Equivalents.”

“Approved Fund” means a fund that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit and that is administered or managed by a Lender or an Affiliate of a Lender or its investment advisor. With respect to any Lender, an Approved Fund shall also include any swap, special purpose vehicle purchasing or acquiring security interests in collateralized loan obligations or any other vehicle through which such Lender may leverage its investments from time to time.

“Arrangers” means KeyBanc Capital Markets Inc., BMO Capital Markets Corp., FifthThird Bank, National Association, Silicon Valley Bank, Truist Securities, Inc. and Wells Fargo Securities, LLC, in each case, in their respective capacity as a lead arranger and bookrunner.

“Asset Sale” means, with respect to any Person, the sale, lease, transfer or other disposition (including by means of Sale and Lease-Back Transactions, and by means of mergers, consolidations, statutory divisions, amalgamations and liquidations of a corporation, partnership or limited liability company of the interests therein of such Person) by such Person to any other Person of any of such Person’s assets, *provided* that the term Asset Sale specifically excludes (i) any sales, transfers or other dispositions of inventory, or obsolete, worn-out or excess furniture, fixtures, equipment or other property, real or personal, tangible or intangible, in each case in the ordinary course of business, and (ii) any disposition or series of related dispositions for fair market value that yield gross proceeds of less than \$250,000.

“Assignment Agreement” means an Assignment Agreement substantially in the form of Exhibit G hereto or such other agreement acceptable to the Administrative Agent.

“Authorized Officer” means, with respect to any Person, any of the following officers: the President, the Chief Executive Officer, the Chief Legal Officer, the Chief Financial Officer, the Treasurer or the Assistant Treasurer, or such other officer of such Person as is authorized in writing to act on behalf of such Person. Unless otherwise qualified, all references herein to an Authorized Officer shall refer to an Authorized Officer of the Borrower.

“Available Amount” means, at any date, an aggregate amount determined on a cumulative basis equal to:

(a) \$2,500,000; plus

(b) the amount (which shall not be less than zero) of Excess Cash Flow (if any) not required to be applied towards repayment of the Loans pursuant to Section 2.13(c)(iv) (but excluding the amount of any voluntary repayments, prepayments or redemptions made during such fiscal year that are applied to reduce the amount of such required prepayment in accordance with Section 2.13(c)(iv)), determined for the period (taken as one accounting period) commencing with the fiscal year ending December 31, 2021 to the end of the most recently completed fiscal year in respect of which a Compliance Certificate has been delivered as required hereunder; plus

(c) the cash proceeds of any Permitted Equity Issuance after the Closing Date; plus

(d) any Declined Amounts; less

(e) the portion of the Available Amount that is applied from time to time to make Investments or payments of Subordinated Indebtedness to the extent permitted hereunder.

At any time the Borrower utilizes the Available Amount, the Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer certifying as to (i) compliance with the conditions for usage of the Available Amount, as applicable, and (ii) the calculation of the Available Amount both prior to and immediately after giving effect to its usage.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement, or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.09(i)(iv).

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

“Bail-In Legislation” means (i) 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 (ii) 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).

“Banking Services Obligations” means all obligations of the Credit Parties, whether absolute or contingent, and howsoever and whensoever created, arising, evidenced or acquired in connection with the provision of commercial credit cards, stored value cards, or treasury management services (including controlled disbursement automated clearinghouse transactions, return items, overdrafts, netting and interstate depository network services) by any Lender (or any Affiliate of a Lender) to any Credit Party or by any Person that was a Lender (or an Affiliate of a Lender) at the time such obligation was created.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto, as hereafter amended.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (i) the Federal Funds Rate plus 0.50%, (ii) the rate of interest in effect for such day as established from time to time by the Administrative Agent as its “prime rate”, whether or not publicly announced, which interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit, (iii) the Adjusted ~~Eurodollar~~ 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 1.00% and (iv) 1.50%. Any change in the Base Rate due to a change in the prime rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the prime rate, the Federal Funds Effective Rate or Adjusted Term SOFR, respectively.

“Base Rate Loan” means any Loan bearing interest at a rate based upon the Base Rate in effect from time to time.

“Benchmark” means, initially, with respect to any Term SOFR Loan, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.09(i).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for the then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the ~~Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto~~ Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate ~~of interest~~ as a replacement ~~to LIBOR for U.S. dollar-denominated syndicated credit facilities and (b) the~~ for such Benchmark for syndicated credit facilities denominated in U.S. Dollars at such time and (ii) the related Benchmark Replacement Adjustment, if any; provided that, if ~~the~~ such Benchmark Replacement as so determined would be less than ~~0.50%, the~~ the Term SOFR Floor, such Benchmark Replacement will be deemed to be ~~0.50%~~ the Term SOFR Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of ~~the Adjusted Eurodollar Rate~~ any then-current Benchmark with an Unadjusted Benchmark Replacement for ~~each~~ any applicable ~~Interest Period~~ Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment; (which may be a positive or negative value or zero), if any, that has been selected by the Administrative Agent and the Borrower 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 ~~LIBOR~~ such Benchmark with the applicable Unadjusted Benchmark Replacement by the ~~Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto~~ Relevant Governmental Body 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 ~~the Adjusted Eurodollar Rates~~ such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. ~~dollar-denominated~~ Dollar denominated syndicated credit facilities ~~at such time.~~

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides 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 the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the ~~Adjusted Eurodollar Rate;~~ then-current Benchmark:

(a) in the case of clause ~~(1a)~~ or ~~(2b)~~ of the definition of “Benchmark Transition Event;”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of ~~LIBOR~~ such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide ~~LIBOR~~; or ~~(b) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein~~ all Available Tenors of such Benchmark (or such component thereof); or

~~(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by 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 non-representative or non-compliant with or non-aligned 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 (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.~~

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to the then-current Benchmark, the occurrence of one or more of the following events with respect to such Benchmark:

~~“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the Adjusted Eurodollar Rate: (1a) a public statement or publication of information by or on behalf of the administrator of LIBOR such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide LIBOR; (2) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or (3) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative~~ any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by 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 not, or as of a specified future date will not be, representative or in compliance with or aligned 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).

“Benchmark Transition Start Date” means ~~(a), with respect to any Benchmark,~~ in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) ~~and (b) in the case of an Early Opt in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.~~

“Benchmark Unavailability Period” means, ~~if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred~~ with respect to ~~LIBOR and solely to the extent that the Adjusted Eurodollar Rate has not been replaced with a~~any then-current Benchmark Replacement, the period ~~(x) if any~~ (i) beginning at the time that ~~such a~~ Benchmark Replacement Date with respect to such Benchmark pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement has replaced ~~the Adjusted Eurodollar Rate~~such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.09(h) and ~~(y) i~~ ending at the time that a Benchmark Replacement has replaced ~~the Adjusted Eurodollar Rate~~such Benchmark for all purposes hereunder ~~pursuant to~~and under any Loan Document in accordance with Section 2.09(h).

“Beneficial Owner” means (i) each individual, if any, who, directly or indirectly, owns 25% or more of Holdings’ Equity Interests, (ii) each individual, if any, who, directly or indirectly, owns 25% or more of the Borrower’s Equity Interests, and (iii) a single individual with significant responsibility to control, manage or direct Holdings or the Borrower.

“Benefited Creditors” means, with respect to the Borrower Guaranteed Obligations pursuant to Article X, each of the Administrative Agent, the Lenders, each LC Issuer and the Swing Line Lender and each Designated Hedge Creditor and each person providing Designated Banking Services Obligations, and the respective successors and assigns of each of the foregoing.

“Borrower” has the meaning provided in the first paragraph of this Agreement.

“Borrower Guaranteed Obligations” has the meaning provided in Section 10.01.

“Borrowing” means a Revolving Borrowing, a Term Borrowing or the incurrence of a Swing Loan.

“Business Day” means (i) any day other than Saturday, Sunday or any other day on which commercial banks in Cleveland, Ohio or New York, New York are authorized or required by law to close and (ii) with respect to any matters relating to ~~Eurodollar Loans, any day on which dealings in U.S. Dollars are carried on in the London interbank market~~ Term SOFR Loans, a SOFR Business Day.

“Capital Distribution” means, with respect to any Person, a payment made, liability incurred or other consideration given for the purchase, acquisition, repurchase, redemption or retirement of any Equity Interest of such Person or as a dividend, return of capital or other distribution in respect of any of such Person’s Equity Interests.

“Capital Expenditures” means, without duplication, (i) any expenditure or commitment to expend money for any purchase or other acquisition of any asset including capitalized leasehold improvements, which would be classified as a fixed or capital asset on a consolidated balance sheet of Holdings, the Borrower and its Subsidiaries prepared in accordance with GAAP, and (ii) Capitalized Lease Obligations and Synthetic Lease Obligations, but excluding (a) expenditures made in connection with the replacement, substitution or restoration of property pursuant to Section 2.13(c)(viii), (b) the purchase price of equipment that is purchased substantially contemporaneously 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 and (c) Permitted Acquisitions.

“Capital Lease” as applied to any Person means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, should be accounted for as a capital lease or financing lease on the balance sheet of that Person.

“Capitalized Lease Obligations” means, with respect to any Person, all obligations under Capital Leases of such Person, without duplication, in each case taken at the amount thereof accounted for as liabilities identified as “capital lease obligations” (or any similar words) on a consolidated balance sheet of such Person prepared in accordance with GAAP.

“Cash Collateralize” means, (i) to deposit into a cash collateral account maintained with (or on behalf of) the Administrative Agent, and under the sole dominion and control of the Administrative Agent, or (ii) to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the LC Issuers or Lenders, as collateral for LC Outstandings or obligations of Lenders to fund participations in respect of LC Outstandings, cash or deposit account balances in each case, in an amount equal to 103% of such obligations or, if the Administrative Agent and each applicable LC Issuer shall agree in their sole discretion, other credit support; in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and each applicable LC Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Dividend” means a Capital Distribution by a Person payable in cash to the holders of Equity Interests of such Person with respect to any class or series of Equity Interest of such Person.

“Cash Equivalents” means any of the following:

(i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition;



(ii) U.S. dollar denominated time deposits, certificates of deposit and bankers' acceptances of (x) any Lender, (y) any commercial bank of recognized standing organized under the laws of the United States (or any state thereof or the District of Columbia) and having capital and surplus in excess of \$500,000,000 or (z) any commercial bank (or the parent company of such bank) of recognized standing organized under the laws of the United States (or any state thereof or the District of Columbia) and whose short-term commercial paper rating from S&P is at least A-1, A-2 or the equivalent thereof or from Moody's is at least P-1, P-2 or the equivalent thereof (any such bank, an "Approved Bank"), in each case with maturities of not more than 365 days from the date of acquisition;

(iii) commercial paper and variable or fixed rate notes issued by any Lender or Approved Bank or by the parent company of any Lender or Approved Bank and commercial paper or any variable rate note issued by, or guaranteed by, any industrial or financial company with a short-term commercial paper rating of at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, or guaranteed by any industrial company with a long-term unsecured debt rating of at least A or A2, or the equivalent of each thereof, from S&P or Moody's, as the case may be, and in each case maturing within 270 days after the date of acquisition;

(iv) fully collateralized repurchase agreements entered into with any Lender or Approved Bank having a term of not more than 30 days and covering securities described in clause (i) above;

(v) investments funds investing at least 95% of their assets in securities of the types described in clauses (i) through (iv) above;

(vi) investments in money market funds access to which is provided as part of "sweep" accounts maintained with a Lender or an Approved Bank;

(vii) investments in industrial development revenue bonds that (A) "re-set" interest rates not less frequently than quarterly, (B) are entitled to the benefit of a remarketing arrangement with an established broker dealer, and (C) are supported by a direct pay letter of credit covering principal and accrued interest that is issued by an Approved Bank; and

(viii) investments in pooled funds or investment accounts consisting of investments of the nature described in the foregoing clause (vii).

"Cash Proceeds" means, with respect to (i) any Asset Sale, the aggregate cash payments (including any cash received by way of deferred payment pursuant to a note receivable issued in connection with such Asset Sale, other than the portion of such deferred payment constituting interest, but only as and when so received) received by Holdings, the Borrower or any Subsidiary from such Asset Sale, (ii) any Event of Loss, the aggregate cash payments, including all insurance proceeds and proceeds of any award for condemnation or taking, received in connection with such Event of Loss and (iii) the issuance or incurrence of any Indebtedness, the aggregate cash proceeds received by Holdings, the Borrower or any Subsidiary in connection with the issuance or incurrence of such Indebtedness.

"CBA" means [CME Group Benchmark Administration Ltd.](#)

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same may be amended from time to time, 42 U.S.C. § 9601 *et seq.*

"CFC" means a Subsidiary that is a controlled foreign corporation under the Code.

“CFC Holdco” means any Subsidiary with no material operations and no material assets other than capital stock of and/or indebtedness incurred by one or more CFCs.

“Change in Control” means:

(i) any “person” or “group” (as those terms are used in Section 13(d)(3) of the 1934 Act, it being agreed that an employee of Holdings or any of its Subsidiaries for whom shares are held under an employee stock ownership, employee retirement, employee savings or similar plan and whose shares are voted in accordance with the instructions of such employee shall not be a member of a “group” (as that term is used in Section 13(d)(3) of the 1934 Act) solely because such employee’s shares are held by a trustee under said plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the 1934 Act), directly or indirectly, of Equity Interests of Holdings (or other securities convertible into such Equity Interests) representing 35% or more of the combined voting power of all Equity Interests of Holdings entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Holdings;

(ii) occupation of a majority of the seats (other than vacant seats) on the board of directors of Holdings by Persons who were neither (i) nominated or approved by the board of directors of Holdings nor (ii) appointed by directors so nominated or approved;

(iii) other than the Series B shares issued and outstanding as of the ~~Closing Date~~First Amendment Effective Date (except to the extent any are repurchased, retired or otherwise acquired pursuant to Section 7.06(e)(ii)), Holdings fails to directly own 100% of the Equity Interests of the Borrower or fails to control directly 100% of the Equity Interests of the Borrower;

(iv) the Series B Holders assign or transfer any of the Equity Interests of the Borrower to any Person other than as permitted under the Organizational Documents of Holdings as in effect on the date hereof or as modified as agreed to by the Required Lenders;

(v) except in connection with a transaction permitted by Section 7.05, the Borrower fails to own and control, directly or indirectly, 100% of the Equity Interests of each other Credit Party other than Holdings (or if such Subsidiary becomes a Credit Party after the Closing Date, the amount owned and controlled, directly or indirectly, as of the date such Subsidiary becomes a Credit Party); or

(vi) the occurrence of any “Change in Control” (or any similar or like term) as defined in any indenture, agreement, note or similar document governing or evidencing Material Indebtedness or Equity Interests of Holdings or the Borrower.

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

“Charges” has the meaning provided in Section 11.23.

“CIP Regulations” has the meaning provided in Section 9.07.

“Claims” has the meaning set forth in the definition of “Environmental Claims.”

“Closing Certificate” means a certificate substantially in the form of Exhibit F attached hereto.

“Closing Date” means September 3, 2020.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. Section references to the Code are to the Code as in effect at the Closing Date and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

“Collateral” means the “Collateral” as defined in the Security Agreement, together with any other collateral (whether Real Property or personal property) covered by any Security Document.

“Collateral Assignment” means a collateral assignment agreement, in form and substance reasonably acceptable to the Administrative Agent, pursuant to which, in connection with any Permitted Acquisition, the applicable Credit Party, among other things, collaterally assigns its rights and benefits under the applicable documentation related to the Permitted Acquisition to the Administrative Agent.

“Commercial Letter of Credit” means any letter of credit or similar instrument issued for the purpose of providing the primary payment mechanism in connection with the purchase of materials, goods or services in the ordinary course of business.

“Commitment” means, with respect to each Lender, (i) its Revolving Commitment or (ii) its Term Commitment, if any, or, in the case of such Lender, all of such Commitments.

“Commitment Fees” has the meaning provided in Section 2.11(a).

“Commodities Hedge Agreement” means a commodities contract purchased by Holdings, the Borrower or any of its Subsidiaries in the ordinary course of business, and not for speculative purposes, with respect to raw materials necessary to the manufacturing or production of goods in connection with the business of Holdings, the Borrower and its Subsidiaries.

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

“Communications” has the meaning provided in Section 9.15(a).

“Competitor” means any Person described in clause (b) of the definition of Disqualified Institution.

“Compliance Certificate” has the meaning provided in Section 6.01(c).

“Confidential Information” has the meaning provided in Section 11.15(b).

“Conforming Changes” means, with respect to either the use or administration of Term SOFR, or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “SOFR Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.02 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

“Consideration” means, in connection with an Acquisition, the aggregate consideration paid, including borrowed funds, cash, the issuance of securities or notes, the assumption or incurring of liabilities (direct or contingent), the payment of consulting fees (excluding any fees payable to any investment banker or advisors in connection with such Acquisition) or fees for a covenant not to compete and any other consideration paid.

“Consolidated Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) made by Holdings and its Subsidiaries to acquire or lease (pursuant to a Capital Lease) fixed or capital assets, or additions to equipment (including replacements, capitalized repairs and improvements during such period).

“Consolidated Depreciation and Amortization Expense” means, for any period, all depreciation and amortization expenses of Holdings and its Subsidiaries, all as determined for Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP.

“Consolidated EBITDA” means, for any period:

- (i) Consolidated Net Income for the most recently completed Testing Period, plus
- (ii) without duplication, the sum of the amounts for such period included in determining such Consolidated Net Income of:
  - (a) Consolidated Income Tax Expense,
  - (b) Consolidated Interest Expense,
  - (c) Consolidated Depreciation and Amortization Expense,
  - (d) the amount of any non-recurring restructuring charge or retention, severance or integration costs or other non-recurring business optimization expense or cost incurred in connection with any Permitted Acquisition, in each case, to the extent incurred within twelve months of the closing of such Acquisition; provided that amounts added-back to Consolidated EBITDA in reliance on this clause (d) and on clause (h) below, in an aggregate basis, shall not, exceed 15% of Consolidated EBITDA (determined prior to giving effect to such add-backs) in any four consecutive fiscal quarter period,

- (e) other non-cash charges (including, without limitation, any non-cash loss attributable to the mark-to-market movement in the valuation of hedging obligations or warrant obligations (to the extent the cash impact resulting from such loss has not been realized), and non-cash stock based compensation expenses, but excluding any such noncash charges to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period),
  - (f) proceeds of business interruption insurance received in cash during such period,
  - (g) transaction costs, expenses or charges (other than depreciation or amortization expenses) related to any equity offering, sale, redemption or repurchase of equity interest, non-ordinary course Asset Sale, Permitted Acquisition or similar Investment, in each case, permitted hereunder, or the incurrence or amendment of Indebtedness permitted to be incurred hereunder (in each case, whether or not successful, and including the Transactions),
  - (h) pro forma “run rate” cost savings, operating expense reductions and synergies, in each case, related to Permitted Acquisitions consummated by the Borrower or any of its Subsidiaries that are factually supportable and reasonably identifiable and are projected by the Borrower in good faith (and certified by the Chief Financial Officer of Borrower in reasonable detail) to result from actions taken or expected to be taken (in the good faith determination of Borrower) within twelve months after the date any such transaction is consummated, and in each case to the extent reasonably expected to be realized within such twelve month period; provided that amounts added-back to Consolidated EBITDA in reliance on this clause (h) and on clause (d) above, in an aggregate basis (including any such amounts that would be permitted to be included in financial statements prepared in accordance with Regulation S-X, but excluding any such amounts relating to the Transactions and/or any transaction consummated prior to the Closing Date), shall not exceed 15% of Consolidated EBITDA (determined prior to giving effect to such add-backs) in any four consecutive fiscal quarter period,
  - (i) costs and expenses in connection with pre-opening and opening of any retail location or showroom in an amount not to exceed \$200,000 per any such location or showroom, and
  - (j) costs, expenses or charges with respect to preparation of filings made with the SEC, defense of third party litigation and/or executive search fees and costs and expenses associated with a new executive level position, in an aggregate amount not to exceed \$1,000,000 for any Testing Period; less
- (iii) without duplication, the sum of the amounts for such period included in determining such Consolidated Net Income of:
- (a) interest income (except to the extent deducted in determining Consolidated Interest Expense),
  - (b) any non-cash gains, and
  - (c) any federal, state, local, and foreign income tax credits;

*provided, however*, that Consolidated EBITDA of Holdings and its Subsidiaries for any Testing Period shall (y) include the Consolidated EBITDA for any Person or business unit that has been acquired by Holdings or any of its Subsidiaries for any portion of such Testing Period prior to the date of acquisition, so long as such Consolidated EBITDA has been verified by appropriate audited financial statements or other financial statements reasonably acceptable to the Administrative Agent and (z) exclude the Consolidated EBITDA for any Person or business unit that has been disposed of by Holdings or any of its Subsidiaries, for the portion of such Testing Period prior to the date of disposition. ~~For the purposes of this Agreement, Consolidated EBITDA shall be deemed to mean \$15,300,000 for the fiscal quarter ending September 30, 2019, \$5,800,000 for the fiscal quarter ending December 31, 2019, \$10,600,000 for the fiscal quarter ending March 31, 2020, and for the fiscal quarter ending June 30, 2020, \$35,200,000 and from July 1, 2020 to the Closing Date, an amount calculated using the same methodology used in calculating each of the prior periods.~~

“Consolidated Fixed Charges” means, for any period, as determined on a consolidated basis and in accordance with GAAP, without duplication, the aggregate of (i) Consolidated Interest Expense (excluding any interest that is paid-in-kind and other non-cash interest payments or adjustments), (ii) scheduled principal payments on Indebtedness due in the twelve months preceding the measurement date (which for the avoidance of doubt shall not include prepayments of the Revolving Loans or other optional or mandatory prepayments required under Section 2.13(a) or (c), except, in each case, if such prepayment is accompanied with a termination of the Revolving Commitments), ~~and~~ (iii) Capital Distributions made in cash (other than distributions made in cash under Section 7.06(d) for Taxes) made by the Borrower in respect of its common stock during such period; ~~provided that for purposes of calculating items (i) and (ii) above;~~ (iv) unfinanced (and not financed by revolving Indebtedness) Consolidated Maintenance Capital Expenditures of Holdings, the Borrower and its Subsidiaries during such period, and (v) cash payments in respect of Taxes (including, without duplication, cash payments made or required to be made by Holdings and its Subsidiaries pursuant to the Tax Receivables Agreement, distributions made in cash under Section 7.06(d) for Taxes and federal, state, local and foreign income taxes) made during such period (net of any cash refund in respect of income taxes actually received by Holdings, the Borrower and its Subsidiaries during such period).

~~(i) such items for the period ended September 30, 2020 shall be the actual amounts for the period from the Closing Date through September 30, 2020 divided by the number of days during such period multiplied by 365;~~

~~(ii) such items for the period ended December 31, 2020 shall be the actual amounts for the period from the Closing Date through December 31, 2020 divided by the number of days during such period multiplied by 365; and~~

~~(iii) such items for the period ended March 31, 2021 shall be the actual amounts for the period from the Closing Date through March 31, 2021 divided by the number of days during such period multiplied by 365.~~

“Consolidated Income Tax Expense” means, for any period, all provisions for taxes based on income, profits or capital of Holdings and its Subsidiaries, including, without limitation, federal, state, franchise, excise and similar taxes and foreign withholding taxes paid or accrued during such period including penalties and interest related to such taxes or arising from any tax examinations.

“Consolidated Interest Expense” means with respect to Holdings and its Subsidiaries on a consolidated basis, for any Testing Period, interest expense in accordance with GAAP, adjusted, to the extent not included, to include without duplication (i) interest expense attributable to Capitalized Leases, (ii) gains and losses on hedging or other derivatives to hedge interest rate risk, (iii) fees and costs related to letters of credit, bankers’ acceptance financing, surety bonds and similar financings, and (iv) amortization or write-off of deferred financing fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, financing fees and expenses and, adjusted, to the extent included, to exclude (i) interest income and (ii) any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program.

“Consolidated Leverage Ratio” means, for any Testing Period, the ratio of (i) Consolidated Total Debt to (ii) Consolidated EBITDA; provided that, solely for purposes of Section 7.07, for the period ending (x) September 30, 2022, Consolidated EBITDA in the denominator shall only consist of Consolidated EBITDA for the fiscal quarter then ended, and (y) December 31, 2022, Consolidated EBITDA in the denominator shall only consist of Consolidated EBITDA for the fiscal quarters ended September 30, 2022 and December 31, 2022.

“Consolidated Maintenance Capital Expenditures” means, for any period, (x) Capital Expenditures of Holdings, the Borrower and its Subsidiaries ~~made in connection with the replacement, maintenance, substitution or restoration of assets (other than~~ less (y) Growth Capital Expenditures ~~made in connection with the expansion or remodeling of any existing unit or location) for such period, as determined on a consolidated basis.~~

“Consolidated Net Leverage Ratio” means, for any Testing Period, the ratio of (i) Consolidated Net Total Debt to (ii) Consolidated EBITDA.

“Consolidated Net Income” means for any period, the net income (or loss) of Holdings, the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; provided, that there shall be excluded (a) the income (or loss) of any Person (other than a Subsidiary of Holdings) in which any other Person (other than Holdings or any of its Subsidiaries) has a joint interest (provided that Consolidated Net Income shall be increased by the amount of dividends or other distributions actually paid in cash or Cash Equivalents to any Credit Party by such other Person during such period), (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Holdings or is merged into or consolidated with Holdings or any of its Subsidiaries or that Person’s assets are acquired by Holdings or any of its Subsidiaries, (c) the income (or loss) of any Subsidiary of Holdings to the extent that the declaration or payment of dividends or similar distributions or other payment by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any material agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-Tax gains or losses attributable to asset sales outside the ordinary course of business or returned surplus assets of any Plan and (e) to the extent not included in clauses (a) through (d) above, any extraordinary gains or extraordinary losses.

“Consolidated Net Working Capital” means current assets (excluding cash and Cash Equivalents), minus current liabilities, all as determined for Holdings, the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

“Consolidated Net Total Debt” means, as at any date of determination, Consolidated Total Debt, less the lesser of (x) \$25,000,000, and (y) the amount of cash and Cash Equivalents of the Credit Parties subject to Control Agreements in favor of the Administrative Agent (it being understood that for the first ninety (90) days after the Closing Date, Borrower shall be permitted to net unrestricted cash and Cash Equivalents not subject to a first priority perfected lien in favor of the Administrative Agent for purposes of calculating the Consolidated Net Leverage Ratio).

“Consolidated Net Total Debt” means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Holdings, the Borrower and its Subsidiaries of the type described in clauses (i) through (iii), clause (iv) (solely to the extent of any unreimbursed obligations), clause (v) (solely to the extent of any unreimbursed obligations), clause (vi), clause (vii), clause (ix) and clause (xii) of the definition of the term “Indebtedness” (or, if higher, the par value or stated face amount of all such Indebtedness), and with respect to any Indebtedness of the type described by the foregoing, (without duplication) any guarantee of such type of Indebtedness, determined on a consolidated basis as of such date in accordance with GAAP, ~~less the lesser of (x) \$50,000,000, and (y) the amount of cash and Cash Equivalents of the Credit Parties subject to Control Agreements in favor of the Administrative Agent (it being understood that for the first ninety (90) days after the Closing Date, Borrower shall be permitted to net unrestricted cash and Cash Equivalents not subject to a first priority perfected lien in favor of the Administrative Agent for purposes of calculating the Consolidated Net Leverage Ratio).~~

“Continue,” “Continuation” and “Continued” each refers to a continuation of a Eurodollar Term SOFR Loan for an additional Interest Period as provided in Section 2.10.

“Control Agreements” has the meaning set forth in the Security Agreement.

“Convert,” “Conversion” and “Converted” each refers to a conversion of Loans of one Type into Loans of another Type.

“Covenant Amendment Period” means the period commencing as of the First Amendment Effective Date and ending as of the fifth (5<sup>th</sup>) Business Day after the date on which the Borrower delivers a Compliance Certificate to the Administrative Agent pursuant to Section 6.01(c) demonstrating a Consolidated Leverage Ratio (without giving effect to the proviso set forth in the definition thereof) of less than 2.00:1.00 for two consecutive fiscal quarters.

“Credit Event” means the making of any Borrowing, any Conversion or Continuation or any LC Issuance.

“Credit Facility” means the credit facility established under this Agreement pursuant to which (i) the Lenders shall make Revolving Loans to the Borrower, and shall participate in LC Issuances, under the Revolving Facility pursuant to the Revolving Commitment of each such Lender, (ii) each Lender with a Term Commitment shall make a Term Loan to the Borrower pursuant to such Term Commitment of such Lender, (iii) the Swing Line Lender shall make Swing Loans to the Borrower under the Swing Line Facility pursuant to the Swing Line Commitment, and (iv) each LC Issuer shall issue Letters of Credit for the account of the LC Obligors in accordance with the terms of this Agreement.

“Credit Facility Exposure” means, for any Lender at any time, the sum of (i) such Lender’s Revolving Facility Exposure at such time, (ii) in the case of the Swing Line Lender, the principal amount of Swing Loans outstanding at such time, and (iii) the outstanding aggregate principal amount of the Term Loan made by such Lender, if any.

“Credit Party” means the Borrower, Holdings or any other Guarantor.

“Crossover Lender” means each holder of any Subordinated Indebtedness or any of such holder’s Affiliates.

“Debtor Relief Laws” means the Bankruptcy Code and any other federal, state, provincial, or foreign bankruptcy or insolvency law, each as now and hereinafter in effect, any successors to such statutes, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), judicial management, administration, examinership or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and any law permitting a debtor to obtain a stay or a compromise of the claims of its creditors (including any applicable corporate law relating to arrangements, reorganizations or restructuring which permits a debtor to seek a compromise or arrangement of a corporation’s debts or a stay of proceedings to enforce any claims of such corporation’s creditors against it).



“Declined Amounts” has the meaning set forth in Section 2.13(f).

“Declining Lender” has the meaning set forth in Section 2.13(f).

“Default” means any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any LC Issuer, any Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any LC Issuer or Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, in each case, which is still in effect or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) upon delivery of written notice of such determination to the Borrower, each LC Issuer, each Swing Line Lender and each Lender.

“Default Rate” means, for any day, (i) with respect to any Loan, a rate per annum equal to 2% per annum above the interest rate that is or would be applicable from time to time to such Loan pursuant to Section 2.09(a) or Section 2.09(b), as applicable and (ii) with respect to any other amount, a rate per annum equal to 2% per annum above the rate that would be applicable to Revolving Loans that are Base Rate Loans pursuant to Section 2.09(a).

“Designated Banking Services Obligations” means any Banking Services Obligations evidenced by an agreement to which Holdings, the Borrower or any of its Subsidiaries is a party and as to which a Lender or any of its Affiliates is a counterparty that, pursuant to a written instrument signed by the Borrower and the Administrative Agent, has been designated as a Designated Banking Services Obligations and will be entitled to share in the benefits of the Guaranty and the Security Documents.

“Designated Hedge Agreement” means any Hedge Agreement (other than a Commodities Hedge Agreement) to which Holdings, the Borrower or any of its Subsidiaries is a party and as to which a Lender or any of its Affiliates (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of such Hedge Agreement) is a counterparty that, pursuant to a written instrument signed by the Administrative Agent, has been designated as a Designated Hedge Agreement so that Holdings’, Borrower’s or such Subsidiary’s counterparty’s credit exposure thereunder will be entitled to share in the benefits of the Guaranty and the Security Documents to the extent the Guaranty and such Security Documents provide guarantees or security for creditors of Holdings, the Borrower or any Subsidiary under Designated Hedge Agreements.

“Designated Hedge Creditor” means each Secured Hedge Provider that participates as a counterparty to any Credit Party pursuant to any Designated Hedge Agreement with such Secured Hedge Provider.

“Disqualified Equity Interests” means any Equity Interest that (a) 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, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) 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, on or prior to one hundred and eighty (180) days after the Term Loan Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or other Indebtedness or (ii) any Equity Interest referred to in clause (a) above, in each case at any time on or prior to one hundred and eighty (180) days after the Term Loan Maturity Date, (c) contains any repurchase obligation that may come into effect prior to payment in full of all Obligations, (d) requires cash dividend payments prior to one hundred and eighty (180) days after the Term Loan Maturity Date, or (e) provides the holders of such Equity Interests with any rights to receive any cash upon the occurrence of a change of control prior to one hundred and eighty (180) days after the date on which the Obligations have been irrevocably paid in full in cash (other than contingent obligations for which no claim has been made), unless, in any case, the rights to receive such cash are contingent upon the Obligations being irrevocably paid in full in cash (other than contingent obligations for which no claim has been made).

“Disqualified Institution” means, on any date, (a) any Person designated by the Borrower as a “Disqualified Institution” by written notice delivered to the Administrative Agent prior to the Closing Date, (b) any Person that (x) is engaged in manufacturing, wholesale or retailing of bedding or comfort related products or any of their Affiliates, in each case, specifically identified by name and designated by the Borrower as a “Disqualified Institution” by written notice to the Administrative Agent and the Lenders (including by posting such notice to the Platform) not less than five (5) Business Days prior to such date or (y) is engaged in a business classified under NAICS code 337910, and (c) any reasonably identifiable Affiliate of any Person referred to in the foregoing clauses (a) and (b) on the basis of the name of such Affiliate containing the name of such Person; provided, (i) a Competitor or an Affiliate of a Competitor shall not include any Person that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and (ii) “Disqualified Institution” shall exclude any Person that the Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent from time to time.

“Dollars,” “U.S. Dollars” and the sign “\$” each means lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States, any State thereof, or the District of Columbia.

“DQ List” has the meaning set forth in Section 11.06(g).

~~“Early Opt-in Election” means the occurrence of:~~

~~(1) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.09(h), are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Adjusted Eurodollar Rate, and~~

~~(2) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.~~

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

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

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

“Eligible Assignee” means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund, and (iv) any other Person (other than a natural Person) approved by (A) the Administrative Agent, (B) in the case of an assignment of a Revolving Commitment, each LC Issuer, and (C) unless a Specified Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed (and the Borrower shall be deemed to have consented if it fails to object to any assignment within five Business Days after it received written notice thereof)); *provided, however*, no such approval of the Administrative Agent or the Borrower shall be required in connection with assignments to any Lender or any Affiliate thereof; and, *provided further*, that notwithstanding the foregoing, “Eligible Assignee” shall not include (x) Holdings or the Borrower or any of their Affiliates or Subsidiaries, (y) any holder of any Subordinated Indebtedness or any of such holder’s Affiliates, or (z) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (z). For the avoidance of doubt, any Disqualified Institution is subject to Section 11.06(g).

“Eligible Participant” means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund, (iv) any commercial bank (or the parent company of such bank), insurance company or any company engaged in the business of making commercial loans and (v) any other Person (other than a natural Person) approved by (A) the Administrative Agent, (B) each LC Issuer, (C) each Swing Line Lender and (D) unless a Default or Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed (and the Borrower shall be deemed to have consented thereto if it fails to object to any participation within five Business Days after it received written notice thereof)); *provided, however*, that notwithstanding the foregoing, “Eligible Participant” shall not include (x) Holdings or the Borrower or any of their Affiliates or Subsidiaries, (y) any holder of any Subordinated Indebtedness or any of such holder’s Affiliates or (z) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (z).

“Environmental Claims” means any and all global, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued under any such law (hereafter “Claims”), including, without limitation, (i) any and all Claims by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the storage, treatment or Release (as defined in CERCLA) of any Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

“Environmental Law” means any applicable Federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy and rule of common law now or hereafter in effect and in each case as amended, and any binding and enforceable judicial or global interpretation thereof, including any judicial or global order, consent, decree or judgment issued to or rendered against Holdings, the Borrower or any of its Subsidiaries relating to the protection of the environment or employee health and safety or Hazardous Materials, including, without limitation, CERCLA; RCRA; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 *et seq.*, the Hazardous Material Transportation Act, 49 U.S.C. § 5101 *et seq.* and the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.* (to the extent it regulates occupational exposure to Hazardous Materials); and any state, provincial and local or foreign counterparts or equivalents, in each case as amended from time to time.

“Environmental Liabilities and Costs” means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any Environmental Claim which relate to any environmental condition or a release, use, handling, storage or treatment of Hazardous Materials by any Credit Party or a predecessor in interest from or on to (i) any property presently or formerly owned by any Credit Party or (ii) any facility which received Hazardous Materials generated by any Credit Party.

“Equity Interest” means with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or non-voting) of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) or any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership, but in no event will Equity Interest include any debt securities convertible or exchangeable into equity unless and until actually converted or exchanged.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the Closing Date and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

“ERISA Affiliate” means each Person (as defined in Section 3(9) of ERISA), which together with Holdings or a Subsidiary of Holdings, would be deemed to be a “single employer” (i) within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(a)(14) or 4001(b)(i) of ERISA or (ii) as a result of Holdings or a Subsidiary of Holdings being or having been a general partner of such Person.

“ERISA Event” means: (i) that a Reportable Event has occurred with respect to any Plan; (ii) with respect to any Single Employer Plan, the failure to meet the minimum funding standard of Section 412 of the Code (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430(j) of the Code; (iii) the institution of any steps by Holdings, the Borrower or any Subsidiary, any ERISA Affiliate, the PBGC or any other Person to terminate any Plan or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan; (iv) the institution of any steps by Holdings, the Borrower or any Subsidiary or any ERISA Affiliate to withdraw from any Multi-Employer Plan or Multiple Employer Plan, if such withdrawal could result in withdrawal liability (as described in Part 1 of Subtitle E of Title IV of ERISA or in Section 4063 of ERISA) in excess of \$1,000,000; (v) a non-exempt “prohibited transaction” within the meaning of Section 406 of ERISA in connection with any Plan; (vi) the cessation of operations at a facility of Holdings, the Borrower or any Subsidiary or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (vii) the conditions for imposition of a Lien under Section 303(a) of ERISA shall have been met with respect to a Plan; (viii) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 206(g) of ERISA; (ix) the insolvency of or commencement of reorganization proceedings with respect to a Multi-Employer Plan; or (x) the taking of any action by, or the threatening of the taking of any action by, the Internal Revenue Service, the Department of Labor or the PBGC with respect to any of the foregoing.

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

~~“Eurodollar Loan” means each Loan bearing interest at a rate based upon the Adjusted Eurodollar Rate.~~

“Event of Default” has the meaning provided in Section 8.01.

“Event of Loss” means, with respect to any property, (i) the actual or constructive total loss of such property or the use thereof resulting from destruction, damage beyond repair, or the rendition of such property permanently unfit for normal use from any casualty or similar occurrence whatsoever, (ii) the destruction or damage of a portion of such property from any casualty or similar occurrence whatsoever, (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, any property, or (iv) in the case of any fixtures located upon a leasehold, the termination or expiration of such leasehold.

“Excess Cash Flow” means, for any period, the excess of (i) Consolidated EBITDA for such period, minus (ii) the sum for such period without duplication of (A) Consolidated Interest Expense, (B) Consolidated Income Tax Expense, (C) Consolidated Capital Expenditures funded with Internally Generated Cash, (D) the increase (or decrease), if any, in Consolidated Net Working Capital, (E) scheduled or mandatory repayments, prepayments or redemptions of the principal of Indebtedness (and, as in the case of any revolving credit facility, so long as there is a permanent reduction in the commitment thereunder), (F) without duplication of any amount included under the preceding clause (E), scheduled payments representing the principal portion of Capitalized Leases and Synthetic Leases, (G) Restricted Payments by Holdings to the extent such Restricted Payment was permitted hereunder, (H) the amount of consideration paid in connection with a Permitted Acquisition (including, to the extent permitted to be paid hereunder, the subsequent cash payment of earn-outs in connection therewith, when paid) and other Investments in cash during such period to the extent that such consideration was financed with Internally Generated Cash and permitted under Section 7.05, (I) cash payments by Holdings and its Subsidiaries required to be paid in cash during such period in respect of long-term liabilities of Holdings and its Subsidiaries other than Indebtedness to the extent that such payments were made with Internally Generated Cash, (J) cash payments by Holdings and its Subsidiaries required to be paid in cash during such period pursuant to that certain Tax Receivables Agreement to the extent that such payments were made with Internally Generated Cash and (K) the amount related to items that were added to or not deducted from net income in calculating Consolidated EBITDA to the extent such items represented a cash payment by Holdings, the Borrower or any Subsidiary, on a consolidated basis during such period and to the extent permitted to be paid hereunder.

“Exchange Agreement” means that certain Exchange Agreement dated as of February 2, 2018 by and among Holdings, the Borrower, InnoHold, LLC, a Delaware limited liability company, and any other Series B Holders that may from time to time become parties thereto.

“Excluded Accounts” means any (i) payroll accounts, (ii) escrow accounts, (iii) trust accounts, (iv) employee benefit accounts, 401(k) accounts and pension fund accounts, (v) tax withholding accounts, and (vi) zero balance accounts.

“Excluded Subsidiary” means (i) any Subsidiary not wholly-owned, directly or indirectly, by Holdings or the Borrower to the extent (but only so long as) it is prohibited by the terms of any contractual obligation (including pursuant to any Organizational Documents of such Subsidiary) from guaranteeing the Obligations or any other obligations or liabilities guaranteed pursuant to the terms of the Security Agreement; provided, that such contractual obligation is not and was not created in contemplation of this definition, (ii) any Subsidiary that is prohibited or restricted by applicable law, rule or regulation or from guaranteeing the Obligations or which would require consent, approval, license or authorization from any Governmental Authority to provide a guarantee unless such consent, approval, license or authorization has been received, after giving effect to the anti-assignment provision of the UCC and other applicable law, (iii) any CFC, (iv) any CFC Holdco, (v) any Subsidiary whose Equity Interests are owned directly or indirectly by a CFC or CFC Holdco, (vi) captive insurance companies, and (vii) not-for-profit Subsidiaries.

“Excluded Swap Obligation” means, with respect to the Borrower or any Guarantor, (x) as it relates to all or a portion of the guaranty of such Guarantor or the Borrower, any Swap Obligation if, and to the extent that, 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 or the Borrower’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor or the Borrower becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor or the Borrower of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect 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 or the Borrower’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor or the Borrower becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under [Section 3.05](#)) or (ii) such Lender changes its Applicable Lending Office, except in each case to the extent that, pursuant to [Section 3.03](#), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Applicable Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with [Section 3.03\(g\)](#) and (d) any U.S. Federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Amended and Restated Credit Agreement, dated as of February 26, 2019, by and among the Borrower, the lenders party thereto and Delaware Trust Company, a Delaware corporation, as collateral agent, as amended.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any applicable intergovernmental agreements with respect thereto (including any applicable law implementing such agreements) and any current or future regulations or official interpretations thereof.

“Federal Funds Effective Rate” means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

“Fee Letters” means (i) the Amended and Restated Fee Letter, dated as of the Closing Date, among the Borrower, KeyBanc Capital Markets Inc., and the Administrative Agent., and (ii) the Fee Letter (Upfront Fees), dated as of the Closing Date, between the Borrower and the Administrative Agent.

“Fees” means all amounts payable pursuant to, or referred to in, [Section 2.11](#).

“Financial Officer” means the chief executive officer, the president or the chief financial officer of the Borrower.

“Financial Projections” has the meaning provided in [Section 5.07\(b\)](#).

[“First Amendment” means the First Amendment to Credit Agreement, dated as of the First Amendment Effective Date, among the Borrower, Holdings, the Lenders party thereto and the Administrative Agent.](#)

[“First Amendment Effective Date” means February 28, 2022.](#)

“Fixed Charge Coverage Ratio” means, for any Testing Period, the ratio of (i) Consolidated EBITDA ~~minus all cash payments in respect of Taxes (including federal, state, local and foreign income taxes) made during such period (net of any cash refund in respect of income taxes actually received by Holdings, the Borrower and its Subsidiaries during such period) minus distributions made in cash under Section 7.06(d) for Taxes made during such period minus cash payments made or required to be made by Holdings and its Subsidiaries during such period pursuant to that certain Tax Receivables Agreement minus unfinanced (and not financed by revolving Indebtedness) Consolidated Maintenance Capital Expenditures and other Capital Expenditures of Holdings, the Borrower and its Subsidiaries during such period, in either such case made in connection with either (x) the opening of new showrooms or other retail locations or (y) research and development of Holdings, the Borrower and its Subsidiaries to~~ (ii) Consolidated Fixed Charges; provided that, solely for purposes of Section 7.07, for the period ending (x) September 30, 2022, Consolidated EBITDA and Consolidated Fixed Charges in this equation shall only consist of Consolidated EBITDA and Consolidated Fixed Charges for the fiscal quarter then ended, and (y) December 31, 2022, Consolidated EBITDA and Consolidated Fixed Charges in this equation shall only consist of Consolidated EBITDA and Consolidated Fixed Charges for the fiscal quarters ending September 30, 2022 and December 31, 2022.

“Flood Hazard Property” means any Real Property located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to any LC Issuer, such Defaulting Lender’s Revolving Facility Percentage of LC Outstandings with respect to Letters of Credit issued by such LC Issuer other than LC Outstandings as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to any Swing Line Lender, such Defaulting Lender’s Revolving Facility Percentage of outstanding Swing Loans made by such Swing Line Lender other than Swing Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Governmental Authority” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Granting Lender” has the meaning provided in Section 11.06(f).

“Growth Capital Expenditures” means, for any period, Capital Expenditures of Holdings, the Borrower and its Subsidiaries during such period made in connection with the opening of new showrooms or other retail locations, research and development costs, wholesale expenditures (including new marketing displays), and acquisitions of equipment, in each case, that are incurred for the purpose of adding new productive capacity.

“Guarantors” means Holdings and any Subsidiary that is or hereafter becomes a party to the Guaranty. Schedule 2 hereto lists each Guarantor as of the Closing Date.



“Guaranty” has the meaning provided in Section 4.01(iii).

“Guaranty Obligations” means as to any Person (without duplication) any obligation of such Person guaranteeing any Indebtedness (“primary Indebtedness”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent: (i) to purchase any such primary Indebtedness or any property constituting direct or indirect security therefore; (ii) to advance or supply funds for the purchase or payment of any such primary Indebtedness or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary Indebtedness of the ability of the primary obligor to make payment of such primary Indebtedness; or (iv) otherwise to assure or hold harmless the owner of such primary Indebtedness against loss in respect thereof; *provided, however*, that the definition of Guaranty Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guaranty Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary Indebtedness in respect of which such Guaranty Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder).

“Hazardous Materials” means (i) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (ii) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “restricted hazardous materials,” “extremely hazardous wastes,” “restrictive hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar meaning and regulatory effect, under any applicable Environmental Law.

“Hedge Agreement” means (i) any interest rate swap agreement, any interest rate cap agreement, any interest rate collar agreement or other similar interest rate management agreement or arrangement, (ii) any currency swap or option agreement, foreign exchange contract, forward currency purchase agreement or similar currency management agreement or arrangement or (iii) any Commodities Hedge Agreement.

“Hedge Termination Value” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined by the applicable Secured Hedge Provider (or, if there is no Secured Hedge Provider party to such Hedge Agreement, by a recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender)) in accordance with the terms thereof and in accordance with customary methods for calculating mark-to-market values under similar arrangements by the applicable Secured Hedge Provider (or, if there is no Secured Hedge Provider party to such Hedge Agreement, by a recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender)).

“Hedging Obligations” means all obligations of any Credit Party under and in respect of (i) any Hedge Agreements entered into with any Secured Hedge Provider or (ii) any Designated Hedge Agreement.

“Holdings” has the meaning provided in the first paragraph of this Agreement.

“Immaterial Subsidiary” means, on any date, any Subsidiary of the Borrower (a) that has been designated as such pursuant to a written notice delivered by the Borrower to the Administrative Agent (or identified in this definition) and (b) that did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been delivered to the Administrative Agent pursuant to Section 6.01(b), (i) have individually or in the aggregate with all other Immaterial Subsidiaries, assets in excess of 5% of the consolidated total assets of Holdings and its Subsidiaries or revenues in excess of 5% of the consolidated revenues of Holdings and its Subsidiaries or (ii) own material Intellectual Property; *provided*, however, that no Subsidiary shall be deemed or designated an Immaterial Subsidiary if such Subsidiary guarantees any Material Indebtedness of the Borrower or any other Credit Party.

“Incremental Revolving Credit Assumption Agreement” means an Incremental Revolving Credit Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Incremental Revolving Credit Lenders.

“Incremental Revolving Credit Commitment” means the commitment of any Lender, established pursuant to Section 2.17, to make Incremental Revolving Loans to the Borrower.

“Incremental Revolving Credit Lender” means a Lender with an Incremental Revolving Credit Commitment or an outstanding Incremental Revolving Loan.

“Incremental Revolving Loans” means Revolving Loans made by one or more Lenders to the Borrower pursuant to Section 2.17. Incremental Revolving Loans shall be made in the form of additional Revolving Loans.

“Incremental Term Lender” means a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan.

“Incremental Term Loan Assumption Agreement” means an Incremental Term Loan Assumption Agreement in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Incremental Term Lenders.

“Incremental Term Loan Commitment” means the commitment of any Lender, established pursuant to Section 2.17, to make Incremental Term Loans to the Borrower.

“Incremental Term Loan Maturity Date” means the final maturity date of any Incremental Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement.

“Incremental Term Loan Repayment Dates” means the dates scheduled for the repayment of principal of any Incremental Term Loan, as set forth in the applicable Incremental Term Loan Assumption Agreement.

“Incremental Term Loans” means Term Loans made by one or more Lenders to the Borrower pursuant to Section 2.17, Incremental Term Loans may be made in the form of additional Term Loans or, to the extent permitted by Section 2.17 and provided for in the relevant Incremental Term Loan Assumption Agreement, Other Term Loans.

“Indebtedness” of any Person means without duplication:

- (i) all indebtedness of such Person for borrowed money;

- (ii) all indebtedness evidenced by bonds, notes, debentures, loan agreements and similar debt securities of such Person;
- (iii) the deferred purchase price of capital assets or capital services that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person, including, without limitation, Permitted Seller Notes and Permitted Earnouts;
- (iv) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder;
- (v) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, surety bonds, performance bonds, and similar instruments issued or created by or for the account of such person;
- (vi) all indebtedness of a second Person secured by any Lien on any property owned by such first Person, whether or not such indebtedness has been assumed;
- (vii) all Capitalized Lease Obligations and Purchase Money Indebtedness of such Person;
- (viii) the present value, determined on the basis of the implicit interest rate, of all basic rental obligations under all Synthetic Leases of such Person;
- (ix) all obligations of such Person with respect to any asset securitization financing;
- (x) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted, i.e., take-or-pay and similar obligations, in each case that in accordance with GAAP would be shown on the liability side of the balance sheet of such Person;
- (xi) all net obligations of such Person under Hedge Agreements;
- (xii) all Disqualified Equity Interests of such Person;
- (xiii) the full outstanding balance of trade receivables, notes or other instruments sold with full recourse (and the portion thereof subject to potential recourse, if sold with limited recourse), other than in any such case any thereof sold solely for purposes of collection of delinquent accounts; and
- (xiv) all Guaranty Obligations of such Person;

*provided, however,* that (y) neither trade payables (other than trade payables outstanding for more than 180 days after the date such trade payables were created), deferred revenue, taxes nor other similar accrued or deferred expenses, in each case arising in the ordinary course of business, shall constitute Indebtedness; and (z) the Indebtedness of any Person shall in any event include (without duplication) the Indebtedness of any other entity (including any general partnership in which such Person is a general partner) to the extent such Person is liable thereon as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the holders of such Indebtedness do not have recourse to such Person. The amount of Indebtedness of any Person for purposes of clause (vi) above shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date.

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

“Indemnitees” has the meaning provided in Section 11.02.

“Initial Term Loan Maturity Date” means September 3, 2025.

“Insolvency Event” means, with respect to any Person:

(i) the commencement of a voluntary case by such Person under the Bankruptcy Code or the seeking of relief by such Person under any Debtor Relief Law or analogous law in any jurisdiction outside of the United States;

(ii) the commencement of an involuntary case against such Person under the Bankruptcy Code, any Debtor Relief Law or analogous law in any jurisdiction outside of the United States and the petition is not dismissed within 60 days, after commencement of the case;

(iii) a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of such Person;

(iv) such Person commences (including by way of applying for or consenting to the appointment of, or the taking of possession by, a rehabilitator, receiver, administrative receiver, receiver-manager, administrator, judicial manager, compulsory manager, custodian, trustee, monitor, conservator or liquidator (collectively, a “conservator”) of such Person or all or any substantial portion of its property) any other proceeding under any Debtor Relief Law or similar law of any jurisdiction whether now or hereafter in effect relating to such Person;

(v) any such proceeding of the type set forth in clause (iv) above is commenced against such Person to the extent such proceeding is consented to by such Person or remains undismissed for a period of 60 days;

(vi) such Person is adjudicated insolvent or bankrupt, or is deemed to, or is declared to, be unable to pay its debts under applicable law;

(vii) any order of relief or other order approving any such case or proceeding is entered;

(viii) such Person suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of 60 days;

(ix) such Person makes a general assignment for the benefit of creditors or generally does not pay its debts as such debts become due; or

(x) any corporate (or similar organizational) action is taken by such Person for the purpose of effecting any of the foregoing.

“Intellectual Property” has the meaning provided in the Security Agreement.

“Intercompany Subordination Agreement” means the Intercompany Subordination Agreement in substantially the form of Exhibit K hereto.

“Interest Period” means, with respect to each ~~Eurodollar Loan~~ Term SOFR Borrowing, a period of one, ~~two, three, or six~~ or, if available to each Lender, nine or twelve months as selected by the Borrower; *provided, however*, that (i) the initial Interest Period for any Borrowing of ~~such Eurodollar~~ Term SOFR Loan shall commence on the date of such Borrowing (the date of a Borrowing resulting from a Conversion or Continuation shall be the date of such Conversion or Continuation) and each Interest Period occurring thereafter in respect of such Borrowing shall commence on the day on which the next preceding Interest Period expires; (ii) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month; (iii) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; *provided, however*, that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day; (iv) no Interest Period for any ~~Eurodollar~~ Term SOFR Loan may be selected that would end after the Revolving Facility Termination Date or the latest Term Loan Maturity Date, as the case may be; and (v) if, upon the expiration of any Interest Period, the Borrower has failed to (or may not) elect a new Interest Period to be applicable to the respective Borrowing of ~~Eurodollar~~ Term SOFR Loans as provided above, the Borrower shall be deemed to have elected to Convert such Borrowing to Base Rate Loans effective as of the expiration date of such current Interest Period.

“Internally Generated Cash” means, with respect to any Person, funds of such Person and its Subsidiaries not constituting (x) proceeds of the issuance of (or contributions in respect of) equity interests of such Person, (y) proceeds of the incurrence of Indebtedness by such Person or any of its Subsidiaries (other than under any revolving credit facility or line of credit) or (z) proceeds of Asset Sales (other than Asset Sales in the ordinary course of business) and casualty events.

“Investment” means: (i) any direct or indirect purchase or other acquisition by a Person of any Equity Interest of any other Person; (ii) any loan, advance (other than deposits with financial institutions available for withdrawal on demand), capital contribution or extension of credit to, guarantee or assumption of debt or purchase or other acquisition of any other Indebtedness of, any Person by any other Person; (iii) the purchase, acquisition or investment of or in any stocks, bonds, mutual funds, notes, debentures or other securities, or any deposit account, certificate of deposit or other investment of any kind; or (iv) any statutory division.

“IRS” means the United States Internal Revenue Service.

“Landlord’s Agreement” means a landlord’s waiver, mortgagee’s waiver or bailee’s waiver, each in form and substance reasonably satisfactory to the Administrative Agent, and providing, among other things, for waiver of Lien, certain notices and opportunity to cure and access to Collateral, delivered by a Credit Party in connection with this Agreement, as the same may from time to time be amended, restated or otherwise modified.

“LC Commitment Amount” means \$5,000,000.

“LC Documents” means, with respect to any Letter of Credit, any documents executed in connection with such Letter of Credit, including the Letter of Credit itself.

“LC Fee” means any of the fees payable pursuant to Section 2.11(b) or Section 2.11(c) in respect of Letters of Credit.

“LC Issuance” means the issuance of any Letter of Credit by any LC Issuer for the account of an LC Obligor in accordance with the terms of this Agreement, and shall include any amendment thereto that increases the Stated Amount thereof or extends the expiry date of such Letter of Credit.

“LC Issuer” means KeyBank National Association or any of its Affiliates, or such other Lender that is requested by the Borrower and agrees to be an LC Issuer hereunder (*provided* that any such Lender is entitled to agree or decline in its sole discretion) and is approved by the Administrative Agent.

“LC Obligor” means, with respect to each LC Issuance, the Borrower or the Guarantor for whose account such Letter of Credit is issued.

“LC Outstandings” means, at any time, the sum, without duplication, of (i) the aggregate Stated Amount of all outstanding Letters of Credit and (ii) the aggregate amount of all Unpaid Drawings with respect to Letters of Credit.

“LC Participant” has the meaning provided in Section 2.05(g).

“LC Participation” has the meaning provided in Section 2.05(g).

“LC Request” has the meaning provided in Section 2.05(b).

“Leaseholds” of any Person means all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

“Lease Revenue Test” means that ratio of (x) the average revenue of each showroom (which shall be calculated (i) excluding any revenues of showrooms open for less than six (6) months, (ii) on an annualized basis for showrooms (excluding any outlet showrooms) open for a period of six (6) to 12 months (excluding revenues for the first three months thereof), and (iii) over the prior 12-month period for any showroom (excluding any outlet showrooms) open for a period longer than 12 months) over (y) the average cost (net of tenant allowance) of opening each store referenced in clause (x) hereof, shall be greater than or equal to 2.25 to 1.00 for the Testing Period ended at least 30 days prior to such time

“Lender” and “Lenders” have the meaning provided in the first paragraph of this Agreement and includes any other Person that becomes a party hereto pursuant to an Assignment Agreement, other than any such Person that ceases to be a party hereto pursuant to an Assignment Agreement. Unless the context otherwise requires, the term “Lenders” includes the Swing Line Lender. In addition to the foregoing, solely for the purpose of identifying the Persons entitled to share in payments and collections from the Collateral and the benefit of any guarantees of the Obligations, as more fully set forth in this Agreement and the other Loan Documents, the term “Lender” shall include Secured Hedge Providers. For the avoidance of doubt, any Secured Hedge Provider to whom any Hedging Obligations are owed and that does not hold any Loans or commitments hereunder shall not be entitled to any other rights as a “Lender” under this Agreement or the other Loan Documents.

“Lender Register” has the meaning provided in Section 2.08(b).

“Letter of Credit” means any Standby Letter of Credit or Commercial Letter of Credit, in each case issued by any LC Issuer under this Agreement pursuant to Section 2.05 for the account of any LC Obligor.

~~“LIBOR” has the meaning provided in the definition of “Adjusted Eurodollar Rate”.~~

“Lien” means any mortgage, pledge, security interest, hypothecation, encumbrance, trust or deemed trust, lien (statutory or otherwise) or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof).

~~“Limited Capital Expenditures” means Capital Expenditures other than Consolidated Maintenance Capital Expenditures and other Capital Expenditures of Holdings, the Borrower and its Subsidiaries during such period made in connection with either the opening of new showrooms or other retail locations and research and development costs of Holdings, the Borrower and its Subsidiaries.~~

“Liquidity” means, the sum of, without duplication, (x) unrestricted cash and Cash Equivalents of the Credit Parties which are subject to a Control Agreement in favor of the Administrative Agent, plus (y) availability under the Revolving Facility to the extent such amounts can be borrowed for general corporate purposes.

“Liquidity Certificate” has the meaning provided in Section 6.01(k).

“Loan” means any Revolving Loan, Term Loan or Swing Loan.

“Loan Documents” means this Agreement, the Notes, the Guaranty, the Security Documents, the Fee Letter, the Intercompany Subordination Agreement, the First Amendment and each Letter of Credit and each other LC Document.

“Margin Stock” has the meaning provided in Regulation U.

“Material Adverse Effect” means the occurrence of any event which has the effect of any or all of the following: (i) any material adverse effect on the business, operations, property, assets, liabilities or financial or other condition of the Borrower, individually, or of Holdings and its Subsidiaries, taken as a whole; (ii) any material adverse effect on the ability of the Borrower, individually, or Holdings and its Subsidiaries, taken as a whole, to perform their obligations under any of the Loan Documents to which they are party; (iii) any material adverse effect on the validity, effectiveness or enforceability, as against any Credit Party, of any of the Loan Documents to which it is a party; (iv) any material adverse effect on the rights and remedies of the Administrative Agent or any Lender under any Loan Document; or (v) any material adverse effect on the validity, perfection or priority of any Lien in favor of the Administrative Agent on any of the Collateral; *provided* that for purposes of clause (i) of this definition, the Coronavirus Disease 2019 (“COVID-19”), the declaration of the national emergency relating to COVID-19, and the direct impacts of the foregoing on the Borrower, individually, or Holdings and its Subsidiaries, taken as a whole, in each case, disclosed in public filings made by Holdings or in materials delivered to the Lenders prior to Closing Date, and occurring on or prior to the date which is three hundred sixty four (364) days after the Closing Date shall not constitute a material adverse effect on the business, assets, operations, properties, assets, liabilities or financial or other condition of the Borrower, individually, or Holdings and its Subsidiaries, taken as a whole.

“Material Acquisition” means any Permitted Acquisition for which the aggregate consideration (including the purchase price, any earn-out, any Indebtedness assumed and any other consideration) paid or payable exceeds \$15,000,000.

“Material Contract” means each contract or agreement to which Holdings, the Borrower or any of its Subsidiaries is a party involving aggregate consideration payable to or by Holdings, the Borrower or such Subsidiary of \$5,000,000 or more per annum (other than purchase orders in the ordinary course of business of Holdings, the Borrower or such Subsidiary and other than contracts that by their terms may be terminated by the Borrower or such Subsidiary in the ordinary course of its business upon less than 60 days’ notice without penalty or premium).

“Material Indebtedness” means, as to Holdings, the Borrower or any of its Subsidiaries, any particular Indebtedness of Holdings, the Borrower or such Subsidiary (including any Guaranty Obligations) in excess of the aggregate principal amount of \$5,000,000.

“Material Indebtedness Agreement” means any agreement governing or evidencing any Material Indebtedness.

“Maximum Rate” has the meaning provided in Section 11.23.

“Minimum Borrowing Amount” means (i) with respect to any Base Rate Loan, \$1,000,000, with minimum increments thereafter of \$500,000, (ii) with respect to any ~~Eurodollar~~ Term SOFR Loan, \$1,000,000, with minimum increments thereafter of \$500,000, and (iii) with respect to Swing Loans, \$500,000, with minimum increments thereafter of \$500,000, or, in each case, such lesser amounts as agreed to by the Administrative Agent.

“Minimum Collateral Amount” means, at any time with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of all LC Issuers with respect to Letters of Credit issued and outstanding at such time.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Mortgage” means a Mortgage, Deed of Trust or other instrument, in form and substance reasonably satisfactory to the Administrative Agent, executed by a Credit Party with respect to a Mortgaged Real Property, as the same may from time to time be amended, restated or otherwise modified.

“Mortgaged Real Property” means each parcel of Real Property that shall become subject to a Mortgage in accordance with Section 6.10(a), in each case together with all of such Credit Party’s right, title and interest in the improvements and buildings thereon and all appurtenances, easements or other rights belonging thereto.

“Multi-Employer Plan” means a multi-employer plan, as defined in Section 4001(a)(3) of ERISA to which Holdings, the Borrower or any Subsidiary of the Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“Multiple Employer Plan” means an employee benefit plan, other than a Multi-Employer Plan, to which Holdings, the Borrower or any Subsidiary of the Borrower or any ERISA Affiliate, and one or more employers other than the Borrower or a Subsidiary of the Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Holdings, the Borrower or a Subsidiary of the Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

“Narrative Report” means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of Holdings, the Borrower and its Subsidiaries in the form prepared for presentation to the board of directors of Holdings thereof for the applicable fiscal quarter or fiscal year and for the period from the beginning of the then current fiscal year to the end of such period to which such financial statements relate with comparison to and variances from the immediately preceding period and budget.



“National Flood Insurance Program” means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

“Net Cash Proceeds” means, with respect to (i) any Asset Sale, the Cash Proceeds resulting therefrom net of (A) reasonable and customary expenses of sale incurred in connection with such Asset Sale, and other reasonable and customary fees and expenses incurred, and all state, provincial and local taxes paid or reasonably estimated to be payable by such person as a consequence of such Asset Sale, and the payment of principal, premium and interest of Indebtedness (other than the Obligations) secured by the asset that is the subject of such Asset Sale, and required to be, and that is, repaid under the terms thereof as a result of such Asset Sale (to the extent any intercreditor or subordination agreement applies, only if permitted by such intercreditor or subordination agreement), and (B) incremental federal, state, provincial and local income taxes paid or payable as a result thereof; (ii) any Event of Loss, the Cash Proceeds resulting therefrom net of (A) reasonable and customary expenses incurred in connection with such Event of Loss, and local taxes paid or reasonably estimated to be payable by such person as a consequence of such Event of Loss and the payment of principal, premium and interest of Indebtedness (other than the Obligations) secured by the asset that is the subject of the Event of Loss and required to be, and that is, repaid under the terms thereof as a result of such Event of Loss (to the extent any intercreditor or subordination agreement applies, only if permitted by such intercreditor or subordination agreement), and (B) incremental federal, state, provincial and local income taxes paid or payable as a result thereof; and (iii) the incurrence or issuance of any Indebtedness, the Cash Proceeds resulting therefrom net of reasonable and customary fees and expenses incurred in connection therewith and net of the repayment or payment of any Indebtedness or obligation intended to be repaid or paid with the proceeds of such Indebtedness; in the case of each of clauses (i), (ii) and (iii), to the extent, but only to the extent, that the amounts so deducted are (x) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (y) properly attributable to such transaction or to the asset that is the subject thereof.

“Non-Consenting Lender” has the meaning provided in Section 11.12(g).

“Non-Credit Party” means each Subsidiary that is not a Guarantor.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a Revolving Facility Note, a Term Note or a Swing Line Note, as applicable.

“Notice of Borrowing” has the meaning provided in Section 2.06(b).

“Notice of Continuation or Conversion” has the meaning provided in Section 2.10(b).

“Notice of Swing Loan Refunding” has the meaning provided in Section 2.04(b).

“Notice Office” means the office of the Administrative Agent at Key Agency Services, 4900 Tiedeman Road, OH-01-49-0362, Brooklyn, OH 44144, Attention: KAS Services (email: Agent\_Servicing@keybank.com), or such other office as the Administrative Agent may designate in writing to the Borrower from time to time.

“Obligations” means all amounts, indemnities and reimbursement obligations, direct or indirect, contingent or absolute, of every type or description, and at any time existing, owing by the Borrower or any other Credit Party to the Administrative Agent, any Lender, any Affiliate of any Lender, the Swing Line Lender, any Secured Hedge Provider or any LC Issuer pursuant to the terms of this Agreement, any other Loan Document or any Designated Hedge Agreement (including, but not limited to, interest and fees that accrue after the commencement by or against any Credit Party of any insolvency proceeding or other proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding or subject to an automatic stay under Section 362(a) of the Bankruptcy Code or analogous provision under any other Debtor Relief Laws); *provided*, however, that Obligations shall not include any Excluded Swap Obligations. Without limiting the generality of the foregoing description of Obligations, the Obligations include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, reasonable attorneys’ fees and disbursements, indemnities and other amounts payable by the Credit Parties under any Loan Document, (b) Banking Services Obligations, (c) Hedging Obligations and (d) the obligation to reimburse any amount in respect of any of the foregoing that any Agent, any Lender or any Affiliate or any Secured Hedge Provider of any of them, in connection with the terms of any Loan Document, may elect to pay or advance on behalf of the Credit Parties.

“OFAC” has the meaning provided in Section 5.23.

“Operating Lease” as applied to any Person means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is not accounted for as a Capital Lease on the balance sheet of that Person.

“Organizational Documents” means, with respect to any Person (other than an individual), such Person’s Articles (Certificate or Memorandum) of Incorporation, or equivalent formation documents, and Regulations, Bylaws, Operating Agreements, or Articles, or equivalent governing documents, and, in the case of any partnership, includes any partnership agreement and any amendments to any of the foregoing.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.05).

“Other Term Loans” has the meaning set forth in Section 2.17(a).

“Participant Register” has the meaning provided in Section 11.06(b).

“Payment Office” means the office of the Administrative Agent at 4900 Tiedeman Road, Cleveland, OH, 44144, Attention: Paula Gordon (facsimile: 216 813-6101), or such other office(s), as the Administrative Agent may designate to the Borrower in writing from time to time.

“PBGC” means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

“Perfection Certificate” has the meaning provided in the Security Agreement.

“Permitted Acquisition” means any Acquisition by any Credit Party as to which all of the following conditions are satisfied:

(i) such Acquisition involves a line or lines of business that is or are complementary, reasonably related or ancillary to the lines of business in which Holdings, the Borrower and its Subsidiaries, considered as an entirety, are engaged on the Closing Date;

(ii) with respect to any Material Acquisition or, at the request of the Administrative Agent, in connection with any other Acquisition, the Borrower shall have furnished to the Administrative Agent (for distribution to the Lenders) at least five (5) Business Days prior to the consummation of such Acquisition (or such shorter period of time as the Administrative Agent agrees) pro forma financial statements of the Borrower and its Subsidiaries giving effect to the consummation of such Acquisition;

(iii) the agreements, instruments and other documents delivered in connection with such Acquisition shall provide that (A) neither the Credit Parties nor any of their Subsidiaries shall, in connection with such Acquisition, assume or remain liable in respect of any Indebtedness of the seller or sellers, except for Indebtedness permitted hereunder, and (B) all property to be so acquired in connection with such Acquisition shall be free and clear of any and all Liens, except for Permitted Liens (and if any such property is subject to any Lien not permitted by this clause (B), then concurrently with such Acquisition such Lien shall be released);

(iv) such Acquisition shall be effected in such a manner so that either (A) the acquired Equity Interests or assets are owned either by a Credit Party or by a Person that will become a Credit Party in accordance with Section 6.09 and, if effected by merger or consolidation involving a Credit Party, such Credit Party shall be the continuing or surviving Person or the continuing or surviving Person shall become a Credit Party upon the effectiveness of such merger or consolidation or (B) if the entity so acquired is not a Domestic Subsidiary or if the assets so acquired do not constitute Collateral, such Acquisition, together with any other such Acquisition in any fiscal year, shall not exceed the greater of (x) \$9,000,000, or (y) 15% of Consolidated EBITDA as of the last Testing Period for which financial statements were delivered pursuant to Section 6.01(a) or (b) hereto;

(v) ~~reserved~~ the Covenant Amendment Period shall have ended;

(vi) no Default or Event of Default shall exist prior to or immediately after giving effect to such Acquisition;

(vii) the Borrower would, after giving effect to such Acquisition, on a pro forma basis (as determined in accordance with subpart (viii) below whether or not a certificate is required pursuant to such subpart (viii)), be in compliance with the financial covenants contained in Section 7.07;

(viii) at least five Business Days prior to the consummation of any Material Acquisition, the Borrower shall have delivered to the Administrative Agent and the Lenders (A) a certificate of an Authorized Officer demonstrating, in reasonable detail, the computation of the financial covenants referred to in Section 7.07 on a *pro forma* basis, such *pro forma* ratios being determined as if (y) such Acquisition had been completed at the beginning of the most recent Testing Period for which financial information for the Borrower and the business or Person to be acquired, is available, and (z) any such Indebtedness, or other Indebtedness incurred to finance such Acquisition, had been outstanding for such entire Testing Period, and (B) historical financial statements relating to the business or Person to be acquired evidencing positive Consolidated EBITDA on a *pro forma* basis (with such adjustments as the Administrative Agent agrees to) for the four fiscal quarter period most recently ended prior to the date of the Acquisition and such other information as the Administrative Agent may reasonably request; *provided*, however that this subclause (B) shall not apply if the Consolidated ~~Net~~ Leverage Ratio as of the most recent date on which a Compliance Certificate was delivered pursuant to Section 6.01(c) was less than or equal to 1.00 to 1.00;

(ix) all transactions in connection with such Acquisition shall be consummated, in all material respects, in accordance with all applicable laws;

(x) the Acquisition shall have been approved by the board of directors or other governing body or controlling Person of the Person from whom such Equity Interests or assets are proposed to be acquired;

(xi) as of the date of the Acquisition, a Financial Officer shall provide a certificate to the Administrative Agent and the Lenders certifying as to the matters set forth in the foregoing clauses and further certifying that the Acquisition could not reasonably be expected to have a Material Adverse Effect;

(xii) immediately after giving effect to such Acquisition, any acquired or newly formed Subsidiary shall be a wholly owned Subsidiary and shall take all actions required to be taken pursuant to Section 6.09 and Section 6.10 (or within 30 days of such Acquisition in the case of Section 6.10(c) or, in each case, such longer period as agreed to by the Administrative Agent); and

(xiii) immediately after giving effect to the Acquisition, the Credit Parties' unrestricted cash and Cash Equivalents, together with Revolving Availability, shall be no less than \$20,000,000.

"Permitted Creditor Investment" means any securities (whether debt or equity) received by Holdings, the Borrower or any of its Subsidiaries in connection with the bankruptcy or reorganization of any customer or supplier of Holdings, the Borrower or any such Subsidiary and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business.

"Permitted Earnout" means any earnout, hold back amount, deferred purchase price or similar obligation of Holdings, the Borrower or any Subsidiary that is incurred in connection with a Permitted Acquisition and is subordinated to the Obligations hereunder in a manner reasonably acceptable to the Administrative Agent or is otherwise on payment terms reasonably acceptable to the Administrative Agent.

"Permitted Equity Issuance" means any capital contribution to Holdings (other than with respect to Disqualified Equity Interests and other than any such contributions from a Subsidiary of Holdings) or sale or issuance of any Equity Interests (other than Disqualified Equity Interests) of Holdings, in each case, the proceeds of which are contributed to the common equity of the Borrower.

"Permitted Lien" means any Lien permitted by Section 7.03.

"Permitted Refinancing" means any modification, refinancing, refunding, renewal, replacement, redemption, repurchase, defeasance, exchange and/or extension (collectively to "Refinance" or a "Refinancing" or "Refinanced") of any Indebtedness (any such Indebtedness as so modified, refinanced, refunded, renewed, replaced, redeemed, repurchased, defeased, exchanged and/or extended, "Refinancing Indebtedness"); provided that (a) the principal amount (or, if issued with original issue discount, the aggregate issue price) of such Refinancing Indebtedness does not exceed the outstanding principal amount of the Indebtedness so Refinanced except by an amount equal to unpaid accrued interest, fees and premium (including tender premium) and penalties (if any) thereon, plus upfront fees and OID thereon, plus other reasonable and customary fees and expenses incurred or paid in connection with such Refinancing; (b) such Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the Indebtedness being Refinanced; (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations, such Refinancing Indebtedness is subordinated in right of payment to the Obligations on terms, taken as a whole, not materially less favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced; (d) if the Indebtedness being Refinanced is secured by a second-priority or other junior-priority security interest in the Collateral and/or subject to any intercreditor arrangements for the benefit of the Lenders, such Refinancing Indebtedness is secured and subject to intercreditor arrangements on terms, taken as a whole, not materially less favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced; and (e) such Refinancing Indebtedness is incurred by the Person or Persons who was or were obligor(s) or guarantor(s) (or any successor thereto) on the Indebtedness being Refinanced.

“Permitted Seller Note” means a Seller Note permitted under Section 7.04(p).

“Person” means any individual, partnership, joint venture, firm, corporation, limited liability company, association, central bank, trust or other enterprise or any governmental or political subdivision or any agency, department or instrumentality thereof.

“Plan” means any Multi-Employer Plan, Multiple Employer Plan or Single Employer Plan.

“Platform” has the meaning provided in Section 9.15(b).

“primary Indebtedness” has the meaning provided in the definition of “Guaranty Obligations.”

“primary obligor” has the meaning provided in the definition of “Guaranty Obligations.”

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

“Purchase Date” has the meaning provided in Section 2.04(c).

“Purchase Money Indebtedness” means, for any Person, Indebtedness incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets or the cost of installation, construction or improvement of any fixed or capital assets; *provided, however*, that (i) such Indebtedness is incurred within 270 days after such acquisition, installation, construction or improvement of such fixed or capital assets by such person and (ii) the amount of such Indebtedness does not exceed the lesser of 100% of the fair market value of such fixed or capital asset at the time incurred or the cost of the acquisition, installation, construction or improvement thereof, as the case may be.

“Qualified ECP Guarantor” means, in respect of any Obligations with respect to a Designated Hedge Agreement, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Obligations or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

“Real Property” of any Person means all of the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any LC Issuer, as applicable.

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Remedial Action” means all actions any Environmental Law requires any Credit Party to: (i) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the environment; (ii) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the environment; (iii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (iv) perform any other actions authorized by 42 U.S.C. § 9601.

“Reportable Event” means an event described in Section 4043 of ERISA or the regulations thereunder with respect to a Plan, other than those events as to which the notice requirement is waived under subsection .22, .23, .25, .27, .28, .29, .30, .31, .32, .34, .35, .62, .63, .64, .65 or .67 of PBGC Regulation Section 4043.

“Required Lenders” means Lenders whose Credit Facility Exposure and Unused Revolving Commitments constitute more than 50% of the sum of the Aggregate Credit Facility Exposure and the Unused Total Revolving Commitment. The Credit Facility Exposure and Unused Revolving Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

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

“Restricted Payment” means (i) any Capital Distribution, (ii) any amount paid by Holdings, the Borrower or any of its Subsidiaries in repayment, redemption, retirement, repurchase, payments, or prepayment, direct or indirect, of any Subordinated Indebtedness or any Permitted Earnouts, (iii) any payment by Holdings, the Borrower or any of its Subsidiaries of any management fees, consulting fees or any similar fees, whether pursuant to a management agreement or otherwise, or (iv) any distribution of assets pursuant to a plan of statutory division, or (v) any voluntary or mandatory prepayment of principal of any junior lien Indebtedness, Subordinated Indebtedness, Permitted Earnout or Seller Note.

“Resulting Company” means any Person formed by virtue of any statutory division of any Credit Party.

“Revolving Availability” means, at the time of determination, (a) the sum of all Revolving Commitments at such time less (b) the sum of (i) the principal amount of Revolving Loans and Swing Loans made and outstanding at such time and (ii) the LC Outstandings at such time.

“Revolving Borrowing” means the incurrence of Revolving Loans consisting of one Type of Revolving Loan by the Borrower from all of the Lenders having Revolving Commitments in respect thereof on a *pro rata* basis on a given date (or resulting from Conversions or Continuations on a given date) in the same currency, having in the case of any Eurodollar Term SOFR Loans, the same Interest Period.

“Revolving Commitment” means, with respect to each Lender, the amount set forth opposite such Lender’s name in Schedule 1 hereto as its “Revolving Commitment” or in the case of any Lender that becomes a party hereto pursuant to an Assignment Agreement, the amount set forth in such Assignment Agreement, as such commitment may be reduced from time to time pursuant to Section 2.12 or adjusted from time to time as a result of assignments to or from such Lender pursuant to Section 11.06 and any Incremental Revolving Credit Commitments.

“Revolving Facility” means the credit facility established under Section 2.02 pursuant to the Revolving Commitment of each Lender.

“Revolving Facility Availability Period” means the period from the Closing Date until the Revolving Facility Termination Date.

“Revolving Facility Exposure” means, for any Lender at any time, the sum of (i) the principal amount of Revolving Loans made by such Lender and outstanding at such time, and (ii) such Lender’s share of the LC Outstandings at such time.

“Revolving Facility Note” means a promissory note substantially in the form of Exhibit A-1 hereto.

“Revolving Facility Percentage” means, at any time for any Lender, the percentage obtained by dividing such Lender’s Revolving Commitment by the Total Revolving Commitment, *provided, however*, that if the Total Revolving Commitment has been terminated, the Revolving Facility Percentage for each Lender shall be determined by dividing such Lender’s Revolving Commitment immediately prior to such termination by the Total Revolving Commitment immediately prior to such termination.

“Revolving Facility Termination Date” means, as applicable, the earlier of (i) September 3, 2025, or (ii) the date that the Commitments have been terminated pursuant to Section 8.02.

“Revolving Loan” means, with respect to each Lender, any loan made by such Lender pursuant to Section 2.02.

“S&P” means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., and its successors.

“Sale and Lease-Back Transaction” means any arrangement with any Person providing for the leasing by the Borrower or any Subsidiary of the Borrower of any property (except for temporary leases for a term, including any renewal thereof, of not more than one year and except for leases between the Borrower and a Subsidiary or between Subsidiaries), which property has been or is to be sold or transferred by the Borrower or such Subsidiary to such Person.

“Sanctions” has the meaning provided in Section 5.23.

“Scheduled Repayment” has the meaning provided in Section 2.13(b).

“SEC” means the United States Securities and Exchange Commission.

“SEC Regulation D” means Regulation D as promulgated under the Securities Act of 1933, as amended, as the same may be in effect from time to time.

“Secured Creditors” has the meaning provided in the Security Agreement.

“Secured Hedge Provider” means a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Designated Hedge Agreement) who has entered into a Designated Hedge Agreement with Holdings, the Borrower or any of its Subsidiaries.

“Security Agreement” has the meaning provided in Section 4.01(iii).

“Security Documents” means the Security Agreement, each Mortgage, each Landlord’s Agreement, each Additional Security Document, any UCC financing statement, any Control Agreement, any Collateral Assignment, any Perfection Certificate and any document pursuant to which any Lien is granted or perfected by any Credit Party to the Administrative Agent as security for any of the Obligations.

“Seller Note” means any unsecured promissory note (and any guarantee thereof) issued by one or more Credit Parties (or any Subsidiary of a Credit Party organized for purposes of the corresponding Permitted Acquisition, which as a part of such Permitted Acquisition will contemporaneously be merged with or into a Credit Party or otherwise will become a Credit Party promptly thereafter in accordance with this Agreement) in favor of a seller in connection with a Permitted Acquisition in an aggregate principal amount not to exceed the purchase price in respect of such Permitted Acquisition.

“Series B Holders” means the holders of the Series B shares of Holdings. As of the Closing Date, the Series B Holders are set forth on Schedule 3 hereto.

“Single Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, to which Holdings, the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Holdings, the Borrower, any Subsidiary of the Borrower or any ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

[“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.](#)

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



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

“SOFR Index Adjustment” means a percentage per annum as set forth below for the applicable Interest Period therefor:

<u>Interest Period</u>	<u>Percentage</u>
<u>One month</u>	<u>0.10 %</u>
<u>Three months</u>	<u>0.15%</u>
<u>Six months</u>	<u>0.25%</u>

“SPC” has the meaning provided in Section 11.06(f).

“Specified Event of Default” means either (x) an Event of Default other than an Event of Default under Section 8.01(c) as a result of a breach of Section 6.01, Section 6.05 (other than as to existence), Section 6.09, Section 6.10, Section 6.11, Section 6.14, Section 6.15 or Section 6.16 or (y) an Event of Default under Section 8.01(c) as a result of a breach of Section 6.01, Section 6.05 (other than as to existence), Section 6.09, Section 6.10, Section 6.11, Section 6.14, Section 6.15 or Section 6.16 which continues for ten (10) consecutive Business Days.

“Standard Permitted Lien” means any of the following:

(i) Liens for taxes not yet delinquent with respect to income taxes and not overdue for a period of more than ninety (90) days for all other taxes so long as the aggregate amount of all overdue taxes is less than \$1,000,000 or Liens for taxes, assessments or governmental charges being contested in good faith and by appropriate proceedings for which adequate reserves in accordance with GAAP have been established;

(ii) Liens in respect of property or assets imposed by law that were incurred in the ordinary course of business, such as, but not limited to, landlord’s, carriers’, suppliers’, warehousemen’s, materialmen’s and mechanics’ Liens and other similar Liens arising in the ordinary course of business, that do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Holdings, the Borrower or any of its Subsidiaries and do not secure any Indebtedness;

(iii) Liens created by this Agreement or the other Loan Documents;

(iv) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.01(h);

(v) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers compensation, unemployment insurance and other types of social security, and mechanic’s Liens, carrier’s Liens, and other Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, surety, appeal, customs, performance and return-of-money bonds and other similar obligations, incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to statutory requirements, common law or consensual arrangements;

(vi) leases or subleases granted in the ordinary course of business to others not interfering in any material respect with the business of Holdings, the Borrower or any of its Subsidiaries and any interest or title of a lessor under any lease not in violation of this Agreement;

(vii) easements, rights-of-way, zoning or other restrictions, charges, encumbrances, defects in title, prior rights of other persons, and obligations contained in similar instruments, in each case that do not secure Indebtedness and do not involve, and are not likely to involve at any future time, either individually or in the aggregate, (A) a substantial and prolonged interruption or disruption of the business activities of Holdings, the Borrower and its Subsidiaries considered as an entirety, or (B) a Material Adverse Effect;

(viii) Liens arising from the rights of lessors under leases (including financing statements regarding property subject to lease) not in violation of the requirements of this Agreement, *provided* that such Liens are only in respect of the property subject to, and secure only, the respective lease (and any other lease with the same or an affiliated lessor);

(ix) rights of consignors of goods, whether or not perfected by the filing of a financing statement under the UCC;

(x) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(xi) Liens that are contractual rights of setoff or rights of pledge (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings, the Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings, the Borrower or any of its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business, and Liens arising on any real property as a result of any eminent domain, condemnation or similar proceeding being commenced with respect to such real property;

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

(xiii) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business; and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(xiv) Liens (i) on cash or Cash Equivalents advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.05 to be applied against the purchase price for such Investment, (ii) arising out of conditional sale, title retention, consignment or similar arrangements for the purchase or sale of goods entered into by Holdings, the Borrower or any of their respective Subsidiaries in the ordinary course of business, (iii) solely on any cash earnest money deposits made by Holdings, the Borrower or any of their respective Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder or (iv) consisting of an agreement to dispose of any property in a disposition permitted under Section 7.02 (or, to dispose of any property in a transaction not constituting an Asset Sale hereunder); and

(xv) (i) deposits made in the ordinary course of business to secure liability to insurance carriers and (ii) Liens on insurance policies and the proceeds thereof securing the financing of insurance premiums with respect thereto.

“Standby Letter of Credit” means any standby letter of credit issued for the purpose of supporting workers compensation, liability insurance, releases of contract retention obligations, contract performance guarantee requirements and other bonding obligations or for other lawful purposes.

“Stated Amount” of each Letter of Credit means the maximum amount available to be drawn thereunder (regardless of whether any conditions or other requirements for drawing could then be met).

“Subordinated Debt Documents” means, collectively, any loan agreements, indentures, note purchase agreements, promissory notes, guarantees and other instruments and agreements evidencing the terms of any Subordinated Indebtedness.

“Subordinated Indebtedness” means any Indebtedness that has been subordinated to the prior payment in full of all of the Obligations pursuant to a written agreement or written terms reasonably acceptable to the Administrative Agent, including, without limitation, Permitted Earnouts and Permitted Seller Notes.

“Subsidiary” of any Person means (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary Voting Power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have Voting Power by reason of the happening of any contingency) is at the time owned by such Person directly or indirectly through Subsidiaries, and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person directly or indirectly through Subsidiaries, owns more than 50% of the Equity Interests of such Person at the time or in which such Person, one or more other Subsidiaries of such Person or such Person and one or more Subsidiaries of such Person, directly or indirectly, has the power to direct the policies, management and affairs thereof. Unless otherwise expressly provided, all references herein to “Subsidiary” means a Subsidiary of Holdings.

“Swap Obligation” means, with respect to the Borrower or 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.

“Swing Line Commitment” means \$10,000,000.

“Swing Line Facility” means the credit facility established under Section 2.04 pursuant to the Swing Line Commitment of the Swing Line Lender.

“Swing Line Lender” means KeyBank National Association or any replacement or successor thereto.

“Swing Line Note” means a promissory note substantially in the form of Exhibit A-2 hereto.

“Swing Line Participation Amount” has the meaning provided in Section 2.04(c).

“Swing Loan” means any loan made by the Swing Line Lender under the Swing Line Facility pursuant to Section 2.04.

“Swing Loan Maturity Date” means, with respect to any Swing Loan, the earlier of (i) the last day of the period for such Swing Loan as established by the Swing Line Lender and agreed to by the Borrower, which shall be less than seven (7) Business Days, and (ii) the Revolving Facility Termination Date.

“Swing Loan Participation” has the meaning provided in Section 2.04(c).

“Synthetic Lease” means any lease (i) that is accounted for by the lessee as an Operating Lease, and (ii) under which the lessee is intended to be the “owner” of the leased property for federal income tax purposes.

“Synthetic Lease Obligations” means, as to any person, an amount equal to the capitalized amount of the remaining lease payments under any Synthetic Lease that would appear on a balance sheet of such person in accordance with GAAP if such obligations were accounted for as Capitalized Lease Obligations.

“Tax Receivables Agreement” means that certain Tax Receivables Agreement dated as of February 2, 2018 by and among Holdings, InnoHold, LLC, a Delaware limited liability company, and those direct or indirect equity owners listed on Schedule 1 thereto.

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

“Term Borrowing” means the incurrence of Term Loans or Incremental Term Loans consisting of one Type of Term Loan by the Borrower from all of the Lenders having Term Commitments in respect thereof on a *pro rata* basis on a given date (or resulting from Conversions or Continuations on a given date), having in the case of ~~Eurodollar~~ Term SOFR Loans the same Interest Period.

“Term Commitment” means, with respect to each Lender, the amount, if any, set forth opposite such Lender’s name in Schedule 1 hereto as its “Term Commitment” or in the case of any Lender that becomes a party hereto pursuant to an Assignment Agreement, the amount set forth in such Assignment Agreement, as such commitment may be reduced from time to time as a result of assignments to or from such Lender pursuant to Section 11.06 and any Incremental Term Loan Commitments.

“Term Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a Term Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term Loans at such time.

“Term Loan” means, with respect to each Lender that has a Term Commitment, any loan made by such Lender pursuant to Section 2.03. Unless the context shall otherwise require, the term “Term Loans” shall include the Incremental Term Loans, if any.

“Term Loan Maturity Date” means, as applicable, (a) with respect to any Term Loans made on the Closing Date, the Initial Term Loan Maturity Date, (b) with respect to any Incremental Term Loan, the applicable Incremental Term Loan Maturity Date, or (c) with respect to all Term Loans, the latest of the dates referred to in clause (a), (b) and (c).

“Term Note” means a promissory note substantially in the form of Exhibit A-3 hereto.

“Term SOFR” means 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 “Lookback Day”) that is two SOFR Business Days prior to the first day of such Interest Period (and rounded in accordance with the Administrative Agent’s customary practice), 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 Lookback 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 SOFR 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 SOFR Business Day is not more than three SOFR Business Days prior to such Lookback Day, and for any calculation with respect to a Base Rate Loan, the Term SOFR Reference Rate for a tenor of one month on the day that is two SOFR Business Days prior to the date the Base Rate is determined, subject to the proviso provided above; provided, further, that if Term SOFR as so determined would be less than the Term SOFR Floor, then Term SOFR shall be deemed to be the Term SOFR Floor.

“Term SOFR Administrator” means CBA (or a successor administrator of the Term SOFR Reference Rate, as selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Borrowing” means a Borrowing comprised of Term SOFR Loans.

“Term SOFR Floor” means a rate of interest equal to 0.50% per annum.

“Term SOFR Loan” means each Loan bearing interest at a rate based upon Adjusted Term SOFR (other than pursuant to clause (iii) of the definition of Base Rate).

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

“Testing Period” means a single period consisting of the four consecutive fiscal quarters of Holdings then last ended (whether or not such quarters are all within the same fiscal year), *except* that if a particular provision of this Agreement indicates that a Testing Period shall be of a different specified duration, such Testing Period shall consist of the particular fiscal quarter or quarters then last ended that are so indicated in such provision.

“Title Company” has the meaning provided in Section 6.10(c)(i).

“Title Policy” has the meaning provided in Section 6.10(c)(i).

“Total Credit Facility Amount” means the aggregate of the Total Revolving Commitment and the Total Term Loan Commitment. As of the Closing Date, the Total Credit Facility Amount is \$100,000,000.

“Total Revolving Commitment” means the sum of the Revolving Commitments of the Lenders as the same may be decreased pursuant to Section 2.12(c) hereof. As of the Closing Date, the amount of the Total Revolving Commitment is \$55,000,000.

“Total Term Loan Commitment” means the sum of the Term Commitments of the Lenders. As of the Closing Date, the amount of the Total Term Loan Commitment is \$45,000,000.

“Trade Date” has the meaning set forth in Section 11.06(g).

“Transactions” means the transactions contemplated by the Loan Documents.

“Type” means any type of Loan determined with respect to the interest option and currency denomination applicable thereto, which in each case shall be a Base Rate Loan or a ~~Eurodollar~~ Term SOFR Loan.

“UCC” means the Uniform Commercial Code as in effect from time to time. Unless otherwise specified, the UCC shall refer to the UCC as in effect in the State of New York.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“United States” and “U.S.” each means United States of America.

“Unpaid Drawing” means, with respect to any Letter of Credit, the aggregate Dollar amount of the draws made on such Letter of Credit that have not been reimbursed by the Borrower or the applicable LC Obligor or converted to a Revolving Loan pursuant to Section 2.05(f)(i), and, in each case, all interest that accrues thereon pursuant to this Agreement.

“Unused Revolving Commitment” means, for any Lender at any time, the excess of (i) such Lender’s Revolving Commitment at such time over (ii) such Lender’s Revolving Facility Exposure at such time.

“Unused Total Revolving Commitment” means, at any time, the excess of (i) the Total Revolving Commitment at such time over (ii) the Aggregate Revolving Facility Exposure at such time.

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

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 3.03(g)(ii)(B)(iii).

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001.

“Voting Power” means, with respect to any Person, the exclusive ability to control, through the ownership of shares of capital stock, partnership interests, membership interests or otherwise, the election of members of the board of directors or other similar governing body of such Person, and the holding of a designated percentage of Voting Power of a Person means the ownership of shares of capital stock, partnership interests, membership interests or other interests of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or other similar governing body of such Person.

“Withholding Agent” means any Credit Party and the Administrative Agent.

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

Section 1.02 Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each means “to but excluding” and the word “through” means “through and including.”

Section 1.03 Accounting Terms. Except as otherwise specifically provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time, *provided* that if the Borrower notifies the Administrative Agent and the Lenders that the Borrower wishes to amend any financial ratio or requirement to eliminate the effect of any change in GAAP that occurs after the Closing Date on the operation of such financial ratio or requirement (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend any financial ratio or requirement for such purpose), then the Borrower’s compliance with such financial ratio or requirement 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 financial ratio or requirement is amended in a manner satisfactory to the Borrower, the Administrative Agent and the Required Lenders, with the Borrower, the Administrative Agent and the Lenders agreeing to enter into negotiations to amend any such financial ratio or requirement immediately upon receipt from any party entitled to send such notice. Notwithstanding the foregoing, (A) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof and (B) all terms of an accounting or financial nature used herein shall be construed shall be made in a manner such that all liabilities related to operating leases, as defined by Accounting Standards Codification 842 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect), are excluded from the definition of Indebtedness and payments related to operating leases are not included in Consolidated Interest Expense in part or in whole. Without limiting the foregoing, leases (whether existing or entered into after the date hereof) shall continue to be classified and accounted for on a basis consistent with that reflected in the Borrower’s historical financial statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

Section 1.04 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” 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, supplements or modifications set forth herein or in any other Loan Document), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Schedules and Exhibits shall be construed to refer to Sections of, and Schedules and Exhibits to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all Real Property, tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and interests in any of the foregoing, and (f) any reference to a statute, rule or regulation is to that statute, rule or regulation as now enacted or as the same may from time to time be amended, re-enacted or expressly replaced.

Section 1.05 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

## ARTICLE II

### THE TERMS OF THE CREDIT FACILITY

Section 2.01 Establishment of the Credit Facility. On the Closing Date, and subject to and upon the terms and conditions set forth in this Agreement and the other Loan Documents, the Administrative Agent, the Lenders, the Swing Line Lender and each LC Issuer agree to establish the Credit Facility for the benefit of the Borrower; *provided, however*, that at no time will (i) the Aggregate Credit Facility Exposure exceed the Total Credit Facility Amount, or (ii) the Credit Facility Exposure of any Lender exceed the aggregate amount of such Lender's Commitment.

Section 2.02 Revolving Facility. During the Revolving Facility Availability Period, each Lender severally, and not jointly, agrees, on the terms and conditions set forth in this Agreement, to make a Revolving Loan or Revolving Loans to the Borrower from time to time pursuant to such Lender's Revolving Commitment, which Revolving Loans: (i) may, except as set forth herein, at the option of the Borrower, be incurred and maintained as, or Converted into, Revolving Loans that are Base Rate Loans or ~~Eurodollar~~ Term SOFR Loans, in each case denominated in Dollars, *provided* that all Revolving Loans made as part of the same Revolving Borrowing shall consist of Revolving Loans of the same Type; (ii) may be repaid or prepaid and reborrowed in accordance with the provisions hereof; and (iii) shall not be made if, after giving effect to any such Revolving Loan, (A) the Revolving Facility Exposure of any Lender would exceed such Lender's Revolving Commitment, (B) the Aggregate Revolving Facility Exposure plus the principal amount of Swing Loans would exceed the Total Revolving Commitment, or (C) the Borrower would be required to prepay Loans or Cash Collateralize Letters of Credit pursuant to Section 2.13(c)(iii). The Revolving Loans to be made by each Lender will be made by such Lender on a *pro rata* basis based upon such Lender's Revolving Facility Percentage of each Revolving Borrowing, in each case in accordance with Section 2.07 hereof.

Section 2.03 Term Loan. On the Closing Date, each Lender that has a Term Commitment severally, and not jointly, agrees, on the terms and conditions set forth in this Agreement, to make a Term Loan to the Borrower pursuant to such Lender's Term Commitment, which Term Loans: (i) can only be incurred on the Closing Date in the entire amount of each Lender's Term Commitment; (ii) once prepaid or repaid, may not be reborrowed; (iii) may, except as set forth herein, at the option of the Borrower, be incurred and maintained as, or Converted into, Term Loans that are Base Rate Loans or ~~Eurodollar~~ Term SOFR Loans, in each case denominated in Dollars, *provided* that all Term Loans made as part of the same Term Borrowing shall consist of Term Loans of the same Type; (iv) shall be repaid in accordance with Section 2.13(b); and (v) shall not exceed (A) for any Lender at the time of incurrence thereof the aggregate principal amount of such Lender's Term Commitment, if any, and (B) for all the Lenders at the time of incurrence thereof the Total Term Loan Commitment. The Term Loans to be made by each Lender will be made by such Lender in the aggregate amount of its Term Commitment in accordance with Section 2.07 hereof.



#### Section 2.04 Swing Line Facility.

(a) Swing Loans. During the Revolving Facility Availability Period, the Swing Line Lender ~~shall~~may in its sole discretion, upon the request of the Borrower and on the terms and conditions set forth in this Agreement, make a Swing Loan or Swing Loans to the Borrower from time to time, which Swing Loans: (i) shall be payable on the Swing Loan Maturity Date applicable to each such Swing Loan; (ii) shall be made only in Dollars; (iii) may be repaid or prepaid and reborrowed in accordance with the provisions hereof; (iv) may only be made if after giving effect thereto (A) the aggregate principal amount of Swing Loans outstanding does not exceed the Swing Line Commitment, and (B) the Aggregate Revolving Facility Exposure plus the principal amount of Swing Loans would not exceed the Total Revolving Commitment; (v) shall not be made if, after giving effect thereto, the Borrower would be required to prepay Loans or Cash Collateralize Letters of Credit pursuant to Section 2.13(c)(ii) or (iii) hereof; (vi) shall not be made if the proceeds thereof would be used to repay, in whole or in part, any outstanding Swing Loan and (vii) at no time shall there be more than three Borrowings of Swing Loans outstanding hereunder.

(b) Swing Loan Refunding. The Swing Line Lender may at any time, in its sole and absolute discretion, direct that the Swing Loans owing to it be refunded by delivering a notice to such effect to the Administrative Agent, specifying the aggregate principal amount thereof (a "Notice of Swing Loan Refunding"). Promptly upon receipt of a Notice of Swing Loan Refunding, the Administrative Agent shall give notice of the contents thereof to the Lenders with Revolving Commitments and, unless an Event of Default specified in Section 8.01(i) in respect of the Borrower has occurred, the Borrower. Each such Notice of Swing Loan Refunding shall be deemed to constitute delivery by the Borrower of a Notice of Borrowing requesting Revolving Loans consisting of Base Rate Loans in the amount of the Swing Loans to which it relates. Each Lender with a Revolving Commitment (including the Swing Line Lender) hereby unconditionally agrees (notwithstanding that any of the conditions specified in Section 4.02 or elsewhere in this Agreement shall not have been satisfied, but subject to the provisions of paragraph (d) below) to make a Revolving Loan to the Borrower in the amount of such Lender's Revolving Facility Percentage of the aggregate amount of the Swing Loans to which such Notice of Swing Loan Refunding relates. Each such Lender shall make the amount of such Revolving Loan available to the Administrative Agent in immediately available funds at the Payment Office not later than 2:00 P.M. (local time at the Payment Office), if such notice is received by such Lender prior to 11:00 A.M. (local time at its Payment Office), or not later than 2:00 P.M. (local time at the Payment Office) on the next Business Day, if such notice is received by such Lender after such time. The proceeds of such Revolving Loans shall be made immediately available to the Swing Line Lender and applied by it to repay the principal amount of the Swing Loans to which such Notice of Swing Loan Refunding relates.

(c) Swing Loan Participation. If prior to the time a Revolving Loan would otherwise have been made as provided above as a consequence of a Notice of Swing Loan Refunding, any of the events specified in Section 8.01(i) shall have occurred in respect of the Borrower or one or more of the Lenders with Revolving Commitments shall determine that it is legally prohibited from making a Revolving Loan under such circumstances, each Lender (other than the Swing Line Lender), or each Lender (other than such Swing Line Lender) so prohibited, as the case may be, shall, on the date such Revolving Loan would have been made by it (the "Purchase Date"), purchase an undivided participating interest (a "Swing Loan Participation") in the outstanding Swing Loans to which such Notice of Swing Loan Refunding relates, in an amount (the "Swing Line Participation Amount") equal to such Lender's Revolving Facility Percentage of such outstanding Swing Loans. On the Purchase Date, each such Lender or each such Lender so prohibited, as the case may be, shall pay to the Swing Line Lender, in immediately available funds, such Lender's Swing Line Participation Amount, and promptly upon receipt thereof the Swing Line Lender shall, if requested by such other Lender, deliver to such Lender a participation certificate, dated the date of the Swing Line Lender's receipt of the funds from, and evidencing such Lender's Swing Loan Participation in, such Swing Loans and its Swing Line Participation Amount in respect thereof. If any amount required to be paid by a Lender to the Swing Line Lender pursuant to the above provisions in respect of any Swing Loan Participation is not paid on the date such payment is due, such Lender shall pay to the Swing Line Lender on demand interest on the amount not so paid at the overnight Federal Funds Effective Rate from the due date until such amount is paid in full. Whenever, at any time after the Swing Line Lender has received from any other Lender such Lender's Swing Line Participation Amount, the Swing Line Lender receives any payment from or on behalf of the Borrower on account of the related Swing Loans, the Swing Line Lender will promptly distribute to such Lender its ratable share of such amount based on its Revolving Facility Percentage of such amount on such date on account of its Swing Loan Participation (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded); *provided, however*, that if such payment received by the Swing Line Lender is required to be returned, such Lender will return to the Swing Line Lender any portion thereof previously distributed to it by the Swing Line Lender.

(d) Obligations Unconditional. Each Lender's obligation to make Revolving Loans pursuant to Section 2.04(b) and/or to purchase Swing Loan Participations in connection with a Notice of Swing Loan Refunding shall be subject to the conditions that (i) such Lender shall have received a Notice of Swing Loan Refunding complying with the provisions hereof and (ii) at the time the Swing Loans that are the subject of such Notice of Swing Loan Refunding were made, the Swing Line Lender making the same had no actual written notice from another Lender that an Event of Default had occurred and was continuing, but otherwise shall be absolute and unconditional, shall be solely for the benefit of the Swing Line Lender that gives such Notice of Swing Loan Refunding, and shall not be affected by any circumstance, including, without limitation, (A) any set-off, counterclaim, recoupment, defense or other right that such Lender may have against any other Lender, any Credit Party, or any other Person, or any Credit Party may have against any Lender or other Person, as the case may be, for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default; (C) any event or circumstance involving a Material Adverse Effect; (D) any breach of any Loan Document by any party thereto; or (E) any other circumstance, happening or event, whether or not similar to any of the foregoing.

#### Section 2.05 Letters of Credit.

(a) LC Issuances. During the Revolving Facility Availability Period, the Borrower may request an LC Issuer at any time and from time to time to issue, for the account of the Borrower or any Subsidiary, and subject to and upon the terms and conditions herein set forth, each LC Issuer agrees to issue from time to time Letters of Credit denominated and payable in Dollars and in each case in such form as may be approved by such LC Issuer and the Administrative Agent; *provided, however*, that notwithstanding the foregoing, no LC Issuance shall be made if, after giving effect thereto, (i) the LC Outstandings would exceed the LC Commitment Amount, (ii) the Revolving Facility Exposure of any Lender would exceed such Lender's Revolving Commitment, (iii) the Aggregate Revolving Facility Exposure plus the principal amount of Swing Loans outstanding would exceed the Total Revolving Commitment, or (iv) the Borrower would be required to prepay Loans or Cash Collateralize Letters of Credit pursuant to Section 2.13(c)(ii) or Section 2.13(c)(iii) hereof; and *provided, further*, that the Borrower shall be a co-applicant, and be jointly and severally liable, with respect to each Letter of Credit issued for the account of a Subsidiary that is not a Guarantor hereof. Subject to Section 2.05(c) below, each Letter of Credit shall have an expiry date (including any renewal periods) occurring not later than the earlier of (y) one year from the date of issuance thereof, or (z) five (5) Business Days prior to the scheduled Revolving Facility Termination Date.

(b) LC Requests. Whenever the Borrower desires that a Letter of Credit be issued for its account or the account of any eligible LC Obligor, the Borrower shall give the Administrative Agent and the applicable LC Issuer written or telephonic notice (in the case of telephonic notice, promptly confirmed in writing if so requested by the Administrative Agent) which, if in the form of written notice, shall be substantially in the form of Exhibit B-3 (each such request, an "LC Request"), or transmit by electronic communication (if arrangements for doing so have been approved by the applicable LC Issuer), prior to 11:00 A.M. (local time at the Notice Office) at least three Business Days (or such shorter period as may be acceptable to the relevant LC Issuer) prior to the proposed date of issuance (which shall be a Business Day), which LC Request shall include such supporting documents that such LC Issuer customarily requires in connection therewith (including, in the case of a Letter of Credit for an account party other than the Borrower, an application for, and if applicable a reimbursement agreement with respect to, such Letter of Credit). In the event of any inconsistency between any of the terms or provisions of any LC Document and the terms and provisions of this Agreement respecting Letters of Credit, the terms and provisions of this Agreement shall control.

(c) Auto-Extension Letters of Credit. If an LC Obligor so requests in any applicable LC Request, each LC Issuer shall agree to issue a Letter of Credit that has automatic extension provisions; *provided, however*, that any Letter of Credit that has automatic extension provisions must permit such LC Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Once any such Letter of Credit that has automatic extension provisions has been issued, the Lenders shall be deemed to have authorized (but may not require) such LC Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than five (5) Business Days prior to the scheduled Revolving Facility Termination Date; *provided, however*, that such LC Issuer shall not permit any such renewal if (i) such LC Issuer has determined that it would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof, or (ii) it has received notice (which may be by telephone or in writing) on or before the day that is two Business Days before the date that such LC Issuer is permitted to send a notice of non-renewal from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied.

(d) Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the applicable LC Issuer and the applicable LC Obligor, when a Letter of Credit is issued, (i) the rules of the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance (including the International Chamber of Commerce’s decision published by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to each Standby Letter of Credit and Commercial Letter of Credit.

(e) Notice of LC Issuance. Each LC Issuer shall, on the date of each LC Issuance by it, give the Administrative Agent, each applicable Lender and the Borrower written notice of such LC Issuance, accompanied by a copy to the Administrative Agent of the Letter of Credit or Letters of Credit issued by it. Each LC Issuer shall provide to the Administrative Agent a quarterly (or monthly if requested by any applicable Lender) summary describing each Letter of Credit issued by such LC Issuer and then outstanding and an identification for the relevant period of the daily aggregate LC Outstandings represented by Letters of Credit issued by such LC Issuer.

(f) Reimbursement Obligations.

(i) The Borrower hereby agrees to reimburse (or cause any LC Obligor for whose account a Letter of Credit was issued to reimburse) each LC Issuer, by making payment directly to such LC Issuer in immediately available funds at the payment office of such LC Issuer, for any Unpaid Drawing with respect to any Letter of Credit immediately after, and in any event on the date on which, such LC Issuer notifies the Borrower (or any such other LC Obligor for whose account such Letter of Credit was issued) of such payment or disbursement (which notice to the Borrower (or such other LC Obligor) shall be delivered reasonably promptly after any such payment or disbursement), such payment to be made in Dollars in which such Letter of Credit is denominated, with interest on the amount so paid or disbursed by such LC Issuer, to the extent not reimbursed prior to 1:00 P.M. (local time at the payment office of the applicable LC Issuer) on the date of such payment or disbursement, from and including the date paid or disbursed to but not including the date such LC Issuer is reimbursed therefor at a rate per annum that shall be the rate then applicable to Revolving Loans pursuant to Section 2.09(a) that are Base Rate Loans or, if not reimbursed on the date of such payment or disbursement, at the Default Rate, any such interest also to be payable on demand. Immediately following notice to it of its obligation to make reimbursement in respect of an Unpaid Drawing, if the Borrower or the relevant LC Obligor has not made such reimbursement out of its available cash on hand, (x) the Borrower will be deemed to have given a Notice of Borrowing for Revolving Loans that are Base Rate Loans in an aggregate principal amount sufficient to reimburse such Unpaid Drawing (and the Administrative Agent shall promptly give notice to the Lenders of such deemed Notice of Borrowing), (y) the Lenders shall, unless they are legally prohibited from doing so, make the Revolving Loans contemplated by such deemed Notice of Borrowing (which Revolving Loans shall be considered made under Section 2.02), and (z) the proceeds of such Revolving Loans shall be disbursed directly to the applicable LC Issuer to the extent necessary to effect such reimbursement and repayment of the Unpaid Drawing, with any excess proceeds to be made available to the Borrower in accordance with the applicable provisions of this Agreement.

(ii) Obligations Absolute. Each LC Obligor’s obligation under this Section to reimburse each LC Issuer with respect to Unpaid Drawings (including, in each case, interest thereon) shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that such LC Obligor may have or have had against such LC Issuer, the Administrative Agent or any Lender, including, without limitation, any defense based upon the failure of any drawing under a Letter of Credit to conform to the terms of the Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing; *provided, however*, that no LC Obligor shall be obligated to reimburse an LC Issuer for any wrongful payment made by such LC Issuer under a Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of such LC Issuer.

(g) LC Participations.

(i) Immediately upon each LC Issuance, the LC Issuer of such Letter of Credit shall be deemed to have sold and transferred to each Lender with a Revolving Commitment, and each such Lender (each an “LC Participant”) shall be deemed irrevocably and unconditionally to have purchased and received from such LC Issuer, without recourse or warranty, an undivided interest and participation (an “LC Participation”), to the extent of such Lender’s Revolving Facility Percentage of the Stated Amount of such Letter of Credit in effect at such time of issuance, in such Letter of Credit, each substitute Letter of Credit, each drawing made thereunder, the obligations of any LC Obligor under this Agreement with respect thereto (although LC Fees relating thereto shall be payable directly to the Administrative Agent for the account of the Lenders as provided in Section 2.11 and the LC Participants shall have no right to receive any portion of any fees of the nature contemplated by Section 2.11(c) or Section 2.11(d)), the obligations of any LC Obligor under any LC Documents pertaining thereto, and any security for, or guaranty pertaining to, any of the foregoing.

(ii) In determining whether to pay under any Letter of Credit, an LC Issuer shall not have any obligation relative to the LC Participants other than to determine that any documents required to be delivered under such Letter of Credit have been delivered and that they appear to comply on their face with the requirements of such Letter of Credit. Any action taken or omitted to be taken by an LC Issuer under or in connection with any Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not create for such LC Issuer any resulting liability.

(iii) If an LC Issuer makes any payment under any Letter of Credit and the applicable LC Obligor shall not have reimbursed such amount in full to such LC Issuer pursuant to Section 2.05(f), such LC Issuer shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each LC Participant of such failure, and each LC Participant shall promptly and unconditionally pay to the Administrative Agent for the account of such LC Issuer, the amount of such LC Participant’s Revolving Facility Percentage of such payment in Dollars and in same-day funds; *provided, however*, that no LC Participant shall be obligated to pay to the Administrative Agent its Revolving Facility Percentage of such unreimbursed amount for any wrongful payment made by such LC Issuer under a Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of such LC Issuer. If the Administrative Agent so notifies any LC Participant required to fund a payment under a Letter of Credit prior to 11:00 A.M. (local time at its Notice Office) on any Business Day, such LC Participant shall make available to the Administrative Agent for the account of the relevant LC Issuer such LC Participant’s Revolving Facility Percentage of the amount of such payment on such Business Day in same-day funds. If and to the extent such LC Participant shall not have so made its Revolving Facility Percentage of the amount of such payment available to the Administrative Agent for the account of the relevant LC Issuer, such LC Participant agrees to pay to the Administrative Agent for the account of such LC Issuer, forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent for the account of such LC Issuer at the Federal Funds Effective Rate. The failure of any LC Participant to make available to the Administrative Agent for the account of the relevant LC Issuer its Revolving Facility Percentage of any payment under any Letter of Credit shall not relieve any other LC Participant of its obligation hereunder to make available to the Administrative Agent for the account of such LC Issuer its Revolving Facility Percentage of any payment under any Letter of Credit on the date required, as specified above, but no LC Participant shall be responsible for the failure of any other LC Participant to make available to the Administrative Agent for the account of such LC Issuer such other LC Participant’s Revolving Facility Percentage of any such payment.

(iv) Whenever an LC Issuer receives a payment of a reimbursement obligation as to which the Administrative Agent has received for the account of such LC Issuer any payments from the LC Participants pursuant to subpart (iii) above, such LC Issuer shall pay to the Administrative Agent and the Administrative Agent shall promptly pay to each LC Participant that has paid its Revolving Facility Percentage thereof, in same-day funds, an amount equal to such LC Participant's Revolving Facility Percentage of the principal amount thereof and interest thereon accruing after the purchase of the respective LC Participations, as and to the extent so received.

(v) The obligations of the LC Participants to make payments to the Administrative Agent for the account of each LC Issuer with respect to Letters of Credit shall be irrevocable and not subject to counterclaim, set-off or other defense or any other qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Agreement under all circumstances, including, without limitation, any of the following circumstances:

(A) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(B) the existence of any claim, set-off defense or other right that any LC Obligor may have at any time against a beneficiary named in a Letter of Credit, any transferee of any Letter of Credit (or any Person for whom any such transferee may be acting), the Administrative Agent, any LC Issuer, any Lender, or other Person, whether in connection with this Agreement, any Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between the applicable LC Obligor and the beneficiary named in any such Letter of Credit), other than any claim that the applicable LC Obligor may have against any applicable LC Issuer for gross negligence or willful misconduct of such LC Issuer in making payment under any applicable Letter of Credit;

(C) any draft, certificate or other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(D) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents;  
or

(E) the occurrence of any Default or Event of Default.

(vi) To the extent any LC Issuer is not indemnified by the Borrower or any LC Obligor, the LC Participants will reimburse and indemnify such LC Issuer, in proportion to their respective Revolving Facility Percentages, for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature that may be imposed on, asserted against or incurred by such LC Issuer in performing its respective duties in any way related to or arising out of LC Issuances by it; *provided, however*, that no LC Participants shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements resulting from such LC Issuer's gross negligence or willful misconduct.

#### Section 2.06 Notice of Borrowing.

(a) Time of Notice. Each Borrowing of a Loan (other than a Continuation or Conversion) shall be made upon notice in the form provided for below which shall be provided by the Borrower to the Administrative Agent at its Notice Office not later than (i) in the case of each Borrowing of a ~~Eurodollar~~ Term SOFR Loan, 11:00 A.M. (local time at its Notice Office) at least three Business Days' prior to the date of such Borrowing, (ii) in the case of each Borrowing of a Base Rate Loan, prior to 11:00 A.M. (local time at its Notice Office) on the proposed date of such Borrowing, and (iii) in the case of any Borrowing under the Swing Line Facility, prior to 1:00 P.M. (local time at its Notice Office) on the proposed date of such Borrowing.

(b) Notice of Borrowing. Each request for a Borrowing (other than a Continuation or Conversion) shall be made by an Authorized Officer of the Borrower by delivering written notice of such request substantially in the form of Exhibit B-1 hereto (each such notice, a “Notice of Borrowing”) or by telephone (to be confirmed promptly (and in any event, within five (5) Business Days) in writing by delivery by an Authorized Officer of the Borrower of a Notice of Borrowing), and in any event each such request shall be irrevocable and shall specify (i) the aggregate principal amount of the Loans to be made pursuant to such Borrowing, (ii) the date of the Borrowing (which shall be a Business Day), (iii) the Type of Loans such Borrowing will consist of, and (iv) if applicable, the initial Interest Period or the Swing Loan Maturity Date (which shall be less than seven days). Without in any way limiting the obligation of the Borrower to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower entitled to give telephonic notices under this Agreement on behalf of the Borrower. In each such case, the Administrative Agent’s record of the terms of such telephonic notice shall be conclusive absent manifest error.

(c) Minimum Borrowing Amount. The aggregate principal amount of each Borrowing by the Borrower shall not be less than the Minimum Borrowing Amount.

(d) Maximum Borrowings. More than one Borrowing may be incurred by the Borrower on any day; *provided, however*, that (i) if there are two or more Borrowings on a single day (other than with respect to a Term Borrowing made on the Closing Date) by the Borrower that consist of ~~Eurodollar~~ Term SOFR Loans, each such Borrowing shall have a different initial Interest Period, and (ii) at no time shall there be more than five Borrowings of ~~Eurodollar~~ Term SOFR Loans outstanding hereunder.

#### Section 2.07 Funding Obligations; Disbursement of Funds.

(a) Several Nature of Funding Obligations. The Commitments of each Lender hereunder and the obligation of each Lender to make Loans, acquire and fund Swing Loan Participations, and LC Participations, as the case may be, are several and not joint obligations. No Lender shall be responsible for any default by any other Lender in its obligation to make Loans or fund any participation hereunder and each Lender shall be obligated to make the Loans provided to be made by it and fund its participations required to be funded by it hereunder, regardless of the failure of any other Lender to fulfill any of its Commitments hereunder. Nothing herein and no subsequent termination of the Commitments pursuant to Section 2.12 shall be deemed to relieve any Lender from its obligation to fulfill its commitments hereunder and in existence from time to time or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder.

(b) Borrowings Pro Rata. Except with respect to the making of Swing Loans by the Swing Line Lender, all Loans hereunder shall be made as follows: (i) all Revolving Loans made, and LC Participations acquired by each Lender, shall be made or acquired, as the case may be, on a *pro rata* basis based upon each Lender’s Revolving Facility Percentage of the amount of such Revolving Borrowing or Letter of Credit in effect on the date the applicable Revolving Borrowing is to be made or the Letter of Credit is to be issued; and (ii) all Term Loans shall be made by the Lenders having Term Commitments *pro rata* on the basis of their respective Term Commitments.

(c) Notice to Lenders. The Administrative Agent shall promptly give each Lender, as applicable, written notice (or telephonic notice promptly confirmed in writing) of each proposed Borrowing, or Conversion or Continuation thereof, and LC Issuance, and of such Lender's proportionate share thereof or participation therein and of the other matters covered by the Notice of Borrowing, Notice of Continuation or Conversion, or LC Request, as the case may be, relating thereto.

(d) Funding of Loans.

(i) Loans Generally. No later than 2:00 P.M. (local time at the Payment Office) on the date specified in each Notice of Borrowing, each Lender will make available its amount, if any, of each Borrowing requested to be made on such date to the Administrative Agent at the Payment Office in Dollars and in immediately available funds and the Administrative Agent promptly will make available to the Borrower by depositing to its account at the Payment Office (or such other account as the Borrower shall specify) the aggregate of the amounts so made available in the type of funds received.

(ii) Swing Loans. No later than 2:00 P.M. (local time at the Payment Office) on the date specified in each Notice of Borrowing, the Swing Line Lender will make available to the Borrower by depositing to its account at the Payment Office (or such other account as the Borrower shall specify) the aggregate of Swing Loans requested in such Notice of Borrowing.

(e) Advance Funding. Unless the Administrative Agent shall have been notified by any Lender prior to the date of Borrowing that such Lender does not intend to make available to the Administrative Agent its portion of the Borrowing or Borrowings to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing, and the Administrative Agent, in reliance upon such assumption, may (in its sole discretion and without any obligation to do so) make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender and the Administrative Agent has made the same available to the Borrower, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent shall also be entitled to recover from such Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower to the date such corresponding amount is recovered by the Administrative Agent at a rate per annum equal to (i) if paid by such Lender, the overnight Federal Funds Effective Rate or (ii) if paid by the Borrower, the then applicable rate of interest, calculated in accordance with Section 2.09, for the respective Loans (but without any requirement to pay any amounts in respect thereof pursuant to Section 3.02).

Section 2.08 Evidence of Obligations.

(a) Loan Accounts of Lenders. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Obligations of the Borrower 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.

(b) Loan Accounts of Administrative Agent; Lender Register. The Administrative Agent shall maintain accounts in which it shall record: (i) the amount of each Loan and Borrowing made hereunder, the Type thereof, the currency in which such Loan is denominated, the Interest Period and applicable interest rate and, in the case of a Swing Loan, the Swing Loan Maturity Date applicable thereto; (ii) the amount and other details with respect to each Letter of Credit issued hereunder; (iii) the amount of any principal due and payable or to become due and payable from the Borrower to each Lender hereunder; (iv) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof; and (v) the other details relating to the Loans, Letters of Credit and other Obligations. In addition, the Administrative Agent shall maintain a register (the "Lender Register") on or in which it will record the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender, pursuant to the terms hereof from time to time. The entries in the Lender Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Lender Register pursuant to the terms hereof as a Lender for all purposes of this Agreement. The Administrative Agent will make the Lender Register available to any Lender or the Borrower upon its request.

(c) Effect of Loan Accounts, etc. The entries made in the accounts maintained pursuant to Section 2.08(b) shall be *prima facie* evidence of the existence and amounts of the Obligations recorded therein; *provided*, that the failure of the Administrative Agent to maintain such accounts or any error (other than manifest error) therein shall not in any manner affect the obligation of any Credit Party to repay or prepay the Loans or the other Obligations in accordance with the terms of this Agreement.

(d) Notes. Upon request of any Lender or the Swing Line Lender, the Borrower will execute and deliver to such Lender or the Swing Line Lender, as the case may be, (i) a Revolving Facility Note with blanks appropriately completed in conformity herewith to evidence the Borrower's obligation to pay the principal of, and interest on, the Revolving Loans made to it by such Lender, (ii) a Term Note with blanks appropriately completed in conformity herewith to evidence its obligation to pay the principal of, and interest on, the Term Loan made to it by such Lender, and (iii) a Swing Line Note with blanks appropriately completed in conformity herewith to evidence the Borrower's obligation to pay the principal of, and interest on, the Swing Loans made to it by the Swing Line Lender; *provided, however*, that the decision of any Lender or the Swing Line Lender to not request a Note shall in no way detract from the Borrower's obligation to repay the Loans and other amounts owing by the Borrower to such Lender or the Swing Line Lender.

#### Section 2.09 Interest; Default Rate.

(a) Interest on Revolving Loans. The outstanding principal amount of each Revolving Loan made by each Lender shall bear interest at a fluctuating rate per annum that shall at all times be equal to (i) during such periods as such Revolving Loan is a Base Rate Loan, the Base Rate plus the Applicable Margin in effect from time to time and (ii) during such periods as such Revolving Loan is a ~~Eurodollar~~Term SOFR Loan, the relevant Adjusted ~~Eurodollar~~RateTerm SOFR for such ~~Eurodollar~~Term SOFR Loan for the applicable Interest Period plus the Applicable Margin in effect from time to time.



(b) Interest on Term Loans. The outstanding principal amount of each Term Loan made by each Lender shall bear interest at a fluctuating rate per annum that shall at all times be equal to (i) during such periods as such Term Loan is a Base Rate Loan, the Base Rate plus the Applicable Margin in effect from time to time; and (ii) during such periods as such Term Loan is a Eurodollar Term SOFR Loan, the relevant Adjusted Eurodollar Rate Term SOFR for such Eurodollar Term SOFR Loan for the applicable Interest Period plus the Applicable Margin, in each case, as in effect from time to time.

(c) Interest on Swing Loans. The outstanding principal amount of each Swing Loan shall bear interest from the date of the Borrowing at a rate per annum that shall be equal to the Base Rate plus the Applicable Margin in effect from time to time.

(d) Default Interest. Notwithstanding the above provisions, if an Event of Default under Section 8.01(a) or (i) has occurred and is continuing or upon the request of the Administrative Agent (made at the request or direction of the Required Lenders), if any other Event of Default has occurred and is continuing, (i) the principal amount of all Loans outstanding and, to the extent permitted by applicable law, all overdue interest in respect of each Loan and all fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable Debtor Relief Laws) payable on demand, at a rate per annum equal to the Default Rate, and (ii) the LC Fees shall be increased by an additional 2% per annum in excess of the LC Fees otherwise applicable thereto. In addition, if any amount (other than amounts as to which the foregoing subparts (i) and (ii) are applicable) payable by the Borrower under the Loan Documents is not paid when due, upon written notice by the Administrative Agent (which notice the Administrative Agent may give in its discretion and shall give at the direction of the Required Lenders), such amount shall bear interest, payable on demand, at a rate per annum equal to the Default Rate.

(e) Accrual and Payment of Interest. Interest shall accrue from and including the date of any Borrowing to but excluding the date of any prepayment or repayment thereof and shall be payable by the Borrower: (i) in respect of each Base Rate Loan, quarterly in arrears on the last Business Day of each March, June, September and December; (ii) in respect of each Eurodollar Term SOFR Loan, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of three months, on the dates that are successively three months after the commencement of such Interest Period; (iii) in respect of any Swing Loan, on the Swing Loan Maturity Date applicable thereto; and (iv) in respect of all Loans, other than Revolving Loans accruing interest at a Base Rate, on any repayment, prepayment or Conversion (on the amount repaid, prepaid or Converted), at maturity (whether by acceleration or otherwise), and, after such maturity or, in the case of any interest payable pursuant to Section 2.09(d), on demand.

(f) Computations of Interest. All computations of interest on Eurodollar Term SOFR Loans shall be made on the actual number of days elapsed over a year of 360 days. All computations of interest on Base Rate Loans and Unpaid Drawings hereunder shall be made on the actual number of days elapsed over a year of 365 or 366 days, as applicable.

(g) Information as to Interest Rates. The Administrative Agent, upon determining the interest rate for any Borrowing, shall promptly notify the Borrower and the Lenders thereof. Any changes in the Applicable Margin shall be determined by the Administrative Agent in accordance with the provisions set forth in the definition of "Applicable Margin" and the Administrative Agent will promptly provide notice of such determinations to the Borrower and the Lenders. Any such determination by the Administrative Agent shall be conclusive and binding absent manifest error.

(h) Temporary Inability to Determine Rates. If (A) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR cannot be determined pursuant to the definition thereof or (B) the Required Lenders determine that for any reason in connection with any request for a Term SOFR Loan or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent, in each case of (A) and (B), on or prior to the first day of any Interest Period, the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, (i) any obligation of the Lenders to make or continue the applicable Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended (to the extent of the affected Interest Periods) until the Administrative Agent revokes such notice and (ii) if such determination affects the calculation of the Base Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate without reference to clause (iii) of the definition of "Base Rate" until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of any applicable Term SOFR Loans (to the extent of the affected Term SOFR Loans or affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected Term SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 3.02. If the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof on any given day, the interest rate on Base Rate Loans shall be determined by the Administrative Agent without reference to clause (iii) of the definition of "Base Rate" until the Administrative Agent revokes such determination.

(h) ~~Effect of~~Permanent Inability to Determine Rate: Benchmark ~~Transition Event~~Replacement.

(i) ~~Benchmark Replacement~~. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event ~~or an Early Opt-in Election, as applicable~~, the Administrative Agent and the Borrower may amend this Agreement to replace the ~~Adjusted Eurodollar Rate~~then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. ~~Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment.~~ No replacement of the ~~Adjusted Eurodollar Rate~~then-current Benchmark with a Benchmark Replacement pursuant to this Section 2.09(h) will occur prior to the applicable Benchmark Transition Start Date.

(ii) ~~Benchmark Replacement Conforming Changes~~. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make ~~Benchmark Replacement~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~Benchmark Replacement~~ Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of ~~(+) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) and~~ the effectiveness of any ~~Benchmark Replacement~~ Conforming Changes ~~and (iv) the commencement or conclusion of any Benchmark Unavailability Period. The Administrative Agent will notify the Borrower and the removal or reinstatement of any tenor of a Benchmark.~~ Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.09(hi), 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 or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.09(hi).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if any then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(+v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for ~~a Eurodollar~~ the applicable Term SOFR Borrowing of, conversion to or continuation of ~~Eurodollar~~ Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon ~~the Adjusted Eurodollar Rate~~ Term SOFR (or then-current Benchmark) will not be used in any determination of Base Rate.

#### Section 2.10 Conversion and Continuation of Loans.

(a) Conversion and Continuation of Revolving Loans. The Borrower shall have the right, subject to the terms and conditions of this Agreement, to (i) Convert all or a portion of the outstanding principal amount of Loans of one Type made to it into a Borrowing or Borrowings of another Type of Loans that can be made to it pursuant to this Agreement and (ii) Continue a Borrowing of ~~Eurodollar~~ Term SOFR Loans at the end of the applicable Interest Period as a new Borrowing of ~~Eurodollar~~ Term SOFR Loans with a new Interest Period; *provided, however*, that any Conversion of ~~Eurodollar~~ Term SOFR Loans into Base Rate Loans shall be made on, and only on, the last day of an Interest Period for such ~~Eurodollar~~ Term SOFR Loans.

(b) Notice of Continuation and Conversion. Each Continuation or Conversion of a Loan shall be made upon notice in the form provided for below provided by the Borrower to the Administrative Agent at its Notice Office not later than (i) in the case of each Continuation of or Conversion into a Eurodollar Term SOFR Loan, prior to 11:00 A.M. (local time at its Notice Office) at least three Business Days' prior to the date of such Continuation or Conversion, and (ii) in the case of each Conversion to a Base Rate Loan, prior to 11:00 A.M. (local time at its Notice Office) on the proposed date of such Conversion. Each such request shall be made by an Authorized Officer of the Borrower delivering written notice of such request substantially in the form of Exhibit B-2 hereto (each such notice, a "Notice of Continuation or Conversion") or by telephone (to be confirmed immediately in writing by delivery by an Authorized Officer of the Borrower of a Notice of Continuation or Conversion), and in any event each such request shall be irrevocable and shall specify (A) the Borrowings to be Continued or Converted, (B) the date of the Continuation or Conversion (which shall be a Business Day), and (C) the Interest Period or, in the case of a Continuation, the new Interest Period. Without in any way limiting the obligation of the Borrower to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may act prior to receipt of written confirmation without liability upon the basis of such telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of the Borrower entitled to give telephonic notices under this Agreement on behalf of the Borrower. In each such case, the Administrative Agent's record of the terms of such telephonic notice shall be conclusive absent manifest error.

#### Section 2.11 Fees.

(a) Commitment Fees. The Borrower agrees to pay to the Administrative Agent, for the ratable benefit of each Lender based upon each such Lender's Revolving Facility Percentage, as consideration for the Revolving Commitments of the Lenders, commitment fees (the "Commitment Fees") for the period from the Closing Date to, but not including, the Revolving Facility Termination Date, computed for each day at a rate per annum equal to (i) the Applicable Margin times (ii) the Unused Total Revolving Commitment in effect on such day. Accrued Commitment Fees shall be due and payable in arrears on the last Business Day of each March, June, September and December and on the Revolving Facility Termination Date.

(b) LC Fees. (i) Standby Letters of Credit. The Borrower agrees to pay to the Administrative Agent, for the ratable benefit of each Lender with a Revolving Commitment based upon each such Lender's Revolving Facility Percentage, a fee in respect of each Letter of Credit issued hereunder that is a Standby Letter of Credit for the period from the date of issuance of such Letter of Credit until the expiration date thereof (including any extensions of such expiration date that may be made at the election of the account party or the beneficiary), computed for each day at a rate per annum equal to (A) the Applicable Margin for Revolving Loans that are Eurodollar Term SOFR Loans in effect on such day times (B) the Stated Amount of such Letter of Credit on such day. The foregoing fees shall be payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Revolving Facility Termination Date.

(ii) Commercial Letters of Credit. The Borrower agrees to pay to the Administrative Agent for the ratable benefit of each Lender based upon each such Lender's Revolving Facility Percentage, a fee in respect of each Letter of Credit issued hereunder that is a Commercial Letter of Credit in an amount equal to (A) the Applicable Margin for Revolving Loans that are Eurodollar Term SOFR Loans in effect on the date of issuance times (B) the Stated Amount of such Letter of Credit. The foregoing fees shall be payable on the date of issuance of such Letter of Credit.

(c) Fronting Fees. The Borrower agrees to pay directly to each LC Issuer, for its own account, a fee in respect of each Letter of Credit issued by it, payable on the date of issuance (or any increase in the amount, or renewal or extension) thereof, computed at the rate of 0.25% per annum on the Stated Amount thereof for the period from the date of issuance (or increase, renewal or extension) to the expiration date thereof (including any extensions of such expiration date which may be made at the election of the beneficiary thereof).

(d) Additional Charges of LC Issuer. The Borrower agrees to pay directly to each LC Issuer upon each LC Issuance, drawing under, or amendment, extension, renewal or transfer of, a Letter of Credit issued by it such amount as shall at the time of such LC Issuance, drawing under, amendment, extension, renewal or transfer be the processing charge that such LC Issuer is customarily charging for issuances of, drawings under or amendments, extensions, renewals or transfers of, letters of credit issued by it.

(e) Closing Date Fees. The Borrower shall pay to the Administrative Agent, on the Closing Date and thereafter, the fees set forth in the Fee Letter.

(f) Computations and Determination of Fees. All computations of Commitment Fees, LC Fees and other Fees hereunder shall be made on the actual number of days elapsed over a year of 360 days.

#### Section 2.12 Termination and Reduction of Revolving Commitments.

(a) Mandatory Termination of Revolving Commitments. All of the Revolving Commitments shall terminate on the Revolving Facility Termination Date.

(b) Cash Collateral. If the Total Revolving Commitment is reduced to any amount that is less than the LC Outstandings, the Borrower shall immediately Cash Collateralize the LC Outstandings to the extent of such excess.

(c) Voluntary Termination of the Total Revolving Commitment. Upon at least three Business Days' prior irrevocable written notice (or telephonic notice confirmed in writing) (unless such notice expressly conditions such termination upon consummation of a transaction which is contemplated to result in prepayment of the Loans, in which case such notice may be revoked by Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied) to the Administrative Agent at its Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), the Borrower shall have the right to terminate in whole the Total Revolving Commitment, *provided* that (i) all outstanding Revolving Loans and Unpaid Drawings are contemporaneously prepaid in accordance with Section 2.13 and (ii) either there are no outstanding Letters of Credit or the Borrower shall contemporaneously cause all outstanding Letters of Credit to be surrendered for cancellation (any such Letters of Credit to be replaced by letters of credit issued by other financial institutions acceptable to each LC Issuer and the Revolving Lenders) or shall Cash Collateralize all LC Outstandings.

(d) Partial Reduction of Total Revolving Commitment. Upon at least three Business Days' prior irrevocable written notice (or telephonic notice confirmed in writing) (unless such notice expressly conditions such reduction upon consummation of a transaction which is contemplated to result in prepayment of the Loans, in which case such notice may be revoked by Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied) to the Administrative Agent at its Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders), the Borrower shall have the right to partially and permanently reduce the Unused Total Revolving Commitment; *provided, however*, that (i) any such reduction shall apply to proportionately (based on each Lender's Revolving Facility Percentage) and permanently reduce the Revolving Commitment of each Lender, (ii) such reduction shall apply to proportionately and permanently reduce the LC Commitment Amount, but only to the extent that the Unused Total Revolving Commitment would be reduced below any such limits, (iii) no such reduction shall be permitted if the Borrower would be required to make a mandatory prepayment of Loans pursuant to Section 2.13(c)(ii) or (iii), and (iv) any partial reduction shall be in the amount of at least \$1,000,000 (or, if greater, in integral multiples of \$250,000).

Section 2.13 Voluntary, Scheduled and Mandatory Prepayments of Loans.

(a) Voluntary Prepayments. The Borrower shall have the right to prepay any of the Loans owing by it, in whole or in part, without premium or penalty, *except* as specified in subpart (f) below, from time to time. The Borrower shall give the Administrative Agent at the Notice Office written or telephonic notice (in the case of telephonic notice, promptly confirmed in writing if so requested by the Administrative Agent) of its intent to prepay the Loans, the amount of such prepayment and (in the case of ~~Eurodollar~~ Term SOFR Loans) the specific Borrowing(s) pursuant to which the prepayment is to be made, which notice shall be received by the Administrative Agent by (y) 11:00 A.M. (local time at the Notice Office) three Business Days prior to the date of such prepayment, in the case of any prepayment of ~~Eurodollar~~ Term SOFR Loans, or (z) 11:00 A.M. (local time at the Notice Office) on date of such prepayment, in the case of any prepayment of Base Rate Loans, and which notice shall promptly be transmitted by the Administrative Agent to each of the affected Lenders, *provided* that:

(i) each partial prepayment shall be in an aggregate principal amount of at least (A) in the case of any prepayment of a ~~Eurodollar~~ Term SOFR Loan, \$1,000,000 (or, if less, the full amount of such Borrowing), or an integral multiple of \$250,000, (B) in the case of any prepayment of a Base Rate Loan, \$250,000 (or, if less, the full amount of such Borrowing), or an integral multiple of \$100,000, and (C) in the case of any prepayment of a Swing Loan, in the full amount thereof;

(ii) no partial prepayment of any Loans made pursuant to a Borrowing shall reduce the aggregate principal amount of such Loans outstanding pursuant to such Borrowing to an amount less than the Minimum Borrowing Amount applicable thereto; and

(iii) in the case of any prepayment of Term Loans, such prepayment shall be applied as directed by the Borrower, and if the Borrower has not so directed, in direct order of the Scheduled Repayments in respect of the Term Loans.

(b) Scheduled Repayments of Term Loans.

(i) Closing Date Term Loans. On each of the dates set forth below, the Borrower shall repay the principal amount of the Term Loans made on the Closing Date in the amount set forth opposite such date, *except* that the payment due on the Term Loan Maturity Date shall in any event be in the amount of the entire remaining principal amount of the outstanding Term Loans (each such repayment, as the same may be reduced by reason of the application of prepayments pursuant to Sections 2.13(a) and 2.13(c), a “Scheduled Repayment”):

<b>Date</b>	<b>Amount of Payment</b>
December 31, 2020	\$562,500
March 31, 2021	\$562,500
June 30, 2021	\$562,500
September 30, 2021	\$562,500
December 31, 2021	\$562,500
March 31, 2022	\$562,500
June 30, 2022	\$562,500
September 30, 2022	\$562,500
December 31, 2022	\$843,750
March 31, 2023	\$843,750
June 30, 2023	\$843,750
September 30, 2023	\$843,750
December 31, 2023	\$843,750
March 31, 2024	\$843,750
June 30, 2024	\$843,750
September 30, 2024	\$843,750
December 31, 2024	\$1,125,000
March 31, 2025	\$1,125,000
June 30, 2025	\$1,125,000
September 3, 2025	Remainder of Term Loans

(ii) Incremental Loans. In addition to the foregoing, the Borrower shall pay to the Administrative Agent, for the account of the Lenders, on each Incremental Term Loan Repayment Date, a principal amount of the Other Term Loans (as adjusted from time to time pursuant to Sections 2.13(a), 2.13(c) and 2.17(d)) equal to the amount set forth for such date in the applicable Incremental Term Loan Assumption Agreement, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. To the extent not previously paid, all Incremental Term Loans shall be due and payable on the applicable Incremental Term Loan Maturity Date and all Incremental Revolving Loans shall be due and payable on the applicable Revolving Facility Termination Date, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

(c) **Mandatory Payments.** The Loans shall be subject to mandatory repayment or prepayment (in the case of any partial prepayment conforming to the requirements as to the amounts of partial prepayments set forth in [Section 2.13\(a\)](#) above), and the LC Outstandings shall be subject to cash collateralization requirements, in accordance with the following provisions:

(i) **Revolving Facility Termination Date.** The entire principal amount of all outstanding Revolving Loans shall be repaid in full on the Revolving Facility Termination Date.

(ii) **Loans Exceed the Commitments.** If on any date (after giving effect to any other payments on such date) (A) the Aggregate Credit Facility Exposure exceeds the Total Credit Facility Amount, (B) the Revolving Facility Exposure of any Lender exceeds such Lender's Revolving Commitment, (C) the Aggregate Revolving Facility Exposure plus the principal amount of Swing Loans exceeds the Total Revolving Commitment, or (D) the aggregate principal amount of Swing Loans outstanding exceeds the Swing Line Commitment, *then*, in the case of each of the foregoing, the Borrower shall, on such day, prepay on such date the principal amount of Loans and, after Loans have been paid in full, Unpaid Drawings, in an aggregate amount at least equal to such excess.

(iii) **LC Outstandings Exceed LC Commitment.** If on any date the LC Outstandings exceed the LC Commitment Amount, *then* the applicable LC Obligor or the Borrower shall, on such day, Cash Collateralize the LC Outstandings to the extent of such excess.

(iv) **Excess Cash Flow.** Within ten days following the earlier of the date on which the financial statements have been delivered, or are required to be delivered, pursuant to [Section 6.01\(a\)](#), commencing with the financial statements of the Borrower for the fiscal year ended December 31, 2021, the Borrower shall prepay the principal of the Loans in an aggregate amount equal to the sum of (A) Excess Cash Flow times (B) the percentage of the Excess Cash Flow for such fiscal year computed in accordance with the table set forth below based on the Consolidated ~~Net~~ Leverage Ratio as of the end of such fiscal year, with such amount to be applied as set forth in [Section 2.13\(d\)](#) below, less the amount of any voluntary repayments, prepayments or redemptions of the principal of the Term Loans (and, as in the case of any Revolving Loans, so long as there is a permanent reduction in the commitment thereunder) made during such fiscal year that are not financed with other Indebtedness; provided that, the percentage of Excess Cash Flow shall be computed in accordance with the table set forth below based on the Consolidated Net Leverage Ratio if for such Fiscal Year no Revolving Borrowings were outstanding for the 30-day period immediately prior to the end of such Fiscal Year.

<b>Consolidated-Net Applicable Leverage Ratio</b>	<b>Percentage of Excess Cash Flow</b>
Greater than or equal to 1.50 to 1.00	50%
Greater than or equal to 0.50 to 1.00 but less than 1.50 to 1.00	25%
Less than 0.50 to 1.00	0%

(v) **Certain Proceeds of Asset Sales.** If during any fiscal year of the Borrower, Holdings and its Subsidiaries have received cumulative Net Cash Proceeds during such fiscal year from one or more Asset Sales (other than Asset Sales permitted by [Section 7.02\(b\), \(h\)](#) through [\(j\)](#) and [\(l\)](#) through [\(o\)](#)) of at least \$2,500,000, not later than the third Business Day following the date of receipt of any Cash Proceeds in excess of such amount, an amount equal to 100% of the Net Cash Proceeds then received in excess of such amount from any Asset Sale shall be applied as a mandatory prepayment of the Loans in accordance with [Section 2.13\(d\)](#) below; *provided*, that (A) if no Event of Default shall have occurred and be continuing, and (B) the Borrower notifies the Administrative Agent of the amount and nature thereof and of its intention to reinvest all or a portion of such Net Cash Proceeds in assets constituting Collateral (other than inventory) of Holdings and its Subsidiaries within 180 days of receipt of such Net Cash Proceeds (or, if the Holdings or the relevant Subsidiary, as applicable, has contractually committed within 180 days following receipt of such Net Cash Proceeds to reinvest such Net Cash Proceeds, then within 360 days following receipt of such Net Cash Proceeds), then no such prepayment shall be required. Any amounts not so applied to such reinvestment or as provided in [Section 8.03](#) shall be applied to the prepayment of the Loans as provided in [Section 2.13\(d\)](#) below. If at the end of any such 180 day period (or 360 day period, as applicable) any portion of such Net Cash Proceeds has not been so reinvested, the Borrower will immediately make a prepayment of the Loans, to the extent required above.



~~(vi) [Reserved].~~

(vi) If any Revolving Loans are outstanding, and the aggregate amount of cash and Cash Equivalents exceeds \$25,000,000 for a period of five (5) consecutive Business Days, then not later than the first (1st) Business Day following the end of such five (5) Business Day period, the Borrower shall prepay the Revolving Loans in an amount equal to the lesser of (i) the outstanding amount of the Revolving Loans at such time and (ii) the aggregate amount of cash and Cash Equivalents in excess of \$25,000,000 on such fifth (5th) Business Day. All such prepayments shall be applied to prepay, with interest and with any additional compensation required under Section 3.02, the Revolving Loans outstanding hereunder. All prepayments of Revolving Loans pursuant to this Section 2.13(c)(vi) shall be applied to the outstanding Revolving Loans of each Lender pro rata.

(vii) Certain Proceeds of Indebtedness. Not later than the Business Day following the date of the receipt by any Credit Party of the Net Cash Proceeds from any sale or issuance of any Indebtedness (other than any Indebtedness incurred pursuant to Section 7.04 or otherwise consented to by the Required Lenders after the Closing Date), the Borrower will make a prepayment of the Loans in an amount equal to 100% of such Net Cash Proceeds in accordance with Section 2.13(d) below.

(viii) Certain Proceeds of an Event of Loss. If during any fiscal year of the Borrower, any Credit Party has received cumulative Net Cash Proceeds during such fiscal year from one or more Events of Loss of at least \$5,000,000, not later than the third Business Day following the date of receipt of any Net Cash Proceeds in excess of such amount, the Borrower will make a prepayment of the Loans with an amount equal to 100% of the Net Cash Proceeds then received in excess of such amount from any Event of Loss in accordance with Section 2.13(d) below. Notwithstanding the foregoing, in the event any property suffers an Event of Loss and (A) no Default or Event of Default has occurred and is continuing, and (B) the Borrower notifies the Administrative Agent and the Lenders in writing that it intends to replace, rebuild or restore the affected property or invest in other long-term assets of Holdings and its Subsidiaries, that such reinvestment can be accomplished within 180 days out of such Cash Proceeds and other funds available to the Borrower (which 180-day period shall be extended for an additional 180 days to the extent Borrower has entered into a legally binding agreement to reinvest such Net Cash Proceeds within such 180-day period), *then* no such prepayment of the Loans shall be required. If at the end of any such 180 day (or 360-day) period any portion of such Net Cash Proceeds from Events of Loss has not been so used to replace, rebuild or restore the affected property or invest in other long-term assets of Holdings and its Subsidiaries, the Borrower will immediately make a prepayment of the Loans, to the extent required above.

(d) Applications of Certain Prepayment Proceeds. Each prepayment required to be made pursuant to Section 2.13(c)(iv), (v), (vii) or (viii), above shall be applied as a mandatory prepayment of principal of *first*, the outstanding Term Loans, with such amounts being applied to the Scheduled Repayments (excluding the final payment), thereof in the inverse order of their maturity, *second*, to the final payment of the Term Loans, *third*, after no Term Loans are outstanding, the outstanding Swing Loans, and *fourth*, the outstanding Revolving Loans, and the Total Revolving Commitment shall not be permanently reduced on the date of any such prepayment by an amount equal to such prepayment in accordance with Section 2.12(b) and the LC Outstandings shall be Cash Collateralized to the extent required by Section 2.12(b).

(e) Particular Loans to be Prepaid. With respect to each repayment or prepayment of Loans made or required by this Section, the Borrower shall designate the Types of Loans that are to be repaid or prepaid and the specific Borrowing(s) pursuant to which such repayment or prepayment is to be made; *provided, however*, that (i) the Borrower shall first so designate all Loans that are Base Rate Loans and Eurodollar Term SOFR Loans with Interest Periods ending on the date of repayment or prepayment prior to designating any other Eurodollar Term SOFR Loans for repayment or prepayment, and (ii) if the outstanding principal amount of Eurodollar Term SOFR Loans made pursuant to a Borrowing is reduced below the applicable Minimum Borrowing Amount as a result of any such repayment or prepayment, then all the Loans outstanding pursuant to such Borrowing shall, in the case of Eurodollar Term SOFR Loans, be Converted into Base Rate Loans. In the absence of a designation by the Borrower as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion with a view, but no obligation, to minimize breakage costs owing under Article III.

(f) Breakage and Other Compensation. Any prepayment made pursuant to this Section 2.13 shall be accompanied by any amounts payable in respect thereof under Article III hereof.

(g) Term Lender Opt-Out. With respect to any prepayment of Term Loans pursuant to Section 2.13(c)(iv) or (v), the Term Lenders may decline to accept the applicable prepayment. The Borrower shall notify the Administrative Agent of any event giving rise to a prepayment under Section 2.13(c)(iv) or (v) at least ten (10) Business Days prior to the date of such prepayment. Each such notice shall specify the expected date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment that is required to be made under Section 2.13(c)(iv) or (v) (the “Prepayment Amount”). The Administrative Agent will promptly notify each Term Lender of the contents of any such prepayment notice so received from the Borrower, including the date on which such prepayment is to be made (the “Prepayment Date”). Any Term Lender may decline to accept all (but not less than all) of its share of any such prepayment (any such Lender, a “Declining Lender”) by providing written notice to the Administrative Agent no later than five (5) Business Days after the date of such Term Lender’s receipt of notice from the Administrative Agent regarding such prepayment. If any Term Lender does not give a notice to the Administrative Agent on or prior to such fifth (5<sup>th</sup>) Business Day informing the Administrative Agent that it declines to accept the applicable prepayment, then such Lender will be deemed to have accepted such prepayment. On any Prepayment Date, an amount equal to the Prepayment Amount minus the portion thereof allocable to Declining Lenders, in each case for such Prepayment Date, shall be paid to the Administrative Agent by the Borrower and applied by the Administrative Agent ratably to prepay Term Loans owing to Appropriate Lenders (other than Declining Lenders) in the manner described in Section 2.13(d) for such prepayment. The remaining amount may be retained by the Borrower (such remaining amounts, the “Declined Amounts”).

Section 2.14 Method and Place of Payment.

(a) Generally. All payments made by the Borrower hereunder (including any payments made with respect to the Borrower Guaranteed Obligations under Article X) under any Note or any other Loan Document shall be made without setoff, counterclaim or other defense.

(b) Application of Payments. Except as specifically set forth elsewhere in this Agreement and subject to Section 8.03, (i) all payments and prepayments of Revolving Loans and Unpaid Drawings with respect to Letters of Credit shall be applied by the Administrative Agent on a *pro rata* basis based upon each Lender's Revolving Facility Percentage of the amount of such prepayment, (ii) all payments and prepayments of Term Loans shall be applied by the Administrative Agent to reduce the principal amount of the Term Loans made by each Lender with a Term Commitment, *pro rata* on the basis of their respective Term Commitments, and (iii) all payments or prepayments of Swing Loans shall be applied by the Administrative Agent to pay or prepay such Swing Loans.

(c) Payment of Obligations. Except as specifically set forth elsewhere in this Agreement, all payments under this Agreement with respect to any of the Obligations shall be made to the Administrative Agent on the date when due and shall be made at the Payment Office in immediately available funds and, except as set forth in the next sentence, shall be made in Dollars.

(d) Timing of Payments. Any payments under this Agreement that are made later than 2:00 P.M. (local time at the Payment Office) shall be deemed to have been made on the next succeeding Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable during such extension at the applicable rate in effect immediately prior to such extension.

(e) Distribution to Lenders. Upon the Administrative Agent's receipt of payments hereunder, the Administrative Agent shall immediately distribute to each Lender or the applicable LC Issuer, as the case may be, its ratable share, if any, of the amount of principal, interest, and Fees received by it for the account of such Lender. Payments received by the Administrative Agent in Dollars shall be delivered to the Lenders or the applicable LC Issuer, as the case may be, in Dollars in immediately available funds; *provided, however*, that if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Unpaid Drawings, interest and Fees then due hereunder then, except as specifically set forth elsewhere in this Agreement and subject to Section 8.03, such funds shall be applied, *first*, towards payment of interest and Fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and Fees then due to such parties, and *second*, towards payment of principal and Unpaid Drawings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Unpaid Drawings then due to such parties.

Section 2.15 Defaulting Lenders.

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

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

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.03 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to any LC Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the LC Issuers' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the LC Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.16; *sixth*, to the payment of any amounts owing to the Lenders, the LC Issuers or Swing Line Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the LC Issuers or Swing Line Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or reimbursement of any payment on any Letter of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans or reimbursement of any payment on any Letter of Credit were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Outstandings owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or LC Outstandings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Outstandings and Swing Loans are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Credit Facilities without giving effect to Section 2.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. (A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive LC Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Facility Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16.

(C) With respect to any LC Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to the Administrative Agent for the ratable benefit of each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC Outstandings or Swing Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each LC Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such LC Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Outstandings and Swing Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Facility Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Facility Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swing Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the LC Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.16.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and each Swing Line Lender and LC Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Loans to be held *pro rata* by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swing Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Loan and (ii) no LC Issuer shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

#### Section 2.16 Cash Collateral.

(a) Fronting Exposure. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any LC Issuer (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize the LC Issuers' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the LC Issuers, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Outstandings, to be applied pursuant to clause (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the LC Issuers as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.16 or Section 2.15 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Outstandings (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce any LC Issuer's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.16 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and each LC Issuer that there exists excess Cash Collateral; *provided that*, subject to Section 2.15, the Person providing Cash Collateral and each LC Issuer may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and *provided, further* that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

#### Section 2.17 Increase in Commitments.

(a) The Borrower may, by written notice to the Administrative Agent at any time after the ~~Closing Date~~Covenant Amendment Period and prior to the Term Loan Maturity Date, request on one or more occasions, Incremental Term Loan Commitments and/or Incremental Revolving Credit Commitments in an aggregate principal amount not to exceed \$50,000,000 (provided that the aggregate amount of all Incremental Revolving Credit Commitments shall not exceed \$10,000,000) from one or more Incremental Term Lenders or Incremental Revolving Credit Lenders, as applicable, which may include any existing Lender (each of which shall be entitled to agree or decline to participate in its sole discretion); *provided*, that each Incremental Term Lender and Incremental Revolving Credit Lender, if not already a Lender hereunder, shall be subject to the approval of the Administrative Agent in its reasonable discretion. Such notice shall set forth (i) the amount of the Incremental Term Loan Commitments or the Incremental Revolving Credit Commitments being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$10,000,000), (ii) the date on which such Incremental Term Loan Commitments or Incremental Revolving Credit Commitments are requested to become effective (which shall not be less than 15 days nor more than 60 days after the date of such notice, unless otherwise agreed to by the Administrative Agent) and (iii) whether such Incremental Term Loan Commitments are to be Term Commitments or commitments to make term loans with terms different from the Term Loans ("Other Term Loans"). Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that all Incremental Revolving Credit Commitments are to be Revolving Commitments and based on the terms and conditions set forth herein for Revolving Commitments and Revolving Loans.

(b) The Borrower may seek Incremental Term Loan Commitments and Incremental Revolving Credit Commitments from existing Lenders (each of which shall be entitled to agree or decline to participate in its sole discretion) and additional banks, financial institutions and other institutional lenders who will become Incremental Term Lenders and/or Incremental Revolving Credit Lenders, as applicable, in connection therewith. The Borrower and each Incremental Term Lender shall execute and deliver to the Administrative Agent an Incremental Term Loan Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Loan Commitment of such Incremental Term Lender. The Borrower and each Incremental Revolving Credit Lender shall execute and deliver to the Administrative Agent an Incremental Revolving Credit Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Revolving Credit Commitment of such Incremental Revolving Credit Lender. Each Incremental Term Loan Assumption Agreement and Incremental Revolving Credit Assumption Agreement shall specify the terms of the Incremental Term Loans or Incremental Revolving Loans, as applicable, to be made thereunder; *provided*, that, without the prior written consent of the Required Lenders, (i) the final maturity date of any Other Term Loans shall be no earlier than the Term Loan Maturity Date and (ii) the weighted average life to maturity of any Other Term Loans shall be no shorter than the weighted average life to maturity of the Term Loans, and *provided, further*, that, if the Initial Yield on such Other Term Loans exceeds by more than 50 basis points the sum of (A) the margin then in effect for Term Loans that are Eurodollar Term SOFR Loans plus (B) one-quarter of the amount of such upfront fee initially paid in respect of the Term Loans (the amount of such excess above 50 basis points being referred to herein as the “Yield Differential”), then the Applicable Margin then in effect for each such affected Type of Term Loans shall automatically be increased by the Yield Differential, effective upon the making of the Other Term Loans. As used in the prior sentence, “Initial Yield” shall, as determined by the Administrative Agent, be equal to the sum of (x) the margin above the Adjusted Eurodollar Rate Term SOFR on such Other Term Loans (which shall be increased by the amount any “LIBOR benchmark floor” applicable to such Other Term Loans on the date such Other Term Loans are made exceeds the Adjusted Eurodollar Rate Term SOFR) plus (y) if the Lenders making such Other Term Loans receive any upfront fee or similar fees (including original issue discount where the amount of such discount is equated to interest based on an assumed four year life to maturity or, if the actual maturity date falls earlier than four years, the lesser number of years, but excluding any arrangement, underwriting, structuring or similar fees) directly or indirectly from Holdings, the Borrower or any Subsidiary, the amount of such upfront fee or similar divided by the lesser of (A) the average life to maturity of such Other Term Loans and (B) four. The other terms of the Incremental Term Loans and the Incremental Term Loan Assumption Agreement to the extent not consistent with the terms applicable to the Term Loans hereunder shall otherwise be reasonably satisfactory to the Administrative Agent and, to the extent that such Incremental Term Loan Assumption Agreement contains any covenants, events of default, representations or warranties or other rights or provisions that place greater restrictions on Holdings, the Borrower or any of their respective Subsidiaries that are more favorable to the Lenders making such Other Term Loans, the existing Lenders shall be entitled to the benefit of such rights and provisions so long as such Other Term Loans remain outstanding and such additional rights and provisions shall be deemed automatically incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein, without any further action required on the part of any Person effective as of the date of such Incremental Term Loan Assumption Agreement. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Term Loan Assumption Agreement and Incremental Revolving Credit Assumption Agreement. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Term Loan Assumption Agreement or Incremental Revolving Credit Assumption Agreement, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Term Loan Commitment or Incremental Revolving Credit Commitment, as applicable, evidenced thereby as provided for in Section 11.12. Any such deemed amendment may be memorialized in writing by the Administrative Agent and the Borrower (any such amendment, an “Incremental Amendment”) and furnished to the other parties hereto, without requiring the consent of any other Lender, other than the Lenders providing such Incremental Term Loan Commitments or Incremental Revolving Credit Commitments.

(c) All Incremental Term Loans shall rank *pari passu* in right of payment and security with the initial Term Loans and shall be guaranteed by the Guarantors.

(d) Notwithstanding the foregoing, no Incremental Term Loan Commitment or Incremental Revolving Credit Commitment shall become effective under this Section 2.17 unless (i) on the date of such effectiveness, the conditions set forth in Section 4.02 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Borrower, (ii) the Administrative Agent shall have received legal opinions, board resolutions and other closing certificates and documentation consistent with those delivered on the Closing Date, and (iii) the Borrower would be in pro forma compliance with the covenants set forth in Section 7.07.

(e) Each of the parties hereto hereby agrees that the Administrative Agent may take any and all ~~action~~actions as may be reasonably necessary to ensure that all Incremental Term Loans (other than Other Term Loans), when originally made, are included in each Borrowing of outstanding Term Loans on a pro rata basis, and the Borrower agrees that Section 3.02 shall apply to any conversion of Eurodollar Term SOFR Loans which are Term Loans to Base Rate Loans reasonably required by the Administrative Agent to effect the foregoing. In addition, to the extent any Incremental Term Loans are not Other Term Loans, the scheduled amortization payments set forth in Section 2.13(b) required to be made after the making of such Incremental Term Loans shall be ratably increased by the aggregate principal amount of such Incremental Term Loans.

(f) Each Incremental Revolving Loan shall contain terms and provisions identical to the terms and conditions applicable to the Revolving Facility.

## ARTICLE III

### INCREASED COSTS, ILLEGALITY AND TAXES

#### Section 3.01 Increased Costs, Illegality, etc.

(a) In the event that (y) in the case of clause (i) below, the Administrative Agent or (z) in the case of clauses (ii) and (iii) below, any Lender or other Recipient, shall have determined on a reasonable basis (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto):

(i) on any date for determining the interest rate applicable to any ~~Eurodollar~~Term SOFR Loan for any Interest Period that, by reason of any changes arising after the Closing Date, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in this Agreement for such ~~Eurodollar~~Term SOFR Loan; or

(ii) at any time, that such Lender or other Recipient shall incur increased costs or reductions in the amounts received or receivable by it hereunder in an amount that such Lender or other Recipient deems material with respect to any ~~Eurodollar~~Term SOFR Loans (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of any (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) because of (x) any Change in Law since the Closing Date (including, but not limited to, a change in requirements for any reserve, special deposit, liquidity or similar requirements (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 other Recipient, ~~but, in all events, excluding reserves already includable in the interest rate applicable to such Eurodollar Loan pursuant to this Agreement~~) or (y) other circumstances adversely affecting the ~~London interbank market or the position of such Lender or other Recipient in any such market~~availability of SOFR; or

(iii) at any time, that the making or continuance of any ~~Eurodollar~~Term SOFR Loan has become unlawful by compliance by such Lender in good faith with any Change in Law since the Closing Date, or would conflict with any thereof not having the force of law but with which such Lender customarily complies, or has become impracticable as a result of a contingency occurring after the Closing Date that materially adversely affects the ~~London interbank market~~availability of SOFR;

then, and in each such event, such Lender or other Recipient (or the Administrative Agent in the case of clause (i) above) shall (1) on or promptly following such date or time and (2) within 10 Business Days of the date on which such event no longer exists give notice (by telephone confirmed in writing) to the Borrower and to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders or other Recipients). Thereafter (x) in the case of clause (i) above, the affected Type of ~~Eurodollar~~Term SOFR Loans shall no longer be available until such time as the Administrative Agent notifies the Borrower and the Lenders or other Recipients that the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing or Notice of Continuation or Conversion given by the Borrower with respect to such Type of ~~Eurodollar~~Term SOFR Loans that have not yet been incurred, Converted or Continued shall be deemed rescinded by the Borrower or, in the case of a Notice of Borrowing, shall, at the option of the Borrower, be deemed converted into a Notice of Borrowing for Base Rate Loans to be made on the date of Borrowing contained in such Notice of Borrowing, (y) in the case of clause (ii) above, the Borrower shall pay to such Lender or other Recipient, upon written demand therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender or other Recipient shall determine) as shall be required to compensate such Lender or other Recipient for such increased costs or reductions in amounts receivable hereunder (a written notice as to the additional amounts owed to such Lender or other Recipient, showing the basis for the calculation thereof, which basis must be reasonable, submitted to the Borrower by such Lender or other Recipient shall, absent manifest error, be final and conclusive and binding upon all parties hereto) and (z) in the case of clause (iii) above, the Borrower shall take one of the actions specified in Section 3.01(b) as promptly as possible and, in any event, within the time period required by law.



(b) At any time that any ~~Eurodollar~~Term SOFR Loan is affected by the circumstances described in Section 3.01(a)(ii) or (iii), the Borrower may (and in the case of a ~~Eurodollar~~Term SOFR Loan affected pursuant to Section 3.01(a)(iii) the Borrower shall) either (i) if the affected ~~Eurodollar~~Term SOFR Loan is then being made pursuant to a Borrowing, by giving the Administrative Agent telephonic notice (confirmed promptly in writing) thereof on the same date that the Borrower was notified by a Lender or other Recipient pursuant to Section 3.01(a)(ii) or (iii), cancel said Borrowing, or, in the case of any Borrowing, convert the related Notice of Borrowing into one requesting a Borrowing of Base Rate Loans or require the affected Lender or other Recipient to make its requested Loan as a Base Rate Loan, or (ii) if the affected ~~Eurodollar~~Term SOFR Loan is then outstanding, upon at least one Business Day's notice to the Administrative Agent, require the affected Lender or other Recipient to Convert each such ~~Eurodollar~~Term SOFR Loan into a Base Rate Loan; *provided, however*, that if more than one Lender or other Recipient is affected at any time, then all affected Lenders or other Recipients must be treated the same pursuant to this Section 3.01(b).

(c) If any Lender shall have determined that after the Closing Date, any Change in Law regarding capital adequacy or liquidity by any Governmental Authority, central bank or comparable agency charged by law with the interpretation or administration thereof, or compliance by such Lender or its parent corporation with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such authority, central bank, or comparable agency, in each case made subsequent to the Closing Date, has or would have the effect of reducing by an amount reasonably deemed by such Lender to be material to the rate of return on such Lender's or its parent corporation's capital or assets as a consequence of such Lender's commitments or obligations hereunder to a level below that which such Lender or its parent corporation could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Lender's or its parent corporation's policies with respect to capital adequacy and liquidity), then from time to time, within 15 days after demand by such Lender (with a copy to the Administrative Agent), the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or its parent corporation for such reduction. Each Lender, upon determining in good faith that any additional amounts will be payable pursuant to this Section 3.01(c), will give prompt written notice thereof to the Borrower, which notice shall set forth, in reasonable detail, the basis of the calculation of such additional amounts, which basis must be reasonable, although the failure to give any such notice shall not release or diminish any of the Borrower's obligations to pay additional amounts pursuant to this Section 3.01(c) upon the subsequent receipt of such notice.

(d) Notwithstanding the foregoing, the provisions of Section 2.09(hi) shall apply with respect to a Benchmark ~~Transaction~~Transition Event ~~or an Early Opt-In Election~~.

(e) The Borrower shall not be required to compensate a Lender pursuant to Section 3.01(a) or (c) for any such increased cost or reduction incurred more than one hundred eighty (180) days prior to the date that such Lender demands, or notifies the Borrower of its intention to demand, compensation therefor; provided that if the circumstance giving rise to such increased cost or reduction is retroactive, then such one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 3.02 Breakage Compensation. The Borrower shall compensate each Lender upon its written request (which request shall set forth the detailed basis for requesting and the method of calculating such compensation), for all reasonable losses, costs, expenses and liabilities (including, without limitation, any loss, cost, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its EurodollarTerm SOFR Loans) which such Lender may sustain in connection with any of the following: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of EurodollarTerm SOFR Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Continuation or Conversion (whether or not withdrawn by the Borrower or deemed withdrawn pursuant to Section 3.01(a)); (ii) if any repayment, prepayment, Conversion or Continuation of any EurodollarTerm SOFR Loan occurs on a date that is not the last day of an Interest Period applicable thereto; (iii) if any prepayment of any of its EurodollarTerm SOFR Loans is not made on any date specified in a notice of prepayment given by the Borrower; (iv) as a result of an assignment by a Lender of any EurodollarTerm SOFR Loan other than on the last day of the Interest Period applicable thereto pursuant to a request by the Borrower pursuant to Section 3.05(b); or (v) as a consequence of (y) any other default by the Borrower to repay or prepay any EurodollarTerm SOFR Loans when required by the terms of this Agreement or (z) an election made pursuant to Section 3.05(b). The written request of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such request within 10 days after receipt thereof.

Section 3.03 Net Payments.

(a) Defined Terms. For purposes of this Section 3.03, the term “Lender” includes any LC Issuer and the term “applicable law” includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit 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 Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Credit 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 the payment of, any Other Taxes.

(d) Indemnification by the Credit Parties. The Credit Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) 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 the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(b) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 3.03, such Credit 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.

(g) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent and at the time or times prescribed by applicable law, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent or prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.03(g)(ii)(A), (ii)(B) and (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 the Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

- (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;
- (2) executed originals 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 L-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or
- (4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-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 L-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.03 (including by the payment of additional amounts pursuant to this Section 3.03), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 3.03 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.

Section 3.04 Increased Costs to LC Issuers. If after the Closing Date, there is a Change in Law by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any LC Issuer or any Lender with any request or directive (whether or not having the force of law) by any such authority, central bank or comparable agency (in each case made subsequent to the Closing Date) shall either (i) impose, modify or make applicable any reserve, deposit, capital adequacy or similar requirement against Letters of Credit issued by such LC Issuer or such Lender's participation therein, or (ii) impose on such LC Issuer or any Lender any other conditions affecting this Agreement, any Letter of Credit or such Lender's participation therein; and the result of any of the foregoing is to increase the cost to such LC Issuer or such Lender of issuing, maintaining or participating in any Letter of Credit, or to reduce the amount of any sum received or receivable by such LC Issuer or such Lender hereunder (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of taxes or similar charges), then, upon demand to the Borrower by such LC Issuer or such Lender (a copy of which notice shall be sent by such LC Issuer or such Lender to the Administrative Agent), the Borrower shall pay to such LC Issuer or such Lender such additional amount or amounts as will compensate any such LC Issuer or such Lender for such increased cost or reduction. A certificate submitted to the Borrower by any LC Issuer or any Lender, as the case may be (a copy of which certificate shall be sent by such LC Issuer or such Lender to the Administrative Agent), setting forth, in reasonable detail, the basis for the determination of such additional amount or amounts necessary to compensate any LC Issuer or such Lender as aforesaid shall be conclusive and binding on the Borrower absent manifest error, although the failure to deliver any such certificate shall not release or diminish the Borrower's obligations to pay additional amounts pursuant to this Section 3.04.

Section 3.05 Change of Lending Office; Replacement of Lenders.

(a) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.01(a)(ii) or (iii), 3.01(c), 3.03 or 3.04 requiring the payment of additional amounts to the Lender, such Lender will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another Applicable Lending Office for any Loans or Commitments affected by such event; *provided, however*, that such designation is made on such terms that such Lender and its Applicable Lending Office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of any such Section. The Borrower hereby agrees 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 any compensation, reimbursement or other payment under Section 3.01(a)(ii) or (iii), 3.01(c) or 3.04 with respect to such Lender, (ii) the Borrower is, or because of a matter in existence as of the date that the Borrower is seeking to exercise its rights under this Section will be, required to pay any additional amount to any Lender or Governmental Authority pursuant to Section 3.03, or (iii) or if any Lender is a Defaulting Lender, then the Borrower may, at its 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 the restrictions contained in Section 11.06(c)), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations; *provided, however*, that (1) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed, (2) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Section 3.02 hereof), and (3) in the case of any such assignment resulting from a claim for compensation, reimbursement or other payments required to be made under Section 3.01(a)(ii) or (iii), Section 3.01(c) or Section 3.04 with respect to such Lender, or resulting from any required payments to any Lender or Governmental Authority pursuant to Section 3.03, such assignment will result in a reduction in such compensation, reimbursement 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 Borrower to require such assignment and delegation cease to apply.

(c) Nothing in this Section 3.05 shall affect or postpone any of the obligations of the Borrower or the right of any Lender provided in Section 3.01, 3.03 or 3.04.

Section 3.06 Rates. The interest rate on Loans denominated in Dollars may be determined by reference to a benchmark rate that is, or may in the future become, the subject of regulatory reform or cessation. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration Term SOFR.

#### ARTICLE IV

#### CONDITIONS PRECEDENT

Section 4.01 Conditions Precedent at Closing Date. The obligation of the Lenders to make Loans, and of any LC Issuer to issue Letters of Credit, is subject to the satisfaction of each of the following conditions on or prior to the Closing Date:

(i) Credit Agreement. This Agreement shall have been executed by Holdings, the Borrower, the Administrative Agent, each LC Issuer and each of the Lenders.

(ii) Notes. The Borrower shall have executed and delivered to the Administrative Agent the appropriate Note or Notes for the account of each Lender that has requested the same.

(iii) Security Agreement and Guaranty. The Credit Parties shall have duly executed and delivered a Pledge and Security Agreement (the "Security Agreement") and a Guaranty Agreement (the "Guaranty"), in each case in form and substance reasonably acceptable to the Administrative Agent, and shall have executed and delivered all of the following in connection therewith, each of which shall be in form and substance satisfactory to the Administrative Agent: (A) a Perfection Certificate, and (B) each other Security Document that is required by this Agreement or the Security Agreement.

(iv) Fees and Fee Letters. The Borrower shall have (A) executed and delivered to the Administrative Agent, the Fee Letter and shall have paid to the Administrative Agent the fees required to be paid therein, and (B) paid or caused to be paid all reasonable fees and expenses of the Administrative Agent and of special counsel to the Administrative Agent that have been invoiced on or prior to the Closing Date.

(v) Corporate Resolutions and Approvals. The Administrative Agent shall have received certified copies of the resolutions of the Board of Directors (or similar governing body) of each Credit Party approving the Loan Documents to which such Credit Party is or may become a party, and of all documents evidencing other necessary corporate or other organizational action, as the case may be, and governmental approvals, if any, with respect to the execution, delivery and performance by such Credit Party of Transactions and the Loan Documents to which it is or may become a party and the expiration of all applicable waiting periods, all of which documents to be in form and substance reasonably satisfactory to the Administrative Agent.

(vi) Incumbency Certificates. The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary of each Credit Party certifying the names and true signatures of the officers of such Credit Party authorized to sign the Loan Documents to which such Credit Party is a party and any other documents to which such Credit Party is a party that may be executed and delivered in connection herewith.

(vii) Opinions of Counsel. The Administrative Agent shall have received such opinions of counsel from counsel to the Credit Parties, including opinions of local counsel for the Credit Parties in each jurisdiction in which any Credit Party is registered under the UCC, each of which opinions shall be addressed to the Administrative Agent and the Lenders and dated the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent.

(viii) Recordation of Security Documents, Delivery of Collateral, Taxes, etc. The Security Documents (or proper notices or UCC financing statements in respect thereof) shall have been duly recorded, published and filed in such manner and in such places as is required by law to establish, perfect, preserve and protect the rights, Liens and security interests of the parties thereto and their respective successors and assigns, all Collateral items required to be physically delivered to the Administrative Agent thereunder shall have been so delivered, accompanied by any appropriate instruments of transfer, and all taxes, fees and other charges then due and payable in connection with the execution, delivery, recording, publishing and filing of such instruments and the issuance of the Obligations and the delivery of the Notes shall have been paid in full.

(ix) Evidence of Insurance. The Administrative Agent shall have (A) received certificates of insurance and other evidence satisfactory to it of compliance with the insurance requirements of this Agreement and the Security Documents and (B) received endorsements naming the Administrative Agent, for the benefit of the Lenders, as an additional insured on the liability insurance policies of the Credit Parties and as a loss payee on the property insurance policies of the Credit Parties.



(x) Search Reports. The Administrative Agent shall have received the results of UCC and other search reports from one or more commercial search firms acceptable to the Administrative Agent, listing all of the effective financing statements filed against any Credit Party, together with copies of such financing statements.

(xi) Organizational Documents. The Administrative Agent shall have received: (A) an original certified copy of the Certificate or Articles of Incorporation or equivalent formation document of each Credit Party and any and all amendments and restatements thereof, certified as of a recent date by the relevant Secretary of State; (B) the bylaws or governing documents of each Credit Party as in effect on the Closing Date, and (C) an original “long-form” good standing certificate or certificate of existence from the Secretary of State of the state of incorporation, dated as of a recent date, listing all charter documents affecting such Credit Party and certifying as to the good standing of such Credit Party.

(xii) Closing Certificate. The Administrative Agent shall have received a Closing Certificate, dated the Closing Date, of an Authorized Officer, to the effect that, at and as of the Closing Date, both before and after giving effect to the initial Borrowings hereunder and the application of the proceeds thereof: (i) no Default or Event of Default has occurred or is continuing; and (ii) all representations and warranties of each Credit Party set forth in each Loan Document to which any Credit Party is a party are true and correct in all material respects (or in the case of any representation and warranty subject to a materiality qualifier, true and correct).

(xiii) Financial Statements. The Administrative Agent shall have received (i) financial projections through the Maturity Date in form and substance satisfactory to the Administrative Agent, (ii) a pro forma consolidated balance sheet and related pro forma consolidated statement of income of the Borrower as of and for the twelve-month period ending on March 31, 2020, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income), (iii) audited consolidated balance sheet of Holdings and related statements of income, retained earnings, and members’ equity and changes in financial position of Holdings as of the end of and for the fiscal years ended December 31, 2017, December 31, 2018 and December 31, 2019, (iv) unaudited consolidated balance sheets and related consolidated statements of income, retained earnings, and members’ equity as of March 31, 2020, and (v) auditors’ management letters, if any, for the fiscal years ended December 31, 2018 and December 31, 2019.

(xiv) Solvency Certificate. The Administrative Agent shall have received a solvency certificate in substantially the form attached hereto as Exhibit D, dated as of the Closing Date, and executed by a Financial Officer of the Borrower.

(xv) [Reserved].

(xvi) Payment of Outstanding Indebtedness, etc. The Administrative Agent shall have received evidence that immediately after the making of the Loans on the Closing Date, all Indebtedness under the Existing Credit Agreement and any other Indebtedness not permitted by Section 7.04, together with all interest, all payment premiums and all other amounts due and payable with respect thereto, shall be paid in full from the proceeds of the initial Credit Event, and the commitments in respect of such Indebtedness shall be permanently terminated, and all Liens securing payment of any such Indebtedness shall be released and the Administrative Agent shall have received all payoff and release letters, Uniform Commercial Code Form UCC-3 termination statements or other instruments or agreements as may be suitable or appropriate in connection with the release of any such Liens.

(xvii) No Material Adverse Change. As of the Closing Date, no condition or event shall have occurred since December 31, 2019 that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

(xviii) Litigation. There shall not exist any litigation or proceeding seeking to enjoin or prevent the transactions contemplated hereby.

(xix) Know Your Customer Information Act. The Administrative Agent shall have received, at least five Business Days prior to the Closing Date, (i) all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act and (ii) information regarding the Beneficial Owners of the Borrower reasonably requested by the Administrative Agent, including without limitation, the complete legal names, addresses of residence, date of birth, social security number and/or tax identification number of each such Beneficial Owner.

(xx) Miscellaneous. The Credit Parties shall have provided to the Administrative Agent and the Lenders such other items and shall have satisfied such other conditions as may be reasonably required by the Administrative Agent or the Lenders.

Section 4.02 Conditions Precedent to All Credit Events. The obligations of the Lenders, the Swing Line Lender and each LC Issuer to make or participate in each Credit Event is subject, at the time thereof, to the satisfaction of the following conditions:

(a) Notice. The Administrative Agent (and in the case of subpart (iii) below, the applicable LC Issuer) shall have received, as applicable, (i) a Notice of Borrowing meeting the requirements of Section 2.06(b) with respect to any Borrowing (other than a Continuation or Conversion), (ii) a Notice of Continuation or Conversion meeting the requirements of Section 2.10(b) with respect to a Continuation or Conversion, or (iii) an LC Request meeting the requirements of Section 2.05(b) with respect to each LC Issuance.

(b) No Default; Representations and Warranties. At the time of each Credit Event and also after giving effect thereto, (i) there shall exist no Default or Event of Default and (ii) all representations and warranties of the Credit Parties contained herein or in the other Loan Documents shall be true and correct in all material respects (or in the case of any representation and warranty subject to a materiality qualifier, true and correct) with the same effect as though such representations and warranties had been made on and as of the date of such Credit Event, except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties shall have been true and correct in all material respects as of the date when made.

~~(c) Consolidated Net Leverage Ratio. The Borrower shall have delivered evidence that the Consolidated Net Leverage Ratio after giving pro forma effect to such Borrowing shall not exceed 2.00 to 1.00.~~

(c) [Reserved].

(d) Cash and Cash Equivalents. After giving effect to such Borrowing and any transactions to be consummated therewith, the aggregate amount of cash and Cash Equivalents shall not exceed \$25,000,000.

The acceptance of the benefits of (i) the Credit Events on the Closing Date shall constitute a representation and warranty by the Borrower to the Administrative Agent, the Swing Line Lender, each LC Issuer and each of the Lenders that all of the applicable conditions specified in Section 4.01 have been satisfied as of the times referred to in such Section and (ii) each Credit Event thereafter shall constitute a representation and warranty by the Borrower to the Administrative Agent, the Swing Line Lender, each LC Issuer and each of the Lenders that all of the applicable conditions specified in Section 4.02 have been satisfied as of the times referred to in such Section.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

In order to induce the Administrative Agent, the Lenders and each LC Issuer to enter into this Agreement and to make the Loans and to issue and to participate in the Letters of Credit provided for herein, each of the Borrower and Holdings makes the following representations and warranties to, and agreements with, the Administrative Agent, the Lenders and each LC Issuer, all of which shall survive the execution and delivery of this Agreement and each Credit Event:

Section 5.01 Corporate Status. Holdings, the Borrower and each of its Subsidiaries (i) is a duly organized or formed and validly existing corporation, partnership or limited liability company, as the case may be, in good standing or in full force and effect under the laws of the jurisdiction of its formation and has the corporate, partnership or limited liability company power and authority, as applicable, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage, and (ii) is duly qualified and is authorized to do business in all jurisdictions where it is required to be so qualified or authorized except where the failure to be so qualified would not have a Material Adverse Effect. Neither Holdings, the Borrower nor any of its Subsidiaries is an Affected Financial Institution.

Section 5.02 Corporate Power and Authority. Each Credit Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is party. Each Credit Party has duly executed and delivered each Loan Document to which it is party and each Loan Document to which it is party constitutes the legal, valid and binding agreement and obligation of such Credit Party enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 5.03 No Violation. Neither the execution, delivery and performance by any Credit Party of the Loan Documents to which it is party nor compliance with the terms and provisions thereof (i) will contravene any provision of any law, statute, rule, regulation, order, writ, injunction or decree of any Governmental Authority applicable to such Credit Party or its properties and assets, (ii) will conflict with or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (other than the Liens created pursuant to the Security Documents) upon any of the property or assets of such Credit Party pursuant to the terms of (A) any Material Contract, or (B) any other promissory note, bond, debenture, indenture, mortgage, deed of trust, credit or loan agreement, or any other agreement or other instrument related to Indebtedness, to which such Credit Party is a party or by which it or any of its property or assets are bound or to which it may be subject, or (iii) will violate any provision of the Organizational Documents of such Credit Party.

Section 5.04 Governmental Approvals. No order, consent, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority is required to authorize or is required as a condition to (i) the execution, delivery and performance by any Credit Party of any Loan Document to which it is a party or any of its obligations thereunder, or (ii) the legality, validity, binding effect or enforceability of any Loan Document to which any Credit Party is a party, *except* those that have been obtained and are in full force and effect and the filing and recording of financing statements and other documents necessary in order to perfect the Liens created by the Security Documents.

Section 5.05 Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened in writing with respect to any Credit Party or any of their respective Subsidiaries or against any of their respective properties (i) that have had, or could reasonably be expected to have, a Material Adverse Effect, or (ii) that question the validity or enforceability of any of the Loan Documents, or of any action to be taken by any Credit Party pursuant to any of the Loan Documents.

Section 5.06 Use of Proceeds; Margin Regulations; Sanctions.

(a) The proceeds of all Loans and LC Issuances shall be utilized to (a) repay the obligations under the Existing Credit Agreement, (b) finance capital expenditures and (c) provide working capital and funds for other general corporate purposes, including, without limitation, to pay fees and expenses incurred in connection with the Transactions and for Permitted Acquisitions, in each case, not inconsistent with the terms of this Agreement.

(b) No part of the proceeds of any Credit Event will be used directly or indirectly to purchase or carry Margin Stock, or to extend credit to others for the purpose of purchasing or carrying any Margin Stock, in violation of any of the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System. No Credit Party is engaged in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. At no time would more than 25% of the value of the assets of the Borrower or of Holdings, the Borrower and its consolidated Subsidiaries that are subject to any "arrangement" (as such term is used in Section 221.2(g) of such Regulation U) hereunder be represented by Margin Stock.

(c) No part of the proceeds of any Credit Event will be used directly or indirectly to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions or in any other manner that would result in a violation of Sanctions by any Person.

Section 5.07 Financial Statements.

(a) The Borrower has furnished to the Administrative Agent and the Lenders complete and correct copies of the Financial Statements required by Section 4.01(xiii). All financial statements delivered pursuant hereto or in connection herewith have been prepared in accordance with GAAP, consistently applied (except as stated therein), and fairly present the financial position of Holdings, the Borrower and its Subsidiaries as of the respective dates indicated and the consolidated results of their operations and cash flows for the respective periods indicated, subject in the case of any such financial statements that are unaudited, to normal audit adjustments, none of which shall be material. Holdings, the Borrower and its Subsidiaries did not have, as of the date of the latest financial statements referred to above, and will not have after giving effect to the incurrence of Loans or LC Issuances hereunder, any material or significant contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the foregoing financial statements or the notes thereto in accordance with GAAP and that in any such case is material in relation to the business, operations, properties, assets, financial or other condition of Holdings, the Borrower and its Subsidiaries.

(b) The financial projections of Holdings, the Borrower and its Subsidiaries for the fiscal years 2020 through 2025 prepared by the Borrower and delivered to the Administrative Agent and the Lenders (the “Financial Projections”) were prepared on behalf of the Borrower in good faith after taking into account historical levels of business activity of Holdings, the Borrower and its Subsidiaries, known trends, including general economic trends, and all other information, assumptions and estimates considered by management of Holdings, the Borrower and its Subsidiaries to be pertinent thereto; *provided, however*, that no representation or warranty is made as to the impact of future general economic conditions or as to whether the Borrower’s projected consolidated results as set forth in the Financial Projections will actually be realized, it being recognized by the Lenders that such projections as to future events are not to be viewed as facts and that actual results for the periods covered by the Financial Projections may differ materially from the Financial Projections and that no assurance is or can be given that the projected results will be realized. No facts are known to Holdings or the Borrower as of the Closing Date which, if reflected in the Financial Projections, would result in a material adverse change in the assets, liabilities, results of operations or cash flows reflected therein.

Section 5.08 Solvency. The Borrower has received consideration that is the reasonable equivalent value of the obligations and liabilities that Holdings and the Borrower has incurred to the Administrative Agent, each LC Issuer and the Lenders under the Loan Documents. The Borrower now has capital sufficient to carry on its business and transactions and all business and transactions in which it is about to engage and is now solvent and able to pay its debts as they mature, and the Borrower owns property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay the Borrower’s debts; and the Borrower is not entering into the Loan Documents with the intent to hinder, delay or defraud its creditors. The Credit Parties, taken as a whole, now have capital sufficient to carry on their business and transactions and all business and transactions in which they are about to engage and are now solvent and able to pay their debts as they mature, and the Credit Parties, taken as a whole, own property having a value, both at fair valuation and at present fair salable value, greater than the amount required to pay the Credit Parties’ debts; and the Credit Parties are not entering into the Loan Documents with the intent to hinder, delay or defraud their creditors. For purposes of this Section 5.08, “debt” means any liability on a claim, and “claim” means (y) right to payment whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, secured or unsecured; or (z) right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, secured or unsecured.

Section 5.09 No Material Adverse Change. Since December 31, 2019, there has been no change in the condition or business of Holdings, the Borrower and its Subsidiaries taken as a whole, or their properties and assets considered as an entirety, *except* for changes none of which, individually or in the aggregate, has had or could reasonably be expected to have, a Material Adverse Effect.

Section 5.10 Tax Returns and Payments. Each Credit Party has filed all federal and state income tax returns and all other material tax returns, domestic and foreign, required to be filed by it and has paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for (i) those prior year tax liability accruals set forth in the financial statements delivered to the Administrative Agent prior to the Closing Date or (ii) those contested in good faith. Each Credit Party has established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by GAAP. No Credit Party knows of any proposed assessment for additional federal, foreign, state or provincial taxes for any period, or of any basis therefor, which, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as Holdings, the Borrower and its Subsidiaries have made, could reasonably be expected to have a Material Adverse Effect.

Section 5.11 Title to Properties, etc. Each Credit Party has good and marketable title, in the case of Real Property (or valid Leaseholds, in the case of any leased property), and good title, in the case of all other property, to all of its properties and assets free and clear of Liens other than Permitted Liens. The interests of the Credit Parties and their Subsidiaries in the properties reflected in the most recent balance sheet referred to in Section 5.07(a), taken as a whole, were sufficient, in the judgment of the Credit Parties, as of the date of such balance sheet for purposes of the ownership and operation of the businesses conducted by the Credit Parties and their Subsidiaries. Schedule 5.11 sets forth a complete list of Real Property owned and/or leased or subleased (as lessor or sublessor, lessee or sublessee) by the Credit Parties on the Closing Date.

Section 5.12 Lawful Operations, etc. Each Credit Party and each of its Subsidiaries: (i) holds all necessary foreign, federal, state, provincial, local and other governmental licenses, registrations, certifications, permits and authorizations necessary to conduct its business and own its properties; and (ii) is in full compliance with all requirements imposed by law, regulation or rule, whether foreign, federal, state or local, that are applicable to it, its operations, or its properties and assets, including, without limitation, applicable requirements of Environmental Laws, *except* for any failure to obtain and maintain in effect, or noncompliance that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.13 Environmental Matters.

(a) Each Credit Party and each of their Subsidiaries is in compliance with all applicable Environmental Laws, except to the extent such non-compliance could not reasonably be expected to have a Material Adverse Effect. All licenses, permits, registrations or approvals required for the conduct of the business of each Credit Party and each of their Subsidiaries under any Environmental Law have been secured and each Credit Party and each of their Subsidiaries is in substantial compliance therewith, except for such licenses, permits, registrations or approvals the failure to secure or to comply therewith is not reasonably likely to have a Material Adverse Effect. No Credit Party nor any of their Subsidiaries has received written notice, or otherwise knows, that it is in any respect in noncompliance with, breach of or default under any applicable writ, order, judgment, injunction, or decree to which such Credit Party or such Subsidiary is a party or that would affect the ability of such Credit Party or such Subsidiary to operate any Real Property and no event has occurred and is continuing that, with the passage of time or the giving of notice or both, would constitute noncompliance, breach of or default thereunder, except in each such case, such noncompliance, breaches or defaults as would not reasonably be expected to, in the aggregate, have a Material Adverse Effect. There are no Environmental Claims pending or, to the knowledge of any Credit Party, threatened wherein an unfavorable decision, ruling or finding would reasonably be expected to have a Material Adverse Effect. There are no facts, circumstances, conditions or occurrences on any Real Property now or at any time owned, leased or operated by the Credit Parties or their Subsidiaries or on any property adjacent to any such Real Property, that are known by the Credit Parties or as to which any Credit Party or any such Subsidiary has received written notice, that could reasonably be expected: (i) to form the basis of an Environmental Claim against any Credit Party or any of their Subsidiaries or any Real Property of a Credit Party or any of their Subsidiaries; or (ii) to cause such Real Property to be subject to any restrictions on the ownership, occupancy, use or transferability of such Real Property under any Environmental Law, except in each such case, such Environmental Claims or restrictions that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

(b) Hazardous Materials have not at any time been (i) generated, used, treated or stored on, or transported to or from, any Real Property of the Credit Parties or any of their Subsidiaries or (ii) released on or about any such Real Property, in each case where such occurrence or event is not in compliance with or could give rise to liability under Environmental Laws and is reasonably likely to have a Material Adverse Effect.

Section 5.14 Compliance with ERISA.

(a) Compliance by the Credit Parties with the provisions hereof and Credit Events contemplated hereby will not involve any non-exempt prohibited transaction within the meaning of ERISA or Section 4975 of the Code. Except as could not reasonably be expected to have a Material Adverse Effect, the Credit Parties, their Subsidiaries and each ERISA Affiliate (i) has fulfilled all obligations under the minimum funding standards of ERISA and the Code with respect to each Plan that is not a Multi-Employer Plan or a Multiple Employer Plan, (ii) has satisfied all contribution obligations in respect of each Multi-Employer Plan and each Multiple Employer Plan, (iii) is in compliance in all material respects with all other applicable provisions of ERISA and the Code with respect to each Plan, each Multi-Employer Plan and each Multiple Employer Plan, and (iv) has not incurred any liability under Title IV of ERISA to the PBGC with respect to any Plan, any Multi-Employer Plan, any Multiple Employer Plan, or any trust established thereunder. No Plan or trust created thereunder has been terminated, and there have been no Reportable Events, with respect to any Plan or trust created thereunder or with respect to any Multi-Employer Plan or Multiple Employer Plan, which termination or Reportable Event could reasonably be expected to have Material Adverse Effect. No Credit Party nor any Subsidiary of a Credit Party nor any ERISA Affiliate is at the date hereof, or has been at any time within the five years preceding the date hereof, an employer required to contribute to any Multi-Employer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multi-Employer Plan or Multiple Employer Plan. No Credit Party nor any Subsidiary of a Credit Party nor any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as has been disclosed to the Administrative Agent and the Lenders in writing.

(b) The Borrower represents and warrants as of the Closing Date that the Borrower is not and will not be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans in connection with the Loans, the Letters of Credit or the Commitments.

Section 5.15 Intellectual Property, etc. Each Credit Party and each of its Subsidiaries has obtained or has the right to use all patents, trademarks, service marks, trade names, copyrights, licenses and other rights with respect to the foregoing necessary for the present and planned future conduct of its business, without any known conflict with the rights of others, *except* for such patents, trademarks, service marks, trade names, copyrights, licenses and rights, the loss of which, and such conflicts that, in any such case individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, Schedule 5.15 sets forth a complete list of all material licenses, trade names and service marks and all registered patents, trademarks and copyrights, in each case with respect to Intellectual Property.

Section 5.16 Investment Company Act, etc. No Credit Party nor any of its Subsidiaries is subject to regulation with respect to the creation or incurrence of Indebtedness under the Investment Company Act of 1940, as amended, the Federal Power Act, as amended or any applicable Federal or state public utility law.

Section 5.17 Insurance. The Credit Parties and their Subsidiaries maintain insurance coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with industry standards and in each case in compliance with the terms of Section 6.03. Schedule 5.17 sets forth a complete list of all insurance maintained by the Credit Parties on the Closing Date.

Section 5.18 Burdensome Contracts; Labor Relations. No Credit Party nor any of its Subsidiaries (a) is subject to any burdensome labor contract, agreement, corporate restriction, judgment, decree or order, (b) is a party to any labor dispute affecting any bargaining unit or other group of employees generally, (c) is subject to any strike, slowdown, workout or other concerted interruptions of operations by employees of a Credit Party or any Subsidiary, whether or not relating to any labor contracts, (d) is subject to any pending or, to the knowledge of any Credit Party, threatened, unfair labor practice complaint, before the National Labor Relations Board, (e) is subject to any pending or, to the knowledge of any Credit Party, threatened grievance or arbitration proceeding arising out of or under any collective bargaining agreement, (f) is subject to any pending or, to the knowledge of any Credit Party, threatened significant strike, labor dispute, slowdown or stoppage, or (g) is, to the knowledge of the Credit Parties, involved or subject to any union representation organizing or certification matter with respect to the employees of the Credit Parties or any of their Subsidiaries, *except* (with respect to any matter specified in any of the above clauses) for such matters as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Neither Holdings, the Borrower nor any of its Subsidiaries has suffered any strikes, walkouts or work stoppages in the five years preceding the Closing Date.

Section 5.19 Security Interests. Once executed and delivered, each of the Security Documents creates, as security for the Obligations, a valid and enforceable, and upon making the filings and recordings referenced in the next sentence, perfected security interest in and Lien on all of the Collateral subject thereto from time to time, in favor of the Administrative Agent for the benefit of the Secured Creditors, superior to and prior to the rights of all third persons and subject to no other Liens, *except* that the Collateral under the Security Documents may be subject to Permitted Liens. No filings or recordings are required in order to perfect the security interests created under any Security Document except for filings or recordings required in connection with any such Security Document that shall have been made, or for which satisfactory arrangements have been made, upon or prior to the execution and delivery thereof. All recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable legal requirements or other laws applicable to the property encumbered by the Security Documents in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement thereof have been paid.

Section 5.20 True and Complete Disclosure. The factual information (taken as a whole) heretofore or contemporaneously furnished by or on behalf of any Credit Party to the Administrative Agent or any Lender for purposes of or in connection with this Agreement or any transaction contemplated herein, other than the Financial Projections (as to which representations are made only as provided in Section 5.07(b)), is, and all other such factual information (taken as a whole) hereafter furnished by or on behalf of such Person in writing to the Administrative Agent or any Lender will be, complete and correct in all material respects on the date as of which such information is dated or certified and does not contain any untrue statement of material fact or omit to state any material fact necessary to make such information (taken as a whole) not misleading at such time in light of the circumstances under which such information was provided, except that all information consisting of financial projections prepared by any Credit Party or any Subsidiary is only represented herein as being based on good faith estimates and assumptions believed by such persons to be reasonable at the time made, it being recognized that such projections are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the Credit Parties' control, and that actual results during the period or periods covered by any such projections may differ materially from the projected results, and that no assurance is or can be given that the projected results will be realized.



Section 5.21 Defaults. No Default or Event of Default has occurred and is continuing.

Section 5.22 Capitalization. As of the Closing Date, Schedule 5.22 sets forth a true, complete and accurate description of the equity capital structure of Holdings, the Borrower and each of its Subsidiaries showing, for each Subsidiary of Holdings, accurate ownership percentages of the equityholders of record and accompanied by a statement of authorized and issued Equity Interests for each such Person. Except as set forth on Schedule 5.22, as of the Closing Date (a) there are no preemptive rights, outstanding subscriptions, warrants or options to purchase any Equity Interests of Holdings, the Borrower or any Subsidiary of the Borrower, (b) there are no obligations of Holdings, the Borrower or any Subsidiary of the Borrower to redeem or repurchase any of its Equity Interests and (c) there is no agreement, arrangement or plan to which Holdings, the Borrower or any Subsidiary of the Borrower is a party or of which any such Person has knowledge that could directly or indirectly affect the capital structure of any such Person. The Equity Interests of Borrower and each Subsidiary described on Schedule 5.22 (i) are validly issued and fully paid and non-assessable (to the extent such concepts are applicable to the respective Equity Interests) and (ii) are owned of record and beneficially as set forth on Schedule 5.22, the Equity Interests owned by Holdings, the Borrower and each of their respective Subsidiaries, are owned free and clear of all Liens (other than Liens created under the Security Documents). The Organizational Documents of each such Person whose Equity Interests are subject to the Liens created under the Loan Documents do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Liens created under the Loan Documents.

Section 5.23 Anti-Terrorism and Anti-Money Laundering Law Compliance. Each Credit Party and each Subsidiary of each Credit Party is and will remain in compliance with all U.S. trade, economic or financial sanctions laws, embargoes, Executive Orders, restrictive measures and implementing regulations as promulgated by the U.S. Department of State, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the European Union and Her Majesty's Treasury, all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act or Executive Order No. 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended, and other applicable law and all regulations issued or promulgated pursuant thereto as well as all applicable anti-corruption laws. Each Credit Party and each Subsidiary of each Credit Party is and will remain in compliance with all other trade, economic or financial sanctions and anti-money laundering or anti-terrorism laws applicable to it. No Credit Party and no Subsidiary or Affiliate of a Credit Party and, to the knowledge of the Borrower, no Affiliate, director, officer, employee or agent of any Credit Party or any of its Subsidiaries is a Person that is, or is owned or controlled by Persons that are (i) the subject of any trade, economic or financial sanctions laws, embargoes or restrictive measures administered or enforced by OFAC, the U.S. Department of State, the United Nations Security Council or other relevant sanctions authority (collectively, "Sanctions") or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (a) is a Person designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List") with which a U.S. Person cannot deal with or otherwise engage in business transactions, (b) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person or (c) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under U.S. law. The Credit Parties, each of their Subsidiaries and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the Patriot Act and (c) other federal, state or other applicable laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any Person, government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

Section 5.24 Location of Bank Accounts. Schedule 5.24 sets forth a complete and accurate list as of the Closing Date of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by each Credit Party, together with a description thereof (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

Section 5.25 Material Contracts. As of the Closing Date, all Material Contracts are in full force and effect and no material defaults by a Credit Party currently exist thereunder.

Section 5.26 Affiliate Transactions. As of the Closing Date, except as disclosed in any filing with the SEC on Form 10-K, 10-Q or 8-K (or any successor forms) prior to the date hereof, there are no existing or proposed agreements, arrangements or transactions between any Credit Party and any of the officers, members, managers, directors, stockholders, parents, other interest holders, employees, or Affiliates (other than the Subsidiaries) of any Credit Party or any members of their respective immediate families.

Section 5.27 Beneficial Ownership. The information regarding Beneficial Owners provided to the Administrative Agent and the Lenders pursuant to Section 4.01(xviii) on or prior to the Closing Date, as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date hereof and as of the date any such update is delivered.

Section 5.28 Status of Obligations as Senior Indebtedness. All of the Obligations and fees and expenses in connection therewith shall constitute “senior indebtedness” or similar term as defined in the documentation governing any Material Indebtedness relating to the Obligations.

Section 5.29 Status of Holdings. Holdings has not engaged in any activities or business or incurred any Indebtedness or other liabilities as of the Closing Date, except as permitted by Section 7.14 and except in connection with its formation and the Loan Documents, nor is it holding assets other than the Equity Interests in the Borrower.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

The Borrower hereby covenants and agrees that on the Closing Date and thereafter so long as this Agreement is in effect and until such time as the Commitments have been terminated, no Notes remain outstanding and the Loans, together with interest, Fees and all other Obligations incurred hereunder and under the other Loan Documents (other than contingent obligations for which no claim has been made), have been paid in full, as follows:

Section 6.01 Reporting Requirements. The Borrower will furnish to the Administrative Agent and each Lender:

(a) Annual Financial Statements. As soon as available and in any event within 90 days after the close of each fiscal year of Holdings, the audited consolidated balance sheets of Holdings, the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income, of stockholders' equity and of cash flows for such fiscal year, in each case setting forth comparative figures for the preceding fiscal year, all in reasonable detail and accompanied by the opinion with respect to such consolidated financial statements of independent public accountants of recognized national standing selected by Holdings or the Borrower, which opinion shall be unqualified (except any "going concern" qualification or exception as a result of the maturity of a Credit Facility within the next 12 months) and shall (i) state that such accountants audited such consolidated financial statements in accordance with generally accepted auditing standards, that such accountants believe that such audit provides a reasonable basis for their opinion, and that in their opinion such consolidated financial statements present fairly, in all material respects, the consolidated financial position of Holdings, the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the consolidated results of their operations and cash flows for such fiscal year in conformity with generally accepted accounting principles, or (ii) contain such statements as are customarily included in unqualified reports of independent accountants in conformity with the recommendations and requirements of the American Institute of Certified Public Accountants (or any successor organization) together with all management letters of such accountants addressed to the Borrower or any other Credit Party; notwithstanding the above, if Holdings or the Borrower seek and obtain a time extension for the date on which the annual financial statements are due with the SEC, then the 90 days after the close of such fiscal year of Holdings shall be automatically extended by the same number of days as approved by the SEC.

(b) Quarterly Financial Statements. As soon as available and in any event within 45 days after the close of each of the first three quarterly accounting periods in each fiscal year of the Borrower (commencing with the fiscal quarter ending September 30, 2020), the unaudited consolidated balance sheets of Holdings, the Borrower and its consolidated Subsidiaries as at the end of such quarterly period and the related unaudited consolidated statements of income and of cash flows for such quarterly period and/or for the fiscal year to date, and setting forth, in the case of such unaudited consolidated and consolidating statements of income and of cash flows, comparative figures for the related periods in the prior fiscal year, and which shall be certified on behalf of the Borrower by the Chief Financial Officer of the Borrower, subject to changes resulting from normal year-end audit adjustments.

Documents required to be delivered pursuant to Section 6.01(a) and Section 6.01(b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents, or provides a link thereto on Holdings' website on the internet; or (ii) on which such documents are posted on the Borrower's behalf on an internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third party website or whether sponsored by the Administrative Agent); provided that (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic version of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

(c) Officer's Compliance Certificates. At the time of the delivery of the financial statements provided for in subparts (a) and (b) above, (i) a certificate (a "Compliance Certificate"), substantially in the form of Exhibit E, signed by a Financial Officer to the effect that (A) no Default or Event of Default exists or, if any Default or Event of Default does exist, specifying the nature and extent thereof and the actions the Credit Parties have taken or proposes to take with respect thereto, and (B) the representations and warranties of the Credit Parties are true and correct in all material respects, except to the extent that any relate to an earlier specified date, in which case, such representations shall be true and correct in all material respects as of the date made, which certificate shall set forth the calculations ~~required to establish compliance with the~~of Consolidated Net Leverage Ratio, Consolidated Leverage Ratio, Fixed Charge Coverage Ratio, the Lease Revenue Test, Liquidity and Capital Expenditures, in each case, regardless of if such provisions ~~of Section 7.07~~are tested for such period, and (ii) a Narrative Report with respect to such financial statements and any other operating reports prepared by management for such period.

(d) Budgets and Forecasts. Not later than 30 days after the commencement of any fiscal year of Holdings, the Borrower and its Subsidiaries, commencing with the fiscal year ending December 31, 2021, a consolidated budget in reasonable detail for each of the four fiscal quarters of such fiscal year, and (if and to the extent prepared by management of the Borrower or any other Credit Party) for any subsequent fiscal years, as customarily prepared by management for its internal use, setting forth, with appropriate discussion, the forecasted balance sheet, income statement, operating cash flows and capital expenditures of Holdings, the Borrower and its Subsidiaries for the period covered thereby, and the principal assumptions upon which forecasts and budget are based.

(e) Notices. Promptly, and in any event within three Business Days, after any Credit Party or any Subsidiary obtains knowledge thereof, notice of:

(i) the occurrence of any event that constitutes a Default or Event of Default, which notice shall specify the nature thereof, the period of existence thereof and what action Holdings, the Borrower or the applicable Subsidiary proposes to take with respect thereto;

(ii) the commencement of, or any other material development concerning, any litigation or governmental or regulatory proceeding pending against any Credit Party or any Subsidiary, if the same could be reasonably likely to have a Material Adverse Effect;

(iii) any amendment or waiver of the terms of, or notice of a default or an event of default under, the Subordinated Debt Documents;

(iv) any event that could reasonably be expected to have a Material Adverse Effect; or

(v) promptly after the transmission or receipt thereof, as applicable, copies of all notices received or sent by any Credit Party to or from the holders of any Material Indebtedness or any trustee with respect thereto.

(f) ERISA. Promptly, and in any event within three (3) days after any Credit Party or any Subsidiary of a Credit Party or any ERISA Affiliate knows of the occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect, the Borrower will deliver to the Administrative Agent and each of the Lenders a certificate of an Authorized Officer of the Borrower setting forth the full details as to such occurrence and the action, if any, that such Credit Party or such Subsidiary of such Credit Party or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given by such Credit Party or such Subsidiary of such Credit Party or the ERISA Affiliate to or filed with the PBGC, a Plan participant or the Plan administrator with respect thereto.

(g) Environmental Matters. Promptly upon, and in any event within 10 Business Days after, an officer of a Credit Party or any Subsidiary of a Credit Party obtaining knowledge thereof, notice of one or more of the following environmental matters to the extent any of the following could reasonably be expected to have a Material Adverse Effect: (i) any pending or threatened Environmental Claim against such Credit Party or any of its Subsidiaries or any Real Property owned or operated by such Credit Party or any of its Subsidiaries; (ii) any condition or occurrence on or arising from any Real Property owned or operated by such Credit Party or any of its Subsidiaries that (A) results in noncompliance by such Credit Party or any of its Subsidiaries with any applicable Environmental Law or (B) would reasonably be expected to form the basis of an Environmental Claim against such Credit Party or any of its Subsidiaries or any such Real Property; (iii) any condition or occurrence on any Real Property owned, leased or operated by such Credit Party or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, occupancy, use or transferability by such Credit Party or any of its Subsidiaries of such Real Property under any Environmental Law; and (iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by such Credit Party or any of its Subsidiaries as required by any Environmental Law or any governmental or other Global agency. All such notices shall describe in reasonable detail the nature of the Environmental Claim, the Credit Party's or such Subsidiary's response thereto and the potential exposure in Dollars of the Credit Parties and their Subsidiaries with respect thereto.

(h) SEC Reports and Registration Statements. Promptly after transmission thereof or other filing with the SEC, copies of all registration statements (other than the exhibits thereto and any registration statement on Form S-8 or its equivalent) and all annual, quarterly or current reports that any Credit Party or any Subsidiary files with the SEC on Form 10-K, 10-Q or 8-K (or any successor forms). Any such documents that are filed pursuant to and are accessible through the SEC's EDGAR system will be deemed to have been provided in accordance with this clause (h) so long as the Administrative Agent and each Lender have received notifications of the same.

(i) Annual, Quarterly and Other Reports. Promptly after transmission thereof to its stockholders, copies of all annual, quarterly and other reports and all proxy statements that Holdings or the Borrower furnishes to its stockholders generally. Any such documents that are filed pursuant to and are accessible through the SEC's EDGAR system will be deemed to have been provided in accordance with this clause (i) so long as the Administrative Agent and each Lender have received notifications of the same.

(j) Auditors' Internal Control Comment Letters, etc. Promptly upon receipt thereof, a copy of each letter or memorandum commenting on internal accounting controls and/or accounting or financial reporting policies followed by the Credit Parties and/or any of their Subsidiaries that is submitted to such Credit Party or Subsidiary, as applicable, by its independent accountants in connection with any annual or interim audit made by them of the books of Holdings, the Borrower or any of its Subsidiaries.

(k) ~~Reserved~~ Liquidity Certificate. As soon as available and in any event within 5 days after the end of each month (commencing with the month ending March 31, 2022), a certificate (a "Liquidity Certificate") calculating the Liquidity of the Credit Parties as of the last day of such month and the calculations demonstrating such amount and certified by the Chief Financial Officer of the Borrower; provided however, that the Borrower shall not be required to deliver a Liquidity Certificate after both (x) the fiscal quarter of the Borrower for which the Borrower provides a Compliance Certificate in accordance with Section 6.10(c), demonstrating a Consolidated Leverage Ratio of less than 3.00:1.00 and (y) the Covenant Amendment Period has ended.

(l) Information Relating to Collateral. At the time of the delivery of the annual financial statements provided for in subpart (a) above, a certificate of an Authorized Officer of the Borrower (i) setting forth any changes to the information required pursuant to the Perfection Certificate or confirming that there has been no change in such information since the date of the most recently delivered or updated Perfection Certificate, (ii) outlining all material insurance coverage maintained as of the date of such report by the Credit Parties and all material insurance coverage planned to be maintained by the Credit Parties in the immediately succeeding fiscal year, and (iii) certifying that no Credit Party has taken any actions (and is not aware of any actions so taken) to terminate any UCC financing statements or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to protect and perfect the security interests and Liens under the Security Documents for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

(m) Violation of Anti-Terrorism Laws. Promptly (i) if any Credit Party obtains knowledge that any Credit Party or any Person that owns, directly or indirectly, any Equity Interests of any Credit Party, or any other holder at any time of any direct or indirect equitable, legal or beneficial interest therein is the subject of any of the Anti-Terrorism Laws, such Credit Party will notify the Administrative Agent and (ii) upon the request of the Administrative Agent or any Lender (through the Administrative Agent), such Credit Party will provide any information the Administrative Agent or such Lender believes is reasonably necessary to be delivered to comply with the USA Patriot Act or to demonstrate compliance with any reporting requirement under any other applicable anti-terrorism or anti-money laundering act or regulation.

(n) Other Information. Promptly upon the reasonable request therefor, such other information or documents (financial or otherwise) relating to any Credit Party or any Subsidiary as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request from time to time.

(o) Showroom Sales Performance. (x) During the Covenant Amendment Period, within five (5) Business Days of the last day of each fiscal month, and (y) at all other times after the Covenant Amendment Period, in connection with the delivery of the Compliance Certificate, in each case, a consolidated showroom sales report in form and detail reasonably acceptable to the Administrative Agent and in any case consistent in form with such report previously delivered to the Administrative Agent prior to the First Amendment Effective Date.

(p) 13-Week Cash Flow Forecast. During the Covenant Amendment Period, beginning on Monday March 11, 2022, and continuing on every other Monday thereafter, a rolling 13-week cash flow forecast of the Credit Parties and their Subsidiaries covering the 13-week period (beginning with the date of delivery of such forecast) in form and detail reasonably satisfactory to the Administrative Agent.

Section 6.02 Books, Records and Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, (i) keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of such Credit Party or such Subsidiary, as the case may be, in accordance with GAAP; and (ii) permit officers and designated representatives of the Administrative Agent (and, during the continuance of any Event of Default, representatives of each Lender may accompany the representatives of the Administrative Agent) to visit and inspect any of the properties or assets of such Credit Party and/or its Subsidiaries in whomsoever's possession (but only to the extent such Credit Party or such Subsidiary, as applicable, has the right to do so to the extent in the possession of another Person), to examine the books of account of such Credit Party or such Subsidiary, as applicable, and make copies thereof and take extracts therefrom, and to discuss the affairs, finances and accounts of such Credit Party and/or such Subsidiary, as applicable, with, and be advised as to the same by, its and their officers and independent accountants and independent actuaries, if any, all at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or any of the Lenders (through the Administrative Agent) may request; provided that excluding any such visits and inspections during the continuation of an Event of Default, (i) only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 6.02, and (ii) such exercise shall be at the Borrower's expense; provided further that unless an Event of Default has occurred and continuing, the Borrower shall not be responsible for the expenses incurred in the exercise such rights more often than one time during any calendar year; provided still further that to the extent that the books and records of account are available electronically, such portion of the inspections shall be conducted remotely.

Section 6.03 Insurance.

(a) Each Credit Party will, and will cause each of its Subsidiaries to, (i) maintain insurance coverage by such insurers and in such forms and amounts and against such risks as are generally consistent with the insurance coverage maintained by the Credit Parties and their Subsidiaries as of the Closing Date, and (ii) forthwith upon the Administrative Agent's or any Lender's written request, furnish to the Administrative Agent or such Lender such information about such insurance as the Administrative Agent or such Lender may from time to time reasonably request, which information shall be prepared in form and detail reasonably satisfactory to the Administrative Agent or such Lender and certified by an Authorized Officer of the Borrower.

(b) Each Credit Party will at all times keep its respective property that is subject to the Lien of any Security Document insured in favor of the Administrative Agent, for the benefit of the Secured Creditors and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Credit Parties) (i) shall be endorsed to the Administrative Agent's satisfaction for the benefit of the Administrative Agent (including, without limitation, by naming the Administrative Agent as loss payee (with respect to Collateral) or, to the extent permitted by applicable law, as an additional insured), (ii) shall state that such insurance policies shall not be canceled without 30 days' prior written notice thereof (or 10 days' prior written notice in the case of cancellation for the non-payment of premiums) by the respective insurer to the Administrative Agent, (iii) shall provide that the respective insurers irrevocably waive any and all rights of subrogation with respect to the Administrative Agent and the Lenders, and (iv) shall in the case of any such certificates or endorsements in favor of the Administrative Agent, be delivered to or deposited with the Administrative Agent.

(c) Each Credit Party shall maintain at all times, with respect to any Mortgaged Real Property that is a Flood Hazard Property, the flood insurance required by Section 6.10(c)(iv), and shall deliver to the Administrative Agent evidence of such insurance in form and substance reasonably satisfactory to the Administrative Agent, including, without limitation, annual renewals of such insurance.

(d) If any Credit Party shall fail to maintain any insurance in accordance with this Section 6.03, or if any Credit Party shall fail to so endorse and deliver or deposit all endorsements or certificates with respect thereto, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance and the Borrower agrees to reimburse the Administrative Agent on demand for all costs and expenses of procuring such insurance.

Section 6.04 Payment of Taxes and Claims. Each Credit Party will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims that, if unpaid, might become a Lien or charge upon any properties of any Credit Party or any of their respective Subsidiaries; *provided, however*, that no Credit Party nor any of their respective Subsidiaries shall be required to pay any such tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings if (i) it has maintained adequate reserves with respect thereto in accordance with GAAP and (ii) in the case of a tax or claim that has or may become a Lien against any of the Collateral, such proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such tax or claim. Without limiting the generality of the foregoing, each Credit Party will, and will cause each of its Subsidiaries to, pay in full all of its wage obligations in accordance with the Fair Labor Standards Act (29 U.S.C. Sections 206-207), with respect to its employees subject thereto, and any comparable provisions of applicable law.

Section 6.05 Corporate Franchises. Each Credit Party will do, and will cause each of its Subsidiaries to do, or cause to be done, all things necessary to preserve and keep in full force and effect its corporate existence, rights and authority, qualification, franchises, licenses and permits, other than those (excluding corporate existence) the failure to keep in full force and effect would not individually or in the aggregate be reasonably expected to have a Material Adverse Effect; *provided, however*, that nothing in this Section 6.05 shall be deemed to prohibit any transaction permitted by Section 7.02.

Section 6.06 Good Repair. Each Credit Party will, and will cause each of its Subsidiaries to, ensure that its material properties and equipment used or useful in its business in whomsoever's possession they may be, are kept in reasonably good repair, working order and condition, normal wear and tear excepted, and that from time to time there are made in such properties and equipment all needful and proper repairs, renewals, replacements, extensions, additions, betterments and improvements thereto, in each case, to the extent and in the manner customary for companies in similar businesses.

Section 6.07 Compliance with Statutes, etc. Each Credit Party will, and will cause each of its Subsidiaries to, comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its property, other than those the noncompliance with which would not individually or in the aggregate be reasonably expected to have a Material Adverse Effect.

Section 6.08 Compliance with Environmental Laws. Without limitation of the covenants contained in Section 6.07:

(a) Each Credit Party will comply, and will cause each of its Subsidiaries to comply, with all Environmental Laws applicable to the ownership, lease or use of all Real Property now or hereafter owned, leased or operated by such Credit Party or any of its Subsidiaries, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, *except* to the extent that the reasonably likely outcome in such proceedings could not reasonably be expected to have a Material Adverse Effect.

(b) Each Credit Party will keep or cause to be kept, and will cause each of its Subsidiaries to keep or cause to be kept, all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws other than Permitted Liens.

(c) No Credit Party nor any of its Subsidiaries will generate, use, treat, store, release or dispose of, or permit the generation, use, treatment, storage, release or disposal of, Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Credit Parties or any of their Subsidiaries or transport or permit the transportation of Hazardous Materials to or from any such Real Property other than in compliance with applicable Environmental Laws and in the ordinary course of business, *except* to the extent that the reasonably likely outcome in such proceedings could not reasonably be expected to have a Material Adverse Effect.



(d) If required to do so under any applicable order of any Governmental Authority, each Credit Party will undertake, and cause each of its Subsidiaries to undertake any clean up, removal, remedial or other action necessary to remove and clean up any Hazardous Materials from any Real Property owned, leased or operated by the Credit Parties or any of its Subsidiaries in accordance with, in all material respects, the requirements of all applicable Environmental Laws and in accordance with, in all material respects, such orders of all Governmental Authorities, *except* to the extent that the reasonably likely outcome in such proceedings could not reasonably be expected to have a Material Adverse Effect.

Section 6.09 Certain Subsidiaries to Join in Guaranty. In the event that at any time after the Closing Date, any Credit Party acquires, creates (including by virtue of any statutory division of any such Credit Party) or has any Domestic Subsidiary or Resulting Company (other than an Excluded Subsidiary or Immaterial Subsidiary) that is not already a party to the Guaranty, or if any Domestic Subsidiary no longer meets the requirements of an Excluded Subsidiary or Immaterial Subsidiary, such Credit Party will promptly, but in any event within 30 days (or such later date as the Administrative Agent agrees to in its reasonable discretion), cause such Subsidiary or Resulting Company to deliver to the Administrative Agent, (a) an executed Guaranty or a joinder thereto, duly executed by such Subsidiary or Resulting Company, pursuant to which such Subsidiary or Resulting Company joins in the Guaranty as a guarantor thereunder, (b) resolutions of the Board of Directors or equivalent governing body of such Subsidiary or Resulting Company, certified by the Secretary or an Assistant Secretary of such Subsidiary or Resulting Company, as duly adopted and in full force and effect, authorizing the execution and delivery of such joinder supplement and the other Loan Documents to which such Subsidiary or Resulting Company is or will be a party, together with such other corporate documentation and an opinion of counsel as the Administrative Agent shall reasonably request, in each case, in form and substance reasonably satisfactory to the Administrative Agent and (c) all such documents, instruments, agreements, and certificates as are similar to those described in Section 6.10. In the event that any Person becomes a CFC of the Borrower and the ownership interests of such CFC are owned by the Borrower or by any Guarantor, the Borrower shall, or shall cause such Guarantor to, deliver, all such documents, instruments, agreements, and certificates as are similar to those described in Section 6.10, and the Borrower shall take, or shall cause such Guarantor to take, all of the actions required under Section 6.10.

Section 6.10 Additional Security; Real Property Matters; Further Assurances.

(a) Additional Security. Subject to subpart (b) below, if any Credit Party acquires, owns or holds an interest (other than a Leasehold Interest) in any Real Property with a fair market value in excess of \$5,000,000 for any Real Property (with fair market value determined at the time of acquisition and agreed to by the Administrative Agent), or any personal property (other than Excluded Collateral (as such term is defined in the Security Agreement)) that is not at the time included in the Collateral, the Borrower will promptly notify the Administrative Agent in writing of such event, identifying the property or interests in question and referring specifically to the rights of the Administrative Agent and the Lenders under this Section, and the Credit Party will, or will cause such Subsidiary to, within 20 Business Days following request by the Administrative Agent (or such later date as may be agreed to by the Administrative Agent in its sole discretion), grant to the Administrative Agent for the benefit of the Secured Creditors a Lien on such Real Property or such personal property pursuant to the terms of such security agreements, assignments, Mortgages or other documents as the Administrative Agent deems appropriate (collectively, the "Additional Security Documents") or a joinder to any existing Security Document. Furthermore, the Borrower or such other Credit Party shall cause to be delivered to the Administrative Agent such corporate resolutions, a Perfection Certificate, consents of landlords, Landlord's Agreements, opinions of counsel and other related documents, in each case as may be reasonably requested by the Administrative Agent in connection with the execution, delivery and recording of any such Additional Security Document or joinder, all of which documents shall be in form and substance reasonably satisfactory to the Administrative Agent.

(b) Foreign Subsidiaries. Notwithstanding anything in subpart (a) above or elsewhere in this Agreement to the contrary, no Credit Party shall be required to (i) pledge (or cause to be pledged) more than 65% of the Equity Interests designated as voting and 100% of the Equity Interests designated as non-voting in any CFC or CFC Holdco, or (ii) cause a CFC or CFC Holdco to become a Guarantor or otherwise become a party to the Security Agreement or any other Security Document, if to do so would subject Holdings, the Borrower or any of its Subsidiaries to liability for additional United States income taxes by virtue of Section 956 of the Code in an amount the Borrower considers material.

(c) Real Property Matters. The Credit Parties shall have delivered to the Administrative Agent with respect to each parcel of Real Property to the extent that such parcel of Real Property becomes or should be subject to a Mortgage pursuant to Section 6.10(a) above, all of the following:

(i) an American Land Title Association (ALTA) mortgagee title insurance policy or policies, or unconditional commitments therefor (a "Title Policy") issued by a title insurance company reasonably satisfactory to the Administrative Agent (a "Title Company"), in an amount not less than the amount reasonably required therefor by the Administrative Agent (taking into account the estimated value of the property involved), insuring fee simple title to, or a valid leasehold interest in, such Real Property vested in the applicable Credit Party and assuring the Administrative Agent that the applicable Mortgage creates a valid and enforceable first priority mortgage lien on the respective Real Property encumbered thereby, subject only to Permitted Liens, which Title Policy (1) shall include an endorsement for mechanics' liens, for revolving, "variable rate" and future advances under this Agreement and for any other matters reasonably requested by the Administrative Agent, and (2) shall provide for affirmative insurance and such reinsurance as the Administrative Agent may reasonably request, all of the foregoing in form and substance reasonably satisfactory to the Administrative Agent;

(ii) a title report issued by the Title Company with respect thereto, dated not more than 30 days prior to the date of execution of the applicable Mortgage and satisfactory in form and substance to the Administrative Agent;

(iii) copies of all recorded documents listed as exceptions to title or otherwise referred to in the Title Policy or in such title report relating to such Real Property;

(iv) evidence, which may be in the form of a letter or other certification from the Title Company or from an insurance broker, surveyor, engineer or other provider, as to whether (1) such Real Property is a Flood Hazard Property, and (2) the community in which such Flood Hazard Property is located is participating in the National Flood Insurance Program, and if such Real Property is a Flood Hazard Property, evidence that the applicable Credit Party has obtained flood insurance in respect of such Flood Hazard Property to the extent required under the applicable regulations of the Board of Governors of the Federal Reserve System;

(v) a survey, in form and substance reasonably satisfactory to the Administrative Agent, of such Real Property, certified in a manner satisfactory to the Administrative Agent by a licensed professional surveyor reasonably satisfactory to the Administrative Agent;

(vi) a certificate of the Borrower identifying any Phase I, Phase II or other environmental report received in draft or final form by any Credit Party during the five year period prior to the date of execution of the Mortgage relating to such Real Property and/or the operations conducted therefrom, or stating that no such draft or final form reports have been requested or received by any Credit Party (or its counsel), together with true and correct copies of all such environmental reports so listed (in draft form, if not finalized); and all such environmental reports shall be satisfactory in form and substance to the Administrative Agent;

(vii) an opinion of local counsel admitted to practice in the jurisdiction in which such Real Property is located, reasonably satisfactory in form and substance to the Administrative Agent, as to the validity and effectiveness of such Mortgage as a lien on such Real Property encumbered thereby, and covering such other matters of law in connection with the execution, delivery, recording and enforcement of such Mortgage as the Administrative Agent may reasonably request; and

(viii) upon request of the Administrative Agent and/or the Lenders, the Administrative Agent shall have received appraisals, reasonably satisfactory in form and substance to the Administrative Agent and each Lender, dated not more than 60 days prior to the date of execution of each Mortgage and addressed to the Administrative Agent and the Lenders or accompanied by a separate letter indicating that the Administrative Agent and the Lenders may rely thereon, from one or more nationally recognized appraisal firms, reasonably satisfactory to the Administrative Agent, covering (i) the Real Properties, and (ii) all other tangible property, plant and equipment owned by Holdings, the Borrower or any of its Subsidiaries, that is to be subjected to the Lien of the Security Agreement and is located at any plant or facility owned or leased by Holdings, the Borrower or any of its Subsidiaries in the United States of America, which appraisals shall set forth (A) the “fair market value” of such property (*i.e.*, the amount at which such property would equitably exchange between a willing buyer and a willing seller, neither being under a compulsion and both having reasonable knowledge of all relevant facts on the premise that such property will continue in its present use as part of an ongoing business enterprise), (B) the “orderly disposal value” of such property (*i.e.*, the amount that may be realized through a forced sale disposal of such property when a reasonable time to find a buyer is allowed), and (C) the “forced liquidation value” of such property (*i.e.*, the amount that may be realized through an immediate forced sale disposal of such property), in each case as determined in accordance with sound appraisal standards.

(d) Taxes. The Credit Parties shall have paid or caused to be paid all costs and expenses payable in connection with all of the actions set forth in Section 6.10(c), including but not limited to (A) all mortgage, intangibles or similar taxes or fees, however characterized, payable in respect of this Agreement, the execution and delivery of the Notes, any of the Mortgages or any of the other Loan Documents or the recording of any of the same or any other documents related thereto; and (B) all expenses and premiums of the Title Company in connection with the issuance of such policy or policies of title insurance and to all costs and expenses required for the recording of the Mortgages or any other Loan Documents or any other related documents in the appropriate public records.

(e) Landlord/Mortgagee/Bailee Waivers. The Credit Parties will use commercially reasonable efforts upon request of the Administrative Agent to obtain, and will maintain in effect, Landlord’s Agreements on any Real Property (i) on which any items of Collateral are located, *provided* that the Credit Parties shall not be required to deliver Landlord Agreements for those locations at which the value of the Collateral (excluding any inventory which has been sold and is in the process of being delivered to customers) located thereon is no more than \$1,000,000 in the aggregate for all locations for which Landlord’s Agreements have not been obtained, (ii) that functions as the chief executive office for any Credit Party or (iii) at which books and records of any Credit Party are located, in each case in form and substance reasonably acceptable to the Administrative Agent.

(f) Further Assurances. (i) The Credit Parties will, and will cause each of their respective Subsidiaries to, at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Administrative Agent from time to time such conveyances, financing statements, transfer endorsements, powers of attorney, certificates, and other assurances or instruments and take such further steps relating to the Collateral covered by any of the Security Documents as the Administrative Agent may reasonably require, including any documents, instruments and filings required by the Assignment of Claims Act of 1940. If at any time the Administrative Agent determines, based on applicable law, that all applicable taxes (including, without limitation, mortgage recording taxes or similar charges) were not paid in connection with the recordation of any mortgage or deed of trust, the Borrower shall promptly pay the same upon demand.

(ii) The Borrower will provide to the Administrative Agent and the Lenders (A) confirmation of the accuracy of the information regarding Beneficial Owners provided to the Administrative Agent and the Lenders, (B) updates with respect to the information regarding Beneficial Owners, including, without limitation, updates to any complete legal name, address of residence, date of birth, social security number and/or tax identification number, in form and substance acceptable to the Administrative Agent and the Lenders, when such information has changed or when the individual(s) to be identified as a Beneficial Owner have changed and (C) such other information and documentation as may reasonably be requested by the Administrative Agent or any Lender from time to time for purposes of compliance by the Administrative Agent or such Lender with applicable laws (including without limitation the USA Patriot Act and other “know your customer” and anti-money laundering rules and regulations), and any policy or procedure implemented by the Administrative Agent or such Lender to comply therewith.

(iii) Upon the request by the Administrative Agent, the Administrative Agent shall be permitted to conduct appraisals and field examinations from an appraiser selected by the Administrative Agent and prepared on a basis satisfactory to the Administrative Agent related to the assets of Holdings, the Borrower and their Subsidiaries (including, without limitations, inventory appraisals), in each case, at the sole cost and expense of the Borrower.

Section 6.11 Control Agreements. Subject to Section 6.16, the Credit Parties will take commercially reasonable efforts to enter into, and will maintain in effect, Control Agreements with respect to each deposit account (excluding deposit accounts with no more than a \$100,000 individually or \$500,000 in the aggregate for all such accounts balance in the aggregate at any given time and any Excluded Accounts) and lock-box account maintained by the Credit Parties after the Closing Date. Each such Control Agreement shall be in form and substance reasonably satisfactory to the Administrative Agent.

Section 6.12 Senior Debt. The Obligations shall, and the Credit Parties shall take all necessary action to ensure that the Obligations shall, at all times rank (a) at least *pari passu* in right of payment (to the fullest extent permitted by law) with all other senior Secured Indebtedness of the Credit Parties and (b) prior in right of payment, to the extent set forth in the applicable subordination agreement, to the Subordinated Indebtedness.

Section 6.13 Use of Proceeds. The Borrower will use the proceeds of the Term Loans on the Closing Date to consummate the Transactions including the payments of fees and expenses in connection with the Transactions and for working capital needs and for other general corporate purposes and for any other purpose not prohibited under the Loan Documents. The Borrower will use the proceeds of the Revolving Facility and LC Issuances (i) to consummate the Transactions, (ii) to provide working capital to Holdings, the Borrower and its Subsidiaries (including to replace or provide credit support for any existing letters of credit), (iii) to provide funds for other general corporate purposes of Holdings, the Borrower and its Subsidiaries (including Permitted Acquisitions and Investments), (iv) to fund certain fees and expenses relating thereto, and (v) to finance any transaction not prohibited hereby.

Section 6.14 Lender Meetings. The Credit Parties will, upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and the Lenders once during each fiscal year to be held, at the election of the Borrower, virtually or at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and Administrative Agent) at such time as may be agreed to by the Borrower and the Administrative Agent.

Section 6.15 Cash Management. Subject to Section 6.16, the Credit Parties will cause their primary cash and treasury management services and accounts to be maintained at all times at KeyBank National Association or its Affiliates; provided that this section shall not prohibit the Credit Parties from using any other Lenders for their other cash and treasury management services and accounts.

Section 6.16 Post-Closing Obligations. The Borrower will cause to be delivered or performed the documents and other agreements and actions listed on Schedule 6.16 within the time frame specified on therein.

Section 6.17 Flood Insurance Matters. The parties hereto acknowledge and agree that notwithstanding anything herein to the contrary, (x) the signing of any Mortgage with respect to any Real Property that is required to be subject to a Mortgage hereunder, or (y) if there is any Mortgaged Real Property, any increase, extension, or renewal of any of the Loans or Commitments (including any Incremental Term Loan Commitments and Incremental Revolving Credit Commitments, but excluding (a) any Continuation or Conversion of Borrowings, (b) the making of any Revolving Loans or Swing Loans or (c) the issuance, renewal or extension of Letters of Credit) shall be subject to (and conditioned upon): (i) the prior delivery of all "life of loan" flood zone determination certifications, acknowledgements and evidence of flood insurance and other flood-related documentation with respect to such Mortgaged Property reasonably sufficient to evidence compliance with flood insurance laws and (ii) the earlier to occur of (A) the date that occurs thirty (30) days after the Administrative Agent has delivered the documentation set forth in clause (i) of this Section to the Lenders (which may be delivered electronically) or (B) the Administrative Agent's receipt of written confirmation from each of the Lenders that flood insurance due diligence and flood insurance compliance has been completed by such Lender (such written confirmation not to be unreasonably withheld, conditioned or delayed).

## ARTICLE VII

### NEGATIVE COVENANTS

Each of Holdings, the Borrower and the Subsidiaries hereby covenants and agrees that on the Closing Date and thereafter for so long as this Agreement is in effect and until such time as the Commitments have been terminated, no Notes remain outstanding and the Loans, together with interest, Fees and all other Obligations incurred hereunder and under the other Loan Documents (other than contingent obligations for which no claim has been made), have been paid in full as follows:

Section 7.01 Changes in Business. No Credit Party nor any of its Subsidiaries will engage in any business other than the businesses engaged in by the Credit Parties and its Subsidiaries on the Closing Date and any other business reasonably related, complimentary or ancillary thereto.

Section 7.02 Consolidation, Merger, Acquisitions, Asset Sales, Statutory Divisions, etc. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, (i) wind up, liquidate or dissolve its affairs, (ii) enter into any transaction of merger or consolidation, (iii) make or otherwise effect any Acquisition, (iv) make or otherwise effect any Asset Sale, (v) consummate a statutory division or (vi) agree to do any of the foregoing at any future time, *except* that each of the following shall be permitted:

(a) the merger, consolidation or amalgamation of (i) any Subsidiary of the Borrower with or into the Borrower, *provided* the Borrower is the surviving or continuing or resulting corporation; (ii) any Subsidiary of the Borrower with or into any Guarantor (other than Holdings), *provided* that the surviving or continuing or resulting Person is a Guarantor; (iii) any foreign Subsidiary of the Borrower that is not a Credit Party with or into any other foreign Subsidiary of the Borrower; or (iv) any Domestic Subsidiary that is not a Credit Party into any other Domestic Subsidiary that is not a Credit Party;

(b) any Asset Sale by (i) the Borrower to any other Credit Party, (ii) any Subsidiary of the Borrower to any Credit Party (in the case of an Asset Sale by a Subsidiary that is not a Credit Party to a Credit Party, for not more than fair market value), (iii) any foreign Subsidiary of the Borrower that is not a Credit Party to any other foreign Subsidiary of the Borrower; or (iv) any Domestic Subsidiary that is not a Credit Party to any other Domestic Subsidiary that is not a Credit Party;

(c) any transaction permitted pursuant to Section 7.05;

(d) Asset Sales or other dispositions not to exceed \$1,000,000 in any Fiscal Year, so long as (i) at the time of such Asset Sale or disposition, no Default or Event of Default exists and (ii) the consideration for each such Asset Sale or disposition represents fair value;

(e) the Borrower or any of its Subsidiaries may consummate any Asset Sale or other disposition, *provided* that (i) the consideration for each such Asset Sale represents fair value and at least 75% of such consideration consists of cash or Cash Equivalents; (ii) at the time of and immediately after giving effect to such Asset Sale or disposition, no Default or Event of Default has occurred and is continuing, or would result from consummation of such transaction; and (iii) the aggregate amount of all such Asset Sales made pursuant to this clause (e) in any fiscal year shall not exceed \$5,000,000; provided that, this subclause (iii) shall not apply if the Consolidated ~~Net~~ Leverage Ratio as of the most recent date on which a Compliance Certificate was delivered pursuant to Section 6.01(c) was, and will be after giving pro forma effect to such Asset Sale, less than or equal to 1.00 to 1.00;

(f) Asset Sales resulting from an Events of Loss; provided that the Net Cash Proceeds received by Holdings, the Borrower or a Subsidiary are applied to prepay Loans to the extent required by Section 2.13(c);

(g) the Borrower or any Subsidiary may make any Acquisition that is a Permitted Acquisition, *provided* that all of the conditions contained in the definition of the term Permitted Acquisition are satisfied;

(h) a sale, exchange or other disposition of Investments in cash or Cash Equivalents;

(i) any Restricted Payment that is permitted to be made, and is made, pursuant to Section 7.06;

(j) the creation of any Lien permitted under this Agreement;

(k) [reserved];

(l) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(m) non-exclusive or revocable licenses, sublicenses or cross-licenses of intellectual property, other intellectual property rights or other general intangibles in the ordinary course of business;

(n) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of Borrower or any Subsidiary of Borrower, including pursuant to any plan of reorganization or similar arrangement, upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

(o) to the extent allowable under Section 1031 of the Code, any exchange of like property for use in a similar business; and

(p) the disposition assets acquired pursuant to any permitted Investment, provided that, (A) such assets are not used or useful to the core or principal business of Borrower and its Subsidiaries, (B) such disposition occurs 180-days after the acquisition thereof, (C) the Borrower of such Subsidiary provides written notice to the Administrative Agent promptly after such Acquisition indicating the intention to dispose of such non-core assets and (D) no Default or Event of Default exists.

Notwithstanding the foregoing, during the Covenant Amendment Period no Credit Party nor any of its Subsidiaries shall be permitted to utilize the exceptions set forth in clauses (e), (g) and (p) of this Section 7.02.

Section 7.03 Liens. No Credit Party will, nor will any Credit Party permit its Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets of any kind of such Credit Party or such Subsidiary whether now owned or hereafter acquired, *except* that the foregoing shall not apply to:

(a) any Standard Permitted Lien;

(b) Liens in existence on the Closing Date that are listed on Schedule 7.03 hereto and any renewals or extensions, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.04(b), and (iii) the direct or any contingent obligor with respect thereto is not changed;

(c) Liens (i) that are placed upon fixed or capital assets acquired, constructed or improved by the Credit Parties or any of their respective Subsidiaries, *provided* that (A) such Liens only secure Indebtedness permitted by Section 7.04(c), (B) such Liens and the Indebtedness secured thereby are incurred prior to or within 120 days after such acquisition or the completion of such construction or improvement, (C) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets; and (D) such Liens shall not apply to any other property or assets of the Credit Parties or any of their respective Subsidiaries; or (ii) arising out of the refinancing, extension, renewal or refunding of any Indebtedness secured by any such Liens, *provided* that the principal amount of such Indebtedness is not increased and such Indebtedness is not secured by any additional assets;

(d) any Lien granted to the Administrative Agent securing any of the Obligations or any other Indebtedness of the Credit Parties under the Loan Documents or any Indebtedness under any Designated Hedge Agreement;

(e) [reserved];

(f) Liens on assets of Non-Credit Parties securing Indebtedness permitted by [Section 7.04\(k\)](#);

(g) Liens securing Indebtedness permitted to be incurred pursuant to Section 7.04(n); provided that (i) such Lien was not created in contemplation of such acquisition or such Person becoming a Subsidiary; (ii) in the case of either (x) any assets acquired by a Credit Party (or a Person who is required to be a Credit Party under the terms hereof) or (y) any Person acquired that is a Credit Party or is required to become a Credit Party under the terms hereof, such Liens are not “blanket” or “all asset” Liens and (iii) such Liens do not extend to any assets other than the assets of the acquired Person; and

(h) other Liens on assets of the Borrower and its Subsidiaries not to exceed \$3,000,000 at any one time.

[Notwithstanding the foregoing, during the Covenant Amendment Period no Credit Party nor any of its Subsidiaries shall be permitted to utilize the exceptions set forth in clause \(f\) and \(h\) of this Section 7.03; provided that, such restriction shall not limit any Liens existing prior to the Covenant Amendment Period.](#)

Section 7.04 Indebtedness. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness of the Credit Parties or any of their respective Subsidiaries, *except*:

(a) Indebtedness incurred under this Agreement and the other Loan Documents;

(b) the Indebtedness set forth on [Schedule 7.04](#) hereto, and any Permitted Refinancing thereof;

(c) (i) Indebtedness consisting of Capitalized Lease Obligations of the Credit Parties and their Subsidiaries, (ii) Indebtedness secured by a Lien referred to in [Section 7.03\(c\)](#), (iii) Purchase Money Indebtedness, and (iv) any Permitted Refinancing thereof, *provided* the aggregate outstanding principal amount (using Capitalized Lease Obligations in lieu of principal amount, in the case of any Capital Lease) of Indebtedness permitted by this subpart (c) shall not exceed \$10,000,000 at any time;

(d) any intercompany loans (i) made by the Borrower or any Subsidiary of the Borrower to any Credit Party (other than Holdings), (ii) made by any Non-Credit Party to any other Non-Credit Party, and (iii) any other intercompany loans permitted by [Section 7.05\(i\)](#); provided, that any intercompany loan between a Credit Party and a Non-Credit Party shall be subject to the Intercompany Subordination Agreement;

(e) Indebtedness of the Borrower and its Subsidiaries under Hedge Agreements, *provided* such Hedge Agreements have been entered into in the ordinary course of business and not for speculative purposes;

(f) Indebtedness constituting Guaranty Obligations permitted by [Section 7.05](#);



(g) Indebtedness incurred in favor of insurance companies (or their financing affiliates) in connection with the financing of insurance premiums in the ordinary course of business;

(h) Indebtedness in respect of cash management obligations and netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and similar arrangements, in each case in connection with deposit accounts or arising from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(i) obligations in respect of surety, stay, customs and appeal bonds, bid or performance bonds and performance and completion guaranties and obligations of a like nature (including letters of credit-related thereto), worker's compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance obligations, trade contracts, governmental contracts and leases, in each case incurred in the ordinary course of business and not in connection with the borrowing of money;

(j) to the extent constituting Indebtedness, deposits and advance payments received from customers in the ordinary course of business consistent with past practices;

(k) Indebtedness of Non-Credit Parties not to exceed \$3,000,000 any time outstanding;

(l) additional Indebtedness of the Borrower or any of its Subsidiaries, including in connection with the issuance of letters of credit, to the extent not permitted by any of the foregoing clauses, *provided* that the aggregate outstanding principal amount of all such Indebtedness does not exceed \$3,000,000 at any time; *provided, further*, that to the extent such Indebtedness is secured, such Lien shall only apply to Cash Collateral;

(m) Indebtedness in respect of indemnification, purchase price adjustments or Permitted Earnouts incurred by Holdings, the Borrower or any of their respective Subsidiaries in a Permitted Acquisition or other Investment permitted by Section 7.05 under agreements which provide for indemnification, the adjustment of the purchase price or for similar adjustments; provided, however, that with respect to any Permitted Earnout, shall be subject to a subordination agreement reasonably satisfactory to the Administrative Agent, including without limitation, payment restrictions to the extent required pursuant to the terms of this Agreement;

(n) so long as no Default or Event of Default exists or would result therefrom, Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary (or is merged or consolidated with or into the Borrower or a Subsidiary thereof) or Indebtedness attaching to assets that are acquired by the Borrower or any Subsidiary thereof (including any Indebtedness assumed by the Borrower or any Subsidiary thereof in connection with any acquisition of any assets or Person), in each case after the Closing Date as the result of a Permitted Acquisition or other Investment permitted by Section 7.05 to the extent existing at the time of such Permitted Acquisition or other Investment and any Permitted Refinancing thereof (or successive Permitted Refinancings thereof); provided that (i) such Indebtedness is not incurred in contemplation of such Permitted Acquisition or other Investment, (ii) on the date of determination, immediately after giving effect to such incurrence or assumption of Indebtedness in connection therewith and the related acquisition or similar Investment, the Borrower and its Subsidiaries shall be in Pro Forma Compliance with the applicable maximum Consolidated ~~Net~~ Leverage Ratio set forth in Section 7.07(a)(ii) as of the most recent date on which a Compliance Certificate was delivered pursuant to Section 6.01(c) (or, prior to the first delivery thereof, compliance to be determined on the basis of the most recent financial statements delivered prior to the Closing Date), the aggregate principal amount of any Indebtedness assumed pursuant to this Section 7.02(n) by a (x) Subsidiary that will become a Credit Party pursuant to Section 6.10 shall not exceed \$5,000,000 at any time outstanding, and (y) Subsidiary that is not a Credit Party (or is not required to become a Credit Party under Section 6.10) shall not exceed \$3,000,000 at any time outstanding;

(o) Indebtedness pursuant to the Tax Receivables Agreement; and

(p) Indebtedness in respect of any Seller Note; provided, however, that with respect to any Seller Note, shall be subject to a subordination agreement reasonably satisfactory to the Administrative Agent, including without limitation, payment restrictions to the extent required pursuant to the terms of this Agreement.

Notwithstanding the foregoing, during the Covenant Amendment Period no Credit Party nor any of its Subsidiaries shall be permitted to utilize the exceptions set forth in clauses (d)(iii), (k), (l), (m), (n) and (p) of this Section 7.04; provided that, such restriction shall not limit any Indebtedness existing prior to the Covenant Amendment Period.

Section 7.05 Investments and Guaranty Obligations. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, directly or indirectly, (i) make or commit to make any Investment or (ii) be or become obligated under any Guaranty Obligations, *except*:

(a) Investments by the Borrower or any of its Subsidiaries in cash and Cash Equivalents;

(b) any endorsement of a check or other medium of payment for deposit or collection, or any similar transaction in the normal course of business;

(c) the Borrower and its Subsidiaries may acquire and hold receivables and similar items owing to them in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(d) any Permitted Creditor Investment;

(e) loans and advances to employees for business-related travel expenses, moving expenses, costs of replacement homes, business machines or supplies, automobiles and other similar expenses, in each case incurred in the ordinary course of business, *provided* the aggregate outstanding amount of all such loans and advances shall not exceed \$1,000,000 at any time;

(f) Investments existing as of the Closing Date and described on Schedule 7.05 hereto;

(g) any Guaranty Obligations of the Credit Parties or any of their respective Subsidiaries in favor of the Administrative Agent, each LC Issuer and the Lenders and any other benefited creditors under any Designated Hedge Agreements or with respect to Designated Bank Services Obligations pursuant to the Loan Documents;

(h) Investments of the Borrower and its Subsidiaries in Hedge Agreements permitted to be entered into pursuant to this Agreement;

(i) Investments of the Borrower or any Subsidiary in any other Subsidiaries; provided that, loans and investments by a Credit Party to or in a Non-Credit Party made on or after the Closing Date (A) shall not exceed at any time, in the aggregate amount of \$3,000,000, and (B) such loans and investments are subject to the Intercompany Subordination Agreement;

(j) the Acquisitions permitted by Section 7.02(g);

(k) any Guaranty Obligation incurred by any Credit Party with respect to Indebtedness of another Credit Party that is permitted by Section 7.04;

(l) other Investments by the Borrower or any Subsidiary of the Borrower in any other Person made after the Closing Date and not otherwise permitted pursuant to this Section 7.05, *provided* that (i) at the time of making any such Investment no Default or Event of Default shall have occurred and be continuing, or would result therefrom, and (ii) the maximum cumulative amount of all such Investments that are so made pursuant to this subpart and outstanding at any time shall not exceed an aggregate amount of \$3,000,000, taking into account the repayment of any loans or advances comprising such Investments;

(m) Investments constituting deposits made in connection with the purchase of goods or services in the ordinary course of business;

(n) promissory notes and other non-cash consideration received in connection with Asset Sale permitted by Section 7.02;

(o) Investments in the ordinary course of business, consisting of (i) endorsements for collection or deposit, (ii) customary trade arrangements with customers, (iii) customary trade arrangements with vendors and suppliers in an aggregate outstanding amount not in excess of \$3,000,000, (iv) advances of payroll payments to employees or other advances of salaries or compensation (including advances against commissions) to employees and sales representatives and (v) Investments maintained in connection with any Credit Party's deferred compensation plan;

(p) [reserved];

(q) Investments held by a Person that is acquired and becomes a Subsidiary after the Closing Date and in accordance with this Section 7.05 and/or Section 7.02, as applicable, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation, and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(r) so long as (x) no Default or Event of Default shall have occurred and be continuing or would result therefrom, (y) the Borrower is in pro forma covenant compliance with the financial covenants set forth in Section 7.07 (it being understood that the Consolidated ~~Net~~ Leverage Ratio permitted at the time by Section 7.07(a)(ii) shall be deemed to be 0.50x less than the ratio actually provided for in Section 7.07(a)(ii) at such time), and (z) immediately after giving effect to such Investment, the Credit Parties' unrestricted cash and Cash Equivalents shall be no less than \$10,000,000, Investments made with the portion, if any, of the Available Amount on the date that the Borrower elects to apply all or a portion thereof to this Section 7.05(r);

(s) Investments to the extent that payment for such Investments is made by the issuance of Equity Interests (other than Disqualified Equity Interests) of Holdings; and

(t) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, other Investments if immediately after giving effect thereto, the Consolidated ~~Net~~ Leverage Ratio, on a pro forma basis, as of the most recent date on which a Compliance Certificate was delivered pursuant to Section 6.01(c) (or, prior to the first delivery thereof, compliance to be determined on the basis of the most recent financial statements delivered prior to the Closing Date), shall be less than 1.00 to 1.00.

Notwithstanding the foregoing, during the Covenant Amendment Period no Credit Party nor any of its Subsidiaries shall be permitted to utilize the exceptions set forth in clauses (i), (j), (l), (q), (r), (s) and (t) of this Section 7.05; provided that such restriction shall not limit any Investments existing prior to the Covenant Amendment Period.

Section 7.06 Restricted Payments. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, *except*:

(a) Holdings, the Borrower or any of its Subsidiaries may declare and pay or make Capital Distributions that are payable solely in additional shares of its common stock (or warrants, options or other rights to acquire additional shares of its common stock);

(b) (i) any Subsidiary of the Borrower may declare and pay or make Capital Distributions to the Borrower or any Guarantor, and (ii) any Non-Credit Party may declare and pay or make Capital Distributions to any other Non-Credit Party, the Borrower or any Guarantor;

(c) Restricted Payments so long as after giving pro forma effect thereto, (i) no Default or Event of Default exists or will exist, (ii) as of the last Testing Period for which financial statements were delivered pursuant to Section 6.01(a) or (b) hereto, the Borrower is in pro forma compliance with the financial covenants contained in Section 7.07 hereto, (iii) the availability under the Revolving Credit Facility *plus* the unrestricted cash and Cash Equivalents of the Borrower and the other Credit Parties is greater than \$20,000,000, and (iv) the aggregate amount under this clause (c) shall not exceed \$5,000,000 per fiscal year;

(d) tax distributions in accordance with the Organizational Documents in effect as of the date hereof or as modified with the approval of the Required Lenders;

(e) Borrower or any Subsidiary may make Restricted Payments to Holdings (including by making payments on behalf of Holdings):

(i) the proceeds of which shall be used by Holdings promptly after the receipt thereof to pay its operating expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties), which are reasonable and customary and incurred in the ordinary course of business, plus any reasonable and customary indemnification claims made by directors, officers or employees of Holdings; and

(ii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the proceeds of which will be used by Holdings to repurchase, retire or otherwise acquire the Series B shares outstanding as of the Closing Date from the Series B Holders;

(f) the Borrower may make payments on Subordinated Indebtedness, in an aggregate amount not to exceed an amount equal to the portion, if any, of the Available Amount on the date Borrower elects to apply this to Section 7.06(f); provided that, in the case of this Section 7.06(f), (A) immediately before and after giving effect to any such Restricted Payment, no Default or Event of Default shall have occurred and be continuing, (B) the Borrower is in pro forma covenant compliance with the financial covenants set forth in Section 7.07 (it being understood that the Consolidated ~~Net~~ Leverage Ratio permitted at the time by Section 7.07(a)(ii) shall be deemed to be 1.0x less than the ratio actually provided for in Section 7.07(a)(ii) at such time), and (C) immediately after giving effect to such Restricted Payment, the Credit Parties' unrestricted cash and Cash Equivalents shall be no less than \$10,000,000;

(g) Holdings and any Subsidiary may pay cash in lieu of fractional shares in connection with any dividend, split or combination of its Equity Interests or any Permitted Acquisition (or similar Investment permitted by [Section 7.05](#));

(h) the payment of dividends and distributions within forty five (45) days after the date of declaration thereof, if at the date of declaration of such payment, such payment would otherwise be permitted pursuant to this Section 7.06; and

(i) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower may make payments with respect to Permitted Earnouts, Seller Notes and/or junior lien Indebtedness incurred pursuant to Section 7.03(n) if immediately prior to and immediately after giving effect thereto, (x) the Consolidated ~~Net~~ Leverage Ratio, on a pro forma basis, as of the most recent date on which a Compliance Certificate was delivered pursuant to Section 6.01(c) (or, prior to the first delivery thereof, compliance to be determined on the basis of the most recent financial statements delivered prior to the Closing Date), shall be less than 1.00 to 1.00 and (y) the availability under the Revolving Credit Facility plus the unrestricted cash and Cash Equivalents of the Borrower and the other Credit Parties is greater than \$20,000,000.

[Notwithstanding the foregoing, during the Covenant Amendment Period no Credit Party nor any of its Subsidiaries shall be permitted to utilize the exceptions set forth in clauses \(c\), \(e\)\(ii\), \(f\), \(h\) and \(i\) of this Section 7.06; provided that such restriction shall not limit any Restricted Payments existing prior to the Covenant Amendment Period](#)

Section 7.07 [Financial Covenants](#).

(a)

(~~a~~) **Consolidated Net Leverage Ratio.** The Credit Parties will not permit the Consolidated Net Leverage Ratio of the Credit Parties and their Subsidiaries as of any date set forth below to be greater than the maximum ratio set forth in the table below opposite such date; provided that, upon written notice of the Borrower to the Administrative Agent and the Lenders of a Material Acquisition, for the twelve month period starting as of the date of such Material Acquisition, the Consolidated Net Leverage Ratio shall not exceed the then applicable Consolidated Net Leverage Ratio as set forth below plus 0.25 as of the last day of any fiscal quarter ending during such twelve month period.

<b>Quarter Ending</b>	<b>Consolidated <del>Total</del> Net Leverage Ratio</b>
December 31, 2020	3.00 to 1.00
March 31, 2021	3.00 to 1.00
June 30, 2021	3.00 to 1.00
September 30, 2021	3.00 to 1.00
December 31, 2021	<del>2.50 to 1.00</del> N/A
March 31, 2022	<del>2.50 to 1.00</del> N/A
June 30, 2022	<del>2.50 to 1.00</del> N/A

(ii) Consolidated Leverage Ratio. The Credit Parties will not permit the Consolidated Leverage Ratio of the Credit Parties and their Subsidiaries as of any date set forth below to be greater than the maximum ratio set forth in the table below opposite such date:

<u>Quarter Ending</u>	<u>Consolidated Leverage Ratio</u>
September 30, 2022	<del>2.50</del> 5.75 to 1.00
December 31, 2022 <del>and each Fiscal Quarter ending thereafter</del>	<del>2.00</del> 3.00 to 1.00
March 31, 2023 and each fiscal quarter ending thereafter	2.50 to 1.00

(b) Fixed Charge Coverage Ratio. The Credit Parties will not permit as of the last day of any fiscal quarter the Fixed Charge Coverage Ratio of the Credit Parties and their Subsidiaries to be less than ~~2.00 to 1.00~~ the ratio set forth in the table below opposite such date.

<u>Quarter Ending</u>	<u>Fixed Charge Coverage Ratio</u>
December 31, 2020 – September 30, 2021	2.00 to 1.00
December 31, 2021 – June 30, 2022	N/A
September 30, 2022 and each fiscal quarter ending thereafter	2.00 to 1.00

(c) Minimum Liquidity. During the Covenant Amendment Period the Credit Parties will not permit Liquidity of the Credit Parties as of any date set forth below to be less than the amount set forth in the table below opposite such date as demonstrated by the applicable Liquidity Certificate.

<u>Month Ending</u>	<u>Minimum Liquidity</u>
March 31, 2022	\$15,000,000
April 30, 2022	\$10,000,000
May 31, 2022	\$10,000,000
June 30, 2022	\$10,000,000
July 31, 2022	\$17,500,000
August 31, 2022	\$17,500,000
September 30, 2022	\$17,500,000
October 31, 2022 and thereafter	\$25,000,000

Section 7.08 Limitation on Certain Restrictive Agreements. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist or become effective, any “negative pledge” covenant or other agreement, restriction or arrangement that prohibits, restricts or imposes any condition upon (a) the ability of any Credit Party or any of their respective Subsidiaries to create, incur or suffer to exist any Lien upon any of its property or assets as security for Indebtedness, or (b) the ability of any such Credit Party or any such Subsidiary to make Capital Distributions or any other interest or participation in its profits owned by any Credit Party or any Subsidiary, or pay any Indebtedness owed to any Credit Party or any Subsidiary, or to make loans or advances to any Credit Party or any Subsidiary, or transfer any of its property or assets to any Credit Party or any Subsidiary, *except* for such restrictions existing under or by reason of (i) applicable law, (ii) this Agreement and the other Loan Documents, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (iv) customary provisions restricting assignment of any licensing agreement entered into in the ordinary course of business, (v) customary provisions restricting the transfer or further encumbering of assets subject to Liens permitted under Section 7.03(c), (vi) customary restrictions under any agreement or instrument governing any of the Indebtedness of a Credit Party permitted pursuant to Section 7.04, (vii) restrictions affecting any Non-Credit Party under any agreement or instrument governing any Indebtedness of such Non-Credit Party permitted pursuant to Section 7.04, and customary restrictions contained in “comfort” letters and guarantees of any such Indebtedness, (viii) any document relating to Indebtedness secured by a Lien permitted by Section 7.03, insofar as the provisions thereof limit grants of junior liens on the assets securing such Indebtedness, (ix) any Operating Lease or Capital Lease, insofar as the provisions thereof limit grants of a security interest in, or other assignments of, the related leasehold interest to any other Person, and (x) any restrictions existing at the time any Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower.

Section 7.09 Transactions with Affiliates. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, enter into any transaction or series of transactions with any Affiliate (other than, in the case of the Borrower, any Subsidiary, and in the case of a Subsidiary, the Borrower or another Subsidiary) other than (a) in the ordinary course of business of and pursuant to the reasonable requirements of such Credit Party’s or such Subsidiary’s business and upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary than would be obtained in a comparable arm’s-length transaction with a Person other than an Affiliate, (b) Restricted Payments permitted under Section 7.06, (c) Investments permitted under Section 7.05 (excluding provisions thereof generally permitting transactions permitted by this Section 7.09), (d) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.09 or any amendment to any such agreement to the extent such amendment is not adverse, taken as a whole, to the Lenders in any material respect, (e) any issuance of Equity Interests in Holdings or other payments, awards or grants in cash, securities, Equity Interests in Holdings or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans in the ordinary course of business approved by the board of directors (or other similar governing body) of Holdings and (f) transactions in which the Borrower or any Subsidiary thereof, as the case may be, delivers to the Administrative Agent a letter from an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates stating that such transaction is fair to the Borrower or such Subsidiary from a financial point of view or meets the requirements of clause (a) of this Section 7.09

Section 7.10 Modification of Certain Agreements. Without the prior written consent of the Required Lenders, no Credit Party will amend, modify, supplement, waive or otherwise change, or consent or agree to any amendment, modification, supplement, waiver or other change to, or enter into any forbearance from exercising any rights with respect to the terms or provisions contained in:

(a) any Subordinated Debt Document (other than in accordance with the terms of any applicable subordination agreement and other than any amendment, modification, supplement, waiver or other change for which no fee is payable to the holders of the Subordinated Indebtedness and that (i) extends the maturity or reduces the amount of any repayment, prepayment or redemption of the principal of such Subordinated Indebtedness, (ii) reduces the rate or extends any date for payment of interest, premium (if any) or fees payable on such Subordinated Indebtedness or (iii) makes the covenants, events of default or remedies in such Subordinated Debt Documents less restrictive on any applicable Credit Party);

(b) any of the terms of any preferred Equity Interests of the Credit Parties (other than in accordance with the terms of any applicable subordination agreement and other than any such amendment, modification, supplement, waiver or other change for which no fee is payable to the holders of such preferred stock and that (i) extends the scheduled redemption date or reduces the amount of any scheduled redemption payment or (ii) reduces the rate or extend any date for payment of dividends thereon); or

(c) any Credit Party's Organizational Documents, the Tax Receivables Agreement or the Exchange Agreement, in each case, in any manner materially adverse to the interests of Administrative Agent and the Lenders.

Section 7.11 Anti-Terrorism Laws.

(a) No Credit Party nor any of their respective Subsidiaries shall be subject to or in violation of any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list, Executive Order No. 13224 or the USA Patriot Act) (including, without limitation, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty's Treasury, the "Consolidated list of persons, groups and entities subject to EU financial sanctions" maintained by the European Union External Action Service and the annexes to Regulation (EU) No. 833/2014 (as amended) maintained by the European Union) that prohibits or limits the conduct of business with or the receiving of funds, goods or services to or for the benefit of certain Persons specified therein or that prohibits or limits any Lender or LC Issuer from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower or any other Credit Party.

(b) The Borrower will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture, partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, (ii) in any other manner that would result in a violation of Sanctions by any Person or (iii) 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

Section 7.12 Fiscal Year. No Credit Party shall, nor shall it permit any of its Subsidiaries to, change its Fiscal Year end from December 31.



Section 7.13 Issuance of Disqualified Equity Interests. No Credit Party shall, nor shall it permit any of its Subsidiaries to, issue or sell any Disqualified Equity Interests.

Section 7.14 Business of Holdings. Holdings shall not engage in any business activities or have any material assets or liabilities other than (a) its ownership of the Equity Interests of the Borrower and assets and liabilities incidental to its function as a holding company, including its liabilities under any guaranty of Indebtedness permitted by Section 7.04, and pursuant to the Guarantee and Collateral Agreement and any other Loan Document; (b) maintaining its corporate existence; (c) participating in tax, accounting and other administrative activities (including preparing reports and financial statements); (d) compliance with applicable law; (e) obligations and activities incidental to the business or activities described in the foregoing clauses (a) through (d), including providing indemnification of officers, directors, shareholders and employees.

Section 7.15 Maximum Capital Expenditures.

(a) Holdings and its Subsidiaries will not allow the aggregate amount of Capital Expenditures made during the fiscal quarter ending June 30, 2022 to exceed \$17,500,000.

~~Section 7.15 Maximum Limited Capital Expenditures:~~

~~(b) Holdings and its Subsidiaries will not make or incur Limited~~allow Growth Capital Expenditures made in any fiscal year indicated below ~~in an aggregate amount in excess of~~to exceed the corresponding amount set forth below opposite such fiscal year:

<u>Fiscal Year</u>	<u>Capital Expenditure Amount</u>
Fiscal year ending December 31, 2020	\$19,000,000
Fiscal year ending December 31, 2021	<del>\$26,500,000</del> N/A
Fiscal year ending December 31, 2022	<del>\$12,200,000</del> <u>37,500,000</u>
Fiscal year ending December 31, 2023	<del>\$20,300,000</del> <u>41,000,000</u>
Fiscal year ending December 31, 2024	<del>\$8,300,000</del> <u>41,500,000</u>

; *provided*, however, that (i) if the aggregate amount of ~~Limited~~Growth Capital Expenditures made in any fiscal year shall be less than the maximum amount of ~~Limited~~Growth Capital Expenditures permitted under this Section 7.15 for such fiscal year (before giving effect to any carryover) then the amount of such shortfall not exceeding 50% of such maximum amount may, so long as no Default or Event of Default has occurred and is then continuing, be added to the amount of ~~Limited~~Growth Capital Expenditures permitted under this Section 7.15 for the immediately succeeding (but not any other) fiscal year, and (ii) in determining whether any amount is available for carryover, the amount expended in any fiscal year shall first be deemed to be from the amount allocated to such fiscal year (before giving effect to any carryover); *provided further*, any ~~Limited~~Growth Capital Expenditures made during any fiscal quarter in which the Consolidated ~~Net~~ Leverage Ratio is less than 0.50 to 1.00 shall not be included in determining the amount of ~~Limited~~Growth Capital Expenditures made during such fiscal quarter.

Section 7.16 Lease Incurrence Test. Other than those leases set forth on Schedule 7.16, no Credit Party will, nor will any Credit Party permit any of its Subsidiaries to, contract, create, incur or assume any lease or similar arrangement of Real Property prior to the date on which the Borrower delivers a Compliance Certificate to the Lenders pursuant to Section 6.01(c) demonstrating (A) the Consolidated Leverage Ratio for such Testing Period is less than 0.75x less than the ratio required by Section 7.07 for such Testing Period, or (B) both (i) the Consolidated Leverage Ratio for such Testing Period is less than 0.50x less than the ratio required by Section 7.07 for such Testing Period, and (ii) the Credit Parties are in compliance with the Lease Revenue Test

## ARTICLE VIII

### EVENTS OF DEFAULT

Section 8.01 Events of Default. Any of the following specified events shall constitute an Event of Default (each an “Event of Default”):

(a) Payments: the Borrower shall (i) default in the payment when due (whether at maturity, on a date fixed for a scheduled repayment, on a date on which a required prepayment is to be made, upon acceleration or otherwise) of any principal of the Loans or any reimbursement obligation in respect of any Unpaid Drawing, or in the payment of the same becoming due of any interest on the Loans, any Fees payable under Section 2.11(a) or (e); (ii) default in the payment within five (5) Business Days after the same becomes due, any Fees (other than those payable under Section 2.11(a) and (e)) or any other Obligations; or (iii) fail to Cash Collateralize any Letter of Credit when required to do so hereunder; or

(b) Representations, etc.: any representation, warranty or statement made by the Borrower or any other Credit Party herein or in any other Loan Document or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove to be untrue in any material respect (without duplication as to any materiality modifiers, qualifications, or limitations applicable thereto) on the date as of which made, deemed made, or confirmed; or

(c) Certain Covenants: the Borrower shall default in the due performance or observance by it of any term, covenant or agreement contained in (x) Sections 6.01; (other than Section 6.01(o) and (p)), 6.05, 6.09, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15 or 6.16 or Article VII of this Agreement, or (y) Section 6.01(o) and (p) and such default is not remedied within three (3) days after the date of such default; or

(d) Other Covenants: any Credit Party shall default in the due performance or observance by it of any term, covenant or agreement contained in this Agreement or any other Loan Document (other than those referred to in Section 8.01(a) or (b) or (c) above) and such default is not remedied within 30 days after the earlier of (i) an Authorized Officer of any Credit Party obtaining knowledge of such default or (ii) the Borrower receiving written notice of such default from the Administrative Agent or the Required Lenders (any such notice to be identified as a “notice of default” and to refer specifically to this paragraph); or

(e) Cross Default Under Other Agreements; Designated Hedge Agreements: any Credit Party or any of its Subsidiaries shall (i) default in any payment with respect to any Material Indebtedness (other than the Obligations), and such default shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Material Indebtedness; or (ii) default in the observance or performance of any agreement or condition relating to any Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto (and all grace periods applicable to such observance, performance or condition shall have expired), or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Material Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause any such Material Indebtedness to become due prior to its stated maturity; or any such Material Indebtedness of any Credit Party or any of its Subsidiaries shall be declared to be due and payable, or shall be required to be prepaid (other than by a regularly scheduled required prepayment or redemption, prior to the stated maturity thereof); or (iii) without limitation of the foregoing clauses, default in any payment obligation under a Designated Hedge Agreement, and such default shall continue after the applicable grace period, if any, specified in such Designated Hedge Agreement or any other agreement or instrument relating thereto; *provided* that this clause (e)(ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer or other disposition (including any Event of Loss) of the property or assets securing such Indebtedness, if such sale, transfer or disposition is permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness is repaid when required under the documents providing for such Indebtedness and such Indebtedness and the related Lien were permitted hereunder; or

(f) Invalidity of Loan Documents: any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or under such Loan Document or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Credit Party or any other Person (other than a Lender, the Administrative Agent or one of their respective Affiliates) contests in any manner the validity or enforceability of any provision of any Loan Document; or any Credit Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(g) Invalidity of Liens: any security interest and Lien purported to be created by any Security Document shall cease to be in full force and effect (other than in accordance with the terms hereof and thereof) in a material portion of Collateral covered thereby or shall cease to give the Administrative Agent, for the benefit of the Secured Creditors, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents (including a perfected first priority security interest in and Lien on, all of the Collateral thereunder (except as otherwise expressly provided in such Security Document)) or shall be asserted by any Credit Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on any Collateral covered thereby, except (i) to the extent that any such perfection or priority is not required pursuant to this Agreement or such Security Document, or results from the failure of the Administrative Agent to maintain possession of possessory collateral actually delivered to it or to file UCC continuation statements, or (ii) as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurers have not denied or failed to acknowledge coverage;

(h) Judgments: one or more judgments, orders or decrees (or any settlement of any claim that, if breached, could result in a judgment order or decree) shall be entered against any Credit Party and/or any of its Subsidiaries involving a liability (other than a liability covered by insurance, as to which the carrier has adequate claims paying ability and does not dispute coverage) of \$5,000,000 or more in the aggregate for all such judgments, orders, decrees and settlements for the Credit Parties and their Subsidiaries, and any such judgments or orders or decrees or settlements shall not have been vacated, discharged or stayed or bonded pending appeal within 30 days (or such longer period, not in excess of 60 days, during which enforcement thereof, and the filing of any judgment lien, is effectively stayed or prohibited) from the entry thereof; or

(i) Insolvency Event: any Insolvency Event shall occur with respect to any Credit Party or any of its Subsidiaries; or

(j) ERISA: any ERISA Event shall have occurred and either (i) such event or events could reasonably be expected to have a Material Adverse Effect or (ii) there shall result from any such event or events the imposition of a Lien; or

(k) Change in Control: if there occurs a Change in Control; or

(l) [Reserved]; or

(m) Environmental: Holdings, the Borrower and its Subsidiaries shall have any Environmental Liabilities and Costs (other than Environmental Liabilities and Costs covered by insurance, as to which the carrier has adequate claims paying ability and has not effectively disclaimed coverage), the payment of which is reasonably probable and which could reasonably be expected to have a Material Adverse Effect (after taking into consideration available claims or rights of recovery that Holdings, the Borrower and its Subsidiaries may have against any third-party, to the extent reasonably expected to be realized); or

(n) Subordinated Affiliate Obligations: any Affiliate of any Credit Party holding obligations of any Credit Party that are subordinated to the Obligations shall fail to perform or comply with any of the subordination provisions of any subordination agreement or other subordination document evidencing or governing such obligations; or

(o) Subordinated Indebtedness: (i) any of the Obligations for any reason shall cease to be “Senior Indebtedness” or “Designated Senior Indebtedness” (or any comparable terms) under, and as defined in, any Subordinated Debt Document, (ii) any holder of Subordinated Indebtedness that is an Affiliate of any Credit Party shall fail to perform or comply with any of the subordination provisions of the Subordinated Debt Document evidencing or governing such Subordinated Indebtedness, or (iii) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness.

Section 8.02 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent (i) may, in its discretion, or (ii) shall, upon the written request of the Required Lenders, by written notice to the Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent or any Lender to enforce its claims against the Borrower or any other Credit Party in any manner permitted under applicable law:

(a) declare the Commitments terminated, whereupon the Commitment of each Lender shall forthwith terminate immediately without any other notice of any kind;

(b) declare the principal of and any accrued interest in respect of all Loans, all Unpaid Drawings and all other Obligations (other than any Obligations under any Designated Hedge Agreement) owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower;

(c) (i) terminate any Letter of Credit that may be terminated in accordance with its terms and/or (ii) require the Borrower to Cash Collateralize all or any portion of the LC Outstandings; or

(d) exercise any other right or remedy available under any of the Loan Documents or applicable law;

*provided* that, if an Event of Default specified in Section 8.01(i) shall occur, the result that would occur upon the giving of written notice by the Administrative Agent as specified in clauses (a), (b) and/or (c)(ii) above shall occur automatically without the giving of any such notice.

Section 8.03 Application of Certain Payments and Proceeds. All payments and other amounts received by the Administrative Agent or any Lender through the exercise of remedies hereunder or under the other Loan Documents shall, unless otherwise required by the terms of the other Loan Documents or by applicable law, be applied as follows:

(i) *first*, to the payment of that portion of the Obligations constituting fees, indemnities and expenses and other amounts (including attorneys' fees and amounts due under Article III) payable to the Administrative Agent in its capacity as such;

(ii) *second*, to the payment of that portion of the Obligations constituting fees, indemnities and expenses (including attorneys' fees and amounts due under Article III) payable to each Lender or each LC Issuer, ratably among them in proportion to the aggregate of all such amounts;

(iii) *third*, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and Unpaid Drawings with respect to Letters of Credit, ratably among the Lenders in proportion to the aggregate of all such amounts;

(iv) *fourth, pro rata* to the payment of (A) that portion of the Obligations constituting unpaid principal of the Loans and Unpaid Drawings, ratably among the Lenders and each LC Issuer in proportion to the aggregate of all such amounts, and (B) the amounts due to Designated Hedge Creditors under Designated Hedge Agreements and Designated Banking Services Obligations;

(v) *fifth*, to the Administrative Agent for the benefit of each LC Issuer to Cash Collateralize the Stated Amount of outstanding Letters of Credit;

(vi) *sixth*, to the payment of all other Obligations of the Credit Parties owing under or in respect of the Loan Documents that are then due and payable to the Administrative Agent, each LC Issuer, the Swing Line Lender, the Lenders and the Designated Hedge Creditors, ratably based upon the respective aggregate amounts of all such Obligations owing to them on such date; and

(vii) *finally*, any remaining surplus after all of the Obligations (other than contingent obligations for which no claim has been made) have been paid in full, to the Borrower or to whomsoever shall be lawfully entitled thereto.

## ARTICLE IX

### THE ADMINISTRATIVE AGENT

#### Section 9.01 Appointment.

(a) Each Lender hereby irrevocably designates and appoints the Administrative Agent to act as specified herein and in the other Loan Documents, and each such Lender hereby irrevocably appoints and authorizes KeyBank National Association as the Administrative Agent for such Lender, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. The Administrative Agent agrees to act as Administrative Agent upon the express conditions contained in this Article. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor any fiduciary relationship with any Lender or LC Issuer, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Administrative Agent. The provisions of this Article IX are solely for the benefit of the Administrative Agent and the Lenders, and no Credit Party shall have any rights as a third-party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, the Administrative Agent shall act solely as agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for the Credit Parties or any of their respective Subsidiaries.

(b) Each Lender hereby further irrevocably authorizes the Administrative Agent on behalf of and for the benefit of the Lenders, to be the agent for and representative of the Lenders with respect to the Guaranty, the Security Agreement, the Collateral and any other Loan Document. Subject to Section 11.12, without further written consent or authorization from Lenders, the Administrative Agent may execute any documents or instruments necessary to (i) release any Lien (x) encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 11.12) have otherwise consented, or (y) upon the termination of the Commitments and the payment in full (other than contingent indemnification obligations and unasserted expense reimbursement obligations) of all Obligations and the expiration or termination of all Letters of Credit (other than those that have been Cash Collateralized or backstopped), or (ii) release any Guarantor from the Guaranty, the Security Agreement with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 11.12) have otherwise consented.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty or release the Security Agreement, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Lenders in accordance with the terms hereof and all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and the Administrative Agent, as agent for and representative of the Secured Creditors (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale.

(d) Notwithstanding anything to the contrary herein, no Crossover Lender acting in its capacity as a Lender may make or bring any claim against the Administrative Agent or any other Lender with respect to the duties and obligations of such Person under the Loan Documents (other than claims arising from the failure of the Administrative Agent or any other Lender to make any payment to such Crossover Lender required to be made by such Person pursuant to the terms hereof).

Section 9.02 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, sub-agents or attorneys-in-fact, and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents, sub-agents or attorneys-in-fact selected by it with reasonable care except to the extent otherwise required by Section 9.03. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of Section 9.03 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory and rights to indemnification) and shall have all of the rights, benefits and privileges of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to any Credit Party, any Lender or any other Person and no Credit Party, Lender or any other Person shall have the rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

Section 9.03 Exculpatory Provisions. Neither the Administrative Agent nor any of its Related Parties shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except for its or such Related Parties' own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Credit Parties or any of their respective Subsidiaries or any of their respective officers contained in this Agreement, any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for any failure of any Credit Party or any of its officers to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Credit Parties or any of their respective Subsidiaries. The Administrative Agent shall not be responsible to any Lender for the effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement or any Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Administrative Agent to the Lenders or by or on behalf of the Credit Parties or any of their respective Subsidiaries to the Administrative Agent or any Lender or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or of the existence or possible existence of any Default or Event of Default. In addition, the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institution. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Disqualified Institution.

Section 9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, e-mail or other electronic transmission, facsimile transmission, telex or teletype message, statement, order or other document or conversation believed by it, in good faith, to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrower or any of its Subsidiaries), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders or all of the Lenders, as applicable, as to any matter that, pursuant to Section 11.12, can only be effectuated with the consent of all Required Lenders, or all applicable Lenders, as the case may be, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

Section 9.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." If the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; *provided, however*, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

Section 9.06 Non-Reliance. Each Lender expressly acknowledges that neither the Administrative Agent nor any of its Related Parties has made any representations or warranties to it and that no act by the Administrative Agent hereinafter taken, including, without limitation, any review of the affairs of the Credit Parties or their respective Subsidiaries, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and their Subsidiaries and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Credit Parties and their Subsidiaries. The Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial and other conditions, prospects or creditworthiness of the Credit Parties and their Subsidiaries that may come into the possession of the Administrative Agent or any of its Related Parties.



Section 9.07 No Reliance on Administrative Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with the Credit Parties or their respective Subsidiaries, any of their respective Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under the CIP Regulations or such other laws.

Section 9.08 USA Patriot Act. Each Lender or assignee or participant of a Lender that is not organized under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA Patriot Act and the applicable regulations because it is both (a) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (b) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA Patriot Act and the applicable regulations: (i) within 10 days after the Closing Date, and (ii) at such other times as are required under the USA Patriot Act.

Section 9.09 Reimbursement by Lenders. To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under Sections 11.01 and 11.02 to be paid by it, each Lender severally agrees to pay to the Administrative Agent, each LC Issuer, each Lender, each Arranger and their respective Related Parties, as the case may be, such Lender's *pro rata* share of the Aggregate Credit Facility Exposure (excluding Swing Loans), determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's *pro rata* share of the Aggregate Credit Facility Exposure (excluding Swing Loans) at such time, of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, such LC Issuer or such Arranger in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent, such LC Issuer or any such Arranger in connection with such capacity. The obligations of the Lenders under this Section are subject to the provisions of Section 2.07(a).

Section 9.10 The Administrative Agent in Individual Capacity. The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Credit Parties, their respective Subsidiaries and their Affiliates as though not acting as Administrative Agent hereunder. With respect to the Loans made by it and all Obligations owing to it, the Administrative Agent shall have the same rights and powers under this Agreement as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent in its individual capacity.

Section 9.11 Successor Administrative Agent. The Administrative Agent may resign at any time upon not less than 30 days' notice to the Lenders, each LC Issuer and the Borrower. Any resignation by KeyBank National Association as Administrative Agent pursuant to this Section 9.11 shall also constitute its resignation as LC Issuer. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor consented to by the Borrower at all times other than during the existence of a Default or an Event of Default (which consent, if applicable, of the Borrower shall not be unreasonably withheld or delayed). 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, then the retiring Administrative Agent may on behalf of the Lenders and each LC Issuer, appoint a successor Administrative Agent; *provided, however*, that if the Administrative Agent shall notify the Borrower and the Lenders that no such successor is willing to accept such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring 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 any LC Issuer 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 (ii) 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 LC Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this paragraph. 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 retired) Administrative Agent, and the retiring 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 paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.02 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 9.12 Other Agents. Any Lender identified herein as a syndication agent, documentation agent, lead arranger, arranger, bookrunner or any other corresponding title, other than "Administrative Agent," shall have no right, power, obligation, liability, responsibility or duty under this Agreement or any other Loan Document except those applicable to all Lenders as such. Each Lender acknowledges that it has not relied, and will not rely, on any Lender so identified in deciding to enter into this Agreement or in taking or not taking any action hereunder.

Section 9.13 Agency for Perfection. The Administrative Agent and each Lender hereby appoints the Administrative Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets that, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and the Administrative Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Administrative Agent and the Lenders as secured party. Should any Lender 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 in accordance with the Administrative Agent's instructions. Without limiting the generality of the foregoing, each Lender hereby appoints the Administrative Agent for the purpose of perfecting the Administrative Agent's Liens on deposit accounts or securities accounts of any Credit Party. Each Credit Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 9.14 Proof of Claim. The Lenders and the Borrower hereby agree that after the occurrence of an Event of Default pursuant to Section 8.01(i), in case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or any of the Guarantors, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower or any of the Guarantors) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Loans and any other Obligations that are owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their agents and counsel and all other amounts due the Lenders and the Administrative Agent hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, administrator, sequestrator, examiner or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent and other agents hereunder. Nothing herein contained shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lenders or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding. Further, nothing contained in this Section 9.14 shall affect or preclude the ability of any Lender to (i) file and prove such a claim in the event that the Administrative Agent has not acted within ten (10) days prior to any applicable bar date and (ii) require an amendment of the proof of claim to accurately reflect such Lender's outstanding Obligations.

#### Section 9.15 Posting of Approved Electronic Communications.

(a) Delivery of Communications. Each Credit Party hereby agrees, unless directed otherwise by the Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to such Credit Party that it will, or will cause its Subsidiaries to, provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent or to the Lenders pursuant to the Loan Documents, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Notice of Borrowing or a Notice of Continuation or Conversion, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or any other Loan Document or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Loan or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, each Credit Party agrees, and agrees to cause its Subsidiaries, to continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

(b) Platform. Each Credit Party further agrees that Administrative Agent may make the Communications available to the Lenders by posting the Communications on DebtDomain or a substantially similar electronic transmission system (the “Platform”).

(c) No Warranties as to Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE INDEMNITEES DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE INDEMNITEES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE INDEMNITEES HAVE ANY LIABILITY TO ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY INDEMNITEES IS FOUND IN A FINAL, NON-APPEALABLE ORDER BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH INDEMNITEE’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) Delivery Via Platform. The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its electronic mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender’s electronic mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such electronic mail address.

(e) No Prejudice to Notice Rights. Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 9.16 Credit Bidding. Each Lender hereby irrevocably authorizes the Administrative Agent, based upon the instruction of the Required Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 thereof, at any sale thereof conducted under the provisions of the Bankruptcy Code (including Section 363 of the Bankruptcy Code) or any applicable bankruptcy, insolvency, reorganization or other similar law (whether domestic or foreign, and including any Debtor Relief Laws) now or hereafter in effect, or at any sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable law.

Section 9.17 ERISA.

(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, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit 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 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more 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 sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the 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 9.18 Withholding Taxes. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within ten (10) days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 3.02 and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other expenses, whether or not such Tax was 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 this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations. For purposes of this Section 9.18, the term “Lender” includes any LC Issuer.

Section 9.19 Resignation/Replacement of LC Issuer. Notwithstanding anything to the contrary contained herein, any LC Issuer or Swing Line Lender may, upon sixty (60) days’ notice to the Borrower and the Lenders, resign as an LC Issuer or Swing Line Lender, respectively. For the avoidance of doubt, in the event of any such resignation of an LC Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor LC Issuer or Swing Line Lender hereunder, provided that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant LC Issuer or the Swing Line Lender, as the case may be. If an LC Issuer resigns as an LC Issuer, it shall retain all the rights and obligations of an LC Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an LC Issuer and all Obligations with respect thereto (including the right to require the Lenders to make Loans or fund risk participations in LC Outstandings). If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Loans or fund risk participations in outstanding Swing Loans.

Section 9.20 Erroneous Payments. Each Lender and each Issuing Bank hereby agrees that (x) if the Administrative Agent notifies such Lender or Issuing Bank, as applicable, that the Administrative Agent has determined in its sole discretion that any funds received by such Lender or Issuing Bank, as applicable, from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender or Issuing Bank (whether or not known to such Lender or Issuing Bank, as applicable), and demands the return of such Payment (or a portion thereof), such Lender or Issuing Bank, as applicable, shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Bank, as applicable, to the date such amount is repaid 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 from time to time in effect, and (y) to the extent permitted by applicable law, no Lender or Issuing Bank shall assert, and each Lender and Issuing Bank hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender or any Issuing Bank under this paragraph shall be conclusive, absent manifest error.

Each Lender and each Issuing Bank hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender and each Issuing Bank agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender or Issuing Bank, as applicable, shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Issuing Bank, as applicable, to the date such amount is repaid 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 from time to time in effect.

Holdings and each Subsidiary hereby agrees that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender or any Issuing Bank, as applicable, that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender or such Issuing Bank under this Agreement or any Loan Document, as applicable, with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any obligations owed by the Borrower, Holdings or any Subsidiary under or in connection with this Agreement or other Loan Documents.

Each party's obligations under this Section 9.20 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender or an Issuing Bank, the termination of the Commitments or the repayment, satisfaction or discharge of all obligations owed by the Borrower, Holdings or any Subsidiary under or in connection with this Agreement or other Loan Documents.

## ARTICLE X

### GUARANTY

Section 10.01 Guaranty by the Borrower. The Borrower hereby irrevocably and unconditionally guarantees, for the benefit of the Benefited Creditors, all of the following (collectively, the "Borrower Guaranteed Obligations"): (a) all reimbursement obligations and Unpaid Drawings with respect to Letters of Credit issued for the benefit of any LC Obligor (other than the Borrower) under this Agreement, (b) any Banking Services Obligations, and (c) all amounts, indemnities and reimbursement obligations, direct or indirect, contingent or absolute, of every type or description, and at any time existing owing by Holdings or any Subsidiary of the Borrower under any Designated Hedge Agreement or any other document or agreement executed and delivered in connection therewith to any Designated Hedge Creditor, in each case, other than any Excluded Swap Obligations with respect to the Borrower, and in all cases under subparts (a), (b) or (c) above, whether now existing, or hereafter incurred or arising, including any such interest or other amounts incurred or arising during the pendency of any bankruptcy, insolvency, reorganization, receivership or similar proceeding (including any Debtor Relief Law), regardless of whether allowed or allowable in such proceeding or subject to an automatic stay under Section 362(a) of the Bankruptcy Code or under any Debtor Relief Law. Such guaranty is an absolute, unconditional, present and continuing guaranty of payment and not of collectibility and is in no way conditioned or contingent upon any attempt to collect from any Subsidiary or Affiliate of the Borrower, or any other action, occurrence or circumstance whatsoever. Upon failure by any Credit Party to pay punctually any of the Borrower Guaranteed Obligations, the Borrower shall forthwith on demand by the Administrative Agent pay the amount not so paid at the place and in the currency and otherwise in the manner specified in this Agreement or any other applicable agreement or instrument.

Section 10.02 Additional Undertaking. As a separate, additional and continuing obligation, the Borrower unconditionally and irrevocably undertakes and agrees, for the benefit of the Benefited Creditors that, should any Borrower Guaranteed Obligations not be recoverable from the Borrower under Section 10.01 for any reason whatsoever (including, without limitation, by reason of any provision of any Loan Document or any other agreement or instrument executed in connection therewith being or becoming void, unenforceable, or otherwise invalid under any applicable law) then, notwithstanding any notice or knowledge thereof by any Lender, the Administrative Agent, any of their respective Affiliates, or any other person, at any time, the Borrower as sole, original and independent obligor, upon demand by the Administrative Agent, will make payment to the Administrative Agent, for the account of the Benefited Creditors, of all such obligations not so recoverable by way of full indemnity, in such currency and otherwise in such manner as is provided in the Loan Documents or any other applicable agreement or instrument.

Section 10.03 Guaranty Unconditional. The obligations of the Borrower under this Article X shall be unconditional and absolute and, without limiting the generality of the foregoing shall not be released, discharged or otherwise affected by the occurrence, one or more times, of any of the following:

(a) any extension, renewal, settlement, compromise, waiver or release in respect to the Borrower Guaranteed Obligations under any agreement or instrument, by operation of law or otherwise;

(b) any modification or amendment of or supplement to this Agreement, any Note, any other Loan Document, or any agreement or instrument evidencing or relating to any Borrower Guaranteed Obligation;

(c) any release, non-perfection or invalidity of any direct or indirect security for the Borrower Guaranteed Obligations under any agreement or instrument evidencing or relating to any Borrower Guaranteed Obligations;

(d) any change in the corporate existence, structure or ownership of any Credit Party or other Subsidiary or any insolvency, bankruptcy, reorganization or other similar proceeding (including any Debtor Relief Law) affecting any Credit Party or other Subsidiary or its assets or any resulting release or discharge of any obligation of any Credit Party or other Subsidiary contained in any agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations;

(e) the existence of any claim, set-off or other rights that the Borrower may have at any time against any other Credit Party, the Administrative Agent, any Lender, any Affiliate of any Lender or any other Person, whether in connection herewith or any unrelated transactions;

(f) any invalidity or unenforceability relating to or against any other Credit Party for any reason of any agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations, or any provision of applicable law or regulation purporting to prohibit the payment by any Credit Party of any of the Borrower Guaranteed Obligations; or

(g) any other act or omission of any kind by any other Credit Party, the Administrative Agent, any Lender or any other Person or any other circumstance whatsoever that might, but for the provisions of this Article, constitute a legal or equitable discharge of the Borrower's obligations under this Section other than the payment in full in cash of all Borrower Guaranteed Obligations.



Section 10.04 Borrower Obligations to Remain in Effect; Restoration. The Borrower's obligations under this Article X shall remain in full force and effect until the Commitments shall have terminated, and the principal of and interest on the Notes and other Borrower Guaranteed Obligations, and all other amounts payable by the Borrower, any other Credit Party or other Subsidiary, under the Loan Documents or any other agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations (other than contingent obligations for which no claim has been made), shall have been paid in full. If at any time any payment of any of the Borrower Guaranteed Obligations is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of such Credit Party (including any Debtor Relief Law), the Borrower's obligations under this Article with respect to such payment shall be reinstated at such time as though such payment had been due but not made at such time.

Section 10.05 Waiver of Acceptance, etc. The Borrower irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any person against any other Credit Party or any other Person, or against any collateral or guaranty of any other Person.

Section 10.06 Subrogation. Until the payment in full of all of the Obligations (other than contingent obligations for which no claim has been made) and the termination of the Commitments hereunder, the Borrower shall have no rights, by operation of law or otherwise, upon making any payment under this Section 10.06 to be subrogated to the rights of the payee against any other Credit Party with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by any such Credit Party in respect thereof.

Section 10.07 Effect of Stay. In the event that acceleration of the time for payment of any amount payable by any Credit Party under any of the Borrower Guaranteed Obligations is stayed upon insolvency, bankruptcy or reorganization of such Credit Party (including any Debtor Relief Law), all such amounts otherwise subject to acceleration under the terms of any applicable agreement or instrument evidencing or relating to any of the Borrower Guaranteed Obligations shall nonetheless be payable by the Borrower under this Article forthwith on demand by the Administrative Agent.

Section 10.08 Keepwell. The Borrower, to the extent it is a Qualified ECP Guarantor, hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by the Borrower to honor all of its obligations under this Article X in respect of Designated Hedge Agreements (provided, however, that the Borrower shall only be liable under this Section 10.08 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.08, or otherwise under this Article X, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of the Borrower under this Section 10.08 shall remain in full force and effect until payment in full of all of the Obligations and the termination of the Commitments hereunder. The Borrower intends that this Section 10.08 constitute, and this Section 10.08 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 Payment of Expenses etc. Each Credit Party agrees to pay (or reimburse the Administrative Agent, the Lenders or their Affiliates, as the case may be) all of the following: (i) whether or not the transactions contemplated hereby are consummated, for all reasonable out-of-pocket costs and expenses of the Administrative Agent in connection with the negotiation, preparation, syndication, administration and execution and delivery of the Loan Documents and the documents and instruments referred to therein and the syndication of the Commitments, including without limitation all out-of-pocket expenses and legal fees of counsel to the Administrative Agent and the Arrangers (limited to the reasonable, and documented or invoiced, out-of-pocket fees, disbursements and other charges of one counsel to the Administrative Agent, the Arrangers, the LC Issuers and the Lenders taken as a whole, and, if necessary, of one local counsel in each relevant material jurisdiction and, in the event of any actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction for each group of Lenders and Administrative Agent similarly situated taken as a whole); (ii) all out-of-pocket costs and expenses of the Administrative Agent in connection with any amendment, waiver or consent relating to any of the Loan Documents, including all out-of-pocket expenses and legal fees of counsel; (iii) all costs and expenses of the Administrative Agent, the Lenders and their Affiliates in connection with the enforcement of any of the Loan Documents or the other documents and instruments referred to therein, including, without limitation, the fees and disbursements of counsel to the Administrative Agent and the Lenders and limited to the fees, disbursements and other charges of one counsel to the Administrative Agent and the Lenders taken as a whole, and, if necessary, of one local counsel in each relevant material jurisdiction and, in the event of any actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction for each group of Lenders and Administrative Agent similarly situated taken as a whole; (iv) any and all present and future stamp and other similar taxes with respect to the foregoing matters and save the Administrative Agent and each of the Lenders harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to any such indemnified Person) to pay such taxes; (v) all the actual costs and expenses of creating and perfecting Liens in favor of the Administrative Agent, for the benefit of Secured Creditors, including filing and recording fees, expenses and amounts owed pursuant to Article III, search fees, title insurance premiums and fees, expenses and disbursements of counsel to the Administrative Agent and of counsel providing any opinions that the Administrative Agent or the Required Lenders may request in respect of the Collateral or the Liens created pursuant to the Security Documents; (vi) all the actual costs and fees, expenses and disbursements of any auditors, accountants, consultants or appraisers whether internal or external; and (vii) all the actual costs and expenses (including the reasonable fees, expenses and disbursements of counsel and of any appraisers, consultants, advisors and agents employed or retained by the Administrative Agent and its counsel) in connection with the custody or preservation of any of the Collateral.

Section 11.02 Indemnification. Each Credit Party agrees to indemnify the Administrative Agent, each LC Issuer, each Lender, each Arranger and their respective Related Parties (collectively, the “Indemnitees”) from and hold each of them harmless against any and all losses, liabilities, claims, damages or expenses reasonably incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of (i) the entering into and/or performance of any Loan Document or the use of the proceeds of any Loans hereunder or the consummation of any transactions contemplated in any Loan Document, (ii) the actual or alleged presence of Hazardous Materials in the air, surface water or groundwater or on the surface or subsurface of any Real Property owned, leased or at any time operated by the Credit Parties or any of their respective Subsidiaries, the release, generation, storage, transportation, handling or disposal of Hazardous Materials at any location, whether or not owned or operated by the Credit Parties or any of their respective Subsidiaries, if Holdings, the Borrower or any such Subsidiary could have or is alleged to have any responsibility in respect thereof, the non-compliance of any such Real Property with foreign, federal, state and local laws, regulations and ordinances (including applicable permits thereunder) applicable thereto or (iii) any investigation, litigation or other proceeding or any Environmental Claim asserted against any Credit Party or any of their respective Subsidiaries, in respect of any such Real Property (whether or not any Indemnitee is a party thereto and whether or not such proceeding is brought by the Borrower or any third party) related to any of the foregoing, including, without limitation, the reasonable documented fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding (but excluding any such losses, liabilities, claims, damages or expenses of any Indemnitee to the extent incurred by reason of the bad faith, material breach of its obligations hereunder, gross negligence or willful misconduct of such Indemnitee, in each case, as determined by a final non-appealable judgment of a court of competent jurisdiction), other than any such investigation, litigation or proceeding arising out of transactions solely between any of the Lenders or the Administrative Agent, transactions solely involving the assignment by a Lender of all or a portion of its Loans and Commitments, or the granting of participations therein, as provided in this Agreement, or arising solely out of any examination of a Lender by any regulatory or other Governmental Authority having jurisdiction over it that is not in any way related to the entering into and/or performance of any Loan Document. To the extent that the undertaking to indemnify, pay or hold harmless any Person set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, each Credit Party shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities that is permissible under applicable law.

Section 11.03 Right of Setoff. In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Lender and each LC Issuer is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other Indebtedness at any time held or owing by such Lender or such LC Issuer (including, without limitation, by branches, agencies and Affiliates of such Lender or LC Issuer wherever located) to or for the credit or the account of any Credit Party against and on account of the Obligations and liabilities of any Credit Party to such Lender or LC Issuer under this Agreement or under any of the other Loan Documents, including, without limitation, all claims of any nature or description arising out of or connected with this Agreement or any other Loan Document, irrespective of whether or not such Lender or LC Issuer shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the LC Issuers, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender and LC Issuer agrees to promptly notify the Borrower after any such set off and application, *provided, however*, that the failure to give such notice shall not affect the validity of such set off and application.

Section 11.04 Equalization.

(a) Equalization. If at any time any Lender receives any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker's lien, by counterclaim or cross action, by the enforcement of any right under the Loan Documents, or otherwise) that is applicable to the payment of the principal of, or interest on, the Loans (other than Swing Loans), LC Participations, Swing Loan Participations or Fees (other than Fees that are intended to be paid solely to the Administrative Agent or an LC Issuer and amounts payable to a Lender under Article III), of a sum that with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, *then* such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount. The provisions of this Section 11.04(a) shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (ii) 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 L/C Outstandings to any assignee or participant, other than to Holdings, the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

(b) Recovery of Amounts. If any amount paid to any Lender pursuant to subpart (a) above is recovered in whole or in part from such Lender, such original purchase shall be rescinded, and the purchase price restored ratably to the extent of the recovery.

(c) Consent of Borrower. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 11.05 Notices.

(a) Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subpart (c) 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 the Borrower or any other Credit Party, to it at : 4100 North Chapel Ridge Rd., Suite 200, Lehi, Utah 84043, Attention: Legal and Casey McGarvey; Email: legal@purple.com with a copy to casey@purple.com;

(ii) if to the Administrative Agent, to it at the Notice Office; and

(iii) if to a Lender, to it at its address (or facsimile number) set forth next to its name on the signature pages hereto or, in the case of any Lender that becomes a party to this Agreement by way of assignment under Section 11.04 of this Agreement, to it at the address set forth in the Assignment Agreement to which it is a party;

(b) Receipt of Notices. Notices and communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent and receipt has been confirmed by telephone. Notices delivered through electronic communications to the extent provided in subpart (c) below shall be effective as provided in said subpart (c).

(c) Electronic Communications. Notices and other communications to the Administrative Agent, an LC Issuer or any Lender hereunder and required to be delivered pursuant to Section 6.01 may be delivered or furnished by electronic communication (including e-mail and Internet or intranet web sites) pursuant to procedures approved by the Administrative Agent. The Administrative Agent and the Borrower may, in their discretion, agree in a separate writing to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet web site 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 web site address therefor.

(d) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to each of the other parties hereto in accordance with Section 11.05(a).

Section 11.06 Successors and Assigns.

(a) Successors and Assigns Generally. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; *provided, however*, that the Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of all the Lenders, *provided, further*, that any assignment or participation by a Lender of any of its rights and obligations hereunder shall be effected in accordance with this Section 11.06.

(b) Participations. Each Lender may at any time grant participations in any of its rights hereunder or under any of the Notes to an Eligible Assignee, an Eligible Participant or any other Person, *provided* that in the case of any such participation,

(i) the participant shall not have any rights under this Agreement or any of the other Loan Documents, including rights of consent, approval or waiver (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto),

(ii) such Lender's obligations under this Agreement (including, without limitation, its Commitments hereunder) shall remain unchanged,

(iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations,

(iv) such Lender shall remain the holder of the Obligations owing to it and of any Note issued to it for all purposes of this Agreement, and

(v) the Borrower, the Administrative Agent, and the other Lenders shall continue to deal solely and directly with the selling Lender in connection with such Lender's rights and obligations under this Agreement,

and, *provided, further*, that no Lender shall transfer, grant or sell any participation under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Loan Document except to the extent (A) such participant is an Affiliate or an Approved Fund of the Lender granting the participations or (B) such amendment or waiver would (x) extend the final scheduled maturity of the date of any Scheduled Repayment of any of the Loans in which such participant is participating, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with a waiver of the applicability of any post-default increase in interest rates), or reduce the principal amount thereof, or increase such participant's participating interest in any Commitment over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the terms of any such Commitment), (y) release all or any substantial portion of the Collateral, or release any guarantor from its guaranty of any of the Obligations, except in accordance with the terms of the Loan Documents, or (z) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and, *provided still further* that each participant shall be entitled to the benefits of Section 3.03 with respect to its participation as if it was a Lender, except that a participant shall (i) only deliver the forms described in Section 3.03(g) to the Lender granting it such participation and (ii) not be entitled to receive any greater payment under Section 3.03(g) than the applicable Lender would have been entitled to receive absent the participation, except to the extent such entitlement to a greater payment arose from a Change in Law occurring after the participant became a participant hereunder.

In the event that any Lender sells participations in a Loan, such Lender shall, acting for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name of all participants in such Loan and the principal amount of (and stated interest on) the portion of such Loan that is the subject of the participation (the "Participant Register"). The entries in the Participant Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and each Lender shall treat each person whose name is recorded in the Participant Register as the owner of the participation in question for all purposes of this Agreement notwithstanding any notice to the contrary. A Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of a Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice; *provided*, however, 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. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(c) Assignments by Lenders.

(i) Any Lender may assign all, or if less than all, a fixed portion, of its Loans, LC Participations, Swing Loan Participations and/or Commitments and its rights and obligations hereunder to one or more Eligible Assignees, each of which shall become a party to this Agreement as a Lender by execution of an Assignment Agreement; *provided, however*, that:

(A) except in the case of (x) an assignment of the entire remaining amount of the assigning Lender's Loans and/or Commitments or (y) an assignment to another Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender, the aggregate amount of the Commitment so assigned (which for this purpose includes the Loans outstanding thereunder) shall not be less than \$1,000,000;

(B) in the case of any assignment to an Eligible Assignee at the time of any such assignment the Lender Register shall be deemed modified to reflect the Commitments of such new Lender and of the existing Lenders;

(C) upon surrender of the old Notes, if any, upon request of the new Lender, new Notes will be issued, at the Borrower's expense, to such new Lender and to the assigning Lender, to the extent needed to reflect the revised Commitments; and

(D) unless waived by the Administrative Agent, the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of \$3,500.

(ii) To the extent of any assignment pursuant to this subpart (c), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(iii) At the time of each assignment pursuant to this subpart (c), to a Person that is not already a Lender hereunder and that is not a U.S. Person for Federal income tax purposes, the respective assignee Lender shall provide to the Borrower and the Administrative Agent the applicable Internal Revenue Service Forms (and any necessary additional documentation) described in Section 3.03(g).

(iv) With respect to any Lender, the transfer of any Commitment of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitment shall not be effective until such transfer is recorded on the Lender Register maintained by the Administrative Agent (on behalf of and acting solely for this purpose as a non-fiduciary agent of the Borrower) with respect to ownership of such Commitment and Loans, including the name and address of the Lenders and the principal amount of the Loans (and stated interest thereon). Prior to such recordation, all amounts owing to the transferor with respect to such Commitment and Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Administrative Agent on the Lender Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment Agreement pursuant to this subpart (c). The Lender Register shall be available for the inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice.

(v) Nothing in this Section shall prevent or prohibit (A) any Lender that is a bank, trust company or other financial institution from pledging its Notes or Loans to a Federal Reserve Bank or to any Person that extends credit to such Lender in support of borrowings made by such Lender from such Federal Reserve Bank or such other Person, or (B) any Lender that is a trust, limited liability company, partnership or other investment company from pledging its Notes or Loans to a trustee or agent for the benefit of holders of certificates or debt securities issued by it. No such pledge, or any assignment pursuant to or in lieu of an enforcement of such a pledge, shall relieve the transferor Lender from its obligations hereunder.

(vi) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each LC Issuer, each Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit and Swing Loans in accordance with its Revolving Facility Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Notwithstanding anything contained herein, no Lender may assign, sell, negotiate or otherwise transfer its Loans, LC Participations, Swing Line Participations and/or Commitments to any Credit Party or any Affiliate of any of the foregoing.

(d) No SEC Registration or Blue Sky Compliance. Notwithstanding any other provisions of this Section, no transfer or assignment of the interests or obligations of any Lender hereunder or any grant of participation therein shall be permitted if such transfer, assignment or grant would require the Borrower to file a registration statement with the SEC or to qualify the Loans under the “Blue Sky” laws of any State.

(e) Representations of Lenders. Each Lender initially party to this Agreement hereby represents, and each Person that becomes a Lender pursuant to an assignment permitted by this Section will, upon its becoming party to this Agreement, represents that it is a commercial lender, other financial institution or other “accredited” investor (as defined in SEC Regulation D) that makes or acquires loans in the ordinary course of its business and that it will make or acquire Loans for its own account in the ordinary course of such business; *provided, however*, that subject to the preceding Section 11.06(b) and (c), the disposition of any promissory notes or other evidences of or interests in Indebtedness held by such Lender shall at all times be within its exclusive control.

(f) Special Purpose Funding Vehicles. Notwithstanding anything to the contrary contained herein, any Lender (“Granting Lender”) may grant to a special purpose funding vehicle (a “SPC”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (x) nothing herein shall constitute a commitment by any SPC to make any Loans and (y) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this clause, any SPC may (i) with notice to, but without the prior written consent of, the Borrower or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This Section may not be amended without the written consent of the SPC. The Borrower acknowledges and agrees, subject to the next sentence, that, to the fullest extent permitted under applicable law, each SPC, for purposes of Sections 2.10, 2.14, 3.01, 3.03, 11.01, 11.02 and 11.03, shall be considered a Lender.

(g) Disqualified Institutions.

(i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment or participation in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). During the continuance of an Event of Default the Borrower shall be deemed to have consented to any assignment or participation to a Disqualified Institution. For the avoidance of doubt, with respect to any assignee or participant that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), (x) such assignee shall not retroactively be disqualified from becoming a Lender or participant and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this Section 11.06(g)(i) shall not be void, but the other provisions of this Section 11.06(g)(i) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Credit Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 11.06), all of its interest, rights and obligations under this Agreement and the other Loan Documents to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents; provided, that (i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(c), (ii) such assignment does not conflict with applicable Laws and (iii) in the case of clause (B), the Borrower shall not use the proceeds from any Loans to prepay Term Loans held by Disqualified Institutions.



(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, 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 and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (“Plan”), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan, (2) if such Disqualified Institution does vote on such Plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan in accordance with Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders and/or (B) provide the DQ List to each Lender requesting the same.

Section 11.07 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent or any Lender in exercising any right, power or privilege hereunder or under any other Loan Document and no course of dealing between the Borrower and the Administrative Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent or the Lenders to any other or further action in any circumstances without notice or demand. Without limiting the generality of the foregoing, the making of a Loan or any LC Issuance shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or any LC Issuer may have had notice or knowledge of such Default or Event of Default at the time. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies that the Administrative Agent or any Lender would otherwise have.

Section 11.08 Governing Law; Submission to Jurisdiction; Venue; Waiver of Jury Trial.

**(a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT (OTHER THAN THE LETTERS OF CREDIT, TO THE EXTENT SPECIFIED BELOW, AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN A LOAN DOCUMENT) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT OR, IF NO LAWS OR RULES ARE SO DESIGNATED, THE INTERNATIONAL STANDBY PRACTICES (ISP98 — INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NUMBER 590 (THE “ISP98 RULES”)) AND, AS TO MATTERS NOT GOVERNED BY THE ISP98 RULES, THE LAW OF THE STATE OF NEW YORK.**

(b) EACH CREDIT PARTY HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN IN ANY LITIGATION OR OTHER PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS, THE LC ISSUER OR THE CREDIT PARTIES IN CONNECTION HEREWITH OR THEREWITH; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND; PROVIDED, FURTHER, THAT NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT, ANY LENDER OR THE LC ISSUER TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

(c) EACH CREDIT PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 11.05. EACH CREDIT PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO IN CLAUSE (b) ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY CREDIT PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH CREDIT PARTY HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THE LOAN DOCUMENTS. EACH CREDIT PARTY HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION ANY INDIRECT SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(d) THE ADMINISTRATIVE AGENT, EACH LENDER, THE LC ISSUER AND EACH CREDIT PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, SUCH LENDER, THE LC ISSUER OR SUCH CREDIT PARTY IN CONNECTION THEREWITH. EACH CREDIT PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT, EACH LENDER AND THE LC ISSUER ENTERING INTO THE LOAN DOCUMENTS.

Section 11.09 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same agreement. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Administrative Agent.

Section 11.10 Integration. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent, for its own account and benefit and/or for the account, benefit of, and distribution to, the Lenders, constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof or thereof. To the extent that there is any conflict between the terms and provisions of this Agreement and the terms and provisions of any other Loan Document, the terms and provisions of this Agreement will prevail.

Section 11.11 Headings Descriptive. The headings of the several Sections and other portions of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 11.12 Amendment or Waiver; Acceleration by Required Lenders.

(a) Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof, may be amended, changed, waived or otherwise modified unless such amendment, change, waiver or other modification is in writing and signed by the Borrower and the Required Lenders or by the Administrative Agent acting at the written direction of the Required Lenders; *provided, however*, that

(i) no change, waiver or other modification shall:

(A) increase the amount of any Commitment of any Lender hereunder, without the written consent of such Lender;

(B) extend or postpone the Revolving Facility Termination Date, the Term Loan Maturity Date or the maturity date provided for herein that is applicable to any Loan of any Lender, extend or postpone the expiration date of any Letter of Credit as to which such Lender is an LC Participant beyond the latest expiration date for a Letter of Credit provided for herein, or extend or postpone any scheduled expiration or termination date provided for herein that is applicable to a Commitment of any Lender, without the written consent of such Lender;

(C) reduce the principal amount of any Loan made by any Lender, or reduce the rate or extend, defer or delay the time of payment of, or excuse the payment of, principal or interest thereon (other than as a result of (x) waiving the applicability of any post-default increase in interest rates or (y) any amendment or modification of defined terms used in financial covenants), without the written consent of such Lender;

(D) reduce the amount of any Unpaid Drawing as to which any Lender is an LC Participant, or reduce the rate or extend the time of payment of, or excuse the payment of, interest thereon (other than as a result of waiving the applicability of any post-default increase in interest rates), without the written consent of such Lender;

(E) reduce the rate or extend the time of payment of, or excuse the payment of, any Fees or other amounts to which any Lender is entitled hereunder, without the written consent of such Lender;

(F) release the Borrower from any of its obligations hereunder or consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement, without the written consent of all Lenders; or

(G) release all or substantially all of the Collateral or all or substantially all of the value of the Guarantors, *except* in connection with a transaction permitted under this Agreement, without the written consent of all Lenders.

(ii) no change, waiver or other modification or termination shall, without the written consent of each Lender adversely affected thereby,

(A) release the Borrower from its guaranty obligations under Article X or release any Credit Party from the Guaranty, *except*, in the case of a Guarantor, (x) in accordance with a transaction permitted under this Agreement or (y) to the extent that the release of such Guarantor would not result in the release of Guarantors having a value, in the aggregate, that constitutes all or substantially all of the value, in the aggregate, of the Guarantors;

(B) amend, modify or waive any provision of this Section 11.12, Section 8.03, or any other provision of any of the Loan Documents pursuant to which the consent or approval of all Lenders, or a number or specified percentage or other required grouping of Lenders or Lenders having Commitments, is by the terms of such provision explicitly required;

(C) reduce the percentage specified in, or otherwise modify, the definition of Required Lenders;

(D) amend, modify or waive any provision of Section 2.07(b), Section 2.14(b) or Section 2.14(e); or

(E) except as otherwise permitted Section 7.04, modify the Loan Documents in a manner that would subordinate the Administrative Agent's Lien on any Collateral or subordinate any Obligation in right of payment to any other Indebtedness.

Any waiver or consent with respect to this Agreement given or made in accordance with this Section shall be effective only in the specific instance and for the specific purpose for which it was given or made.

(b) No provision of Section 2.05 or any other provision in this Agreement specifically relating to Letters of Credit may be amended without the consent of any LC Issuer adversely affected thereby.

(c) No provision of Article IX may be amended without the consent of the Administrative Agent and no provision of Section 2.04 may be amended without the consent of the Swing Line Lender.

(d) To the extent the Required Lenders (or all of the Lenders, as applicable, as shall be required by this Section) waive the provisions of Section 7.02 with respect to the sale, transfer or other disposition of any Collateral, or any Collateral is sold, transferred or disposed of as permitted by Section 7.02, (i) such Collateral (but not any proceeds thereof) shall be sold, transferred or disposed of free and clear of the Liens created by the respective Security Documents; (ii) if such Collateral includes all of the capital stock of a Subsidiary that is a Guarantor or whose stock is pledged pursuant to the Security Agreement, such capital stock (but not any proceeds thereof) shall be released from the Security Agreement and such Subsidiary shall be released as a Guarantor; and (iii) the Administrative Agent shall be authorized to take actions deemed appropriate by it in order to effectuate the foregoing.

(e) In no event shall the Required Lenders, without the prior written consent of each Lender, direct the Administrative Agent to accelerate and demand payment of the Loans held by one Lender without accelerating and demanding payment of all other Loans or to terminate the Commitments of one or more Lenders without terminating the Commitments of all Lenders. Each Lender agrees that, except as otherwise provided in any of the Loan Documents and without the prior written consent of the Required Lenders, it will not take any legal action or institute any action or proceeding against any Credit Party with respect to any of the Obligations or Collateral, or accelerate or otherwise enforce its portion of the Obligations. Without limiting the generality of the foregoing, none of Lenders may exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, uniform commercial code sales or other similar sales or dispositions of any of the Collateral except as authorized by the Required Lenders. Notwithstanding anything to the contrary set forth in this Section 11.12(e) or elsewhere herein, each Lender shall be authorized to take such action to preserve or enforce its rights against any Credit Party where a deadline or limitation period is otherwise applicable and would, absent the taking of specified action, bar the enforcement of Obligations held by such Lender against such Credit Party, including the filing of proofs of claim in any insolvency proceeding.

(f) Notwithstanding anything to the contrary contained in this Section 11.12, (x) Security Documents (including any Additional Security Documents) and related documents executed by Subsidiaries of the Borrower in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented and waived with the consent of the Administrative Agent and the Borrower without the need to obtain the consent of any other Person if such amendment, supplement or waiver is delivered in order (i) to comply with local law or advice of local counsel, (ii) to cure ambiguities, omissions, mistakes or defects or (iii) to cause such Security Document or other document to be consistent with this Agreement and the other Loan Documents and (y) if following the Closing Date, the Administrative Agent and the Borrower shall have jointly identified an ambiguity, inconsistency, obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Credit Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

(g) If, in connection with any proposed amendment, modification, termination, waiver or consent with respect to any provisions hereof as contemplated by this Section 11.12 that requires the consent of a greater percentage of the Lenders than the Required Lenders, the consent of the Required Lenders shall have been obtained but the consent of a Lender whose consent is required shall not have been obtained (each a “Non-Consenting Lender”), then the Borrower may, at its 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 the restrictions contained in Section 11.04(c)), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations; *provided* that (A) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Section 3.02 and any amounts accrued and owing to such Lender under Section 3.01(a)(i), Section 3.01(c), Section 3.03 or Section 3.04), and (C) such Eligible Assignee shall consent at the time of such assignment to each matter in respect of which such Non-Consenting Lender did not consent. Each Lender agrees that, if it becomes a Non-Consenting Lender and is being replaced in accordance with this Section 11.12(g), it shall execute and deliver to the Administrative Agent an Assignment Agreement to evidence such assignment and shall deliver to the Administrative Agent any Notes previously delivered to such Non-Consenting Lender. 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 Borrower to require such assignment and delegation cease to apply.

(h) Notwithstanding anything to the contrary contained in this Section 11.12, no Crossover Lender shall have any right in its capacity as a Lender to (i) consent to any amendment, modification, waiver, consent or other such action (each, a “Consent”) with respect to any of the terms of this Agreement or any other Loan Document, except for any Consent of the manner set forth in Section 11.12(a)(i)(A) and Section 11.12(a)(i)(C) above, (ii) require the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to this Agreement or any other Loan Document, (iii) otherwise vote on any matter related to this Agreement or any other Loan Document except as specifically provided in this Section 11.12(h), (iv) attend any “Lender only” meeting with the Administrative Agent or any Lender or receive any “Lender only” information from the Administrative Agent or any Lender, and (v) make or bring any claim, in its capacity as a Lender, against the Administrative Agent or any Lender with respect to the duties and obligations of such Persons under the Loan Documents (other than claims directly arising from the failure of the Administrative Agent or any Lender to make payments to such Crossover Lender required to be made by such Person pursuant to the terms hereof). Upon the occurrence of and during the pendency of any Insolvency Event of which any Credit Party is the subject, each Crossover Lender (A) shall, solely in its capacity as a Lender, not exercise any voting or consent rights of such Person under the Bankruptcy Code or other insolvency law with respect to any matter requiring the vote or consent of the Lenders and arising during the pendency of any such bankruptcy case or other insolvency proceeding (including, without limitation, any right to vote to accept or reject any plan of reorganization or other restructuring plan filed in any such bankruptcy case or other insolvency proceeding, and any right to consent to any sale of Collateral pursuant to section 363 of the Bankruptcy Code), and shall be deemed to have granted (and hereby grants) the Administrative Agent an irrevocable power of attorney entitling the Administrative Agent to exercise any such voting or consent rights of such Person under the Bankruptcy Code or other insolvency law in the manner directed by the Administrative Agent (it being understood that the Administrative Agent shall exercise such power of attorney at the direction of the Required Lenders to the extent the Required Lenders so direct the Administrative Agent in writing), and such power of attorney shall be coupled with an interest; *provided, however* that Crossover Lenders shall retain the right to exercise any such voting or consent rights if and to the extent the matter subject to such voting or consent rights would disproportionately and adversely affect the rights of such Crossover Lender in relations to the rights of all other Lenders, and (B) shall execute and deliver such instruments and documents, and shall take such action, as may be reasonably requested by the Administrative Agent from time to time, to memorialize or effectuate such power of attorney or the exercise of such Person’s voting or consent rights accordance with clause (A) of this sentence.

(i) No Lender consent shall be required to effect an Incremental Amendment except as expressly provided in Section 2.17. In connection therewith, the Borrower, the Administrative Agent and the Lenders providing the Incremental Term Loan Commitments or Incremental Revolving Credit Commitments, as applicable, may effect such other 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, to effect the provisions of this clause shall supersede any provisions of this Agreement to the contrary.

Section 11.13 Survival of Indemnities. All indemnities set forth herein including, without limitation, in Article III, Section 9.09 or Section 11.02 shall survive the execution and delivery of this Agreement and the making and repayment of the Obligations.

Section 11.14 Domicile of Loans. Each Lender may transfer and carry its Loans at, to or for the account of any branch office, subsidiary or affiliate of such Lender; *provided, however*, that the Borrower shall not be responsible for costs arising under Section 3.01 resulting from any such transfer (other than a transfer pursuant to Section 3.05) to the extent not otherwise applicable to such Lender prior to such transfer.

Section 11.15 Confidentiality.

(a) Each of the Administrative Agent, each LC Issuer and the Lenders agrees to maintain the confidentiality of the Confidential Information, *except* that Confidential Information may be disclosed (1) 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 Confidential Information and instructed to keep such Confidential Information confidential), (2) to any direct or indirect contractual prospective or actual counterparty in any Hedge Agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section, (3) to the extent requested by any regulatory authority, (4) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (provided that unless such disclosure is pursuant to an audit or similar exam or review, to the extent permitted by law and reasonably practical, written notice of such disclosure shall be provided to you), (5) to any other party to this Agreement, (6) to any other creditor of any Credit Party that is a direct or intended beneficiary of any of the Loan Documents, (7) in connection with the exercise of any remedies hereunder or under any of the other Loan Documents, or any suit, action or proceeding relating to this Agreement or any of the other Loan Documents or the enforcement of rights hereunder or thereunder, (8) subject to an agreement containing provisions substantially the same as those of this Section, to any prospective assignee, assignee of or participant in any of its rights or obligations under this Agreement, or in connection with transactions permitted pursuant to Section 11.06(c)(v) or Section 11.06(f), (9) with the consent of the Borrower, (9) credit insurances providers, or (10) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section 11.15, or (ii) becomes available to the Administrative Agent, any LC Issuer or any Lender on a non-confidential basis from a source other than a Credit Party and not otherwise in violation of this Section 11.15.

(b) As used in this Section, “Confidential Information” means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, any LC Issuer or any Lender on a non-confidential basis prior to disclosure by the Borrower; *provided, however*, that, in the case of information received from the Borrower after the Closing Date, such information is deemed to be confidential.

(c) Any Person required to maintain the confidentiality of Confidential 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 Confidential Information as such Person would accord to its own confidential information. The Borrower hereby agrees that the failure of the Administrative Agent, any LC Issuer or any Lender to comply with the provisions of this Section shall not relieve the Borrower, or any other Credit Party, of any of its obligations under this Agreement or any of the other Loan Documents.

Section 11.16 Limitations on Liability of the LC Issuers. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letters of Credit. Neither any LC Issuer nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by an LC Issuer against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, *except* that the LC Obligor shall have a claim against an LC Issuer, and an LC Issuer shall be liable to such LC Obligor, to the extent of any direct, but not consequential, damages suffered by such LC Obligor that such LC Obligor proves were caused by (i) such LC Issuer’s willful misconduct or gross negligence in determining whether documents presented under a Letter of Credit comply with the terms of such Letter of Credit or (ii) such LC Issuer’s willful failure to make lawful payment under any Letter of Credit after the presentation to it of documentation strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, an LC Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation.

Section 11.17 General Limitation of Liability. No claim may be made by any Credit Party, any Lender, the Administrative Agent, any LC Issuer or any other Person against any Credit Party, the Administrative Agent, any LC Issuer, or any other Lender or the Affiliates, directors, officers, employees, attorneys or agents of any of them for any damages other than actual compensatory damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any of the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower, each Lender, the Administrative Agent and each LC Issuer hereby, to the fullest extent permitted under applicable law, waive, release and agree not to sue or counterclaim upon any such claim for any indirect special, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in their favor.

Section 11.18 No Duty. All attorneys, accountants, appraisers, consultants and other professional persons (including the firms or other entities on behalf of which any such Person may act) retained by the Administrative Agent or any Lender with respect to the transactions contemplated by the Loan Documents shall have the right to act exclusively in the interest of the Administrative Agent or such Lender, as the case may be, and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to Holdings, to the Borrower, to any of its Subsidiaries, or to any other Person, with respect to any matters within the scope of such representation or related to their activities in connection with such representation. The Borrower agrees, on behalf of itself and its Subsidiaries, not to assert any claim or counterclaim against any such persons with regard to such matters, all such claims and counterclaims, now existing or hereafter arising, whether known or unknown, foreseen or unforeseeable, being hereby waived, released and forever discharged.



Section 11.19 Lenders and Agent Not Fiduciary to Borrower, etc. The relationship among Holdings, the Borrower and its Subsidiaries, on the one hand, and the Administrative Agent, each LC Issuer and the Lenders, on the other hand, is solely that of debtor and creditor, and the Administrative Agent, each LC Issuer and the Lenders have no fiduciary or other special relationship with Holdings, the Borrower and its Subsidiaries, and no term or provision of any Loan Document, no course of dealing, no written or oral communication, or other action, shall be construed so as to deem such relationship to be other than that of debtor and creditor.

Section 11.20 Survival of Representations and Warranties. All representations and warranties herein shall survive the making of Loans and all LC Issuances hereunder, the execution and delivery of this Agreement, the Notes and the other documents the forms of which are attached as Exhibits hereto, the issue and delivery of the Notes, any disposition thereof by any holder thereof, and any investigation made by the Administrative Agent or any Lender or any other holder of any of the Notes or on its behalf. All statements contained in any certificate or other document delivered to the Administrative Agent or any Lender or any holder of any Notes by or on behalf of Holdings, the Borrower or any of its Subsidiaries pursuant hereto or otherwise specifically for use in connection with the transactions contemplated hereby shall constitute representations and warranties by the Borrower hereunder, made as of the respective dates specified therein or, if no date is specified, as of the respective dates furnished to the Administrative Agent or any Lender.

Section 11.21 Severability. Any provision of this Agreement 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 hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 11.22 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action, event, condition or circumstance is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations or restrictions of, another covenant, shall not avoid the occurrence of a Default or an Event of Default if such action is taken or event, condition or circumstance exists.

Section 11.23 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate 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 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 Base Rate to the date of repayment, shall have been received by such Lender.

Section 11.24 USA Patriot Act. Each Lender subject to the USA Patriot Act hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the USA Patriot Act.

Section 11.25 Advertising and Publicity. No Credit Party shall issue or disseminate to the public (by advertisement, including without limitation any “tombstone” advertisement, press release or otherwise), submit for publication or otherwise cause or seek to publish any information describing the credit or other financial accommodations made available by the Lenders pursuant to this Agreement and the other Loan Documents without the prior written consent of the Administrative Agent. Nothing in the foregoing shall be construed to prohibit any Credit Party from making any submission or filing which it is required to make by applicable law or pursuant to judicial process; *provided*, that, (i) such filing or submission shall contain only such information as is necessary to comply with applicable law or judicial process and (ii) unless specifically prohibited by applicable law or court order, the Borrower shall promptly notify the Administrative Agent of the requirement to make such submission or filing and provide the Administrative Agent with a copy thereof. All parties to this Agreement acknowledge that Holdings will be filing a current report on Form 8-K disclosing material terms of this Agreement and other Loan Documents and that a copy of this Agreement such other Loan Documents will made exhibits to that filing.

Section 11.26 Release of Guarantees and Liens. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (i) to the extent necessary to permit consummation of any transaction permitted by any Loan Document or that has been consented to in accordance with the terms hereof or (ii) under the circumstances described in the next succeeding sentence. When this Agreement has been terminated and all of the Obligations have been fully and finally discharged (other than obligations in respect of Designated Hedge Agreements, contingent indemnity obligations and obligations in respect of Letters of Credit that have been Cash Collateralized) and the obligations of the Administrative Agent and the Lenders to provide additional credit under the Loan Documents have been terminated irrevocably, and the Credit Parties have delivered to the Administrative Agent a written release of all claims against the Administrative Agent and the Lenders, in form and substance reasonably satisfactory to the Administrative Agent, the Administrative Agent will, at the Borrower’s sole expense, execute and deliver any termination statements, lien releases, mortgage releases, re-assignments of intellectual property, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are necessary or advisable to release, as of record, the Administrative Agent’s Liens and all notices of security interests and liens previously filed by the Administrative Agent with respect to the Obligations.

Section 11.27 Payments Set Aside. To the extent that any Secured Creditor receives a payment from or on behalf of the Borrower or any other Credit Party, from the proceeds of any Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

Section 11.28 Hedging Liability. Notwithstanding any provision hereof or in any other Loan Document to the contrary, in the event that any Credit Party is not an “eligible contract participant” as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, at the time (i) any transaction is entered into under any Hedging Obligation or (ii) such Person becomes a Borrower or Guarantor hereunder, and the effect of the foregoing would be to render any Guaranty Obligations of such Person violative of the Commodity Exchange Act, the Obligations of such Person shall not include (x) in the case of clause (i) above, such transaction and (y) in the case of clause (ii) above, any transactions outstanding under any Hedging Obligations as of the date such Person becomes a Borrower or Guarantor hereunder.

Section 11.29 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, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an 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 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 undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any Resolution Authority.

Section 11.30 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.30, the following terms have the following meanings:

such party. “BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of

“Covered Entity” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b)

(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

applicable. “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

(D). “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)

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

PURPLE INNOVATION, LLC, as the Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PURPLE INNOVATION, INC., as Holdings

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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KEYBANK NATIONAL ASSOCIATION, as a Lender, LC  
Issuer, Swing Line Lender, and as the Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---

[\_\_\_\_], as a Lender

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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Schedule 1

Lenders and Commitments

<b>Lender</b>	<b>Revolving Commitment</b>	<b>Term Commitment</b>
KEYBANK NATIONAL ASSOCIATION	\$8,250,000.00	\$6,750,000.00
BANK OF MONTREAL	\$7,975,000.00	\$6,525,000.00
FIFTH THIRD BANK, NATIONAL ASSOCIATION	\$7,975,000.00	\$6,525,000.00
SILICON VALLEY BANK	\$7,975,000.00	\$6,525,000.00
TRUIST BANK	\$7,975,000.00	\$6,525,000.00
WELLS FARGO BANK, NATIONAL ASSOCIATION	\$7,975,000.00	\$6,525,000.00
RAYMOND JAMES	\$4,125,000.00	\$3,375,000.00
ARVEST BANK	\$2,750,000.00	\$2,250,000.00
Total:	\$55,000,000.00	\$45,000,000.00

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ANNEX II

**Exhibit B-1**  
**(Form of Notice of Borrowing)**

Attached

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EXHIBIT B-1

NOTICE OF BORROWING

\_\_\_\_\_, 202\_

KeyBank National Association,  
as Administrative Agent  
4900 Tiedeman Road, 1st Floor SE Mailcode: OH-01-49-0362  
Brooklyn, Ohio 44144  
Attention: KAS Services

Re: Notice of Borrowing

Ladies and Gentlemen:

The undersigned, Purple Innovation, LLC, a Delaware limited liability company (the "Borrower"), refers to the Credit Agreement, dated as of September 3, 2020 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement," the terms defined therein being used herein as therein defined), among the Borrower, Purple Innovation, Inc., a Delaware corporation, the lenders from time to time party thereto and KeyBank National Association, as the Administrative Agent, and hereby gives you notice, irrevocably, pursuant to Section 2.06(b) of the Credit Agreement, that the undersigned hereby requests one or more Borrowings under the Credit Agreement, and in that connection therewith sets forth on Annex I hereto the information relating to each such Borrowing (collectively the "Proposed Borrowing") as required by Section 2.06(b) of the Credit Agreement.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Proposed Borrowing:

(A) the ~~Consolidated Net Leverage Ratio after giving pro forma effect to the Proposed Borrowing~~ amount of cash and Cash Equivalents does not exceed ~~2.00 to 1.00 as demonstrated by the calculation set forth on Attachment I hereto~~ \$25,000,000;

(B) the representations and warranties of the Credit Parties contained in the Credit Agreement and the other Loan Documents are true and correct in all material respects (or in the case of any representation and warranty subject to a materiality qualifier, true and correct in all respects), before and after giving effect to the Proposed Borrowing and to the application of the proceeds thereof, as though made on such date, except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties were true and correct in all material respects as of the date when made; and

(C) no Default or Event of Default has occurred and is continuing, or would result from such Proposed Borrowing or from the application of the proceeds thereof.

[Signature Page Follows.]

Very truly yours,

PURPLE INNOVATION, LLC

By: Purple Innovation, Inc., its Manager

By: \_\_\_\_\_

Name:

Title:

1. The Business Day of the Proposed Borrowing is [\_\_\_\_\_].
2. The Type of Loan[s] comprising the Proposed Borrowing [is a][are] [Base Rate Loan[s]] [~~Eurodollar~~Term SOFR Loan[s]] [Swing Loan[s]].
3. The Aggregate amount of [the] [each] [Revolving][Term][Swing] Loan is [as follows]:
  - [(a) Base Rate Loan: \$\_\_\_\_\_.]
  - [(b) ~~Eurodollar~~Term SOFR Loan: \$\_\_\_\_\_.]
  - [(c) Swing Loan: \$\_\_\_\_\_.]
4. The Interest Period for the ~~Eurodollar~~Term SOFR Loan is \_\_\_\_\_.
5. [The Swing Loan Maturity Date[s] for the Swing Loan[s] [is][are] \_\_\_\_\_.]

Consolidated Net Leverage Ratio Calculation

{attached}

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ANNEX III

**Exhibit B-2**  
**(Form of Notice of Continuation or Conversion)**

Attached

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**EXHIBIT B-2**

NOTICE OF CONTINUATION OR CONVERSION

\_\_\_\_\_, 202\_\_

KeyBank National Association,  
as Administrative Agent  
4900 Tiedeman Road, 1st Floor SE Mailcode: OH-01-49-0362  
Brooklyn, Ohio 44144  
Attention: KAS Services

Re: Notice of Continuation or Conversion

Ladies and Gentlemen:

The undersigned, Purple Innovation, LLC, a Delaware limited liability company (the "Borrower"), refers to the Credit Agreement, dated as of September 3, 2020 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement," the terms defined therein being used herein as therein defined), among the Borrower, Purple Innovation, Inc., a Delaware corporation, the lenders from time to time party thereto and KeyBank National Association, as the Administrative Agent, and hereby gives you notice, irrevocably, pursuant to Section 2.10(b) of the Credit Agreement, that the undersigned hereby requests one or more Continuations or Conversions of Loans, consisting of one Type of Loan, pursuant to Section 2.10(b) of the Credit Agreement, and in that connection therewith has set forth on Annex 1 hereto the information required pursuant to such Section 2.10(b) of the Credit Agreement relating to each such Continuation or Conversion.

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the date of the Continuation or Conversion:

(A) the representations and warranties of the Credit Parties contained in the Credit Agreement and the other Loan Documents are and will be true and correct in all material respects (or in the case of any representation and warranty subject to a materiality qualifier, true and correct in all respects), before and after giving effect to the Continuation or Conversion, as though made on such date, except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties were true and correct in all material respects as of the date when made; and

(B) no Default or Event of Default has occurred and is continuing, or would result from such Continuation or Conversion.

[Signature Page Follows.]

Very truly yours,

PURPLE INNOVATION, LLC

By: Purple Innovation, Inc., its Manager

By: \_\_\_\_\_

Name:

Title:



1. The date on which the ~~Eurodollar~~Term SOFR Loan to be [Continued] [Converted] was made is [\_\_\_\_\_].
2. The date on which the ~~Eurodollar~~Term SOFR Loan is to be [Continued] [Converted] is [\_\_\_\_\_].
3. The Aggregate amount of [the] [each] ~~Eurodollar~~Term SOFR Loan is [\$\_\_\_\_\_].
4. The [new] Interest Period for the ~~Eurodollar~~Term SOFR Loan is [\_\_\_\_\_].
- [5. The Type of Loan into which the ~~Eurodollar~~Term SOFR Loan[s] [is] [are] to be Converted is [\_\_\_\_\_]].

ANNEX IV

**Exhibit E**  
**(Form of Compliance Certificate)**

Attached

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EXHIBIT E

COMPLIANCE CERTIFICATE

\_\_\_\_\_, 202\_\_

KeyBank National Association,  
as Administrative Agent  
4900 Tiedeman Road, 1st Floor SE Mailcode: OH-01-49-0362  
Brooklyn, Ohio 44144  
Attention: KAS Services

Each Lender party to the  
Credit Agreement referred to below

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of September 3, 2020, among Purple Innovation, LLC, a Delaware limited liability company (the "Borrower"), Purple Innovation, Inc., a Delaware corporation ("Holdings"), the lenders from time to time party thereto (the "Lenders") and KeyBank National Association, as the Administrative Agent (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; terms defined therein being used herein as therein defined). Pursuant to Section 6.01(c) of the Credit Agreement, the undersigned hereby certifies to the Administrative Agent and the Lenders as follows:

(a) I am the duly elected [insert title of appropriate Financial Officer] of Holdings.

(b) I am familiar with the terms of the Credit Agreement and the other Loan Documents, and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Holdings, the Borrower and its Subsidiaries during the accounting period covered by the attached financial statements.

(c) The review described in paragraph (b) above did not disclose, and I have no knowledge of, the existence of any condition or event that constitutes or constituted a Default or Event of Default at the end of the accounting period covered by the attached financial statements or as of the date of this Compliance Certificate.

(d) The representations and warranties of the Credit Parties contained in the Credit Agreement and in the other Loan Documents are true and correct in all material respects (or in the case of any representation and warranty subject to a materiality qualifier, true and correct in all respects) with the same effect as though such representations and warranties had been made on and at the date hereof, except to the extent that such representations and warranties expressly relate to an earlier specified date, in which case such representations and warranties were true and correct in all material respects as of the date when made.

(e) Set forth on Attachment I hereto are calculations of the financial covenants set forth in ~~Section 7.07~~ Sections [7.07(a)(ii) and 7.07(b)]<sup>1</sup> [7.07(a)(ii), 7.07(b) and 7.07(c)]<sup>2</sup> of the Credit Agreement, which calculations show compliance with the terms thereof for the fiscal quarter of the Borrower ending [\_\_\_\_\_].

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<sup>1</sup> NTD: Use at all times after Covenant Amendment Period.

<sup>2</sup> NTD: Use during Covenant Amendment Period.

[\(f\) Set forth on Attachment II hereto is a description of all Capital Expenditures for such period.](#)

[\(g\) Set forth on Attachment III hereto is a calculation of the Lease Revenue Test for such period.](#)

(~~f~~h) Since the Closing Date and except as disclosed in any Perfection Certificate delivered to the Administrative Agent on the Closing Date or pursuant to Section 6.01(l) or otherwise disclosed to the Administrative Agent in accordance with the Credit Agreement or other Loan Documents, no Credit Party has:

(i) changed its legal name, identity, jurisdiction of incorporation, organization or formation or organizational structure or formed, created, established or acquired any Subsidiary except as follows: \_\_\_\_\_;

(ii) acquired all or substantially all of the assets of, or merged or consolidated with or into, any Person, except as follows: \_\_\_\_\_;

(iii) changed its chief executive office or mailing address or otherwise relocated, acquired fee simple title to any real property or entered into any real property leases, except as follows: \_\_\_\_\_;

(iv) issued (excluding Holdings) or received any Equity Interests, except as follows: \_\_\_\_\_; or

(v) acquired or made any new registrations or applications for the registration of any Intellectual Property, to the extent not previously disclosed to the Administrative Agent, except as follows: \_\_\_\_\_.

[Signature Page Follows.]

Very truly yours,

PURPLE INNOVATION, INC.

By: \_\_\_\_\_

Name:

Title:

Financial Covenant Calculations

[attached]

[Capital Expenditures](#)

[\[attached\]](#)

[Lease Revenue Test](#)

[\[attached\]](#)



ANNEX V

**Schedule 7.16  
Permitted Leases**

Attached

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Consent of Independent Registered Public Accounting Firm

Purple Innovation, Inc.  
Lehi, Utah

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-223030, 333-230522, 333-230521, 333-234186, 333-237045, 333-248507, 333-256253) and Form S-8 (Nos. 333-224220 and 333-231822) of Purple Innovation, Inc. of our reports dated March 1, 2022, relating to the consolidated financial statements, and the effectiveness of Purple Innovation, Inc.'s internal control over financial reporting, which appear in this Form 10-K. Our report on the effectiveness of internal control over financial reporting expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2021.

/s/ BDO USA, LLP  
Salt Lake City, Utah

March 1, 2022

## CERTIFICATIONS

I, Robert T. DeMartini, certify that:

1. I have reviewed this Annual Report on Form 10-K of Purple Innovation, 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.

Dated: March 1, 2022

/s/ Robert T. DeMartini  
\_\_\_\_\_  
Robert T. DeMartini,  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATIONS

I, Bennett L. Nussbaum, certify that:

1. I have reviewed this Annual Report on Form 10-K of Purple Innovation, 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.

Dated: March 1, 2022

/s/ Bennett L. Nussbaum  
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Bennett L. Nussbaum,  
Interim Chief Financial Officer  
(Principal Financial Officer)

## CERTIFICATION

In connection with the Annual Report on Form 10-K of Purple Innovation, Inc. (the “Corporation”) for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Robert T. DeMartini, Chief Executive Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Dated: March 1, 2022

/s/ Robert T. DeMartini

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Robert T. DeMartini,  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION

In connection with the Annual Report on Form 10-K of Purple Innovation, Inc. (the “Corporation”) for the year ended December 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Bennett L. Nussbaum, Interim Chief Financial Officer of the Corporation, hereby certifies, pursuant to Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Dated: March 1, 2022

/s/ Bennett L. Nussbaum  
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Bennett L. Nussbaum,  
Interim Chief Financial Officer  
(Principal Financial Officer)