UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2025

Or

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

For the transition period from to
Commission file number: 001-41850

BED BATH & BEYOND, INC.

(Exact name of registrant as specified in its charter)

Delaware	**87-0634302**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
433 W. Ascension Way, 3rd Floor **Murray, Utah**	**84123**
(Address of principal executive offices)	(Zip Code)

(801) 947-3100
(Registrant's telephone number, including area code)

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0001 par value	BBBY	New York Stock Exchange
Warrants to Purchase Shares of Common Stock	BBBY WS	New York Stock Exchange

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

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

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

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

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

68,845,575 shares of the registrant's common stock, par value $0.0001, were outstanding on October 24, 2025.

BED BATH & BEYOND, INC.
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For the Quarterly Period Ended September 30, 2025

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SPECIAL CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q and the information incorporated herein by reference, and our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of the federal securities laws. These statements are intended to be covered by the safe harbor provisions of these laws. You can find many of these statements by looking for words such as "may," "would," "could," "should," "will," "expect," "anticipate," "predict," "project," "potential," "continue," "contemplate," "seek," "assume," "believe," "intend," "plan," "forecast," "goal," "estimate," or other similar terms or expressions or the negative of these terms or expressions, although not all forward-looking statements contain these identifying terms or expressions.

These forward-looking statements involve known and unknown risks and uncertainties and relate to future events or our future financial or operating performance. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry and business, and on management's beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, you are cautioned that any such forward-looking statements are not guarantees of future performance and are subject to assumptions, risks, uncertainties, and other important factors that are difficult to predict, and that actual results and outcomes may be materially different from the results, performance, achievements, or outcomes expressed or implied by any of our forward-looking statements for a variety of reasons, including among others:

- *We depend on third-party companies to perform functions critical to our business, and any failure or increased cost on their part could have a material adverse effect on our business.*
- *We face intense competition and may not be able to compete successfully against existing or future competitors.*
- *We may not timely identify or effectively respond to consumer needs, expectations or trends, which could adversely affect our relationship with our customers, the demand for our products and services, and our market share.*
- *Our business depends on effective marketing, including marketing via email, search engine marketing, influencer marketing, and social media marketing. Our competitors have and may continue to cause us to increase our marketing costs and decrease certain other types of marketing, and have and may continue to outspend us on marketing or be more efficient in their spend.*
- *Economic factors, including recessions, other economic downturns, inflation, our exposure to the U.S. housing market, and decreases in consumer spending, have affected and could continue to adversely affect us.*
- *Trade policies or restrictions, import and export policies, tariffs, bans, or other measures or events and related macroeconomic effects.*
- *Our changing business model and use of the Bed Bath & Beyond brand, Overstock brand, buybuy BABY brand, Kirkland's and Kirkland's Home brand, Beyond brand, and other brands of ours, could negatively impact our business.*
- *The changing job market, the changes in our leadership team, the change in our compensation approach, changing job structures, or any inability to attract, retain and engage key personnel could affect our ability to successfully grow our business.*
- *We rely upon paid and natural search engines to rank our product offerings, and our financial results may suffer if we are unable to maintain our prior rankings in natural searches.*
- *If we are not profitable and/or are unable to generate sufficient positive cash flow from operations, our ability to continue in business will depend on our ability to raise additional capital, obtain financing or monetize significant assets, and we may be unable to do so.*
- *Our business depends on the Internet, our infrastructure and transaction-processing systems, and catastrophic events could adversely affect our operating results.*
- *Compliance with ever-evolving federal, state, and foreign laws and other requirements relating to the handling of information about individuals necessitates significant expenditure and resources, and any failure by us, our vendors or our business partners to comply may result in significant liability, negative publicity, and/or an erosion of trust, which could materially adversely affect our business, results of operations, and financial condition.*
- *If we or our third-party providers experience cyberattacks or data security incidents, there may be damage to our brand and reputation, material financial penalties, and legal liability, which would materially adversely affect our business, results of operations, and financial condition.*
- *Failure to comply with, or changes in, laws, regulations and enforcement activities may adversely affect the products, services and markets in which we operate.*
- *From time to time we are subject to various legal proceedings which could adversely affect our business, financial condition or results of operations.*
- *Damage to our reputation or brand image could adversely affect our sales and results of operations.*

- *If we do not successfully optimize and operate shipping operations or customer service operations, our business could be harmed.*
- *If we fail to effectively utilize technological advancements, including in artificial intelligence, our business and financial performance could be negatively impacted.*
- *Global conflict could negatively impact our business, results of operations, and financial condition.*
- *Product safety and quality concerns could have a material adverse impact on our revenue and profitability.*
- *We depend on our suppliers' and fulfillment partners' representations regarding product safety, content and quality, product compliance with various laws and regulations, including registration and/or reporting obligations, and for proper labeling of products.*
- *We have an evolving business model, which increases the complexity of our business.*
- *Exercising the Warrants, as defined below, is a risky investment and those who exercise their Warrants may not be able to recover the value of their investment in the common stock received upon such exercise. Warrant holders could sustain a total loss of the exercise price of any Warrants that they exercise.*
- *Investment in new business strategies, acquisitions, dispositions, partnerships, or other transactions could disrupt our ongoing business, present risks not originally contemplated and materially adversely affect our business, reputation, results of operations and financial condition.*
- *Regulatory changes or actions related to cryptocurrencies and blockchain technology could adversely affect our business, prospects and operations.*

In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this report and our Annual Report on Form 10-K for the year ended December 31, 2024, filed with the SEC on February 25, 2025 and our Quarterly Report on Form 10-Q for the quarter ended June 30, 2025, filed with the SEC on July 29, 2025, especially under the headings "Special Cautionary Note Regarding Forward-Looking Statements," "Summary of Risk Factors," "Risk Factors," "Legal Proceedings," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These factors may cause our actual results and outcomes to differ materially from those contemplated by any forward-looking statement. Although we believe that our expectations reflected in the forward-looking statements are reasonable, we cannot guarantee or offer any assurance of future results, levels of activity, performance or achievements or other future events. Our forward-looking statements contained in this report speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report or any changes in our expectations or any change in any events, conditions or circumstances on which any of our forward-looking statements are based.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

Bed Bath & Beyond, Inc.
Consolidated Balance Sheets (Unaudited)
(in thousands, except per share data)

	September 30, 2025	December 31, 2024
Assets		
Current assets:		
Cash and cash equivalents	$ 167,366	$ 159,169
Restricted cash	27,051	26,924
Accounts receivable, net of allowance for credit losses of $2,674 and $2,236	17,307	15,847
Inventories	7,213	11,546
Prepaids and other current assets	12,866	14,021
Total current assets	231,803	227,507
Property and equipment, net	14,794	23,544
Intangible assets, net	45,337	30,246
Goodwill	6,160	6,160
Equity securities, including securities measured at fair value of $31,638 and $21,640	78,625	78,186
Operating lease right-of-use assets	5,397	6,858
Other long-term assets, net, including securities measured at fair value of $25,725 and $25,799	32,260	29,453
Total assets	$ 414,376	$ 401,954
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 94,232	$ 81,939
Accrued liabilities	48,838	73,614
Unearned revenue	35,820	43,095
Operating lease liabilities, current	906	1,342
Short-term debt, net	17,994	24,871
Total current liabilities	197,790	224,861
Operating lease liabilities, non-current	5,872	6,452
Other long-term liabilities, including commitments measured at fair value of $2,766 and $0	7,774	7,909
Total liabilities	211,436	239,222
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, $0.0001 par value, authorized shares - 5,000, issued and outstanding - none	—	—
Common stock, $0.0001 par value, authorized shares - 100,000		
Issued shares - 72,471 and 59,560		
Outstanding shares - 64,984 and 53,069	7	5
Additional paid-in capital	1,183,242	1,072,869
Accumulated deficit	(804,212)	(740,466)
Treasury stock at cost - 7,487 and 6,491	(176,438)	(169,676)
Equity attributable to stockholders of Bed Bath & Beyond, Inc.	202,599	162,732
Equity attributable to noncontrolling interests	341	—
Total stockholders' equity	202,940	162,732
Total liabilities and stockholders' equity	$ 414,376	$ 401,954

See accompanying notes to unaudited consolidated financial statements.

Bed Bath & Beyond, Inc.
Consolidated Statements of Operations (Unaudited)
(in thousands, except per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Net revenue	$ 257,187	$ 311,428	$ 771,186	$ 1,091,813
Cost of goods sold	192,024	245,453	580,922	871,311
Gross profit	65,163	65,975	190,264	220,502
Operating expenses				
Sales and marketing	36,126	51,859	105,625	186,055
Technology	20,645	27,673	70,584	84,596
General and administrative	11,971	17,571	40,373	56,556
Customer service and merchant fees	8,873	12,425	27,561	41,374
Other operating expense (income), net	—	1,648	(5,790)	(8,627)
Total operating expenses	77,615	111,176	238,353	359,954
Operating loss	(12,452)	(45,201)	(48,089)	(139,452)
Interest income, net	1,186	1,554	2,837	6,580
Other income (expense), net	6,978	(17,194)	(17,780)	(44,029)
Loss before income taxes	(4,288)	(60,841)	(63,032)	(176,901)
Provision for income taxes	233	189	714	635
Consolidated net loss	(4,521)	(61,030)	(63,746)	(177,536)
Less: Net loss attributable to noncontrolling interests	—	—	—	—
Net loss attributable to stockholders of Bed Bath & Beyond, Inc.	$ (4,521)	$ (61,030)	$ (63,746)	$ (177,536)
Net loss per share of common stock:				
Basic	$ (0.07)	$ (1.33)	$ (1.11)	$ (3.88)
Diluted	$ (0.07)	$ (1.33)	$ (1.11)	$ (3.88)
Weighted average shares of common stock outstanding:				
Basic	60,333	45,771	57,190	45,700
Diluted	60,333	45,771	57,190	45,700

See accompanying notes to unaudited consolidated financial statements.

Bed Bath & Beyond, Inc.
Consolidated Statements of Comprehensive Loss (Unaudited)
(in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Consolidated net loss	$ (4,521)	$ (61,030)	$ (63,746)	$ (177,536)
Other comprehensive income				
Unrealized gain on cash flow hedges, net of expense for taxes of $0, $0, $0, and $0	—	4	—	12
Other comprehensive income	—	4	—	12
Comprehensive loss	(4,521)	(61,026)	(63,746)	(177,524)
Less: Comprehensive loss attributable to noncontrolling interests	—	—	—	—
Comprehensive loss attributable to stockholders of Bed Bath & Beyond, Inc.	$ (4,521)	$ (61,026)	$ (63,746)	$ (177,524)

See accompanying notes to unaudited consolidated financial statements.

Bed Bath & Beyond, Inc.
Consolidated Statements of Changes in Stockholders' Equity (Unaudited)
(in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Equity attributable to stockholders of Bed Bath & Beyond, Inc.				
Shares of common stock issued				
Balance at beginning of period	64,322	52,230	59,560	51,770
Common stock issued upon vesting of restricted stock	2	6	341	410
Common stock issued for ESPP purchases	47	63	138	119
Common stock sold through offerings	8,100	—	12,432	—
Balance at end of period	72,471	52,299	72,471	52,299
Shares of treasury stock				
Balance at beginning of period	6,917	6,480	6,491	6,356
Repurchases of common stock	570	—	903	—
Tax withholding upon vesting of employee stock awards	—	2	93	126
Balance at end of period	7,487	6,482	7,487	6,482
Total shares of common stock outstanding	64,984	45,817	64,984	45,817
Common stock				
Balance at beginning of period	$ 6	$ 5	$ 5	$ 5
Common stock sold through offerings	1	—	2	—
Balance at end of period	$ 7	$ 5	$ 7	$ 5
Additional paid-in capital				
Balance at beginning of period	$ 1,102,079	$ 1,018,619	$ 1,072,869	$ 1,007,649
Stock-based compensation to employees and directors	3,522	6,349	8,002	16,384
Common stock issued for ESPP purchases	174	537	683	1,472
Common stock sold through offerings, net	77,467	—	101,688	—
Balance at end of period	$ 1,183,242	$ 1,025,505	$ 1,183,242	$ 1,025,505
Accumulated deficit				
Balance at beginning of period	$ (799,691)	$ (598,177)	$ (740,466)	$ (481,671)
Net loss attributable to stockholders of Bed Bath & Beyond, Inc.	(4,521)	(61,030)	(63,746)	(177,536)
Balance at end of period	$ (804,212)	$ (659,207)	$ (804,212)	$ (659,207)
Accumulated other comprehensive loss				
Balance at beginning of period	$ —	$ (498)	$ —	$ (506)
Net other comprehensive income	—	4	—	12
Balance at end of period	$ —	$ (494)	$ —	$ (494)
Treasury stock				
Balance at beginning of period	$ (171,526)	$ (169,595)	$ (169,676)	$ (166,345)
Repurchases of common stock	(4,907)	—	(6,218)	—
Tax withholding upon vesting of employee stock awards	(5)	(21)	(544)	(3,271)
Balance at end of period	$ (176,438)	$ (169,616)	$ (176,438)	$ (169,616)
Total equity attributable to stockholders of Bed Bath & Beyond, Inc.	$ 202,599	$ 196,193	$ 202,599	$ 196,193

Continued on the following page

Bed Bath & Beyond, Inc.
Consolidated Statements of Changes in Stockholders' Equity (Unaudited)
(in thousands)

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Equity attributable to noncontrolling interests				
Balance at beginning of period	$ 337	$ —	$ —	$ —
Proceeds from security token offering, net	4	—	341	—
Net loss attributable to noncontrolling interests	—	—	—	—
Total equity attributable to noncontrolling interests	$ 341	$ —	$ 341	$ —
Total stockholders' equity	$ 202,940	$ 196,193	$ 202,940	$ 196,193

See accompanying notes to unaudited consolidated financial statements.

Bed Bath & Beyond, Inc.
Consolidated Statements of Cash Flows (Unaudited)
(in thousands)

	Nine months ended September 30,	
	2025	**2024**
Cash flows from operating activities:		
Consolidated net loss	$ (63,746)	$ (177,536)
Adjustments to reconcile consolidated net loss to net cash used in operating activities:		
Depreciation and amortization	12,803	12,739
Non-cash operating lease cost	1,461	2,155
Stock-based compensation to employees and directors	8,002	16,384
Gain on sale of intangible assets	(5,790)	(10,250)
Write-down of assets held for sale	—	1,648
Loss from equity method securities	16,644	43,405
Other non-cash adjustments	1,720	(216)
Changes in operating assets and liabilities:		
Accounts receivable, net	(1,460)	4,393
Inventories	4,333	1,982
Prepaids and other current assets	2,251	(438)
Other long-term assets, net	(493)	(1,335)
Accounts payable	12,375	(18,554)
Accrued liabilities	(26,990)	(19,372)
Unearned revenue	(7,275)	(4,648)
Operating lease liabilities	(1,016)	(2,168)
Other long-term liabilities	(3,031)	(814)
Net cash used in operating activities	(50,212)	(152,625)
Cash flows from investing activities:		
Purchase of intangible assets	(15,214)	(6,033)
Disbursement for notes receivable	(8,232)	—
Purchase of equity securities	(8,000)	—
Expenditures for property and equipment	(5,249)	(11,329)
Proceeds from the sale of intangible assets	6,250	10,250
Other investing activities, net	29	566
Net cash used in investing activities	(30,416)	(6,546)
Cash flows from financing activities:		
Proceeds from sale of common stock, net of offering costs	101,690	—
Payments on short-term debt	(7,000)	—
Repurchase of shares	(6,218)	—
Payments of taxes withheld upon vesting of employee stock awards	(544)	(3,271)
Other financing activities, net	1,024	1,190
Net cash provided by (used in) financing activities	88,952	(2,081)
Net (decrease) increase in cash, cash equivalents, and restricted cash	8,324	(161,252)
Cash, cash equivalents, and restricted cash, beginning of period	186,093	302,749
Cash, cash equivalents, and restricted cash, end of period	$ 194,417	$ 141,497

See accompanying notes to unaudited consolidated financial statements.

Bed Bath & Beyond, Inc.
Notes to Unaudited Consolidated Financial Statements

1. DESCRIPTION OF BUSINESS

Bed Bath & Beyond, Inc. is an ecommerce-focused retailer with an affinity model that owns or has ownership interests in various retail brands, offering a comprehensive array of products and services that enable its customers to enhance everyday life through quality, style, and value. The Company currently owns Bed Bath & Beyond, Overstock, buybuy BABY, and other related brands and websites as well as a blockchain asset portfolio, inclusive of tZERO, GrainChain, and other assets.

In August 2025, the Company changed its corporate name from Beyond, Inc. to Bed Bath & Beyond, Inc. and changed its ticker symbol from "BYON" to "BBBY". The Company's common stock ceased trading under the ticker symbol "BYON" at the close of market August 28, 2025, and on August 29, 2025, its common stock began trading under the ticker symbol "BBBY" on the New York Stock Exchange. The Company will not distinguish between its prior and current corporate name and will refer to its current corporate name throughout this Quarterly Report on Form 10-Q.

As used herein, "Bed Bath & Beyond," "the Company," "we," "our" and similar terms include Bed Bath & Beyond, Inc. and its controlled subsidiaries, unless the context indicates otherwise.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of presentation

The Company has prepared the accompanying unaudited consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting. Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP") have been omitted in accordance with the rules and regulations of the SEC. These financial statements should be read in conjunction with the audited annual consolidated financial statements and related notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2024. There have been no significant changes to the Company's significant accounting policies disclosed in Note 2—Accounting Policies and Supplemental Disclosures, included in Part II, Item 8, Financial Statements and Supplementary Data, of the Company's Annual Report on Form 10-K for the year ended December 31, 2024, except as disclosed below.

The accompanying unaudited consolidated financial statements include the Company's accounts and the accounts of the Company's wholly-owned subsidiaries and other subsidiaries for which the Company exercises control, and reflect all adjustments, consisting only of normal recurring adjustments, which are, in the Company's opinion, necessary for a fair presentation of results for the interim periods presented. All intercompany account balances and transactions have been eliminated in consolidation. The results of operations for the three and nine months ended September 30, 2025, are not necessarily indicative of the results to be expected for any future period or the full fiscal year, due to seasonality and other factors.

Revision of previously issued consolidated financial statements

The Company identified errors in the consolidated statements of operations related to the classification of gains on the sale of intangible assets and write-downs of assets held for sale erroneously being included in Other income (expense), net instead of in operating expenses. The Company assessed the materiality of changes to prior period consolidated financial statements to address these errors in accordance with SEC Staff Accounting Bulletin No. 99, "Materiality", (ASC Topic 250, Accounting Changes and Error Corrections). Based on this assessment, the Company concluded that these error corrections in its consolidated statements of operations were not material to any previously presented consolidated financial statements. The corrections had no material impact on the consolidated balance sheets, consolidated statements of comprehensive loss, consolidated statements of changes in stockholders' equity, or consolidated statements of cash flows, for any previously presented interim or annual consolidated financial statements.

The financial reporting periods affected by these errors include the Company's previously reported audited consolidated financial statements for the fiscal years ended December 31, 2024 and 2023, and the Company's previously reported interim unaudited consolidated financial statements for each of the periods ended June 30, 2024, September 30, 2024, March 31, 2025, and June 30, 2025. To correct the immaterial errors, the Company elected to revise its previously reported interim unaudited consolidated financial statements, starting with the period ended September 30, 2024, in this Quarterly Report on Form 10-Q. The Company expects to present the corrected annual amounts in its Annual Report on Form 10-K for the year ending December 31, 2025.

The following table presents the revisions to the consolidated statements of operations (in thousands):

	Three months ended September 30, 2024			Nine months ended September 30, 2024		
	As previously reported	Adjustment	As revised	As previously reported	Adjustment	As revised
Operating expenses:						
Other operating expense (income), net	$ —	$ 1,648	$ 1,648	$ —	$ (8,627)	$ (8,627)
Total operating expenses	109,528	1,648	111,176	368,581	(8,627)	359,954
Operating loss	(43,553)	(1,648)	(45,201)	(148,079)	8,627	(139,452)
Other income (expense), net	(18,842)	1,648	(17,194)	(35,402)	(8,627)	(44,029)
Loss before income taxes	(60,841)	—	(60,841)	(176,901)	—	(176,901)
Consolidated net loss	(61,030)	—	(61,030)	(177,536)	—	(177,536)

	Three months ended March 31, 2025		
	As previously reported	Adjustment	As revised
Operating expenses:			
Other operating expense (income), net	$ —	$ (336)	$ (336)
Total operating expenses	81,679	(336)	81,343
Operating loss	(23,547)	336	(23,211)
Other income (expense), net	(16,933)	(336)	(17,269)
Loss before income taxes	(39,718)	—	(39,718)
Consolidated net loss	(39,912)	—	(39,912)

	Three months ended June 30, 2025			Six months ended June 30, 2025		
	As previously reported	Adjustment	As revised	As previously reported	Adjustment	As revised
Operating expenses:						
Other operating expense (income), net	$ —	$ (5,454)	$ (5,454)	$ —	$ (5,790)	$ (5,790)
Total operating expenses	84,849	(5,454)	79,395	166,528	(5,790)	160,738
Operating loss	(17,880)	5,454	(12,426)	(41,427)	5,790	(35,637)
Other income (expense), net	(2,035)	(5,454)	(7,489)	(18,968)	(5,790)	(24,758)
Loss before income taxes	(19,026)	—	(19,026)	(58,744)	—	(58,744)
Consolidated net loss	(19,313)	—	(19,313)	(59,225)	—	(59,225)

Use of estimates

The preparation of financial statements in conformity with GAAP requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent liabilities in the Company's consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, receivables valuation, revenue recognition, loyalty program reward point and gift card breakage, sales returns, inventory valuation, asset useful lives, equity and debt securities valuation, income taxes, stock-based compensation, performance-based compensation, self-funded health insurance liabilities, and contingencies. Although these estimates are based on the Company's best knowledge of current events and actions that the Company may undertake in the future, the accounting of these estimates may change from period to period. To the extent there are differences between these estimates and actual results, the Company's consolidated financial statements may be materially affected.

Noncontrolling interests

In April 2025, the Company's controlled subsidiary, Commercial Strategies, Inc. ("Commercial Strategies"), launched a crowdfunding offering (the "token offering") of the right to acquire a tokenized digital security linked to Overstock intellectual property and eligible for future dividends, if any, from the licensing revenue that Commercial Strategies earns from the Overstock intellectual property. The token offering closed on May 16, 2025, and Commercial Strategies issued the tokenized digital security in the form of Series A Preferred Stock. The holders of the preferred shares will be entitled to receive, out of funds and assets legally available for such purpose, an annual dividend that is derived from the royalty fee paid by Bed Bath & Beyond, Inc. to Commercial Strategies for licensing of the Overstock intellectual property. The holders of the preferred stock have no voting rights. At September 30, 2025, cumulative proceeds from the token offering totaled $467,000, have been classified as a component of noncontrolling interest within the consolidated financial statements. As of September 30, 2025, Commercial Strategies has incurred $305,000 of offering costs associated with the token offering that are classified as a reduction in proceeds within noncontrolling interest within the consolidated financial statements.

In May 2025, the Company's controlled subsidiary, Zion Peaks, Inc. ("Zion Peaks"), launched a crowdfunding offering (the "token offering") of the right to acquire a tokenized digital security linked to buybuy BABY intellectual property and eligible for future dividends, if any, from the licensing revenue that Zion Peaks earns from the buybuy BABY intellectual property. The token offering closed on August 11, 2025, and Zion Peaks issued the tokenized digital security in the form of Series A Preferred Stock. The holders of the preferred shares will be entitled to receive, out of funds and assets legally available for such purpose, an annual dividend that is derived from the royalty fee paid by Bed Bath & Beyond, Inc. to Zion Peaks for licensing of the buybuy BABY intellectual property. The holders of the preferred stock have no voting rights. At September 30, 2025, cumulative proceeds from the token offering totaled $396,000, have been classified as a component of noncontrolling interest within the consolidated financial statements. As of September 30, 2025, Zion Peaks has incurred $217,000 of offering costs associated with the token offering that are classified as a reduction in proceeds within noncontrolling interest within the consolidated financial statements.

Debt securities carried at fair value

On May 7, 2025, the Company entered into an Amended and Restated Term Loan Credit Agreement (the "Amended and Restated Credit Agreement"), which amended and restated the secured Term Loan Credit Agreement ("Existing Credit Agreement") entered on October 21, 2024 and pursuant to which the Company provided The Brand House Collective, Inc. (formerly known as Kirkland's Inc.) ("The Brand House Collective") with an additional term loan in an approximate aggregate original principal amount of $5.2 million (the "Additional Term Loan") and obligations arising under the Existing Credit Agreement in the aggregate amount of $8.5 million were rolled into the Amended and Restated Credit Agreement as obligations thereunder. On September 15, 2025, the Company entered into Amendment No. 1 to the Amended and Restated Credit Agreement (such amendment, the "Credit Agreement Amendment" and the Existing Credit Agreement as amended by the Credit Agreement Amendment, the "Amended Credit Agreement". Pursuant to the terms of the Amended Credit Agreement, new delayed-draw term loan commitments in an aggregate original principal amount of $20.0 million (the "Delayed Draw Term Loan Commitments") were established. The Amended Credit Agreement provides the Company the right to convert the outstanding loans (including loans extended in satisfaction of the Delayed Draw Term Loan Commitments) owing under the Amended and Restated Credit Agreement into shares of The Brand House Collective's common stock at a price equal to the closing price on the Nasdaq Stock Market LLC ("Nasdaq") on the day prior to the date on which a conversion election is made, up to a number of shares equal to 19.90% of the outstanding shares of The Brand House Collective's common stock on the date the Amended Credit Agreement was entered into, and up to a greater number of shares subject to Nasdaq shareholder approval rules. Bed Bath & Beyond is restricted from holding greater than 75% of outstanding The Brand House Collective's issued shares for so long as any obligations remain outstanding under The Brand House Collective's credit agreement with its senior lender, Bank of America, N.A.

As a result of the Amended Credit Agreement, the Company remeasured the $8.5 million term loan and recorded an unrealized loss of $406,000 during the nine months ended September 30, 2025, which is recorded in Other income (expense), net in the consolidated statements of operations.

Recently issued accounting standards

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures,* which requires public entities to disclose disaggregated information about a reporting entity's effective tax rate reconciliation as well as additional information on income taxes paid. For public entities, ASU 2023-09 is required to be adopted for annual periods beginning after December 15, 2024, with early adoption permitted. This ASU will result in the Company including the additional required disclosures when adopted and does not otherwise have a material impact on the Company's consolidated financial statements.

In November 2024, the FASB issued ASU 2024-03, *Income Statement—Reporting Comprehensive Income—Expense Disaggregation Disclosures (Subtopic 220-40)*, which requires public entities to disclose disaggregated information about certain income statement line items in the notes to the financial statements. For public entities, ASU 2024-03 is required to be adopted for annual periods beginning after December 15, 2026, and for interim periods beginning after December 15, 2027, with early adoption permitted. This ASU will result in the Company including the additional required disclosures when adopted and does not otherwise have a material impact on the Company's consolidated financial statements.

In September 2025, the FASB issued ASU 2025-06, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40), Targeted Improvements to the Accounting for Internal-Use Software,* which clarified and modernizes the accounting for costs related to internal-use software. The amendments in ASU 2025-06 remove all references to project stages throughout Subtopic 350-40 and clarify the threshold entities apply to begin capitalizing costs. ASU 2025-06 is effective for all entities for annual reporting periods beginning after December 15, 2027, and interim reporting periods within those annual reporting periods, with early adoption permitted. This ASU will result in the Company adopting the new threshold to apply to begin capitalizing costs and does not otherwise have a material impact on the Company's consolidated financial statements.

3. FAIR VALUE MEASUREMENT

The following tables summarize the Company's assets and liabilities measured at fair value on a recurring basis using the following levels of inputs (in thousands):

	Fair Value Measurements at September 30, 2025			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents—Money market funds	$ 22,492	$ 22,492	$ —	$ —
Equity securities, at fair value	31,638	14,563	—	17,075
Available-for-sale debt securities (1)	13,989	—	—	13,989
Debt securities, at fair value (1)	11,736	—	—	11,736
Total assets	$ 79,855	$ 37,055	$ —	$ 42,800
Liabilities:				
Loan commitments, at fair value (2)	$ 2,766	$ —	$ —	$ 2,766
Total liabilities	$ 2,766	$ —	$ —	$ 2,766

	Fair Value Measurements at December 31, 2024			
	Total	**Level 1**	**Level 2**	**Level 3**
Assets:				
Cash equivalents—Money market funds	$ 21,799	$ 21,799	$ —	$ —
Equity securities, at fair value	21,640	—	—	21,640
Available-for-sale debt securities (1)	10,985	—	—	10,985
Debt securities, at fair value (1)	14,814	—	—	14,814
Total assets	$ 69,238	$ 21,799	$ —	$ 47,439

(1) Included in Other long-term assets, net in the consolidated balance sheets.
(2) Included in Other long-term liabilities in the consolidated balance sheets.

The following table provides activity for the Company's Level 3 investments (in thousands):

	Amount
Level 3 investments at December 31, 2023	$ 51,530
Increase due to purchases of Level 3 investments	17,000
Decrease in fair value of Level 3 investments	(21,836)
Accrued interest on Level 3 investments	745
Level 3 investments at December 31, 2024	47,439
Increase due to purchases of Level 3 investments	9,804
Transfers out of Level 3 investments	(7,510)
Decrease in fair value of Level 3 investments	(6,842)
Accrued interest, net on Level 3 investments	(91)
Level 3 investments at September 30, 2025	$ 42,800

The following table provides activity for the Company's Level 3 liabilities (in thousands):

	Amount
Level 3 liabilities at December 31, 2024	$ —
Fair value of Level 3 liabilities assumed	2,766
Level 3 liabilities at September 30, 2025	$ 2,766

4. PROPERTY AND EQUIPMENT, NET

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

	September 30, 2025	December 31, 2024
Computer hardware and software, including internal-use software and website development	$ 184,948	$ 202,005
Furniture and equipment	1,456	4,098
Leasehold improvements	1,158	1,466
	187,562	207,569
Less: accumulated depreciation	(172,768)	(184,025)
Total property and equipment, net	$ 14,794	$ 23,544

Capitalized costs associated with internal-use software and website development, both developed internally and acquired externally, and depreciation of costs for the same periods associated with internal-use software and website development consist of the following (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Capitalized internal-use software and website development	$ 1,797	$ 3,505	$ 4,744	$ 11,465
Depreciation of internal-use software and website development	2,682	2,362	8,841	6,378

Depreciation expense is classified within the corresponding operating expense categories on the consolidated statements of operations as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Cost of goods sold	$ 1	$ 104	$ 90	$ 300
Technology	3,607	3,908	11,857	11,355
General and administrative	73	95	240	306
Total depreciation	$ 3,681	$ 4,107	$ 12,187	$ 11,961

5. INTANGIBLE ASSETS, NET

On January 30, 2025, the Company entered into an Asset Purchase Agreement with BBBY Acquisition Co., LLC ("BBBY") to acquire certain intellectual property related to the buybuy BABY brand and closed the transaction on February 21, 2025. The Company acquired BBBY's rights in the buybuy BABY brand, assets, information and content related to the associated buybuy BABY website, including trademarks, domain names, data, information, content, and select contractual rights, and goodwill associated with the brand for a total purchase price of $5.0 million which was paid at closing, and the assumption of certain contractual liabilities described therein. The aggregate purchase price, inclusive of contractual liabilities assumed and direct acquisition-related expenses, totaled $7.1 million which has been allocated to trade names, with an indefinite useful life.

On March 17, 2025, the Company entered into an Intellectual Property Asset Purchase Agreement with Lyons Trading Company, the operator of Proozy.com, to sell its rights in the Zulily brand for a total sales price of $5.0 million while retaining a 25% ownership stake in the brand in the form of a newly created entity ("Zulily Newco"). In connection with this transaction, the Company received $1.25 million upfront and will receive the remaining $3.75 million in quarterly installments commencing on April 30, 2026, over the course of five years, which is recorded as a long-term receivable and included in Other long-term assets, net in the consolidated balance sheets. The Company also recognized $1.57 million, which represents its 25% ownership stake in Zulily Newco, and is included in Equity securities in the consolidated balance sheets.

On June 30, 2025, the Company entered into a Trademark and Domain Name Agreement with a large, well-established Canadian retailer to sell certain intellectual property related to the Bed Bath & Beyond trademarks in Canada and the United Kingdom, which was acquired as part of its purchase of the Bed Bath & Beyond brand in June 2023, for a total sales price of $5.0 million, and revenue share payments to be paid to the Company in perpetuity. In July 2025, the Company received the $5.0 million cash proceeds. For the nine months ended September 30, 2025, the Company recognized the entire $5.0 million as a gain on the sale which is included in Other operating expense (income), net in the consolidated statements of operations.

On May 7, 2025, the Company entered into an Asset Purchase Agreement and on September 15, 2025, entered into an Amendment No. 1 to the Asset Purchase Agreement with The Brand House Collective to acquire certain trademarks and domain names comprised of or containing the element KIRKLAND'S (the "Kirkland's Brand") and certain related marks and brand assets for a total purchase price of $10.0 million. Concurrently, on September 15, 2025, the Company entered into an amendment to the existing trademark license agreement with The Brand House Collective, pursuant to which the Company agreed to license the Kirkland's Brand to The Brand House Collective for use in connection with certain goods and services. The total purchase price was paid at closing on September 15, 2025 concurrently with the assignment of the Kirkland's Brand to the Company. In connection with this transaction, the Company also transferred to The Brand House Collective noncash consideration in the form of Delayed Draw Term Loan Commitments valued at $2.8 million, which has also been included in the acquisition cost. See Note 9—Commitments and Contingencies, for further discussion of the agreement. The aggregate purchase consideration, inclusive of direct acquisition-related costs, totaled $12.9 million which has been allocated to trade names, with an indefinite useful life.

Intangible assets, net consist of the following (in thousands):

	September 30, 2025	December 31, 2024
Intangible assets subject to amortization, gross (1)	$ 5,645	$ 6,239
Less: accumulated amortization of intangible assets	(3,616)	(3,145)
Intangible assets subject to amortization, net	2,029	3,094
Intangible assets not subject to amortization	43,308	27,152
Total intangible assets, net	$ 45,337	$ 30,246

(1) At September 30, 2025, the weighted average remaining useful life for intangible assets subject to amortization, gross was 2.5 years.

6. EQUITY SECURITIES

Equity securities consist of the following (in thousands):

	September 30, 2025	December 31, 2024
Equity securities accounted for under the equity method under ASC 323	$ 46,987	$ 56,546
Equity securities accounted for under the equity method under the fair value option	31,638	21,640
Total equity securities	$ 78,625	$ 78,186

The Company's equity securities accounted for under the equity method under ASC 323 include equity securities in which the Company can exercise significant influence, but not control, over these entities through holding more than a 20% voting interest in the entity. During the nine months ended September 30, 2025, after stockholder approval was obtained from The Brand House Collective's stockholders, the Company funded the additional $8.0 million investment in The Brand House Collective in exchange for The Brand House Collective's common stock and converted the $8.5 million convertible promissory note (plus accrued interest) into shares of The Brand House Collective's common stock. After all transactions, the Company owns approximately 40% of The Brand House Collective's outstanding shares of common stock. In addition, as part of the sale of the Company's rights in the Zulily brand, the Company retained a 25% ownership stake in the brand in the form of a newly created entity, Zulily Newco. See Note 5—Intangible Assets, net, for further information.

In August 2025, the members of SpeedRoute, LLC, a privately-held entity in which the Company held a minority interest, filed dissolution documents to wind down and dissolve SpeedRoute, LLC. There was no gain or loss recorded on dissolution.

The following table includes the Company's equity securities accounted for under the equity method and related ownership interest as of September 30, 2025:

	Ownership interest
Medici Ventures, L.P.	99%
tZERO Group, Inc.	28%
The Brand House Collective, Inc.	40%
Zulily Newco	25%

The carrying amount of the Company's equity method securities was $78.6 million at September 30, 2025, which is included in Equity securities on the consolidated balance sheets, of which $31.6 million was valued under the fair value option (tZERO, The Brand House Collective, and Zulily Newco). Equity securities in The Brand House Collective are carried at fair value based on Level 1 inputs. The aggregate fair value of the equity securities in The Brand House Collective at September 30, 2025, was $14.6 million. For the equity method investments, there was no difference in the carrying amount of the assets and liabilities and the maximum exposure to loss, and there was no difference between the carrying amount of the investment in Medici Ventures, L.P., and the amount of underlying equity the Company has in the entity's net assets.

The following table summarizes the net loss recognized on equity method securities recorded in Other income (expense), net in the consolidated statements of operations (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Net loss recognized on our proportionate share of the net assets of our equity method securities	$ (565)	$ (6,371)	$ (9,559)	$ (23,859)
Increase (decrease) in fair value of equity method securities held under fair value option	7,570	(10,828)	(7,085)	(19,546)

Regulation S-X Rule 10-01(b)(1)

In accordance with Rule 10-01(b)(1) of Regulation S-X, which applies to interim reports on Form 10-Q, the Company must determine if its equity method investees are considered "significant subsidiaries". Summarized income statement information of an equity method investee is required in an interim report if the significance criteria are met as defined under SEC guidance. For the periods ended September 30, 2025 and 2024, none of the Company's equity method investees met the significance criteria.

7. BORROWINGS

In October 2024, the Company entered into a Loan and Security Agreement (the "Loan Agreement") with BMO Bank N.A. (in such capacity, "BMO"), pursuant to which BMO agrees to lend the Company up to $25.0 million on a one-year revolving line of credit to aid the Company in securing strategic ventures. In connection with the Loan Agreement, BMO issued a revolving line of credit promissory note (the "Revolving Note") and granted a lien on the cash collateral account specified in the Loan Agreement (the "Cash Collateral Account"). The revolving line of credit bears interest on the unpaid principal balance at an annual rate equal to the Secured Overnight Financing Rate, or SOFR rate, for a one-month interest period plus 1.00%, established by the Federal Reserve Bank of New York. The Company is obligated to pay certain commitment fees on undrawn amounts under the Loan Agreement in amounts specified in the Loan Agreement. The Loan Agreement and Revolving Note was originally scheduled to terminate on October 18, 2025, and loans thereunder may be borrowed, repaid, and reborrowed up to such date. In September 2025, the Company and BMO extended the term of the Loan Agreement and Revolving Note for an additional year, which will now terminate in October 2026.

As of September 30, 2025, the Company had $7.0 million of outstanding standby letter of credits under the Revolving Note. As of September 30, 2025, the outstanding balance on the line of credit was $18.0 million, net of $6,000 of capitalized debt issuance costs. The total outstanding debt on the line of credit is included in Short-term debt, net on the consolidated balance sheets.

The Loan Agreement is subject to limited affirmative covenants and negative covenants, including the requirement that the Company maintain cash in the Cash Collateral Account in an amount that is three percent greater than BMO's aggregate commitments under the Loan Agreement. The Company is in compliance with its debt covenants and continues to monitor ongoing compliance with the debt covenants.

8. LEASES

The Company has operating leases for office space and a data center. The Company's leases have remaining lease terms of two years to eight years, some of which may include options to extend the leases perpetually, and some of which may include options to terminate the leases within one year. Variable lease costs include executory costs, such as taxes, insurance, and maintenance.

The components of lease expenses were as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Operating lease cost	$ 323	$ 963	$ 1,756	$ 2,522
Variable lease cost	234	253	851	684

The following table provides a summary of other information related to leases (in thousands):

	Nine months ended September 30,	
	2025	2024
Cash payments included in operating cash flows from lease arrangements	$ 1,313	$ 2,628

The following table provides supplemental balance sheet information related to leases:

	September 30, 2025	December 31, 2024
Weighted-average remaining lease term—operating leases	6.97 years	6.65 years
Weighted-average discount rate—operating leases	7 %	6 %

Maturity of lease liabilities under non-cancellable operating leases as of September 30, 2025, are as follows (in thousands):

Payments due by period	Amount
2025 (Remainder)	$ 314
2026	1,285
2027	1,150
2028	1,099
2029	1,132
Thereafter	3,497
Total lease payments	8,477
Less interest	1,699
Present value of lease liabilities	$ 6,778

9. COMMITMENTS AND CONTINGENCIES

Legal proceedings and contingencies

From time to time, the Company is involved in litigation concerning consumer protection, employment, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of the business and the sale of products on the Company's websites. In connection with such litigation, the Company has been in the past and may be in the future subject to judgments requiring the Company to pay significant damages or associated costs. In some instances, other parties may have contractual indemnification obligations to the Company. However, such contractual obligations may prove unenforceable or non-collectible, and if the Company cannot enforce or collect on indemnification obligations, the Company may bear the full responsibility for damages, fees, and costs resulting from such litigation. As a result of such litigation, the Company may also be subject to penalties and equitable remedies that could force the Company to alter important business practices. Such litigation could be costly and time consuming and could divert or distract the Company's management and key personnel from the business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect the Company's business, results of operations, financial position, or cash flows.

The Company establishes liabilities when a particular contingency is probable and estimable which are included in Accrued liabilities on the consolidated balance sheets. At September 30, 2025 and December 31, 2024, the Company's established liabilities were not material.

Delayed Draw Term Loan Commitments

In September 2025, pursuant to the terms of the Amended Credit Agreement, the Company extended delayed-draw term loan commitments (the "Delayed Draw Term Loan Commitments") in the aggregate original principal amount of $20.0 million to The Brand House Collective, Inc. Any loans extended pursuant to the Delayed Draw Term Loan Commitments are convertible by the Company into equity of The Brand House Collective, on the terms set forth in, and subject to further conditions specified in the Amended Credit Agreement. The Delayed Draw Term Loan Commitments require the Company to originate a loan at a floating interest rate plus an agreed margin upon request from the borrower, so long as the conditions specified in the Amended Credit Agreement with respect to the origination of such loan are satisfied.

The Delayed Draw Term Loan Commitments had a notional amount of $20.0 million outstanding at September 30, 2025 and zero at September 30, 2024, respectively. As of September 30, 2025, no amount has been drawn under the Delayed Draw Term Loan Commitments. We have elected to record the Delayed Draw Term Loan Commitments at fair value. The fair value of the Delayed Draw Term Loan Commitments is a net liability of $2.8 million at September 30, 2025 and zero at September 30, 2024, respectively, and is included in the Other long-term liabilities line of our consolidated balance sheets.

10. INDEMNIFICATIONS AND GUARANTEES

During the normal course of business, the Company has made certain indemnities, commitments, and guarantees under which the Company may be required to make payments in relation to certain transactions. These indemnities include, but are not limited to, indemnities to various lessors in connection with facility leases for certain claims arising from such facility or lease, the environmental indemnity the Company entered into in favor of the lenders under its prior loan agreements, customary indemnification arrangements in underwriting agreements and similar agreements, and indemnities to its directors and officers to the maximum extent permitted under the laws of the State of Delaware. The duration of these indemnities, commitments, and guarantees varies, and in certain cases, is indefinite. In addition, the majority of these indemnities, commitments, and guarantees do not provide for any limitation of the maximum potential future payments the Company could be obligated to make. As such, the Company is unable to estimate with any reasonableness its potential exposure under these items. The Company has not recorded any liability for these indemnities, commitments, and guarantees in the accompanying consolidated balance sheets. The Company does, however, accrue losses for any known contingent liability, including those that may arise from indemnification provisions, when future payment is both probable and reasonably estimable.

11. STOCKHOLDERS' EQUITY

Common Stock

Each share of common stock has the right to one vote. The holders of common stock are also entitled to receive dividends declared by the Board of Directors out of funds legally available, subject to prior rights of holders of all classes of stock outstanding having priority rights as to dividends.

JonesTrading Sales Agreement

The Company entered into a Capital on Demand™ Sales Agreement (the "Sales Agreement") dated June 10, 2024 with JonesTrading Institutional Services LLC ("JonesTrading"), under which the Company has conducted and may in the future conduct "at the market" public offerings of its common stock. Under the Sales Agreement, JonesTrading, acting as the Company's sales agent or principal, may offer the Company's common stock in the market on a daily basis or otherwise as the Company requests from time to time. The Company has no obligation to sell shares under the Sales Agreement, but it may do so from time to time. For the nine months ended September 30, 2025, the Company sold 12,432,021 shares of its common stock pursuant to the Sales Agreement and has recognized $101.7 million in proceeds, net of $2.1 million of offering costs, including commissions paid to JonesTrading. As of September 30, 2025, the Company had $52.4 million remaining available under its "at the market" sales program.

Stock Repurchase Program

During the three months ended September 30, 2025, the Company repurchased $4.9 million of its common stock under its stock repurchase program at an average price of $8.59 per share. During the nine months ended September 30, 2025, the Company repurchased $6.2 million of its common stock under its stock repurchase program at an average price of $6.87 per share. During the three and nine months ended September 30, 2024, the Company did not repurchase any shares of its common stock under its stock repurchase program. As of September 30, 2025, the Company had $63.7 million available for future share repurchases under its current repurchase authorization through December 31, 2025.

12. STOCK-BASED AWARDS

The Company has equity incentive and compensatory plans that provide for the grant of stock-based awards, including restricted stock and performance shares to employees and board members, and provide employees the ability to purchase shares of its common stock through an employee stock purchase plan. Employee accounting applies to equity incentives and compensation granted by the Company to its own employees. When an award is forfeited prior to the vesting date, the Company recognizes an adjustment for the previously recognized expense in the period of the forfeiture.

Stock-based compensation expense is classified within the corresponding operating expense categories on the consolidated statements of operations as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Cost of goods sold	$ 2	$ 3	$ 4	$ 6
Sales and marketing	112	414	257	909
Technology	690	1,801	1,409	5,809
General and administrative	2,718	4,131	6,332	9,660
Total stock-based compensation	$ 3,522	$ 6,349	$ 8,002	$ 16,384

Bed Bath & Beyond restricted stock unit awards

The Company's Amended and Restated 2005 Equity Incentive Plan provides for the grant of restricted stock units and other types of equity awards to employees and directors of the Company. The Compensation Committee of the Board of Directors approves grants of restricted stock unit awards to the Company's officers, board members, and employees. These restricted stock unit awards generally vest over three years at 33.3% at the end of the first year, 33.3% at the end of the second year and 33.4% at the end of the third year, subject to the recipient's continuing service to us. In addition to the Company's

traditional equity awards, in fiscal year 2024, the Company changed its vesting schedule for restricted stock units from three years to four years for all restricted stock units granted to employees. These restricted stock unit awards will vest at 25% each year. In the first quarter of fiscal year 2025, the Company adjusted back to the prior vesting schedule of a three-year vesting schedule.

The cost of restricted stock units is determined using the fair value of the Company's common stock on the date of the grant and compensation expense is either recognized on a straight-line basis over the vesting schedule or on an accelerated schedule when vesting of restricted stock awards exceeds a straight-line basis. The cumulative amount of compensation expense recognized at any point in time is at least equal to the portion of the grant date fair value of the award that is vested at that date.

Performance Shares

During the nine months ended September 30, 2025, the Company granted 803,953 performance-based shares ("PSUs") to its executive management team under the 2025 performance share award agreement. Each grant of PSUs is eligible to vest based on achieving three performance metrics, with 50% of the target number of PSUs multiplied by the Adjusted EBITDA Performance Multiplier, 25% of the target number of PSUs multiplied by the Gross Margin Performance Multiplier, and 25% of the target number of PSUs multiplied by the Contribution Margin Performance Multiplier, with the potential weighted average maximum payout of 135% of the "Target" number of PSUs. To the extent any of the PSUs become earned based on the Company's achievement of the three aforementioned performance metrics, such earned PSUs will vest as to one-third of the earned PSUs on each of the first, second, and third anniversaries of the grant date, subject to the recipient's continued service through the vesting date. To be eligible to vest in any tranche of the PSUs, the Company must meet the threshold performance metrics established for the performance period. Expense is recognized as compensation cost based on the fair value on the date of grant over the performance period, taking into account the probability that the Company will satisfy the performance goals.

Stock-based compensation related to the PSUs is included in the stock-based compensation expense table above combined with the expense associated with the Company's restricted stock units, performance share options, and employee stock purchase plan. Stock-based compensation related to the PSUs was $1.0 million and $2.4 million for the three months ended September 30, 2025 and 2024, respectively, and a credit of $363,000 due to staff related reductions and $5.7 million, for the nine months ended September 30, 2025 and 2024, respectively.

Performance Share Options

Stock-based compensation related to the Performance Share Option is included in stock-based compensation expense table above combined with the expense associated with the Company's restricted stock units, PSUs, and employee stock purchase plan. Stock-based compensation related to the performance share options was $734,000 and $1.0 million for the three months ended September 30, 2025 and 2024, respectively, and $2.5 million and $1.4 million for the nine months ended September 30, 2025 and 2024, respectively.

The following table summarizes restricted stock unit, performance-based share units, and Performance Share Option award activity (in thousands, except per share data):

	Nine months ended September 30, 2025	
	Units	Weighted Average Grant Date Fair Value
Outstanding—beginning of year	3,564	$ 20.98
Granted at fair value	2,581	6.29
Vested	(341)	24.55
Forfeited	(755)	14.59
Outstanding—end of period	5,049	$ 6.33

Employee Stock Purchase Plan

Purchases under the 2021 Employee Stock Purchase Plan (the "ESPP") during the nine months ended September 30, 2025 and 2024 were 137,966 shares and 119,425 shares, respectively, at an average purchase price per share of $5.32 and $12.23, respectively. At September 30, 2025, approximately 2.5 million shares of common stock remained available under the ESPP.

Stock-based compensation related to the ESPP is included in the stock-based compensation expense table above combined with the expense associated with the Company's restricted stock units, PSUs, and performance share options. Stock-based compensation related to the ESPP was $154,000 and $271,000 for the three months ended September 30, 2025 and 2024, respectively, and $550,000 and $922,000 for the nine months ended September 30, 2025 and 2024, respectively.

13. REVENUE AND CONTRACT LIABILITY

Unearned Revenue

The following table provides information about unearned revenue from contracts with customers, including significant changes in unearned revenue balances during the periods presented (in thousands):

	Amount
Unearned revenue at December 31, 2023	$ 49,597
Increase due to deferral of revenue at period end, net	32,802
Decrease due to beginning contract liabilities recognized as revenue	(39,304)
Unearned revenue at December 31, 2024	43,095
Increase due to deferral of revenue at period end, net	25,415
Decrease due to beginning contract liabilities recognized as revenue	(32,690)
Unearned revenue at September 30, 2025	$ 35,820

The Company's total unearned revenue related to outstanding loyalty program rewards was $4.9 million and $11.1 million at September 30, 2025 and December 31, 2024, respectively. Breakage income related to loyalty program rewards and gift cards is recognized in Net revenue in the consolidated statements of operations. Breakage included in revenue was $2.0 million and $1.1 million for the three months ended September 30, 2025 and 2024, respectively, and $9.7 million and $4.5 million for the nine months ended September 30, 2025 and 2024, respectively. The timing of revenue recognition of these reward dollars is driven by actual customer activities, such as redemptions and expirations. At September 30, 2025 and December 31, 2024, the Company had an additional $0 and $4.6 million, respectively, of unearned contract revenue classified within Other long-term liabilities on the consolidated balance sheets.

Sales returns allowance

The following table provides additions to and deductions from the sales returns allowance, which is included in the Accrued liabilities balance in the consolidated balance sheets (in thousands):

	Amount
Allowance for returns at December 31, 2023	$ 8,651
Additions to the allowance	105,353
Deductions from the allowance	(104,478)
Allowance for returns at December 31, 2024	9,526
Additions to the allowance	67,891
Deductions from the allowance	(70,316)
Allowance for returns at September 30, 2025	$ 7,101

14. NET LOSS PER SHARE

The following table sets forth the computation of basic and diluted net loss per common share for the periods indicated (in thousands, except per share data):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Numerator:				
Net loss attributable to stockholders of Bed Bath & Beyond, Inc.	$ (4,521)	$ (61,030)	$ (63,746)	$ (177,536)
Denominator:				
Weighted average shares of common stock outstanding—basic	60,333	45,771	57,190	45,700
Weighted average shares of common stock outstanding—diluted	60,333	45,771	57,190	45,700
Net loss per share of common stock:				
Basic	$ (0.07)	$ (1.33)	$ (1.11)	$ (3.88)
Diluted	$ (0.07)	$ (1.33)	$ (1.11)	$ (3.88)

The following shares were excluded from the calculation of diluted shares outstanding as their effect would have been anti-dilutive (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Restricted stock units, PSUs, and Performance Share Option	2,601	3,980	2,601	3,980
Employee Stock Purchase Plan	273	31	273	31

15. BUSINESS SEGMENTS

Segment Operations: The Company currently has one reportable segment, which is its Retail business. The reportable segment is comprised of the Company's Overstock.com operating segment and its Bed Bath & Beyond operating segment, which are aggregated into a single reportable Retail segment due to their similar economic characteristics and business activities. The Bed Bath & Beyond operating segment includes results from its buybuy BABY brand, which are not material to the business. The reporting segment primarily derives revenues from e-commerce sales of home furnishing merchandise through the Company's suite of websites and mobile apps.

The accounting policies of the Retail segment are the same as those described in the summary of significant accounting policies. The Chief Operating Decision Maker (CODM), who is the Company's Principal Executive Officer, makes resource allocation decisions based on reports that focus predominantly on Net Revenues, Gross Profit, Sales and Marketing as a percentage of Gross Profit, Technology, and General & Administrative expenses as a percentage of Gross Profit, as well as Operating Income (Loss) measured under GAAP, as reported on the Consolidated Statement of Operations. The CODM also receives the Consolidated Cash and Cash Equivalents balance as a measure of liquidity as reported on the Consolidated Balance Sheet. The CODM uses Operating Income (Loss) to evaluate income generated from segment resources in deciding whether to reinvest profits into the retail segment or into other parts of the entity, such as to make acquisitions or investments. The CODM also uses Operating Income (Loss) to monitor budget versus actual results. The monitoring of budgeted versus actual results is used in assessing performance of the segment and in establishing bonus metrics.

Cost of Goods Sold, Sales & Marketing, Technology, General & Administrative, and Customer Service and Merchant Fees, as reported on the Consolidated Statement of Operations, are significant expenses evaluated by the Company's CODM. The measure of segments assets is reported on the Consolidated Balance Sheet as Cash and Cash Equivalents.

16. SUBSEQUENT EVENTS

On September 22, 2025, the Company announced that its Board of Directors had declared a warrant dividend distribution (the "Warrant Distribution") to the record holders of the Company's common stock (the "Common Stock"), in the form of warrants to purchase common stock (the "Warrants"). Holders of Common Stock at the close of business on October 2, 2025 (the "Record Date") received one warrant for each ten shares of Common Stock then owned, rounded down to the nearest whole number. The Warrants were distributed on the terms and conditions described in the Warrant Agreement, dated as of October 7, 2025, between the Company, Computershare, Inc., a Delaware corporation, and its affiliate, Computershare Trust Company, N.A., as Warrant Agent. The Warrants have an exercise price of $15.50, which may be exercised for cash only, and will expire on October 7, 2026, unless the Early Expiration Price Condition (defined herein) is met. The "Early Expiration Price Condition" is met if the Company's common stock equals or exceeds $18.60 for at least 20 trading days out of a 30-day trading day period (the "Early Expiration Price Condition Date"), at which point the Company has the right but, not the obligation, to accelerate the expiration date of the Warrants to the business day immediately following the Early Expiration Price Condition Date (the "Early Expiration Date"). If the Early Expiration Price Condition occurs, the Company will make a public announcement to that effect by issuing a press release (the "Early Expiration Price Condition Notice") as promptly as practical after market close on the Early Expiration Price Condition Date setting forth the Early Expiration Date or an Alternative Expiration Date as set forth below. The Company may, in its sole discretion, elect to set the Early Expiration Date on a date falling after the business day immediately following the Early Expiration Price Condition Date (such date, an "Alternate Expiration Date"). Any such Alternate Expiration Date shall be specified in the Early Expiration Price Condition Notice. The Warrants are exercisable beginning as of the date a Registration Statement on Form S-3 registering the shares that are issuable upon exercise of the Warrants has been declared effective by the SEC, and may be exercised at any time through the Expiration Date. Holders of Warrants do not have any rights as a stockholder with respect to the shares of common stock issuable upon exercise of the Warrants prior to the time such Warrants are validly exercised, and the exercise price is paid. For additional details regarding the Warrant Distribution offering, see the Company's Registration Statement on Form S-3 (File No. 333-290763) filed with the SEC on October 8, 2025. The Company is still finalizing the accounting treatment for the Warrants.

On October 1, 2025, the U.S. government shut down and certain regulatory agencies, such as the SEC, have had to furlough critical government employees and stop critical activities. If a prolonged government shutdown occurs, it could impact the Company's ability to access the public markets and obtain necessary capital in order to properly fund its operations.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion provides information that we believe to be relevant to an understanding of our unaudited consolidated financial condition and results of operations. The statements in this section regarding industry outlook, our expectations regarding the performance of our business and any other non-historical statements are forward-looking statements. Our actual results and outcomes may differ materially from those contained in or implied by any forward-looking statements contained herein. These forward-looking statements are subject to numerous risks, uncertainties, and other important factors, including, but not limited to, those described in "Special Cautionary Note Regarding Forward Looking Statements" and in Part II, Item 1A, "Risk Factors" included in this Quarterly Report on Form 10-Q. You should read the following discussion together with our unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and with the sections entitled "Special Cautionary Note Regarding Forward-Looking Statements," Part I, Item 1A, "Risk Factors," and our consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended December 31, 2024, filed with the SEC on February 25, 2025.

Overview

Bed Bath & Beyond, Inc. is an ecommerce-focused retailer with an affinity model that owns or has ownership interests in various retail brands, offering a comprehensive array of products and services that enable its customers to enhance everyday life through quality, style, and value. In addition, it also offers an increasing number of add-on services across our platforms, including warranties, shipping insurance, and installation services. We will be reimagining our loyalty offering through the reintroduction of Welcome Rewards+ to our Bed Bath & Beyond customers and bringing back the successful Club O loyalty program to our Overstock customers. We currently own Bed Bath & Beyond, Overstock, and buybuy BABY, among other brands. As used herein, "Bed Bath & Beyond," "the Company," "we," "our" and similar terms include Bed Bath & Beyond, Inc. and its controlled subsidiaries, unless the context indicates otherwise.

Through the Bed Bath & Beyond brand, we aim to provide an extensive array of home-related products tailored specifically for our target customers - consumers who seek comprehensive support throughout their shopping journey, aspiring to discover quality, stylish products at competitive prices that align with their budget requirements. We regularly refresh our product assortment to reflect the evolving preferences of our customers and aim to stay aligned with current trends. The mission of this brand is to achieve category-leading ownership of four distinct rooms of the home: the bedroom, the bathroom, the kitchen, and the patio, and our goal is for the assortment to include not only core legacy categories like bedding and kitchenware, but also adjacent categories like bedroom and outdoor furniture and rugs. Furniture across all rooms continues to play a critical role in our strategy. Leveraging an asset-light supply chain, direct shipping is offered to customers from both our suppliers and third-party logistics providers.

Bed Bath & Beyond's strategic priorities include curating stylish, high-quality assortments to make product selection intuitive and affordable, in addition to enhancing offerings with trusted aspirational brands. Our goal is to transform the customer experience by building trust, creating life-stage experiences, and consistently delivering inspiration, quality, and value.

Through the Overstock brand, we aim to provide a wide array of quality goods at discounted prices, and a treasure hunt-like experience for our target customers - consumers who are highly engaged, very accustomed to purchasing online, and actively seeking great deals. The mission of this brand is to delight our customers by offering deals on products they will love. Our product assortment includes home categories such as indoor and outdoor furniture, rugs, décor, and lighting, as well as lifestyle categories such as jewelry and watches, apparel and accessories, and designer shoes and handbags.

The buybuy BABY brand acquisition allows us to reunite two traditionally related brands, Bed Bath & Beyond and buybuy BABY, and support our customers through key life stage shopping moments.

In August 2025, we changed our corporate name from Beyond, Inc. to Bed Bath & Beyond, Inc. and changed our ticker symbol from "BYON" to "BBBY".

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read "Special Cautionary Note Regarding Forward-Looking Statements."

Revenue for the three months ended September 30, 2025, was $257.2 million, compared to $311.4 million for the three months ended September 30, 2024, representing a decrease of $54.2 million, or 17%. The decrease was primarily due to a 20% decrease in the number of orders delivered, which contributed $63.6 million of the revenue decline, partially offset by a 3% or $6.60 increase in average order value, which resulted in a revenue increase of approximately $9.3 million. The decrease in orders delivered was driven by a decline in website visits influenced in part by a shift in consumer spending preferences and macroeconomic factors impacting consumer sentiment and the home furnishings industry as well as a reduction in overall sales and marketing spend as we focus on improving more efficient traffic channels and refine our assortment. The increase in average order value was largely driven by orders mixing into categories with higher average unit retail price.

Gross profit for three months ended September 30, 2025, was $65.2 million, or 25.3% of revenue, compared to $66.0 million, or 21.2% of revenue, for the three months ended September 30, 2024. This represents a decrease of $0.8 million, or 1%. The decline in gross profit was primarily attributable to lower revenue, which reduced gross profit by approximately $12.6 million, partially offset by an improved gross margin that contributed an increase of approximately $11.8 million. Gross margin increased by 420 basis points year-over-year, primarily due to approximately 160 basis points of lower carrier costs, 160 basis points of lower return costs, and 90 basis points of improvement from discontinued Canada operations.

Sales and marketing expenses were $36.1 million, or 14.0% of revenue, for the three months ended September 30, 2025, compared to $51.9 million, or 16.7% of revenue, for the three months ended September 30, 2024. This represents a decrease of $15.7 million, or 30%. The decrease was primarily driven by decreased performance marketing expenses of $11.9 million and a $2.6 million reduction in brand advertising.

Technology expenses decreased by $7.1 million for the three months ended September 30, 2025, compared to the prior period. The decrease was primarily due to a reduction in staff-related expenses of $4.9 million and a $1.9 million reduction in third-party expenses.

General and administrative expenses decreased by $5.6 million for the three months ended September 30, 2025, compared to the prior period. The decrease was primarily due to a $4.4 million reduction in staff-related expenses and a $1.1 million reduction in third-party expenses.

Customer service and merchant fees decreased by $3.6 million for the three months ended September 30, 2025, compared to the prior period. The decrease was primarily driven by a $1.8 million decrease in customer service expenses and a $1.8 million decrease in credit card costs, primarily due to decreased order volume.

Other operating expense (income), net decreased by $1.6 million for the three months ended September 30, 2025, compared to the prior period. The decrease reflects the non-recurrence of the $1.6 million loss from the sale of our corporate headquarters in 2024.

Consolidated cash and cash equivalents increased from $159.2 million as of December 31, 2024, to $167.4 million as of September 30, 2025, an increase of $8.2 million, primarily as a result of $101.7 million in net proceeds from the sales of our common stock pursuant to our "at-the-market" public offering, net of offering costs and $6.3 million in proceeds from sales of intangible assets, offset by net cash outflows from operating activities of $50.2 million, purchases of intangible assets of $15.2 million, disbursement for notes receivable of $8.2 million, purchases of equity securities in The Brand House Collective of $8.0 million, payments on short-term debt of $7.0 million, repurchases of common stock under the stock repurchase program of $6.2 million, and expenditures for property and equipment of $5.2 million.

Additional commentary related to macroeconomic trends

We continue to monitor recent macroeconomic trends and geopolitical events, including, without limitation, ongoing global conflicts, trade barriers including tariffs, financial and stock market volatility, higher interest rates, inflation, the U.S. government shutdown, and their impacts. These events have and may continue to negatively impact consumer confidence and consumer spending, which have and may continue to adversely affect our business and our results of operations. Many of our suppliers source from other countries and may be negatively affected by increased tariffs or other import/export controls by the United States and foreign governments, as well as uncertainty in the market as it responds to global macroeconomic factors. Due to the uncertain and constantly evolving nature and volatility of these trends and events, we cannot currently predict their long-term impact on our operations and financial results. As of September 30, 2025, the challenges arising from these events have not adversely affected our liquidity or capacity to service our debt, nor have these conditions required us to reduce our capital expenditures.

Results of Operations

For information regarding revisions to previously issued consolidated financial statements and resulting reclassifications, see the information set forth under Note 2—Summary of Significant Accounting Policies, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q.

Comparisons of Three Months Ended September 30, 2025 to Three Months Ended September 30, 2024, and Nine Months Ended September 30, 2025 to Nine Months Ended September 30, 2024

Net revenue, cost of goods sold, gross profit and gross margin

The following table summarizes our net revenue, cost of goods sold, and gross profit (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Net revenue	$ 257,187	$ 311,428	$ 771,186	$ 1,091,813
Cost of goods sold				
Product costs and other cost of goods sold	192,024	245,453	580,922	871,311
Gross profit	$ 65,163	$ 65,975	$ 190,264	$ 220,502
Year-over-year percentage change				
Net revenue	(17.4)%		(29.4)%	
Gross profit	(1.2)%		(13.7)%	
Percent of net revenue				
Cost of goods sold				
Product costs and other cost of goods sold	74.7 %	78.8 %	75.3 %	79.8 %
Gross margin	25.3 %	21.2 %	24.7 %	20.2 %

Revenue for the three months ended September 30, 2025, was $257.2 million, compared to $311.4 million for the three months ended September 30, 2024, representing a decrease of $54.2 million, or 17%. The decrease was primarily due to a 20% decrease in the number of orders delivered, which contributed $63.6 million of the revenue decline, partially offset by a 3% or $6.60 increase in average order value, which resulted in a revenue increase of approximately $9.3 million. The decrease in orders delivered was driven by a decline in website visits influenced in part by a shift in consumer spending preferences and macroeconomic factors impacting consumer sentiment and the home furnishings industry as well as a reduction in overall sales and marketing spend as we focus on improving more efficient traffic channels and refine our assortment. The increase in average order value was largely driven by orders mixing into categories with higher average unit retail price.

Revenue for the nine months ended September 30, 2025, was $771.2 million, compared to $1,091.8 million for the nine months ended September 30, 2024, representing a decrease of $320.6 million, or 29%. The decrease was primarily due to a 35% decrease in the number of orders delivered, which contributed $394.6 million of the revenue decline, partially offset by an 8% or $15.60 increase in average order value, which resulted in a revenue increase of approximately $73.9 million. The decrease in orders delivered was driven by a decline in website visits influenced in part by a shift in consumer spending preferences and macroeconomic factors impacting consumer sentiment and the home furnishings industry as well as a reduction in overall sales and marketing spend as we focus on improving more efficient traffic channels and refine our assortment. The increase in average order value was largely driven by orders mixing into categories with higher average unit retail price.

International net revenues were less than 4% of total net revenues for each of the three and nine months ended September 30, 2025 and 2024.

Change in estimate of average transit times (days)

Our revenue related to merchandise sales is recognized upon delivery to our customers. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates, which can be further impacted by uncertainty, volatility, and any disruption to our carriers caused by certain macroeconomic conditions, such as supply chain challenges, trade barriers including tariffs, inflation, rising interest rates, climate and weather events, or geopolitical events.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and income before income taxes (in thousands):

	Three months ended September 30, 2025	
Change in the Estimate of Average Transit Times (Days)	**Increase (Decrease) Revenue**	**Increase (Decrease) Income Before Income Taxes**
2	$ (5,238)	$ (964)
1	$ (2,657)	$ (489)
As reported	As reported	As reported
-1	$ 2,552	$ 470
-2	$ 8,824	$ 1,624

Gross profit and gross margin

Our overall gross margins fluctuate based on factors such as competitive pricing; product costs; discounting; product mix of sales; advertising revenue and our marketing allowance program; and operational and fulfillment costs which include costs incurred to operate and staff warehouses, including rent and depreciation expense associated with these facilities, costs to receive, inspect, pick, and prepare customer order for delivery, and direct and indirect labor costs including payroll, payroll-related benefits, and stock-based compensation, all of which we include as costs in calculating gross margin.

Gross margins for the past seven quarterly periods and fiscal year ending 2024 were:

	Q1 2024	**Q2 2024**	**Q3 2024**	**Q4 2024**	**FY 2024**	**Q1 2025**	**Q2 2025**	**Q3 2025**
Gross margin	19.5 %	20.1 %	21.2 %	23.0 %	20.8 %	25.1 %	23.7 %	25.3 %

Gross profit for three months ended September 30, 2025, was $65.2 million, or 25.3% of revenue, compared to $66.0 million, or 21.2% of revenue, for the three months ended September 30, 2024. This represents a decrease of $0.8 million, or 1%. The decline in gross profit was primarily attributable to lower revenue, which reduced gross profit by approximately $12.6 million, partially offset by an improved gross margin that contributed an increase of approximately $11.8 million. Gross margin increased by 420 basis points year-over-year, primarily due to approximately 60 basis points of lower carrier costs, 160 basis points of lower return costs, and 90 basis points of improvement from discontinued Canada operations.

Gross profit for nine months ended September 30, 2025, was $190.3 million, or 24.7 % of revenue, compared to $220.5 million, or 20.2% of revenue, for the nine months ended September 30, 2024. This represents a decrease of $30 million, or 14%. The decline in gross profit was primarily attributable to lower revenue, which reduced gross profit by approximately $71.9 million, partially offset by an improved gross margin that contributed an increase of approximately $41.7 million. Gross margin increased by 450 basis points year-over-year, primarily due to 210 basis points of lower carrier costs, approximately 90 basis points of lower return costs, approximately 90 basis points of lower product costs, and 50 basis points of improvement from discontinued Canada operations.

Operating expenses

Sales and marketing expenses

We use a variety of online advertising channels to attract new and repeat customers, including search engine marketing, personalized emails, mobile app, loyalty program, affiliate marketing, display banners, and social media. We also build our brand awareness through linear and streaming TV advertising.

Costs associated with our discounted shipping and other promotions, such as coupons, are not included in sales and marketing expenses. Rather, they are accounted for as a reduction in revenue as they reduce the amount of consideration we expect to receive in exchange for goods or services and therefore affect net revenues and gross margin. We consider these promotions to be an effective marketing tool.

The following table summarizes our sales and marketing expenses (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Sales and marketing expenses	$ 36,126	$ 51,859	$ 105,625	$ 186,055
Advertising expense included in sales and marketing expenses	34,578	49,087	100,608	177,630
Year-over-year percentage change				
Sales and marketing expenses	(30.3)%		(43.2)%	
Advertising expense included in sales and marketing expenses	(29.6)%		(43.4)%	
Percent of net revenue				
Sales and marketing expenses	14.0 %	16.7 %	13.7 %	17.0 %
Advertising expense included in sales and marketing expenses	13.4 %	15.8 %	13.0 %	16.3 %

Sales and marketing expenses were $36.1 million, or 14.0% of revenue, for the three months ended September 30, 2025, compared to $51.9 million, or 16.7% of revenue, for the three months ended September 30, 2024. This represents a decrease of $15.7 million, or 30%. The decrease was primarily driven by decreased performance marketing expenses of $11.9 million and a $2.6 million reduction in brand advertising.

Sales and marketing expenses were $105.6 million, or 13.7% of revenue, for the nine months ended September 30, 2025, compared to $186.1 million, or 17.0% of revenue, for the nine months ended September 30, 2024. This represents a decrease of $80.4 million, or 43%. The decrease was primarily driven by decreased performance marketing expenses of $66.8 million and a $10.2 million reduction in brand advertising.

Technology expenses

We seek to deploy our capital resources efficiently in technology to support operations, including private and public cloud, web services, customer support solutions, and product search. We aim to enhance the customer experience by investing in technology, including investing in machine learning algorithms and generative AI, improving our process automation and efficiency, modernizing and enhancing our systems, and supporting and expanding our logistics infrastructure. We expect to continue to incur technology expenses to support these efforts and these expenditures may continue to be material.

The frequency and variety of cyberattacks on our websites, enterprise systems, services, and on third parties we use to support our technology continues to increase. The impact of such attacks, their costs, and the costs we incur to protect ourselves against future attacks, have not been material to date. However, we consider the risk introduced by cyberattacks to be serious and will continue to incur costs related to efforts to protect ourselves against them.

The following table summarizes our technology expenses (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Technology expenses	$ 20,645	$ 27,673	$ 70,584	$ 84,596
Year-over-year percentage change				
Technology expenses	(25.4)%		(16.6)%	
Technology expenses as a percent of net revenue	8.0 %	8.9 %	9.2 %	7.7 %

Technology expenses decreased by $7.1 million for the three months ended September 30, 2025, compared to the prior period. The decrease was primarily due to a reduction in staff-related expenses of $4.9 million and a $1.9 million reduction in third-party expenses.

Technology expenses decreased by $14.6 million for the nine months ended September 30, 2025, compared to the prior period. The decrease was primarily due to a reduction in staff-related expenses of $13.4 million and a $1.6 million reduction in third-party expenses, partially offset by one-time restructuring costs of $0.5 million.

General and administrative expenses

The following table summarizes our general and administrative expenses (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
General and administrative expenses	$ 11,971	$ 17,571	$ 40,373	$ 56,556
Year-over-year percentage change				
General and administrative expenses	(31.9)%		(28.6)%	
General and administrative expenses as a percent of net revenue	4.7 %	5.6 %	5.2 %	5.2 %

General and administrative expenses decreased by $5.6 million for the three months ended September 30, 2025, compared to the prior period. The decrease was primarily due to a $4.4 million reduction in staff-related expenses and a $1.1 million reduction in third-party expenses.

General and administrative expenses decreased by $16.2 million for the nine months ended September 30, 2025, compared to the prior period. The decrease was primarily due to a $12.7 million reduction in staff-related expenses, a $3.2 million reduction in third-party expenses and a $0.2 million reduction in depreciation & amortization.

Customer service and merchant fees

Customer service and merchant fees include customer service costs and merchant processing fees associated with customer payments made by credit cards and other payment methods and other variable fees. Customer service and merchant fees as a percent of net revenue may vary due to several factors, such as our ability to effectively manage customer service costs and merchant fees.

The following table summarizes our customer service and merchant fees (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Customer service and merchant fees	$ 8,873	$ 12,425	$ 27,561	$ 41,374
Year-over-year percentage change				
Customer service and merchant fees	(28.6)%		(33.4)%	
Customer service and merchant fees as a percent of net revenue	3.5 %	4.0 %	3.6 %	3.8 %

Customer service and merchant fees decreased by $3.6 million for the three months ended September 30, 2025, compared to the prior period. The decrease was primarily driven by a $1.8 million decrease in customer service expenses and a $1.8 million decrease in credit card costs, primarily due to decreased order volume.

Customer service and merchant fees decreased by $13.8 million for the nine months ended September 30, 2025, compared to the prior period. The decrease was primarily driven by an $8.7 million decrease in credit card costs and a $5.1 million decrease in customer service expenses, primarily due to decreased order volume.

Other operating expense (income), net

The following table summarizes our other operating expense (income), net (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2025	2024	2025	2024
Other operating expense (income), net	$ —	$ 1,648	$ (5,790)	$ (8,627)
Year-over-year percentage change				
Other operating expense (income), net	(100.0)%		(32.9)%	
Other operating expense (income), net as a percent of net revenue	— %	0.7 %	(1.0)%	(1.0)%

Other operating expense (income), net decreased by $1.6 million for the three months ended September 30, 2025, compared to the prior period. The decrease reflects the non-recurrence of the $1.6 million loss from the sale of our corporate headquarters in 2024.

Other operating expense (income), net decreased by $3.4 million for the nine months ended September 30, 2025, compared to the prior period. The decrease reflects the non-recurrence of the $10.3 million gain tied to the 2024 sale of the Wamsutta brand, offset by the $5.0 million gain from the sales of Canada and the United Kingdom Bed Bath & Beyond trademarks in 2025, and the $1.6 million loss related to the 2024 corporate headquarters sale.

Other income (expense), net

The $24.2 million favorable change in other income (expense), net for the three months ended September 30, 2025, as compared to the same period in 2024, was primarily attributable to a $24.2 million decrease in loss recognized from our equity method securities. The decrease reflects the change from a recognized loss on equity method securities of $17.2 million for the three months ended September 30, 2024 to a recognized gain on equity method securities of $7.0 million for the three months ended September 30, 2025.

The $26.2 million favorable change in other income (expense), net for the nine months ended September 30, 2025, as compared to the same period in 2024, was primarily attributable to a $26.8 million decrease in loss recognized from our equity method securities.

Income taxes

Our income tax provision for interim periods is determined using an estimate of our annual effective tax rate adjusted for discrete items, if any, for relevant interim periods. We update our estimate of the annual effective tax rate each quarter and make cumulative adjustments if our estimated annual effective tax rate changes.

Our quarterly tax provision and our quarterly estimate of our annual effective tax rate are subject to significant variations due to several factors including: variability in predicting our pre-tax and taxable income, the mix of jurisdictions to which those items relate, relative changes in expenses or losses for which tax benefits are limited or not recognized, how we do business, fluctuations in our stock price, economic outlook, political climate, and other conditions such as supply chain challenges, inflation, rising interest rates, and geopolitical events. In addition, changes in laws, regulations, and administrative practices will impact our rate. Our effective tax rate can be volatile based on the amount of pre-tax income. For example, the impact of discrete items on our effective tax rate is greater when pre-tax income is lower.

On July 4, 2025, the reconciliation bill, or One Big Beautiful Bill Act (the "OBBBA") was signed into law, which includes a broad range of tax reform provisions that may affect the Company's financial results. The OBBBA allows an elective deduction for domestic Research and Development (R&D), a reinstatement of elective 100% first-year bonus depreciation, and a more favorable tax rate on Foreign-derived Deduction Eligible Income, among other provisions. The OBBBA is not currently expected to materially impact the Company's effective tax rate or cash flows in the current fiscal year.

Our provision for income tax for the three months ended September 30, 2025 and 2024 was $233,000 and $189,000, respectively. The effective tax rate for the three months ended September 30, 2025 and 2024 was (5.4)% and (0.3)%, respectively. Our provision for income tax for the nine months ended September 30, 2025 and 2024 was $714,000 and $635,000, respectively. The effective tax rate for the nine months ended September 30, 2025 and 2024 was (1.1)% and (0.4)%, respectively. Our tax provision and rate differs from the statutory federal income tax rate of 21% primarily due to year-to-date losses on our retail operations for which tax benefits are limited.

Each quarter we assess on a jurisdictional basis whether it is more likely than not that our deferred tax assets will be realized under ASC Topic 740. We have no carryback ability, and therefore we must rely on future taxable income, including tax planning strategies and future reversals of taxable temporary differences, to recover our deferred tax assets. We assess available positive and negative evidence to estimate whether we will generate sufficient future taxable income to use our existing deferred tax assets. A significant piece of objective negative evidence evaluated as of September 30, 2025, is the cumulative loss position over a three-year period generated by our U.S. retail operations. On the basis of this evaluation, we continue to maintain a valuation allowance against our deferred tax assets for the U.S. jurisdiction, not supported by reversals of taxable temporary differences. We intend to continue maintaining a valuation allowance on our net U.S. deferred tax assets until there is sufficient evidence to support the reversal of all or some portion of these allowances. We will continue to monitor the need for a valuation allowance against our deferred tax assets on a quarterly basis.

As we repatriate foreign earnings for use in the United States, the distributions are generally exempt from federal and foreign income taxes but may be subject to certain state taxes. As of September 30, 2025, the cumulative amount of foreign earnings considered permanently reinvested upon which taxes have not been provided, and the corresponding unrecognized deferred tax liability, was not material.

We are subject to taxation in the United States and multiple state and foreign jurisdictions. Tax years beginning in 2020 are subject to examination by taxing authorities, although net operating loss and credit carryforwards from all years are subject to examinations and adjustments for at least three years following the year in which the attributes are used.

Liquidity and Capital Resources

Overview

We believe that our cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months. We continue to monitor, evaluate, and manage our operating plans, forecasts, and liquidity considering the most recent developments driven by macroeconomic conditions, such as supply chain challenges, inflation, rising interest rates, tariffs, bans, or other measures or events that increase the effective price of products, and other geopolitical events. We proactively seek opportunities to improve the efficiency of our operations and have in the past and may in the future take steps to realize internal cost savings, including aligning our staffing needs, creating a more variable cost structure to better support our current and expected future levels of operations and process streamlining.

We periodically evaluate opportunities to repurchase our equity securities, obtain credit facilities, or issue additional debt or equity securities, which may impact our future operations and liquidity. In addition, we may, from time to time, consider the investment in, or acquisition of, complementary businesses, products, services, or technologies to expand our business, any of which might affect our liquidity requirements or cause us to issue additional debt or equity securities that would be dilutive to stockholders.

Our future capital requirements will depend on many factors, including, but not limited to, our growth, our ability to execute on our business strategy, our ability to realize the benefits of any investment in new business strategies, acquisitions, or other transactions, and consumer sentiment towards our offerings. In the event that additional liquidity is required from outside sources, we may not be able to raise the capital on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, financial condition, and results of operations could be adversely affected.

Current sources of liquidity

Our principal sources of liquidity are existing cash and cash equivalents and accounts receivable, net. At September 30, 2025, we had $167.4 million of cash and cash equivalents and $17.3 million of accounts receivable, net of allowance for credit losses.

During the nine months ended September 30, 2025, the Company entered into standby letter of credits with BMO Bank N.A. valued at $7.0 million. The letter of credits were issued in favor of the Company's payment processors as a financial guarantee in connection with ongoing payment processing operations.

We entered into a Sales Agreement dated June 10, 2024 with JonesTrading, under which we have conducted and may in the future conduct "at the market" public offerings of our common stock. Under the Sales Agreement, JonesTrading, acting as our sales agent or principal, may offer our common stock in the market on a daily basis or otherwise as we request from time to time. At September 30, 2025, we had $52.4 million available under our "at the market" sales program. We have no obligation to sell additional shares under the Sales Agreement, but we may do so from time to time. Under the agreement, we will pay JonesTrading up to a 2% sales commission on all sales. For the nine months ended September 30, 2025, we sold 12,432,021 shares of our common stock pursuant to the Sales Agreement and have recognized $101.7 million in proceeds, net of $2.1 million of offering costs, including commissions paid to JonesTrading.

Cash flow information is as follows (in thousands):

	Nine months ended September 30,	
	2025	2024
Cash (used in) provided by:		
Operating activities	$ (50,212)	$ (152,625)
Investing activities	(30,416)	(6,546)
Financing activities	88,952	(2,081)

Operating activities

Cash received from customers generally corresponds to our net revenues as our customers primarily use credit cards to buy from us, causing our receivables from these sales transactions to settle quickly. We have payment terms with our partners that generally extend beyond the amount of time necessary to collect proceeds from our customers.

The $50.2 million of net cash used in operating activities during the nine months ended September 30, 2025, was primarily due to loss from operating activities of $63.7 million, net of the impact from non-cash items such as depreciation and amortization, non-cash operating lease costs, stock-based compensation, gain on sale of intangible assets, and loss from equity method securities of $34.8 million and cash used by changes in operating assets and liabilities of $21.3 million.

The $152.6 million of net cash used in operating activities during the nine months ended September 30, 2024, was primarily due to loss from operating activities of $177.5 million, net of the impact from non-cash items such as depreciation and amortization, non-cash operating lease costs, stock-based compensation, gain on sale of intangible assets, write-down of assets held for sale, and loss from equity method securities of $65.9 million and cash used by changes in operating assets and liabilities of $41.0 million.

Investing activities

For the nine months ended September 30, 2025, investing activities resulted in a net cash outflow of $30.4 million, primarily due to $15.2 million for purchases of intangible assets, $8.2 million for disbursement of notes receivable, $8.0 million for purchases of equity securities in The Brand House Collective, and $5.2 million of expenditures for property and equipment, offset by $6.3 million of proceeds received from the sale of intangible assets.

For the nine months ended September 30, 2024, investing activities resulted in a net cash outflow of $6.5 million, primarily due to $11.3 million of expenditures for property and equipment and $6.0 million for purchases of intangible assets, offset by $10.3 million of proceeds received from the sale of intangible assets.

Financing activities

For the nine months ended September 30, 2025, financing activities resulted in a net cash inflow of $89.0 million, primarily due to $101.7 million in net proceeds from the sales of our common stock pursuant to our "at the market" public offering, net of offering costs, offset by $7.0 million payments on short-term debt and $6.2 million repurchases of common stock under the stock repurchase program.

For the nine months ended September 30, 2024, financing activities resulted in a net cash outflow of $2.1 million, primarily due to $3.3 million for payment of taxes withheld upon vesting of employee stock awards.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of September 30, 2025, and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

Contractual Obligations	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating leases (1)	$ 8,477	$ 1,277	$ 2,295	$ 2,186	$ 2,719
Total contractual cash obligations	$ 8,477	$ 1,277	$ 2,295	$ 2,186	$ 2,719

(1) Represents the future minimum lease payments under non-cancellable operating leases. For information regarding our operating lease obligations, see Note 8—Leases, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q.

Tax contingencies

We are involved in various tax matters, the outcomes of which are uncertain. As of September 30, 2025, accrued tax contingencies were $3.8 million. Changes in federal, foreign, state, and local tax laws may increase our tax contingencies. The timing of the resolution of income tax contingencies is highly uncertain, and the amounts ultimately paid, if any, upon resolution of issues raised by the taxing authorities may differ from the amounts accrued. It is reasonably possible that within the next 12 months we will receive additional assessments by various tax authorities. These assessments may or may not result in changes to our contingencies related to positions on prior years' tax filings.

Critical Accounting Policies and Estimates

The preparation of our financial statements requires that we make estimates and judgments. We base these on historical experience and on other assumptions that we believe to be reasonable. Except as disclosed in Note 2—Summary of Significant Accounting Policies, in the Notes to Unaudited Consolidated Financial Statements included in Item 1, Part I, Financial Statements (Unaudited) of this Quarterly Report on Form 10-Q, there have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates described in Critical Accounting Policies and Estimates, included in Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations and in Note 2—Accounting Policies and Supplemental Disclosures, included in Part II, Item 8, Financial Statements and Supplementary Data, of our Annual Report on Form 10-K for the year ended December 31, 2024.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk from interest rate changes, foreign currency fluctuations, and changes in the market values of our securities. Information relating to quantitative and qualitative disclosures about these market risks is set forth below.

Interest Rate Sensitivity

The fair value of our cash and cash equivalents (highly liquid instruments with a remaining maturity of 90 days or less at the date of purchase) would not be significantly affected by either an increase or decrease in interest rates due mainly to the short-term nature of these instruments.

Interest on the revolving line of credit incurred pursuant to the Loan Agreement described herein would accrue based on market rates plus 1.00%, for a one-month interest period; however, we do not expect that any changes in prevailing interest rates will have a material impact on our results of operations.

The Delayed Draw Term Loan Commitments require the Company to originate a loan at a floating interest rate plus an agreed margin upon request from the borrower, so long as the conditions specified in the Amended Credit Agreement with respect to the origination of such loan are satisfied. The outstanding Delayed Draw Term Loan Commitments expose the Company to the risk that the price of the loans arising from the exercise of the instrument might change from the inception to funding of the loan due to changes in loan interest rate margins; however, we do not expect that any changes in prevailing interest rates will have a material impact on our results of operations.

Foreign Currency Risk

Most of our sales and operating expenses are denominated in U.S. dollars, and therefore, our net revenue and operating expenses are not currently subject to significant foreign currency risk. As we grow our operations, our exposure to foreign currency risk could become more significant.

Inflation

Increases in commodity and shipping prices and energy and labor costs have resulted in inflationary pressures across various parts of our business and operations, including our partners and supply chain. We continue to monitor the impact of inflation to minimize its effects on our customers. We work with our partners to limit the amount of cost increases that are passed on through higher pricing. If costs borne by the Company or our partners were to be subject to incremental inflationary pressures, we may not be able to fully offset such higher costs through pricing actions or other cost efficiency measures. Our inability or failure to do so could harm our business, financial condition, and results of operations. While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we believe the effects of inflation, if any, on our historical results of operations and financial condition have been immaterial. We cannot assure you, however, that our results of operations and financial condition will not be materially impacted by inflation in the future.

Investment Risk

The fair values of the equity and debt securities may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions. At September 30, 2025, the recorded value in equity securities of private and public companies was $78.6 million, of which $14.6 million relates to publicly-traded companies, recorded at fair value, which are subject to market price volatility. At September 30, 2025, $17.1 million of the equity securities and $25.7 million of the debt securities are recorded at fair value using Level 3 inputs. The fair value assessment of private companies includes a review of recent operating results and trends, recent sales/acquisitions of the securities, and other publicly available data. Valuations of private companies are inherently more complex due to the lack of readily available market data. As such, we believe that providing a sensitivity analysis is not practicable. These investments valued using Level 3 inputs represent 53.6% of assets measured at fair value. See Note 3—Fair Value Measurement for further information. For the equity interest in Medici Ventures, L.P., we record our proportionate share of the entity's reported net income or loss, which reflects the fair value changes of the underlying investments of the entity and any other income or losses of the entity.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation of the effectiveness of our disclosure controls and procedures as required by Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") under the supervision and with the participation of our principal executive officer and principal financial officer, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

Limitations on Disclosure Controls and Procedures

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2025, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we are involved in, or become subject to litigation or other legal proceedings concerning consumer protection, employment, privacy, intellectual property, claims under the securities laws, and other commercial matters related to the conduct and operation of our business and the sale of products on our websites. We also prosecute lawsuits to enforce our legal rights. In connection with such litigation or other legal proceedings, we have been in the past and we may be in the future subject to equitable remedies relating to the operation of our business or judgments requiring us to pay significant damages or associated costs. Such litigation could be costly and time consuming and could divert or distract our management and key personnel from our business operations. Due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of such matters could materially affect our business, results of operations, financial position, or cash flows. For additional details, see the information set forth under Item I of Part I, Financial Statements (Unaudited)—Note 9—Commitments and Contingencies, subheading Legal Proceedings and Contingencies, contained in the Notes to Unaudited Consolidated Financial Statements of this Quarterly Report on Form 10-Q, which is incorporated by reference in answer to this Item.

ITEM 1A. RISK FACTORS

Any investment in our securities involves a high degree of risk. Please consider the following risk factors and the risk factors previously disclosed in Part 1, Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the year ended December 31, 2024 carefully. If any one or more of such risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements to the effect that an event could or would harm our business (or have an adverse effect on our business or similar statements) mean that the event could or would have a material adverse effect on our business, prospects, financial condition and results of operations, which in turn could or would have a material adverse effect on the market price of our securities. Many of the risks we face involve more than one type of risk. Consequently, you should carefully read all of the risk factors below, the risk factors described in our Form 10-K for the year ended December 31, 2024, and in any reports we file with the SEC after we file this Form 10-Q, before making any decision to acquire or hold our securities.

Other than the risk factors set forth below, there are no material changes from the risk factors previously disclosed in Part I, Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the year ended December 31, 2024.

Tariffs, bans, or other measures or events that increase the effective price of products or limit our ability to access products we or our suppliers, fulfillment partners, or other third parties that import or export could have a material adverse effect on our business.

We and many of our suppliers and fulfillment partners source a large percentage of the products we offer on our Website from China and other countries. Restrictions on international trade, including increased tariffs or other trade barriers are expected to increase the prices of imported products sold on our Website or limit our ability to access products sold on our Website. These factors in turn could reduce consumer demand and impact sales volume. Increased prices and/or supply chain challenges and the unpredictability of applicable trade barriers, including their scope and duration, have had an adverse effect and could in the future have a material adverse effect on our financial results, business and prospects, including due to their impact on general macroeconomic conditions.

Our changing business model and use of the Bed Bath & Beyond brand, Overstock brand, buybuy BABY brand, Kirkland's and Kirkland's Home brand, Beyond brand, and other brands of ours, could negatively impact our business.

Our business has undergone a number of changes in the recent past, including our company name changing from Overstock.com, Inc. to Beyond, Inc. to Bed Bath & Beyond, Inc., our purchase of the Bed Bath & Beyond and Zulily brands, changing our company ticker symbol from OSTK to BYON to BBBY, and transferring the listing of our common stock from the Nasdaq Stock Market LLC to the New York Stock Exchange. These changes, along with others, may cause negative impacts to our business, including customer and stockholder confusion about our brands, the need for higher promotional discounting or marketing costs to acquire and maintain customers, diversion of the attention of management or key personnel, employee fatigue resulting from implementation efforts, disruptions to existing business relationships, and other unforeseen costs, expenses, losses, disruptions, delays, or negative impacts that could have a material adverse effect on our financial results, business and prospects.

We rely upon paid and natural search engines to rank our product offerings, and our financial results may suffer if we are unable to maintain our prior rankings in natural searches.

We rely on paid and natural search engines to attract consumer interest in our product offerings, including Google, Bing, and Yahoo!. Changes to their ranking algorithms and competition from other retailers to attract consumer interest may adversely affect our product offerings in paid and/or natural searches. Search engine companies change their natural search engine algorithms periodically and online retailers compete to rank well with these search engine companies. Our ranking in natural searches may be adversely affected by those changes, as has occurred from time to time, which has led us to pursue revenue growth in other more expensive marketing channels. Google's search engine is dominant in our business and has historically been a significant source of traffic to our website. Search engine companies may also determine that we are not in compliance with their guidelines from time to time, as has occurred in the past, and they may penalize us in their search algorithms as a result. In recent years, we have experienced declines in our rankings in Google's natural search engine, which has required us to utilize more expensive marketing channels or otherwise compensate for the loss of some of the natural search traffic. Any future declines in our rankings in Google's natural search engine could have a material adverse effect on our business. Additionally, in recent years, a shift in user search behavior has started, with an increasing number of individuals transitioning from traditional search engines like Google to AI platform answer engines such as ChatGPT, Grok, and Copilot for certain types of queries. This transition stems from the way AI tools can effectively address certain questions that users once turned to search engines to answer. This evolution in how people are seeking information, even if often complementing, rather than replacing, the kinds of user intent queries we typically focus on, could have a material adverse effect on our business.

Risks Relating to the Warrants

The price of the Warrants may decline rapidly and significantly following their distribution.

If there is little or no market demand for the Warrants once trading begins, the trading price of the Warrants will likely decline following their distribution. Warrants are being distributed all at once, which could lead to demand and supply imbalances and cause the trading price of the Warrants to decline rapidly and significantly.

An active public market for the Warrants may not be sustained, which would adversely affect the liquidity and market price of the Warrants.

Prior to the Warrant Distribution, there was no existing trading market for the Warrants. The Warrants are subject to trading dynamics over which we have no control. An active and orderly trading market for the Warrants may not be sustained. The trading market for the Warrants may lack adequate size, liquidity or price transparency or may have an unusually high bid-ask spread. You may be unable to sell your Warrants at a price that is favorable to you.

The trading price for the Warrants may bear little or no relationship to traditional valuation methods, or to the market price of our common stock, and therefore the trading price of the Warrants may fluctuate significantly following their issuance.

The trading price of the Warrants may have little or no relationship to, and may be significantly lower, or at times higher, than the price that would otherwise be established using traditional indicators of value, such as our future prospects and those of our industry in general; future potential revenues, earnings, cash flows, and other financial and operating information, or multiples thereof; market prices of securities and other financial and operating information of companies engaged in business activities that are similar to ours; and the views of research analysts. Potential investors should not buy Warrants in the open market unless they are willing to take the risk that the trading price of the Warrants could fluctuate and decline significantly.

Hedging arrangements relating to the Warrants may affect the value and volatility of our common stock.

In order to hedge their financial positions, Warrant holders may choose to enter into hedging transactions with respect to our common stock, may unwind or adjust hedging transactions and may purchase or sell large blocks of our common stock in one or more market transactions. The effect, if any, of these activities on the trading price of our common stock will depend in part on market conditions and cannot be known in advance, but any of these activities could adversely affect the value and price volatility of our common stock.

Exercising the Warrants is a risky investment and those who exercise their Warrants may not be able to recover the value of their investment in the common stock received upon such exercise. Warrant holders could sustain a total loss of the exercise price of any Warrants that they exercise.

In order to recover the value of the investment in the shares of common stock received upon exercise of a Warrant at the exercise price, the value of such shares of common stock must be more than the exercise price of the Warrants. If the value of the shares of common stock a Warrant holder receives upon exercise of a Warrant is lower than the amount paid to the exercise the Warrant, the holder could experience a total loss of investment in exercising the Warrants.

A Warrant holder may lose some or all of their financial investment after exercising a Warrant.

A Warrant holder may incur a financial or other loss upon, or subsequent to, the exercise of a Warrant due to a drop in our stock price, or by a failure to timely deliver Warrant shares as of any particular date after exercise, or for other reasons. If the market value of our common stock price declines, a Warrant holder may be unable to resell shares at or above the price at which they were acquired through the exercise of Warrants. There can be no assurance that the price of our common stock will not fluctuate or decline significantly below the Warrant exercise price in the future, in which case a Warrant holder could incur substantial losses.

The trading price of the shares of our common stock and Warrants could be highly volatile, and purchasers of our common stock or Warrants could incur substantial losses.

During calendar year 2025 to-date, the closing sale price of shares of our common stock on NYSE has been reported as low as $3.68 per share and as high as $12.11 per share. This volatility may affect the price at which a Warrant holder could sell the shares of our common stock or Warrants, and the sale of substantial amounts of our common stock or Warrants could adversely affect the price of our common stock or Warrants. The trading prices of our common stock and Warrants are likely to continue to be volatile and subject to significant price and volume fluctuations in response to market and other factors, including those described in the sections captioned "Risk Factors" herein and in our Annual Report on Form 10-K for the year ended December 31, 2024, filed with the SEC on February 25, 2025. Additionally, broad market and industry factors may negatively affect the market price of our common stock and Warrants, regardless of our actual operating performance.

As a result, Warrant holders may not be able to sell shares of common stock or Warrants at or above the price at which they purchase them.

Speculation in our publicly-traded common stock or Warrants may result in extreme price volatility.

Our stockholders or Warrant holders or outside investors may speculate on the direction of movements in the price of our common stock or Warrants. Speculation in the price of our common stock or Warrants may involve long and short exposures. Sudden changes in demand or supply for our common stock or Warrants due to speculation or other reasons may create trading anomalies that add volatility to the trading price of these securities. The volatility or direction of our stock price or Warrant price may be unrelated or disproportionate to our operating results, which could cause significant losses to Warrant holders' investments.

The settlement process for shares of common stock issuable upon exercise of Warrants is outside of our control and may cause Warrant holders to lose the value of their investment.

The settlement process with respect to exercised Warrants refers to the time between exercise of a Warrant and when the issued common stock is delivered to Warrant holders' account, and Warrant holders become the holder of record of such common stock. The settlement process is conducted by outside parties and broker-dealers and is therefore outside of our control.

Under Rule 15c6-1 of the Securities Exchange Act of 1934, the standard settlement cycle for most broker-dealer transactions is one business day, unless the parties to any such trade expressly agree otherwise. We understand that under existing financial industry practices, delivery of the shares of common stock upon exercise of Warrants will likely not occur within one business day, and delivery may take several business days. Warrant holders could experience a significant loss of investment in exercising Warrants if the settlement process takes longer than anticipated or fails to settle.

The issuance of common stock upon the exercise of the Warrants may depress our stock price.

We could issue a maximum of up to 6,884,341 shares of common stock in connection with the Warrant Distribution, which would be an approximately 10.0% increase from our current number of shares outstanding. The issuance of such additional shares of common stock upon exercise of the Warrants, and the resale of such shares on the open market after their issuance, or the perception that such sales could occur, could result in significant downward pressure on our stock price.

Warrant holders are not entitled to any of the rights of holders of our common stock.

Warrant holders are not entitled to any rights with respect to our common stock, including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock.

Warrant holders will have rights with respect to our common stock only if they receive our common stock upon exercising Warrants for cash and only as of the date when they become a record owner of the shares of our common stock upon such exercise. For example, if an amendment is proposed to our charter or bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the date a Warrant holder is deemed to be the owner of the shares of our common stock due upon exercise of their Warrants, the Warrant holder will not be entitled to vote on the amendment, although they will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

Because we do not currently intend to pay cash dividends on our common stock, stockholders will benefit from an investment in our common stock primarily if it appreciates in value.

We do not currently anticipate paying any cash dividends on shares of our common stock. Any determination to pay dividends in the future would be made by our Board of Directors and would depend upon results of operations, financial conditions, contractual restrictions, restrictions imposed by applicable law, and other factors our Board of Directors would deem relevant. Accordingly, realization of a gain on stockholders' investments will primarily depend on the appreciation of the price of our common stock.

Our management will have broad discretion in the use of any net proceeds from the exercise of Warrants and may allocate any net proceeds from the exercise of Warrants in ways that Warrant holders and other stockholders may not approve.

Our management will have broad discretion in the application of the net proceeds, if any, from the exercise of Warrants, including for any of the purposes described in the section entitled "Use of Proceeds" in our Registration Statement on Form S-3 (File No. 333-290763) filed with the SEC on October 8, 2025 (the "Warrant Registration Statement"), and could spend the net proceeds in ways with which you may not agree. Accordingly, stockholders will be relying on the judgment of our management with regard to the use of the net proceeds, and will not have the opportunity to assess whether the net proceeds are being used appropriately. It is possible that the net proceeds will be invested or otherwise used in a way that does not yield a favorable, or any, return for us, or that does not improve our operating results or enhance the value of our common stock or other securities. Because of the number and variability of factors that will determine our use of any net proceeds from the exercise of Warrants, the ultimate use of such net proceeds may vary substantially from their currently intended use. The failure of our management to use these net proceeds, if any, effectively could harm our business.

The Warrants do not automatically exercise, and any Warrants that Warrant holders do not exercise prior to the Expiration Date will lose all financial value.

The Warrants do not automatically exercise, even if our common stock price remains at or above the exercise price of the Warrants. Warrant holders are entitled to exercise the full number of Warrants registered in their name or any portion thereof. Any Warrant that Warrant holders do not exercise for cash prior to the Expiration Date will expire unexercised and Warrant holders will not receive any shares of our common stock. If the Early Expiration Price Condition occurs, the Expiration Date of the Warrants could be accelerated significantly. The Warrants will have no financial value after the Expiration Date.

Future sales or other dilution of our equity may adversely affect the market price of our common stock.

The Warrant Agreement, dated as of October 7, 2025, between the Company, Computershare, Inc., a Delaware corporation, and its affiliate, Computershare Trust Company, N.A., as Warrant Agent (the "Warrant Agreement") does not restrict us from issuing additional shares of common stock to the public or under our employee and director compensation plans. We regularly evaluate opportunities to access capital markets, taking into account our capital needs, financial condition, strategic plans and other relevant considerations. The issuance of additional shares of common stock or common equivalent securities in future equity offerings will dilute the ownership interest of our existing common stockholders and may depress the trading value of the Warrants or our common stock. There can be no assurances that we will not in the future determine that it is advisable or necessary to issue additional shares of common stock or other securities convertible or exercisable for shares of common stock to fund our business needs. We also expect to continue to use equity and stock options to compensate our employees and directors and others. The market price of our common stock and the Warrants could decline significantly as a result of such offerings or issuances, or the perception that such offerings or issuances could occur.

Our registration statement covering the issuance of common stock issuable upon exercise of the Warrants may not be available at times.

We will use our commercially reasonable efforts to keep a registration statement effective, subject to certain exceptions, covering the issuance of the common stock issuable upon the exercise of the Warrants; however, we are not prohibited from suspending the use of the registration statement and can suspend it at any time at our discretion as described in the Warrant Registration Statement under the heading “Description of the Warrants - Registration and Suspension.” If at the time of exercise of Warrants, there is no effective registration statement covering the issuance of the shares of common stock underlying the Warrants, the right to exercise Warrants shall be automatically suspended until such registration statement becomes effective (any such period, an “Exercise Suspension Period”). The Company shall provide notice by press release, with a copy to the Warrant Agent, of any Exercise Suspension Period. If the Expiration Date would otherwise fall in an Exercise Suspension Period, notwithstanding anything to the contrary in the Warrant Agreement, the Expiration Date shall be extended by the number of days included in such Exercise Suspension Period.

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

Our operations or expansion efforts will require substantial additional financial, operational, and managerial resources and we will need to raise additional funds to expand our operations. We may seek debt financing or additional equity capital. Additional capital may not be available to us, or may only be available on terms that adversely affect our existing stockholders, or that restrict our operations.

For example, if we raise additional funds through issuances of equity or convertible debt securities, our existing stockholders could suffer dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our common stock. Upon liquidation, holders of our debt securities and lenders with respect to other borrowings will receive distributions of our available assets prior to the holders of our common stock. Since our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, our stockholders bear the risk of our future offerings reducing the market price of our common stock.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The following table sets forth information with respect to repurchases of shares of our common stock made during the quarter ended September 30, 2025 (in thousands, except share and per share data):

Period	Total Number of Common Shares Purchased	Average Price Paid per Common Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that may yet be Purchased under the Plans or Programs[1]
July 1 - 31	—	$ —	—	$ 68,572
August 1 - 31	—	$ —	—	$ 68,572
September 1 - 30	569,845	$ 8.59	569,845	$ 63,666
Total	569,845		569,845	

(1) On August 17, 2021, we announced that our Board of Directors had approved a stock repurchase program (the "Repurchase Program"), pursuant to which we may, from time to time, purchase shares of our outstanding common stock. On December 31, 2023, we announced that our Board of Directors approved an extension and expansion of the Repurchase Program and expanded the repurchase amount by $50.0 million, for a total repurchase amount of up to $150.0 million of our common stock. The Repurchase Program expires in December 2025. Under the Repurchase Program, shares may be repurchased in open-market transactions, including under plans complying with Rule 10b5-1 under the Exchange Act.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

(a) Disclosure in lieu of reporting on a Current Report on Form 8-K.

None.

(b) Material changes to the procedures by which security holders may recommend nominees to the board of directors

None.

(c) Insider trading arrangements and policies.

During the three months ended September 30, 2025, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

ITEM 6. EXHIBITS

(a) Exhibit Number	Exhibit Description
2.1***	Asset Purchase Agreement, dated June 12, 2023, by and among Overstock.com, Inc., Bed Bath & Beyond Inc. and certain subsidiaries of Bed Bath & Beyond Inc., incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on June 13, 2023
3.1	Amended and Restated Certificate of Incorporation, incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed on July 29, 2014
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation, incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on November 6, 2023
3.3	Certificate of Amendment to Amended and Restated Certificate of Incorporation, incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on May 24, 2024
3.4	Certificate of Amendment to Amended and Restated Certificate of Incorporation, incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on August 22, 2025
3.5	Fifth Amended and Restated Bylaws, incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on August 22, 2025
4.1	Form of Indenture, incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-3ASR filed on June 10, 2024
4.2	Warrant Agreement (including Form of Warrant), dated October 7, 2025, between the Company, Computershare Inc., a Delaware corporation, and Computershare Trust Company, N.A., as Warrant Agent (incorporated by reference to Exhibit 4.2 of the Company's Registration Statement on Form S-3 filed with the Commission on October 8, 2025)
10.1*	Amendment No. 1 to the Amended and Restated Term Loan Credit Agreement, dated as of September 15, 2025, by and between Kirkland's Stores, Inc., as Lead Borrower, the Borrowers named therein, the Guarantors named therein, Bed Bath & Beyond, Inc., as Administrative Agent and Collateral Agent and the Lenders party thereto.
10.2*	Amendment No. 1 to Asset Purchase Agreement, dated as of September 15, 2025, by and between Bed Bath & Beyond, Inc., as Purchaser, and The Brand House Collective, Inc., as Seller
10.3*	Second Amended and Restated Trademark License Agreement, dated as of September 15, 2025, by and between Bed Bath & Beyond, Inc., as Licensor, and The Brand House Collective, Inc., as Licensee
10.4*	Amendment to Loan and Security Agreement, dated as of September 30, 2025, among BMO Bank N.A., as Lender, and Bed Bath & Beyond, Inc., as Borrower
10.5*	Corrected Employment Letter Agreement between Beyond, Inc. and Adrianne Lee, dated as of August 19, 2025
31.1*	Rule 13a-14(a)/15d-14(a) Certification of Principal Executive Officer
31.2*	Rule 13a-14(a)/15d-14(a) Certification of Principal Financial Officer
32.1**	Section 1350 Certification of Principal Executive Officer
32.2**	Section 1350 Certification of Principal Financial Officer
101	Attached as Exhibit 101 to this report are the following documents formatted in Inline XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations, (iii) Consolidated Statements of Comprehensive Loss, (iv) Consolidated Statements of Cash Flows, (v) Consolidated Statements of Stockholders' Equity, and (vi) Notes to Consolidated Financial Statements.
104	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2025, formatted in Inline XBRL (included as Exhibit 101).

* Filed herewith.
** Furnished herewith.
*** Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Reporting Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

SIGNATURES

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

Date: October 27, 2025

BED BATH & BEYOND, INC.

/s/ ADRIANNE B. LEE
Adrianne B. Lee
President and Chief Financial Officer
(Principal Financial Officer)

AMENDMENT NO. 1 TO
AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT

This AMENDMENT NO. 1 TO AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT (this "Amendment"), dated as of September 15, 2025 (the "Amendment Date"), is entered into by and among KIRKLAND'S STORES, INC., a Tennessee corporation ("Lead Borrower), the other Loan Parties party hereto, the lenders party hereto (the "Lenders") and BED BATH & BEYOND, INC., a Delaware corporation (f/k/a Beyond, Inc., a Delaware corporation), as the Administrative Agent and Collateral Agent (in such capacities, the "Agent"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Amended Credit Agreement (as defined below).

RECITALS

A. Lead Borrower, the other Loan Parties party thereto, the Lenders party thereto and the Agent are party to that certain Amended and Restated Term Loan Credit Agreement, dated as of May 7, 2025 (as amended, restated, supplemented or otherwise modified in writing prior to the date hereof, the "Credit Agreement").

B. The Loan Parties have requested that the Agent and the Lenders amend, and the Agent and the Lenders have agreed to amend, the Credit Agreement on the terms and subject to the conditions set forth herein.

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

SECTION 1. Amendments to Credit Agreement. Subject to the satisfaction of the conditions precedent set forth in Section 3 below, and in reliance on the representations, warranties, covenants and other agreements of the Loan Parties contained herein, the Loan Parties, Agent and the Lenders party hereto agree that the Credit Agreement is hereby amended as follows (the Credit Agreement as so amended, the "Amended Credit Agreement"):

(a) the Credit Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the document attached as Exhibit A hereto; and

(b) Schedule 2.01 of the Credit Agreement shall be amended to add the Delayed Draw Term Loan Commitments and the related Applicable Percentages specified on Exhibit B hereto.

SECTION 2. Representations and Warranties of the Loan Parties. In order to induce the Agent and the Lenders to enter into this Amendment, each of the Loan Parties represent and warrant that:

(a) Each Loan Party (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under this Amendment and to perform its obligations under the Amended Credit Agreement, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each

jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) The execution, delivery and performance of this Amendment and the performance of the Amended Credit Agreement by each Loan Party has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law.

(c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Amendment or the Amended Credit Agreement (as the case may be), except for such as have been obtained or made and are in full force and effect.

(d) This Amendment has been duly executed and delivered by each Loan Party that is party hereto. This Amendment and the Amended Credit Agreement each constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(e) All of the representations and warranties of the Loan Parties under this Amendment and the other Loan Documents are true and correct in all material respects (in each case, without duplication of any materiality qualifier contained herein or therein, as applicable) as of the date hereof (or if, any such representation or warranty relates to an earlier date, such earlier date), immediately before and immediately after giving effect to this Amendment, the Amended Credit Agreement and the transactions contemplated herein and therein.

(f) There shall not exist any Default or Event of Default, in each case immediately before and after giving effect to this Amendment, the Amended Credit Agreement and the transactions contemplated herein and therein.

(g) Since February 1, 2025, there has occurred no event which has had or would reasonably be expected to have a Material Adverse Effect.

SECTION 3. Effectiveness. This Amendment shall be effective at the time that each of the conditions precedent set forth in this Section 3 shall have been met (such date, the "Effective Date"):

(a) Amendment. The Agent shall have received duly executed counterparts of this Amendment signed by the Loan Parties and the Lenders.

(b) Payment of Legal Fees and Expenses. The Loan Parties shall have paid all reasonable and documented out-of-pocket costs and expenses of the Agent and its professional advisors

(including, without limitation, Latham & Watkins LLP) incurred in connection with this Amendment and the other documents related thereto.

(c) Representations and Warranties. The representations and warranties contained herein shall be true, correct and complete in all respects.

(d) No Default, Event of Default. There shall exist no Default or Event of Default, in each case, immediately before and after giving effect to this Amendment, the Amended Credit Agreement and the transactions contemplated herein and therein.

(e) Closing/Solvency Certificate. The Agent shall have received a certificate of a Responsible Officer of the Lead Borrower certifying as to (i) the satisfaction of the conditions precedent set forth in Sections 3(c) and (d) of this Amendment, (ii) the Solvency of the Loan Parties as of the Effective Date after giving effect to the Amendment, the Amended Credit Agreement and the transactions contemplated herein and therein, and (iii) either that (A) no consents, licenses or approvals are required in connection with the execution, delivery and performance of this Amendment and the performance of the Amended Credit Agreement by such Loan Party and the enforceability against such Loan Party of the Amendment and the Amended Credit Agreement, or (B) that all such consents, licenses and approvals have been obtained and are in full force and effect.

(f) Secretary's Certificate. The Agent shall have received such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may require certifying (i) the authority of such Loan Party to enter into this Amendment and to perform its obligations hereunder and under the Amended Credit Agreement, (ii) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Amendment and the Amended Credit Agreement, (iii) (A) that attached thereto are true, correct and complete copies of such Loan Party's Organization Documents and that such Organization Documents are in full force and effect as of the Effective Date or (B) that there have been no changes to the Organizational Documents of such Loan Party since true, correct and complete copies of the same were delivered to the Agent on the Original Closing Date (as defined in the Amended Credit Agreement),and (iv) that such Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect (as evidenced by Certificates of Good Standing (or equivalent documents) issued on a recent date by the Secretary of State (or equivalent Person) in the jurisdiction of formation of such Loan Party.

(g) Notes. The Agent shall have received Delayed Draw Term Loan Notes in favor of each Lender requesting an Amendment No. 1 Term Loan Note.

(h) IP Purchase. The Closing (as defined in the Intellectual Property Purchase Agreement) shall have occurred and the Administrative Agent shall have received all material documents entered into in connection therewith (including, for the avoidance of doubt, all documentation evidencing the BofA Closing Consent (as defined in the Intellectual Property Purchase Agreement)).

(i) Opinion. The Agent shall have received a favorable opinion of Bass, Berry & Sims PLC, counsel to the Loan Parties, addressed to the Agent and each Lender and addressing such matters concerning the Loan Parties, the Amendment and the Amended Credit Agreement as the Agent may reasonably request;

(j) Intercreditor Agreement Amendment. The Agent shall have received an amendment to the ABL Intercreditor Agreement, in form and substance acceptable to the Agent and duly executed by the persons party thereto.

(k) ABL Credit Agreement Amendment. The Agent shall have received an amendment to the ABL Credit Agreement (which, for the avoidance of doubt includes a consent to this Amendment), in form and substance acceptable to the Agent and duly executed by the persons party thereto.

(l) Lien Searches. The Agent shall have received Lien search results with respect to the Loan Parties from all jurisdictions and filing offices reasonably requested by the Agent disclosing no Liens with priority senior to the Liens on the assets of the Loan Parties granted or to be granted pursuant to the Security Documents, except Liens permitted under Section 7.01 of the Amended Credit Agreement.

SECTION 4. Reference to and Effect upon the Loan Documents.

(a) Except as expressly modified hereby, all terms, conditions, covenants, representations and warranties contained in the Amended Credit Agreement and the other Loan Documents, and all rights of the Lenders and all of the Obligations, shall remain in full force and effect. Each of the Loan Parties hereby confirms that the Amended Credit Agreement and the other Loan Documents are in full force and effect and that, as of the Effective Date, no Loan Party has any right of setoff, recoupment or other offset or any defense, claim or counterclaim with respect to any of the Obligations, the Amended Credit Agreement or any other Loan Document.

(b) The execution, delivery and effectiveness of this Amendment shall not directly or indirectly (i) constitute a consent or waiver of any past, present or future violations of any provisions of the Amended Credit Agreement, this Amendment or any other Loan Document or (ii) except as expressly provided herein, amend, modify or operate as a waiver of any provision of the Amended Credit Agreement or any other Loan Documents or any right, power or remedy of any of the Lenders.

(c) From and after the Effective Date, (i) the term "Agreement" in the Amended Credit Agreement, and all references to the Credit Agreement in any Loan Document, shall mean the Amended Credit Agreement and (ii) the term "Loan Documents" in the Amended Credit Agreement and the other Loan Documents shall include, without limitation, this Amendment and any agreements, instruments and other documents executed and/or delivered in connection herewith.

(d) Neither the Agent nor any other Lender has waived, is by this Amendment waiving or has any intention of waiving (regardless of any delay in exercising such rights and remedies) any Default or Event of Default which may be continuing on the Effective Date or any Default or Event of Default which may occur after the Effective Date, and neither the Agent nor any Lender has agreed to forbear with respect to any of its rights or remedies concerning any Defaults or Events of Default, which may have occurred or are continuing as of the Effective Date, or which may occur after the Effective Date.

(e) This Amendment shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Amended Credit Agreement or any other Loan Document.

SECTION 5. Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement

SECTION 6. Costs and Expenses. As provided in Section 10.04 of the Amended Credit Agreement, the Loan Parties agree to reimburse the Agent for all reasonable out-of-pocket costs and expenses, including the reasonable fees and disbursements of counsel, incurred by the Agent in connection with this Amendment.

SECTION 7. Governing Law; Submission to Jurisdiction; Waiver of Venue; Service of Process; Actions Commenced by Loan Parties.. Section 10.14 of the Amended Credit Agreement is incorporated herein by reference as if separately set forth in full herein.

SECTION 8. Headings. Headings used in this Amendment are for convenience only and shall not affect the interpretation of any provision hereof.

SECTION 9. Loan Document. This Amendment shall constitute a Loan Document. For the avoidance of doubt, any breach of the representations, warranties and covenants contained in this Amendment shall be an Event of Default under the Amended Credit Agreement.

SECTION 10. Reaffirmation. Each of the Loan Parties as debtor, grantor, pledgor, guarantor, assignor, or in other any other similar capacity in which such Loan Party grants liens or security interests in its property, proxy rights with respect to its owned or issued equity or otherwise acts as accommodation party, indemnitor or guarantor, as the case may be, hereby (i) acknowledges, ratifies and reaffirms that all Obligations constitute valid and existing "Obligations" under the Amended Credit Agreement (including all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party (after giving effect hereto)) and (ii) to the extent such Loan Party pledged, granted liens on or security interests in (or any other similar rights) any of its property pursuant to any such Loan Document as security for or otherwise guaranteed the Borrowers' Obligations under or with respect to the Loan Documents, acknowledges, ratifies and reaffirms such guarantee and grant of security interests and liens and confirms and agrees that such pledges, security interests, liens and other similar rights remain in full force and effect notwithstanding the effectiveness of this Amendment to secure all of the Obligations arising under or pursuant to and as defined in the Amended Credit Agreement. Without limiting the generality of the foregoing, each Loan Party further agrees (A) that any reference to "Obligations" contained in any Loan Documents shall include, without limitation, the "Obligations" as such term is defined in the Amended Credit Agreement and (B) that the related guarantees and grants of security contained in such Loan Documents shall include and extend to such Obligations. Each of the Loan Parties hereby consents to this Amendment and acknowledges that each of the Loan Documents remains in full force and effect and is hereby ratified and reaffirmed. The execution of this Amendment shall not operate as a waiver of any right, power or remedy of the Agent or Lenders, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

SECTION 11. Severability. Section 10.12 of the Amended Credit Agreement is incorporated herein by reference as if separately set forth in full herein.

SECTION 12. Counterparts; Integration; Effectiveness. Section 10.10 of the Amended Credit Agreement is incorporated herein by reference as if separately set forth in full herein.

SECTION 13. Release of Claims. In consideration of the Lenders' agreements contained in this Amendment, each Loan Party signatory hereby irrevocably releases and forever discharges the Lenders and the Agent and their affiliates, subsidiaries, successors, assigns, directors, officers, employees, agents, consultants and attorneys (each, a "Released Person") of and from any and all claims, suits, actions, investigations, proceedings or demands, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law of any kind or character, known or

unknown, which any such Loan Party ever had or now has against the Agent, any Lender or any other Released Person which relates, directly or indirectly, to any acts or omissions of any Agent, any Lender or any other Released Person relating to the Amended Credit Agreement or any other Loan Document on or prior to the date hereof.

SECTION 14. **Assignments; No Third Party Beneficiaries**. This Amendment shall be binding upon and inure to the benefit of the Agent, the Borrowers, the other Loan Parties, each Lender and their respective successors and permitted assigns. No Person other than the Borrowers, the other Loan Parties, the Lenders and in the case of Section 13, the Released Persons, shall have any rights hereunder or be entitled to rely on this Amendment and all third-party beneficiary rights (other than the rights of the Released Persons under Section 13 hereof) are hereby expressly disclaimed.

SECTION 15. **Post-Closing Obligations**. The Borrowers shall deliver to Agent, within five (5) Business Days after the Effective Date, evidence in form and substance reasonably acceptable to Agent that ABL Agent's Liens encumbering the Acquired Assets (as defined in the Intellectual Property Purchase Agreement) have been released.

[Signature pages to follow]

SimplyAgree Sign signature packet ID: f4456406-39a9-4367-badb-2d598b1c0e56

IN WITNESS WHEREOF, each of the undersigned has caused this Amendment to be duly executed and delivered as of the date first above written.

BORROWERS:

KIRKLAND'S STORES, INC., as Lead Borrower and as a Borrower

By: Andrea K. Courtois
Name: Andrea K. Courtois
Title: Senior Vice President and Chief Financial Officer

KIRKLAND'S TEXAS, LLC, as a Borrower

By: Andrea K. Courtois
Name: Andrea K. Courtois
Title: Senior Vice President and Chief Financial Officer

OTHER LOAN PARTIES

THE BRAND HOUSE COLLECTIVE, INC. (f/k/a Kirkland's, Inc.), as Parent and as a Guarantor

By: Andrea K. Courtois
Name: Andrea K. Courtois
Title: Senior Vice President and Chief Financial Officer

KIRKLAND'S DC, INC., as a Guarantor

By: Andrea K. Courtois
Name: Andrea K. Courtois
Title: Senior Vice President and Chief Financial Officer

BED BATH & BEYOND, INC. (f/k/a Beyond Inc.), as
Administrative Agent, Collateral Agent and a Lender

By: _____
Name: Marcus Lemonis
Title: Executive Chairman

Exhibit A

Amended Credit Agreement

[Attached]

Exhibit A to
Amendment No. 1 to Amended and Restated Term Loan Credit Agreement

AMENDED AND RESTATED

TERM LOAN CREDIT AGREEMENT

Dated as of May 7, 2025

among

KIRKLAND'S STORES, INC.,
as the Lead Borrower

For

The Borrowers Named Herein

The Guarantors Named Herein

BED BATH & BEYOND, INC. (F/K/A BEYOND, INC.),
as Administrative Agent and Collateral Agent
and

The Lenders Party Hereto

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AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT

This AMENDED AND RESTATED TERM LOAN CREDIT AGREEMENT is entered into as of May 7, 2025, among **KIRKLAND'S STORES, INC.**, a Tennessee corporation (the "Lead Borrower"); the Persons named on Schedule 1.01 hereto (collectively with the Lead Borrower, the "Borrowers"); the Guarantors (as defined herein); each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"); and **BED BATH & BEYOND, INC.**, a Delaware corporation **(f/k/a Beyond, Inc., a Delaware corporation)**, as Administrative Agent and Collateral Agent (each as defined herein).

W I T N E S E T H:

WHEREAS, the parties hereto previously entered into that certain Term Loan Credit Agreement, dated as of October 21, 2024 (the "Existing Credit Agreement") pursuant to which the Lenders provided the Convertible Term Loans (as hereinafter defined) and the Non-Convertible Term Loans (as hereinafter defined) to the Borrowers in the aggregate principal amount of $17,000,000; and

WHEREAS, the Borrowers have requested and the Lenders have agreed to amend and restate the Existing Credit Agreement to provide an additional term loan facility in an aggregate principal amount of $5,232,405.54 (the "Additional Term Loan"**) to the Borrowers on the Closing Date, subject to the satisfaction of certain conditions set forth herein**; ~~and~~

WHEREAS, the Borrowers have requested and the Lenders have agreed to, on the Amendment No. 1 Effective Date, amend this Agreement to establish Delayed Draw Term Loan Commitments (as defined below) in an aggregate principal amount of $20,000,000 (the term loans made in satisfaction of the Delayed Draw Term Loan Commitments, the "Delayed Draw Term Loans"; and the Delayed Draw Term Loans, together with the Existing Term Loans (as hereinafter defined) **and the Additional Term Loans**, collectively, the "Term Loans" and each individually, a "Term Loan") to the Borrowers on the Closing Date, subject to the satisfaction of certain conditions set forth **in Amendment No. 1 and** herein; and

NOW, **THEREFORE**, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"ABL Agent" means the "First Lien Agent" as defined in the ABL Intercreditor Agreement. As of the Original Closing Date, the ABL Agent is **Bank of America, N.A**.

"ABL Availability" means "Availability", as defined in the ABL Credit Agreement.

"ABL Credit Agreement" means the "First Lien Agreement" as defined in the ABL

Intercreditor Agreement.

"ABL Facility" means Indebtedness of the Loan Parties pursuant to the ABL Credit Agreement, and any Permitted Refinancing thereof, which is subject to the terms of the ABL Intercreditor Agreement.

"ABL Intercreditor Agreement" means the Intercreditor Agreement, dated as of the Original Closing Date between the Agent, ABL Agent and the Loan Parties and each additional party thereto from time to time, as amended, restated, amended and restated or otherwise modified from time to time in accordance with the terms thereof and any replacement intercreditor agreement entered into in connection with any replacement of the ABL Credit Agreement reasonably acceptable to the Agent.

"ABL Lender" shall mean each financial institution from time to time party to the ABL Credit Agreement as a "Lender" (as defined thereunder).

"ABL Loan Cap" means "Loan Cap", as defined in the ABL Credit Agreement.

"ABL Loan Documents" means the "ABL Documents" as defined in the ABL Intercreditor Agreement.

"ABL Maturity Date" means the "Maturity Date" under and as defined in the ABL Credit Agreement.

"ABL Obligations" means "Obligations" as defined in the ABL Credit Agreement, as in effect on the Original Closing Date.

"ABL Priority Collateral" has the meaning set forth in the ABL Intercreditor Agreement.

"Accommodation Payment" as defined in Section 10.21(d).

"Acquisition" means, with respect to any Person (a) an Investment in, or a purchase of a Controlling interest in, the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition of any Store locations of any Person, in each case in any transaction or group of transactions which are part of a common plan.

"Act" shall have the meaning provided in Section 10.17.

"Additional Term ~~Loan(s)~~**Loans**" has the meaning set forth in ~~**Section 2.01(c)**~~**the preamble to this Agreement**.

"Additional Term Loan ~~**Commitment(s)**~~**Commitments**" means the commitment of each Lender to make an Additional Term Loan to the Borrower pursuant to Section 2.01(c) of this Agreement in an amount equal to the amount set forth opposite the name of such Lender on

Schedule 2.01 attached hereto, and in an aggregate amount for all of the Lenders of $5,232,405.54.

"Additional Term Loan Notes" means the notes evidencing the Additional Term Loan issued to the Lenders requesting such notes, in each instance in the form of Exhibit C-2 (or such other form reasonably acceptable to the Agent).

"Adjustment Date" means the first day of each Fiscal Quarter, commencing February 2, 2025.

"Administrative Agent" means **Bed Bath &** Beyond, Inc. **(f/k/a Beyond, Inc.)**, in its capacity as administrative agent under any of the Loan Documents, or any successor thereto.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent or such other form reasonably acceptable to the Agent.

"Affected Financial Institution" means any EEA Financial Institution or UK Financial Institution.

"Affiliate" means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, (ii) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (iii) any other Person directly or indirectly holding 10% or more of any class of the Equity Interests of that Person, and (iv) any other Person 10% or more of any class of whose Equity Interests is held directly or indirectly by that Person. Notwithstanding the foregoing, neither the Agent nor any of its Affiliates (other than the Lead Borrower and its Subsidiaries) shall constitute "Affiliates" hereunder.

"Agent" means **Bed Bath &** Beyond, Inc. **(f/k/a Beyond, Inc.)**, in its capacity as Administrative Agent and Collateral Agent, or any successor thereto.

"Agent Parties" shall have the meaning specified in Section 10.02(c).

"Agent's Office" means the Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Lead Borrower and the Lenders.

"Agreement" means this Amended and Restated Term Loan Credit Agreement, as amended, modified, waived, supplemented or restated from time to time.

"Allocable Amount" has the meaning specified in Section 10.21(d).

"Amendment No. 1" means that certain Amendment No. 1 to Amended and Restated Term Loan Credit Agreement, dated as of September 15, 2025, by and among the Lead Borrower, the other Loan Parties party thereto, the Lenders party thereto and the Agent.

"Amendment No. 1 Effective Date" shall mean the "Effective Date" as defined in Amendment No. 1.

"Annual Report" shall have the meaning specified in Section 5.20(b).

"Applicable Lenders" means the Required Lenders, all affected Lenders, or all Lenders, as the context may require.

"Applicable Margin" means the percentages set forth in the pricing grid below:

Term SOFR Margin	**Base Rate Margin**
2.75%	1.75%

"Applicable Percentage" means, with respect to any Lender at any time: (a) with respect to such Lender's Additional Term Loan Commitment at any time, the percentage (carried out to the ninth decimal place) of the Additional Term Loan Commitment represented by such Lender's Additional Term Loan Commitment at such time; provided, that if the commitment of each Lender to make Additional Term Loans has been terminated pursuant to Section 8.02 or if the Additional Term Loan Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments, **(b) with respect to such Lender's Delayed Draw Term Loan Commitment at any time, the percentage (carried out to the ninth decimal place) of the Delayed Draw Term Loan Commitment represented by such Lender's Delayed Draw Term Loan Commitment at such time; provided, that if the commitment of each Lender to make Delayed Draw Term Loans has been terminated pursuant to Section 8.02 or if the Delayed Draw Term Loan Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments** and (**~~b~~c**) with respect to such Lender's portion of the outstanding Term Loans, the percentage (carried out to the ninth decimal place) of the outstanding principal amount of the Term Loans held by such Lender at such time. As of the Closing Date, the initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E or any other form approved by the Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of

such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Parent and its Subsidiaries for the fiscal year ended February 3, 2025, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such fiscal year of the Parent and its Subsidiaries, including the notes thereto.

"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 with respect to (a) 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, or (b) the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bankruptcy Code" means the federal Bankruptcy Code of the United States, Title 11 of the United States Code, as amended from time to time.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus ½ of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by **Bank of America** as its "prime rate," and (c) Term SOFR plus 1.00%. The "prime rate" is a rate set by **Bank of America** based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by **Bank of America** shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate.

"Basel III" means the set of reform measures designed to improve the regulation, supervision and risk management within the banking sector, as developed by the Basel Committee on Banking Supervision.

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

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Beyond" means **Bed Bath &** Beyond, Inc., a Delaware corporation **(f/k/a Beyond, Inc., a Delaware corporation)**.

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Blocked Account" has the meaning provided in Section 6.12(a).

"Blocked Account Agreement" means with respect to an account established by a Loan Party, an agreement, in form and substance satisfactory to the Agent (it being agreed that, prior to the payment in full of the ABL Obligations, the form agreed to by the ABL Agent shall be deemed to be reasonably acceptable to the Agent so long as such agreement provides for the same rights in favor of the Collateral Agent as provided to the ABL Agent, subject to the ABL Intercreditor Agreement), establishing control (as defined in the UCC) of such account by the ABL Agent and the Agent and whereby the bank maintaining such account agrees, upon the occurrence and during the continuance of a Cash Dominion Event, to comply only with the instructions originated by the ABL Agent or the Agent, as the case may be, without the further consent of any Loan Party.

"Blocked Account Bank" means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

"Board" shall have the meaning specified in Section 6.20.

"Board Observer" shall have the meaning specified in Section 6.20.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Agent's Office is located.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (a) (x) all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), in each case that are (or should be) set forth as capital expenditures in a Consolidated statement of cash flows of such Person for such period, in each case prepared in accordance with GAAP, minus (y) tenant allowances received in cash during such period from landlords for operating lease agreements for new Stores, and (b) Capital Lease Obligations incurred by a Person during such period.

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under

GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Dominion Event" means the occurrence and continuance of any Event of Default. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing so long as such Event of Default has not been waived. The termination of a Cash Dominion Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Cash Dominion Event in the event that the conditions set forth in this definition again arise.

"Cash Flow Forecast" shall have the meaning given such term in Section 6.02(l).

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

"CERCLIS" means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the United States Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

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

"Change of Control" means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), in each case other than Beyond and its Affiliates, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 25% or more of the Equity Interests of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such Equity Interests that such "person" or "group" has the right to acquire pursuant to any option right), provided, however, that the subscription for and issuance of shares of Parent

Common Stock pursuant to the Subscription Agreement shall not be a Change of Control; or

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by (x) individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (y) Beyond or any of its Affiliates, or (iii) whose election or nomination to that board or other equivalent governing body was approved by (x) individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (y) Beyond or any of its Affiliates; or

(c) any Person (other than Beyond and its Affiliates) or two or more Persons (other than Beyond and its Affiliates) acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, control over the Equity Interests of the Parent entitled to vote for members of the board of directors or equivalent governing body of the Parent on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities; or

(d) any "change in control" or "sale" or "disposition" or similar event as defined in any Organizational Document of any Loan Party, the ABL Credit Agreement or any document governing Material Indebtedness of any Loan Party; or

(e) the Parent fails at any time to own, directly or indirectly, 100% of the Equity Interests of each other Loan Party free and clear of all Liens (other than the Liens in favor of the Agent), except where such failure is as a result of a transaction permitted by the Loan Documents.

"Closing Date" means ~~the date of this Agreement~~**May 7, 2025**.

"Closing Date Non-Convertible Term Loan Commitment" means the Commitment of each applicable Lender to fund the Closing Date Non-Convertible Term Loans on the Original Closing Date pursuant to Section 2.01(a).

"Closing Date Non-Convertible Term Loans" means the Term Loans that are funded on the Original Closing Date in accordance with Section 2.01(a).

"CME" means CME Group Benchmark Administration Limited.

"Code" means the Internal Revenue Code of 1986, and the regulations promulgated thereunder, as amended and in effect from time to time.

"Collaboration Agreement" means that certain Collaboration Agreement, as originally dated as of the Original Closing Date and as amended and restated as of the ~~date hereof~~**Closing Date**, by and among Parent and Beyond (as amended, restated, supplemented or otherwise modified in writing from time to time, including, for the avoidance of doubt, pursuant to any

Post-Closing Investor Document), which such agreement documents the Operating Arrangements, together with all exhibits and attachments thereto.

"Collateral" means any and all "Collateral" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favor of the Agent.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to the Agent (it being agreed that, prior to the payment in full of the ABL Obligations, the form agreed to by the ABL Agent shall be deemed to be reasonably acceptable to the Agent so long as such agreement provides for the same rights in favor of the Collateral Agent as provided to the ABL Agent, subject to the ABL Intercreditor Agreement), executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Loan Party, pursuant to which such Person (i) acknowledges the Agent's Lien on the Collateral, (ii) releases or subordinates such Person's Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

"Collateral Agent" means **Bed Bath &** Beyond, Inc. **(f/k/a Beyond, Inc.)**, acting in such capacity under any of the Loan Documents for its own benefit and the ratable benefit of the other Credit Parties, or any successor thereto.

"Commitment" means, as to each Lender, its Term Loan Commitment.

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

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Communication" has the meaning set forth in Section 10.28.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of "Base Rate", "SOFR", "Term SOFR" and "Interest Period", timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day", timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"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.

"Consent" means actual consent given by a Lender from whom such consent is sought.

"Consolidated" means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income of the Parent and its Subsidiaries for the most recently completed Measurement Period, plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income Taxes, (iii) depreciation and amortization expense, (iv) stock compensation charges which do not represent a cash item in such period or any future period, and (v) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Parent and its Subsidiaries for such Measurement Period), minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits and (ii) all non-cash items increasing Consolidated Net Income (in each case of or by the Parent and its Subsidiaries for such Measurement Period), all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Fixed Charge Coverage Ratio" means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA for such period minus (ii) unfinanced Capital Expenditures made during such period, minus (iii) the aggregate amount of Federal, state, local and foreign income taxes paid in cash during such period (but not less than zero) to (b) (i) Debt Service Charges for such period plus (ii) all Restricted Payments made pursuant to Section 7.06(c) during such period, in each case, of or by the Parent and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Interest Charges" means, for any Measurement Period, an amount equal to (a) the sum of (x) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts, but excluding any non-cash or deferred interest financing costs, and (y) the portion of rent expense with respect to such period under Capital Lease Obligations that is treated as interest in accordance with GAAP, minus (b) interest income during such period (excluding any portion of interest income representing accruals of amounts received in a previous period), in each case of or by the Parent and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Consolidated basis in accordance with GAAP.

"Consolidated Net Income" means, as of any date of determination, the net income of the Parent and its Subsidiaries for the most recently completed Measurement Period, all as determined

on a Consolidated basis in accordance with GAAP, provided, however, that there shall be excluded (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the income (or loss) of any Subsidiary during such Measurement Period in which any other Person has a joint interest, except to the extent of the amount of cash dividends or other distributions actually paid in cash to any of the Parent or its Subsidiaries during such period, (c) the income (or loss) of a Subsidiary during such Measurement Period and accrued prior to the date it becomes a Subsidiary of the Parent and its Subsidiaries or is merged into or consolidated with the Parent or any of its Subsidiaries or such Person's assets are acquired by the Parent or any of its Subsidiaries, and (d) the income of any direct or indirect Subsidiary of the Parent to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, except that the Parent's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income.

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

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

"Conversion" shall have the meaning specified in Section 11.01(a).

"Conversion Cap" means in connection with any issuance of Parent Common Stock, a number of shares, which when aggregated with the number of shares of Parent Common Stock then held by Parent and its Affiliates prior to such issuance, would not exceed ~~65~~75% of the aggregate outstanding Parent Common Stock (after giving effect to such issuance).

"Conversion Date" shall have the meaning specified in Section 11.01(a).

"Conversion Notice" shall have the meaning specified in Section 11.01(a).

"Conversion Price" means the price for a share of Parent Common Stock on the Nasdaq (as reported thereby) on the day prior to the day the Agent delivers a Conversion Notice pursuant to Section 11.01(a).

"Conversion Shares" shall mean, collectively, shares of Parent Common Stock issued upon the conversion of any Term Loans outstanding in accordance with Article XI.

"Convertible Term Loans" means the Term Loans that are funded on the Original Closing Date in accordance with Section 2.01(b) and are subject to Conversion in accordance with Section 11.01.

"Convertible Term Loan Commitments" means the Commitment of each applicable Lender to make Convertible Term Loans to the Borrowers on the Original Closing Date pursuant

to Section 2.01(b) of this Agreement in an amount equal to the amount set forth opposite the name of such Lender on the applicable portion of Schedule 2.01 of the Existing Credit Agreement.

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified in Section 10.27.

"Credit Card Issuer" shall mean any person (other than a Borrower or other Loan Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the Agent.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Party" or "Credit Parties" means (a) individually, (i) each Lender and its Affiliates, (ii) the Administrative Agent and the Collateral Agent, (iii) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (iv) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (v) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

"Credit Party Expenses" means (a) all reasonable out-of-pocket expenses incurred by the Agent, and its Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examiners, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or

enforce the Collateral or in connection with any proceeding under any Debtor Relief Laws, or (D) any workout, restructuring or negotiations in respect of any Obligations, and (iii) all customary fees and charges (as adjusted from time to time) of the Agent with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, and (b) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agent or any of its Affiliates, after the occurrence and during the continuance of an Event of Default, provided, that such Credit Parties shall be entitled to reimbursement for no more than one counsel representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel).

"Daily Simple SOFR" with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York's website (or any successor source satisfactory to Agent).

"DDA" means each checking, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

"Debt Service Charges" means for any Measurement Period, the sum of (a) Consolidated Interest Charges paid or required to be paid for such Measurement Period, plus (b) principal payments made or required to be made on account of Indebtedness (excluding the Obligations and any Synthetic Lease Obligations but including, without limitation, Capital Lease Obligations) for such Measurement Period, in each case determined on a Consolidated basis in accordance with GAAP.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

"Default Rate" means (a) when used with respect to Loans, an interest rate equal to the interest rate (including the Applicable Margin) otherwise applicable to such Loan plus two percent (2%) per annum, and (b) with respect to all other Obligations, an interest rate equal to the Base Rate, plus the then Applicable Margin, plus two percent (2%) per annum.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, subject to Section 9.16(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, or (ii) pay to the Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Lead Borrower or the in writing that it does not intend to comply with its funding obligations hereunder,

or has made a public statement to that effect, (c) has failed, within three Business Days after written request by the Agent or the Lead Borrower, to confirm in writing to the Agent and the Lead 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 Agent and the Lead 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, 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 Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 9.16(b)) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Lead Borrower and each other Lender promptly following such determination.

"Delayed Draw Term Loan Borrowing Date" has the meaning given such term in Section 2.02(a)(i) of this Agreement.

"Delayed Draw Term Loan Commitments" means the commitment of each Lender to make a Delayed Draw Term Loan to the Borrower pursuant to Section 2.01(e) of this Agreement in an amount equal to the amount set forth opposite the name of such Lender on Schedule 2.01 attached hereto, and in an aggregate amount for all of the Lenders of $20,000,000.

"Delayed Draw Term Loan Commitment Period" means the period commencing on the Amendment No. 1 Effective Date and ending on the Delayed Draw Term Loan Commitment Termination Date.

"Delayed Draw Term Loan Commitment Termination Date" means the earliest of (i) the date upon which the Delayed Draw Term Loan Commitments shall have been reduced to zero upon the borrowing of all available Delayed Draw Term Loans pursuant to Section 2.01(e) below and (ii) termination of the Commitments in accordance with Section 8.

"Delayed Draw Term Loan Notes" means the notes evidencing the Delayed Draw Term Loans issued to the Lenders requesting such notes, in each instance in the form of Exhibit C-2 (but including any required conforming definitional changes) (or such other form reasonably acceptable to the Agent).

"Delayed Draw Term Loan Request" has the meaning given such term in Section

2.02(a)(i) of this Agreement.

"Delayed Draw Term Loans" has the meaning set forth in the preamble to this Agreement.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) and any sale, transfer, license or other disposition of (whether in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dividing Person" has the meaning assigned to it in the definition of "Division."

"Division" means the division of the assets, liabilities and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Disqualified Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Loans mature. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Lead Borrower and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

"Dollars" and "$" mean lawful money of the United States.

"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.

"Electronic Copy" has the meaning set forth in Section 10.28.

"Eligible Assignee" means (a) a Credit Party or any of its Affiliates; (b) a bank, insurance company, or company engaged in the business of making commercial loans, which Person, together with its Affiliates, has a combined capital and surplus in excess of $250,000,000; (c) an Approved Fund; (d) any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party's rights in and to a material portion of such Credit Party's portfolio of asset based credit facilities, and (e) any other Person (other than a natural person) approved by (i) the Agent, and (ii) unless an Event of Default has occurred and is continuing, the Lead Borrower (each such approval not to be unreasonably withheld or delayed); provided, that notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

"Environmental Laws" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning set forth in the UCC.

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

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

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

Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

"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.

"Event of Default" has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party under the Facility Guaranty of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 10.25 hereof and any and all guarantees of such Loan Party's Swap Obligations by other Loan Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such guaranty or security interest becomes illegal.

"Excluded Taxes" means, any of the following Taxes imposed on or with respect to any 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 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 Lead Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Executive Order" has the meaning set forth in Section 10.18.

"Existing Credit Agreement" has the meaning set forth in the Recitals.

"Existing Term Loan Notes" means the notes evidencing the Existing Term Loans, issued to the Lenders requesting such notes, in each instance in the form of Exhibit C-1 (or such other form reasonably acceptable to the Agent).

"Existing Term Loans" means, collectively, the Non-Convertible Term Loans outstanding as of the Closing Date in an aggregate principal amount equal to $8,500,000.

"Facility Guaranty" means the Guaranty made by the Guarantors in favor of the Agent and the other Credit Parties, in form reasonably satisfactory to the Agent.

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

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that if the Federal Funds Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for purposes of this Agreement.

"Fiscal Month" means any fiscal month of any Fiscal Year, which month shall generally end on the Saturday closest to the end of each calendar month in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Quarter" means any fiscal quarter of any Fiscal Year, which quarters shall generally end on the Saturday closest to the end of each April, July, October and January of such Fiscal Year in accordance with the fiscal accounting calendar of the Loan Parties.

"Fiscal Year" means any 52 week period or 53 week period ending on the Saturday closest to January 31 of any calendar year.

"Floor" means 0.00% per annum.

"Foreign Asset Control Regulations" has the meaning set forth in Section 10.18.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Lead Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

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

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

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

reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means the Parent and each Subsidiary of the Parent or any Borrower (other than the Borrowers) existing on the Closing Date and each other Subsidiary of the Parent or any Borrower that shall be required to execute and deliver a Facility Guaranty pursuant to Section 6.11.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 60 days);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) All Attributable Indebtedness of such Person;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person (including, without limitation, Disqualified Stock), or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation

under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Intellectual Property Purchase Agreement" means that certain Asset Purchase Agreement, dated as of the Closing Date, by and between the Agent, as purchaser, and Kirkland's Inc. as seller.

"Interest Payment Date" means, (a) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date; provided, however, that if any Interest Period for a Term SOFR Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the first Business Day following each month and the Maturity Date.

"Interest Period" means as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one, three or six months thereafter, as selected by the Lead Borrower in its Notice of Borrowing/Continuation/Conversion (in each case, subject to availability); provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Term SOFR Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period pertaining to a Term SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding

day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Internal Control Event" means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Parent's and/or its Subsidiaries' internal controls over financial reporting, in each case as described in the Securities Laws.

"Inventory" has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

"Investor Documents" means (i) the Collaboration Agreement, (ii) the Investor Rights Agreement, (iii) the License Agreement, (iv) the Subscription Agreement and (v) the Intellectual Property Purchase Agreement.

"Investor Rights Agreement" means that certain Investor Rights Agreement, as originally entered into as of the Original Closing Date and as amended and restated as of the ~~date hereof~~**Closing Date**, by and between Beyond and Parent (as further amended, restated, supplemented or otherwise modified in writing from time to time).

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

"Joinder Agreement" means an agreement, in form satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents

or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lease" means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Lender" has the meaning specified in the introductory paragraph hereto.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Lead Borrower and the Agent.

"License Agreement" means that certain Trademark License Agreement, dated as of the Original Closing Date, as amended on the Closing Date, by and between Beyond and Parent (as further amended, restated, supplemented or otherwise modified in writing from time to time, including, for the avoidance of doubt, pursuant to any Post-Closing Investor Document).

"Lien" means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan" means any Term Loan or other extension of credit made by a Lender or the Agent under this Agreement.

"Loan Account" has the meaning assigned to such term in Section 2.11.

"Loan Documents" means this Agreement, each Note, the Security Documents, the Facility Guaranty, the Blocked Account Agreements, the ABL Intercreditor Agreement and any other instrument or agreement now or hereafter executed and delivered in connection herewith, in each case, as amended, modified, supplemented, substituted, replaced, restated or refinanced, in whole or in part, from time to time.

"Loan Parties" means, collectively, the Borrowers and the Guarantors.

"Master Agreement" has the meaning provided for in the definition of "Swap Contract".

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Loan Party or the Parent and its Subsidiaries taken as a

whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or the Credit Parties under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

"Material Contract" means, with respect to any Person, (i) the Investor Documents and (ii) each contract to which such Person is a party involving aggregate consideration payable to or by such Person of $500,000 or more in any Fiscal Year or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

"Material Indebtedness" means (i) Indebtedness in respect of ABL Facility, and (ii) other Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding $500,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

"Maturity Date" means September 30, 2028.

"Maximum Rate" has the meaning provided therefor in Section 10.09.

"Measurement Period" means, at any date of determination, the most recently completed twelve Fiscal Months of the Parent.

"Monitor" has the meaning provided therefor in Section 6.20(b).

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

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

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including the Lead Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Nasdaq" means the Nasdaq Stock Market.

"Non-Consenting Lender" has the meaning provided therefor in Section 10.01.

"Non-Convertible Term Loan Commitments" means, collectively, the Closing Date

Non-Convertible Term Loan Commitments in an amount equal to the amount set forth opposite the name of such Lender on the applicable portion of Schedule 2.01 of the Existing Credit Agreement.

"Non-Convertible Term Loans" means the Closing Date Non-Convertible Term Loans.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Nonconforming Opinion" the opinion for the Fiscal Year ending February 1, 2025 required by Section 6.01(a) of the Existing Credit Agreement, which such opinion is subject to a "going concern" or like qualification or exception.

"Notes" means, collectively, the Existing Term Loan Notes **~~and~~,** the Additional **Term Loan Notes and the Delayed Draw** Term Loan Notes.

"Notice of Borrowing/Continuation/Conversion" means the request by the Lead Borrower for a borrowing of Additional Term Loans on the Closing **Date, a borrowing of Delayed Draw Term Loans on the applicable Delayed Draw Term Loan Borrowing** Date or continuation or conversion of the applicable Interest Period thereafter in accordance with Section 2.02 and substantially in the form attached hereto as Exhibit A **(with any required definitional changes to reflect the class of the applicable Term Loan being borrowed, continued or converted thereunder)**.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, under the Collaboration Agreement, under the License Agreement or under the Intellectual Property Purchase Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees costs, expenses and indemnities are allowed claims in such proceeding, provided, that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Operating Arrangements" shall have the meaning given such term in the Collaboration Agreement.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any

partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

"Original Closing Date" means October 21, 2024.

"Osmium Shareholder Voting Agreement" means that certain Letter Agreement, dated as of October 21, 2024, executed by Osmium Partners, LLC.

"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 3.06).

"Parent" means **The Brand House Collective, Inc., a Tennessee corporation (f/k/a** Kirkland's, Inc., a Tennessee corporation**)**.

"Parent Common Stock" has the meaning specified in Section 11.01(a).

"Participant" has the meaning specified in Section 10.06(d).

"Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that (a) no Default or Event of Default then exists or would arise as a result of entering into such transaction or the making of such payment, and (b) after giving pro forma effect to such transaction or payment, either (x) (i) ABL Availability for each day during the prior sixty (60) day period was equal to or greater than the greater of (A) 20% of the ABL Loan Cap and (B) $15,000,000, and (ii) the Consolidated Fixed Charge Coverage Ratio, on a pro-forma basis for the twelve months immediately preceding such transaction or payment, will be equal to or greater than 1.0:1.0, or (y) ABL Availability for each day during the prior sixty (60) day period was equal to or greater than 30% of the ABL Loan Cap; provided, that notwithstanding anything to the contrary contained herein, prior to the eighteen (18) month anniversary of the Original Closing Date, the Loan Parties shall not be permitted to undertake any specified transaction or payment which requires the satisfaction of the Payment Conditions. Prior to undertaking any transaction or payment which is subject to the Payment Conditions, the Loan Parties shall deliver to the Agent

evidence of satisfaction of the conditions contained in clause (b) above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Agent.

"PBGC" means the Pension Benefit Guaranty Corporation.

"PCAOB" means the Public Company Accounting Oversight Board.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Lead Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) Such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable Law;

(b) The Lead Borrower shall have furnished the Agent with thirty (30) days' prior written notice of such intended Acquisition and shall have furnished the Agent with a current draft of the Acquisition documents (and final copies thereof as and when executed), a summary of any due diligence undertaken by the Loan Parties in connection with such Acquisition, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and such other information as the Agent may reasonably require, all of which shall be reasonably satisfactory to the Agent;

(c) Either (i) the legal structure of the Acquisition shall be acceptable to the Agent in its discretion, or (ii) the Loan Parties shall have provided the Agent with a favorable solvency opinion from an unaffiliated third party valuation firm reasonably satisfactory to the Agent;

(d) After giving effect to the Acquisition, if the Acquisition is an Acquisition of Equity Interests, a Loan Party shall acquire and own, directly or indirectly, a majority of the Equity Interests in the Person being acquired and shall Control a majority of any voting interests or shall otherwise Control the governance of the Person being acquired;

(e) Any assets acquired shall be utilized in, and if the Acquisition involves a merger, consolidation or acquisition of Equity Interests, the Person which is the subject of such Acquisition shall be engaged in, a business otherwise permitted to be engaged in by a Borrower under this Agreement;

(f) If the Person which is the subject of such Acquisition will be maintained as a Subsidiary of a Loan Party, or if the assets acquired in an Acquisition will be transferred to a Subsidiary which is not then a Loan Party, such Subsidiary shall have been joined as a "Borrower" hereunder or as a Guarantor, as the Agent shall determine, and the Agent shall have received a perfected security interest in such Subsidiary's Equity Interests and property of such Subsidiary and of the same nature as constitutes Collateral under the Security Documents with the priority of such security interest determined in accordance with the ABL Intercreditor Agreement; and

(g) The Loan Parties shall have satisfied the Payment Conditions.

"Permitted Disposition" means any of the following:

(a) dispositions of Inventory in the ordinary course of business;

(b) bulk sales or other dispositions of the Inventory of a Loan Party not in the ordinary course of business in connection with Permitted Store Closings, at arm's length;

(c) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;

(d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided, that if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;

(e) dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary so long as such dispositions do not involve Equipment having an aggregate fair market value in excess of $500,000 for all such Equipment disposed of by the Loan Parties in any Fiscal Year;

(f) Sales, transfers and dispositions (i) among the Loan Parties or (ii) by any Subsidiary to a Loan Party, in the case of this clause (ii), for no more than fair market value;

(g) Sales, transfers and dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party; and

(h) as long as no Default or Event of Default then exists or would arise therefrom, sales of Real Estate of any Loan Party (or sales of any Person or Persons created to hold such Real Estate or the Equity Interests in such Person or Persons), including sale-leaseback transactions involving any such Real Estate pursuant to leases on market terms, as long as, (A) such sale is made for fair market value, and (B) in the case of any sale-leaseback transaction permitted hereunder, the Agent shall have received from each such purchaser or transferee a Collateral Access Agreement on

terms and conditions reasonably satisfactory to the Agent.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(b) Carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Laws, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 6.04;

(c) Pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment and other types of insurance and other social security laws or regulations, other than any Lien imposed by ERISA;

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

(e) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(f) Easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(g) Liens existing on the Original Closing Date and listed on Schedule 7.01 and any Permitted Refinancings thereof;

(h) Liens on fixed or capital assets acquired by any Loan Party which are permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition, (ii) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (iii) such Liens shall not extend to any other property or assets of the Loan Parties;

(i) Liens in favor of the Agent arising under or pursuant to the Loan Documents;

(j) Landlords' and lessors' Liens in respect of rent not in default;

(k) Possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Original Closing Date and Permitted Investments, provided, that such liens (a) attach only to such Investments and (b) secure only

obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens arising from precautionary UCC filings regarding "true" operating leases or, to the extent not prohibited under the Loan Documents, the consignment of goods to a Loan Party;

(n) voluntary Liens on property in existence at the time such property is acquired pursuant to a Permitted Acquisition or on such property of a Subsidiary of a Loan Party in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided, that such Liens are not incurred in connection with or in anticipation of such Permitted Acquisition and do not attach to any other assets of any Loan Party or any Subsidiary;

(o) Liens in favor of customs and revenues authorities imposed by applicable Laws arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(p) [reserved]; and

(q) Liens in favor of the ABL Agent securing the ABL Obligations, so long as such Liens are at all times subject to the ABL Intercreditor Agreement.

"Permitted Indebtedness" means each of the following as long as no Default or Event of Default exists or would arise from the incurrence thereof:

(a) Indebtedness outstanding on the Original Closing Date and listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party to any other Loan Party;

(c) Purchase money Indebtedness of any Loan Party to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof, provided, however, that the aggregate principal amount of Indebtedness permitted by this clause (c) shall not exceed $2,500,000 at any time outstanding and further provided, that if requested by the Agent, the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness to enter into an access and use agreement on terms reasonably satisfactory to the Agent;

(d) If the Agent has consented in its sole discretion to such Indebtedness, Indebtedness incurred for the construction or acquisition or improvement of, or to finance or to refinance, any Real Estate owned by any Loan Party (including therein any Indebtedness incurred in connection with sale-leaseback transactions permitted hereunder and any Synthetic Lease Obligations), provided, for the avoidance of doubt, this clause (d) shall not prohibit the construction or acquisition or improvement of any Real Estate owned by any Loan Party to the extent the Borrower does not incur any Indebtedness in connection therewith, provided further, that the Loan Parties shall use commercially reasonable efforts to cause the holders of such Indebtedness and the lessors under any sale-leaseback transaction to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(e) Contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of Stores;

(f) obligations (contingent or otherwise) of any Loan Party or any Subsidiary thereof existing or arising under any Swap Contract, provided, that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates, and not for purposes of speculation or taking a "market view" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(g) Indebtedness with respect to the deferred purchase price for any Permitted Acquisition, provided, that such Indebtedness does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, has a final maturity which extends beyond the Maturity Date, and is subordinated to the Obligations on terms reasonably acceptable to the Agent;

(h) Indebtedness of any Person that becomes a Subsidiary of a Loan Party in a Permitted Acquisition, which Indebtedness is existing at the time such Person becomes a Subsidiary of a Loan Party (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of a Loan Party);

(i) The Obligations;

(j) Unsecured Subordinated Indebtedness in an aggregate amount not exceeding $10,000,000 at any time;

(k) [reserved]; and

(l) Indebtedness of the Loan Parties evidenced by the ABL Facility in an aggregate principal amount not to exceed the ABL Principal Cap (as defined in the ABL Intercreditor Agreement) at any time outstanding, so long as such Indebtedness shall at all times be subject to the ABL Intercreditor Agreement.

"Permitted Investments" means each of the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by

the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that, the full faith and credit of the United States of America is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is an ABL Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (b) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) Fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;

(f) Investments existing on the Original Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

(g) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Original Closing Date, (ii) additional Investments by any Loan Party and its Subsidiaries in Loan Parties (other than the Parent), and (iii) additional Investments by Subsidiaries of the Loan Parties that are not Loan Parties in other Subsidiaries that are not Loan Parties;

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

(i) Guarantees constituting Permitted Indebtedness;

(j) so long as no Default or Event of Default has occurred and is continuing or would

result from such Investment, Investments by any Loan Party in Swap Contracts permitted hereunder;

(k) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(l) advances to officers, directors and employees of the Loan Parties and Subsidiaries in the ordinary course of business (i) in an aggregate amount not to exceed $250,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes, and (ii) in an aggregate amount not to exceed $1,000,000 at any time outstanding to permit such officers, directors and employees to purchase Equity Interests in a Loan Party so long as no Default or Event of Default shall have occurred and be continuing;

(m) Investments constituting Permitted Acquisitions; and

(n) Capital contributions made by any Loan Party to another Loan Party;

provided, however, that notwithstanding the foregoing, (i) after the occurrence and during the continuance of a Cash Dominion Event, no such Investments specified in clauses (a) through (e) shall be permitted unless either (A) no Loans or, if then required to be Cash Collateralized (as defined in the ABL Credit Agreement), Letters of Credit (as defined in the ABL Credit Agreement) are then outstanding under the ABL Credit Agreement, or (B) the Investment is a temporary Investment pending expiration of an Interest Period for a Term SOFR Loan, the proceeds of which Investment will be applied to the ABL Obligations after the expiration of such Interest Period (capitalized terms used in the foregoing clauses (A) and (B) having the respective meanings ascribed to such terms in the ABL Credit Agreement as in effect on the Original Closing Date), and (ii) such Investments shall be pledged to the ABL Agent and the Agent as additional collateral for the obligations under the ABL Facility and the Obligations, respectively, pursuant to such agreements as may be reasonably required by the Agent and the ABL Agent.

"Permitted Refinancing" means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced (or previous refinancings thereof constituting a Permitted Refinancing); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced, (c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Maturity Date for the Indebtedness being Refinanced, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favorable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced, (e) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the

Indebtedness being Refinanced, or greater guarantees or security, than the Indebtedness being Refinanced, (f) such Permitted Refinancing shall be otherwise on terms not materially less favorable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to financial and other covenants and events of default, (g) the interest rate applicable to any such Permitted Refinancing shall not exceed the then applicable market interest rate, and (h) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

"Permitted Store Closings" means (a) Store closures and related disposition of Inventory, which do not exceed in any Fiscal Year of the Parent and its Subsidiaries, fifteen percent (15%) of the number of the Loan Parties' Stores as of the beginning of such Fiscal Year (net of Store relocations and openings for such Fiscal Year), and (b) the related Inventory is either moved to a distribution center or another retail location of the Loan Parties for future sale in the ordinary course of business or is disposed of, if requested by the Agent, in accordance with liquidation agreements and with professional liquidators reasonably acceptable to the Agent.

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

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Lead Borrower or any ERISA Affiliate or any such Plan to which the Lead Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" has the meaning specified in Section 6.02.

"Post-Closing Investor Documents" has the meaning specified on Schedule 6.19.

"Prepayment Event" means the incurrence by a Loan Party of any Indebtedness other than Permitted Indebtedness.

"Public Lender" has the meaning specified in Section 6.02.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified in Section 10.27.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Real Estate" means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

"Recipient" means the Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

"Register" has the meaning specified in Section 10.06(c).

"Registered Public Accounting Firm" has the meaning specified by the Securities Laws and shall be independent of the Parent and its Subsidiaries as prescribed by the Securities Laws.

"Released Parties" has the meaning provided in Section 10.29.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

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

"Reports" has the meaning provided in Section 9.12(b).

"Required Lenders" means, as of any date of determination, those Lender(s) holding more than 50% of the sum of the unused aggregate Commitments and aggregate principal balance of the Loans.

"Rescindable Amount" has the meaning provided in Section 2.12(c).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, any vice president, secretary or assistant secretary, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to such Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment. Without limiting the foregoing, "Restricted Payments" with respect to any Person shall also include all payments made by such Person with any proceeds of a dissolution or liquidation of such Person.

"RP Conditions" means, at the time of determination with respect to any applicable Restricted Payment, that (a) no Default or Event of Default then exists or would arise as a result of the making of such Restricted Payment, and (b) after giving pro forma effect to such Restricted Payment, either (x) (i) ABL Availability for each day during the prior sixty (60) day period was be equal to or greater than the greater of (A) 20% of the ABL Loan Cap and (B) $15,000,000, and (ii) the Consolidated Fixed Charge Coverage Ratio, on a pro forma basis for the twelve months immediately preceding such transaction or payment, will be equal to or greater than 1.1:1.0, or (y) ABL Availability for each day during the prior sixty (60) day period was equal to or greater than 30% of the ABL Loan Cap. Prior to undertaking any Restricted Payment which is subject to the RP Conditions, the Loan Parties shall deliver to the Agent evidence of satisfaction of the conditions contained in clause (b) above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Agent.

"Sanction(s)" means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty's Treasury ("HMT") or other relevant sanctions authority.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"Scheduled Unavailability Date" has the meaning specified in Section 3.03(b).

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

"Securities Laws" means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

"Security Agreement" means the Security Agreement dated as of the Original Closing Date, among the Loan Parties and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

"Security Documents" means the Security Agreement, the Blocked Account Agreements and each other security agreement or other instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Shareholder Approval" means the approval of the holders of a majority of the Parent Common Stock, at a meeting duly called for such purpose, for Parent to issue any Parent Common Stock required to effectuate a Conversion hereunder as required under the listing standards of Nasdaq, including Nasdaq Listing Rule 5635(b) and (d).

"Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Parent and its Subsidiaries as of that date determined in accordance with GAAP.

"SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

"SOFR Adjustment" means 0.10% (10.00 basis points) per annum.

"Solvent" and "Solvency" means, with respect to any Person on a particular date, that on such date (a) at fair valuation, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair saleable value of the properties and assets of such Person is not less than the amount that would be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or transaction, for which such Person's properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged. The amount of all guarantees at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, can reasonably be expected to become an actual or matured liability.

"Specified Loan Party" means any Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 10.25).

"Store" means any retail store (which may include any real property, fixtures, equipment, Inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent.

"Subscription Agreement" means that certain Subscription Agreement, dated as of the Original Closing Date, as amended on the Closing Date, by and between Parent and Beyond (as further amended, restated, supplemented or otherwise modified in writing from time to time).

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"Successor Rate" has the meaning specified in Section 3.03(b).

"Supported QFC" has the meaning specified in Section 10.27.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit

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

"Swap Obligations" means with respect to any Loan Party 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.

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

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

"Term Loans" means, collectively, the Existing Term Loans ~~and~~, the Additional **Term Loans and the Delayed Draw** Term Loans.

"Term Loan Commitments" means the Additional Term Loan Commitments **and the Delayed Draw Term Loan Commitments**.

"Term SOFR" means, for any calculation with respect to a Loan on any day, the Term SOFR Reference Rate with a tenor equal to the applicable Interest Period (such day, the "Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the

first day of each calendar month as such rate is published by the Term SOFR Administrator; provided, that, (i) if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Term SOFR Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day and (ii) if Term SOFR determined as provided above (including pursuant to clause (i) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

"Term SOFR Loan" means a Loan that bears interest at a rate based on Term SOFR.

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Term SOFR Replacement Date" has the meaning specified in Section 3.03(b).

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

"Termination Date" means the earliest to occur of (i) the applicable Maturity Date, (ii) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (iii) the date on which all outstanding Obligations (other than unasserted contingent indemnification Obligations) have been paid in full and Commitments are irrevocably terminated in accordance with the applicable provisions of Section 8.02.

"Trading with the Enemy Act" has the meaning set forth in Section 10.18.

"Type" means, with respect to a Committed Loan, its character as a Base Rate Loan or a Term SOFR Loan.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9; provided further that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof

relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

"UFCA" has the meaning specified in Section 10.21(d).

"UFTA" has the meaning specified in Section 10.21(d).

"UK Financial Institution" means any BRRD Undertaking (as defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person subject to 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.

"United States" and "U.S." mean the United States of America.

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

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

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.27.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(e)(ii)(B)(III).

"Write-Down and Conversion Powers" means, (a) the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule or (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) 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, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) 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 mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds of all of the Obligations other than unasserted contingent indemnification Obligations.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original

intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding. Any financial ratios required to be maintained by the Loan Parties pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 [Reserved].

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

ARTICLE II
TERM LOANS

2.01 Term Loans.

(a) Closing Date Non-Convertible Term Loans. On the Original Closing Date, each Lender with a Closing Date Non-Convertible Term Loan Commitment advanced to the Borrowers such Lender's Applicable Percentage of the Closing Date Non-Convertible Term Loans, in an amount equal to such Lender's Closing Date Non-Convertible Term Loan Commitment, and each Lender's Closing Date Non-Convertible Term Loan Commitment terminated concurrently therewith. On the Closing Date, the outstanding principal balance of the Closing Date Non-Convertible Term Loan is $8,500,000.00. The Borrowers hereby acknowledge, confirm and agree that the Closing Date Non-Convertible Term Loan is, as of the Closing Date, unconditionally owing by the Borrowers to the applicable Lenders, without offset, defense or counterclaim or any kind, nature or description whatsoever and that the Closing Date Non-Convertible Term Loan remains outstanding and payable as provided for in this Agreement, shall constitute "Existing Term Loans" hereunder and shall be evidenced by the Existing Term Loan Note. The principal amount of any Existing Term Loan which is repaid or prepaid cannot be reborrowed.

(b) Convertible Term Loans. On the Original Closing Date, each Lender with a

Convertible Term Loan Commitment advanced to the Borrowers such Lender's Applicable Percentage of the Convertible Term Loans, in an amount equal to such Lender's Convertible Term Loan Commitment, and each Lender's Convertible Term Loan Commitment terminated. As of the Closing Date, the outstanding principal balance of the Convertible Term Loan is $0.00, due to the conversion of the Convertible Term Loans into Parent Common Stock pursuant to Section 11.01 of the Existing Credit Agreement, and, as a result, such loans have been deemed extinguished and are no longer outstanding.

(c) Additional Term Loan. Subject to the terms and conditions set forth herein, each Lender with an Additional Term Loan Commitment severally agrees to make Additional Term Loans to the Borrowers on the Closing Date, in an amount equal to such Lender's Additional Term Loan Commitment. The Borrowers shall request the funding of the Additional Term Loan pursuant to the procedures set forth in Section 2.02(b). Each Lender's Additional Term Loan Commitment shall automatically be terminated upon the funding of such Lender's Additional Term Loans on the Closing Date. The principal amount of any Additional Term Loan which is repaid or prepaid may not be reborrowed.

(d) [Reserved].

(e) Delayed Draw Term Loan. Subject to the terms and conditions set forth herein, each Lender with Delayed Draw Term Loan Commitment severally agrees to make loans (the "Delayed Draw Term Loans") on each Delayed Draw Term Loan Borrowing Date to the Borrowers at any time during the Delayed Draw Term Loan Commitment Period, in an amount up to such Lender's Delayed Draw Term Loan Commitment; provided, that after giving effect to the requested Delayed Draw Term Loan, the aggregate principal amount of such Lender's Delayed Draw Term Loan shall not exceed such Lender's Delayed Draw Term Loan Commitment. The Borrowers shall request the funding of each Delayed Draw Term Loan pursuant to the procedures set forth in Section 2.02(a)(i) and the Delayed Draw Term Loan shall be funded in accordance with the terms of Section 2.02(a)(ii) hereof. Each Lender's Delayed Draw Term Loan Commitment shall automatically be reduced concurrently with, and in the principal amount of, any Delayed Draw Term Loan made by such Lender, and any remaining unfunded Draw Term Loan Commitments of the Lenders shall terminate on the funding thereof or on the Delayed Draw Term Loan Commitment Termination Date (as applicable). The principal amount of any Delayed Draw Term Loan which is repaid or prepaid may not be reborrowed.

2.02 Loan Procedures.

(a) ~~[Reserved].~~**Request for Delayed Draw Term Loans.**

(i) Lead Borrower shall give irrevocable written notice to the Agent of each proposed borrowing of a Delayed Draw Term Loan by delivery of a Notice of Borrowing/Continuation/Conversion, appropriately completed by a Responsible Officer of the Lead Borrower no later than 11:00 a.m. five (5) Business Days prior to the proposed date of such borrowing (each a "Delayed Draw Term Loan Request"). Each Delayed Draw Term Loan Request shall specify (i) the proposed date of funding of the requested Delayed Draw Term Loan (each such date,

a "Delayed Draw Term Loan Borrowing Date"), and (ii) the requested amount of the Delayed Draw Term Loan (which shall be in an aggregate principal amount of not less than $5,000,000 and, if greater, shall be in a larger multiple of $500,000. All Delayed Draw Term Loans shall be Term SOFR Loans unless the provisions of Sections 3.02 and 3.03 shall apply.

(ii) The Agent shall advise each Lender of the details and amount of any Delayed Draw Term Loan to be made by it as a part of the requested borrowing following receipt of a Delayed Draw Term Loan Request in accordance with this Section. Each Lender shall make the amount of its Delayed Draw Term Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Delayed Draw Term Loan Request. Upon satisfaction of the conditions set forth in Section 4.02, the Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent either by wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower.

(b) Request for Additional Term Loans. Lead Borrower shall give irrevocable written notice to the Agent of the borrowing of the Additional Term Loans by delivery of a Notice of Borrowing/Continuation/Conversion, appropriately completed by a Responsible Officer of the Lead Borrower no later than 11:00 a.m. one (1) Business Days prior to the Closing Date (or such later date as agreed by the Agent in its discretion). The Notice of Borrowing/Continuation/Conversion shall specify the proposed Closing Date. All Term Loans shall be Term SOFR Loans unless the provisions of Sections 3.02 and 3.03 shall apply. The Agent shall advise each Lender of the details and amount of any Term Loan to be made by it as a part of the requested borrowing following receipt of a Notice of Borrowing/Continuation/Conversion in accordance with this Section. Each Lender shall make the amount of its Term Loan available to the Agent in immediately available funds at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Notice of Borrowing/Continuation/Conversion. Upon satisfaction of the applicable conditions, Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent either by wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower.

(c) [Reserved].

(d) The Agent, without the request of the Lead Borrower, may advance any interest, fee, service charge (including direct wire fees), expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document as a Loan hereunder and may charge the same to the Loan Account notwithstanding that the outstanding Obligations may exceed the total Commitments after giving effect to such charge. The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

(e) Conversions and Continuations.

(i) Each conversion of Loans from one Type to the other, and each continuation of Term SOFR Loans shall be made upon the Lead Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans. Each telephonic notice by the Lead Borrower pursuant to this Section 2.02(e)(i) must be confirmed promptly by delivery to the Agent of a written Notice of Borrowing/Continuation/Conversion, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Each conversion to or continuation of Term SOFR Loans shall be in the full of amount of the applicable Term SOFR Loan. Each conversion to Base Rate Loans shall be in such minimum amounts as the Agent may require. Each Notice of Borrowing/Continuation/Conversion (whether telephonic or written) shall specify (i) whether the Lead Borrower is requesting a conversion of Loans from one Type to the other, or a continuation of Term SOFR Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Lead Borrower fails to specify a Type of Loan in a Notice of Borrowing/Continuation/Conversion or if the Lead Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If the Lead Borrower requests a conversion to, or continuation of Term SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(ii) If no timely notice of a conversion or continuation is provided by the Lead Borrower, the Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(e)(i).

(iii) Except as otherwise provided herein, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, converted to or continued as Term SOFR Loans without the Consent of the Required Lenders.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) Each determination of an interest rate by the Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error.

(j) The Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to (i) the rates in the definition of "Term SOFR" or any other reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternate, replacement or successor to such rate (including any Successor Rate), or any component thereof, or the effect of any of the foregoing, or of any Conforming Changes. Agent may select information source(s) in its discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Successor Rate), or any component thereof, in each case pursuant to the terms hereof, and shall have no liability to any Lender, Loan Party or other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise, and whether at law or in equity) for any error or other act or omission related to or affecting the selection, determination or calculation of any rate (or component thereof) provided by such information source(s).

(k) [Reserved].

2.03 [Reserved].

2.04 [Reserved].

2.05 Prepayments.

(a) Voluntary ~~Prepayment~~**Prepayments**.~~(i)~~ The Borrowers may, upon irrevocable written notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Term Loans hereunder. Any prepayment pursuant to this Section 2.05(a) shall be in a minimum amount of $1,000,000 and increments of $1,000,000 in excess of such amount or, if less, the entire amount of the applicable Term Loan so prepaid. Notice of prepayment must be received by the Agent not later than 11:00 a.m. three (3) Business Days prior to any date of prepayment. Each such notice shall specify the date and amount of such prepayment. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Term Loans of the Lenders prepaid in accordance with their respective Applicable Percentages. Amounts prepaid on account of Term Loans may not be reborrowed. Any voluntary prepayments hereunder shall be applied *pro rata* to the ~~Existing Term Loans and the Additional~~ Term Loans.

~~(ii) [Reserved].~~

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) Mandatory Prepayments. With respect to any Prepayment Event irrespective of whether a Cash Dominion Event then exists and is continuing, the Borrowers shall prepay the Loans in an amount equal to the amount of such incurred indebtedness that is not Permitted Indebtedness on the date of such Prepayment Event.

(f) Prepayments made pursuant to Section 2.05(a) and (e) above, shall be applied ratably to the Term Loans then outstanding.

2.06 Repayment of Loans. The Borrowers hereby unconditionally promise to pay to the Agent for the account of each Lender who has advanced a Term Loan, the original principal amount of the Term Loans and all accrued interest thereon on the Maturity Date.

2.07 [Reserved].

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) below, (i) the outstanding principal amount of each Term SOFR Loan for each Interest Period shall bear interest at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Margin for Term SOFR Loans and (ii) the outstanding principal amount of each Base Rate Loan shall bear interest at a rate per annum equal to the applicable Base Rate plus the Applicable Margin for Base Rate Loans.

(b) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Law.

(i) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by Law.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Except as provided in Section 2.08(b)(ii), interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) The Agent may make Conforming Changes from time to time with respect to SOFR, Term SOFR or any Successor Rate. Notwithstanding anything to the contrary in any Loan Document, any amendment implementing such changes shall be effective without further action or consent of any party to any Loan Document. Agent shall post or provide each such amendment to the Lenders and Lead Borrower reasonably promptly after it becomes effective.

2.09 [Reserved].

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid in accordance with Section 2.12(a) below, provided, that any Loan that is repaid on the same day on which it is made shall, bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt. The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, type (if applicable), amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 2:00 p.m. shall, at the option of the Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of any Loan that such Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Loan available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Loan to the Agent, then the amount so paid shall constitute such Lender's Term Loan included in such borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(c) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. With respect to any payment that the Agent makes for the account of the Lenders hereunder as to which the Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrowers have not in fact made such payment; (2) the Agent has made a payment in excess of the amount so paid by the Borrowers (whether or not then owed); or (3) the Agent has for any reason otherwise erroneously made such payment; then each of the Lenders severally agrees to repay to the Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) [Reserved].

(e) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and to make payments hereunder are several and not joint. The failure of any Lender to make any Loan or to make any payment hereunder on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan(s) or to make its payment hereunder.

(f) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in such Credit Party receiving payment of a proportion of the aggregate amount of such Obligations greater than its pro rata share thereof as provided herein (including as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the applicable Loans of the other applicable Lenders or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided, that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section shall apply).

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

2.14 [Reserved].

2.15 [Reserved].

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY; APPOINTMENT OF LEAD BORROWER

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any

Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Agent) require the deduction or withholding of any Tax from any such payment by the Agent or a Loan Party, then the Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Agent shall be required by any applicable Laws to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof 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 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and 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 Lead Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, the Agent against (x) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) any Excluded Taxes attributable to such

Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Lead Borrower or the Agent, as the case may be, after any payment of Taxes by the Lead Borrower or by the Agent to a Governmental Authority as provided in this Section 3.01, the Lead Borrower shall deliver to the Agent or the Agent shall deliver to the Lead Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Lead Borrower or the Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(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 Lead Borrower and the Agent, at the time or times reasonably requested by the Lead Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Lead Borrower or the Agent as will enable the Lead Borrower or the 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 3.01(e)(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 Lead Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Lead Borrower and the 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 Lead Borrower or the 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 Lead Borrower and the 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 Lead Borrower or the Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W8BEN-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 W8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-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 Borrowers 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 W8BEN-E, as applicable; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-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 G-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 Lead Borrower and the 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 Lead Borrower or the 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 Lead Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lead Borrower or the Agent as may be necessary for the Lead Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Lead Borrower and the Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided, that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Grandfathered Obligations. From and after the Closing Date, the Borrowers

shall indemnify the Agent, and hold it harmless from, any and all losses, claims, damages, liabilities and related expenses, including Taxes and the fees, charges and disbursements of any counsel for any of the foregoing, arising in connection with the Agent's treating, for purposes of determining withholding Taxes imposed under FATCA, this Agreement as qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(h) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality. If any Lender determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR, then, on written notice thereof by such Lender to the Lead Borrower through the Agent, (i) any obligation of such Lender to make or continue Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate, in each case, until such Lender notifies the Agent and the Lead Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Term SOFR component of the Base Rate with respect to any Base Rate Loans, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. (a) If in connection with any request for a Term SOFR Loan hereunder or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any such Loans, as applicable, (i) the Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (ii) the Agent or the Required Lenders determine that for any reason that Term SOFR for any requested Interest Period with respect to a

proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Agent upon instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) the Lead Borrower may revoke any pending request for a borrowing of, or conversion to or continuation of, Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein and (ii) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that: (i) adequate and reasonable means do not exist for ascertaining the applicable Interest Period of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or (ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided, that at the time of such statement, there is no successor administrator that is satisfactory to the Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month or six month (as applicable) interest period of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "Scheduled Unavailability Date"); then, on a date and time determined by the Agent (any such date, the "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR plus the SOFR Adjustment for any payment period for interest calculated that can be determined by the Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "Successor Rate").

(c) If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

(d) Notwithstanding anything to the contrary herein, (i) if the Agent determines

that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Agent and the Lead Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a "Successor Rate". Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Lead Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders object to such amendment.

(e) The Agent will promptly (in one or more notices) notify the Lead Borrower and each Lender of the implementation of any Successor Rate.

(f) Any Successor Rate shall be applied in a manner consistent with market practice; provided, that to the extent such market practice is not administratively feasible for the Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Agent.

(g) Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than the Floor, the Successor Rate will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

(h) In connection with the implementation of a Successor Rate, the 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; provided, that with respect to any such amendment effected, the Agent shall post each such amendment implementing such Conforming Changes to the Lead Borrower and the Lenders reasonably promptly after such amendment becomes effective.

3.04 Increased Costs; Reserves on Term SOFR Loans.

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

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

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

(iii) impose on any Lender or the SOFR market any other condition, cost or expense affecting this Agreement or Term SOFR Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making to, continuing or maintaining any Term SOFR Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Loan Parties will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital or liquidity of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Loan Parties will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Loan Parties shall pay such Lender the amount shown as due on any such certificate within 20 days after receipt thereof.

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

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Lead Borrower; or

(c) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Lead Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Term SOFR Loan made by it at Term SOFR for such Loan by a matching deposit or other borrowing in the SOFR market for a comparable amount and for a comparable period, whether or not such Term SOFR Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Commitments and repayment of all other Obligations hereunder.

3.08 Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead

Borrower as such Borrower's agent to obtain Loans, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Loans so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Loans are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Loan. Neither the Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV
CONDITIONS PRECEDENT TO LOANS

4.01 Closing Date Conditions. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date), and each in form and substance satisfactory to the Agent:

(i) counterparts of this Agreement each properly executed by a Responsible Officer of the signing Loan Party and the Lenders sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;

(ii) (A) Additional Term Loan Note(s) executed by the Borrowers in favor of each Lender requesting an Additional Term Loan Note and (B) Existing Term Loan Note(s) executed by the Borrowers in favor of each Lender requesting an Existing Term Loan Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may require evidencing (A) the authority of each Loan Party to enter into this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) a certificate of Responsible Officer of each Loan Party certifying (A) that there have been no amendments, modifications or other changes to each Loan Party's Organization Documents since true, correct and complete copies of the same were delivered to the Agent on the Original Closing Date, and confirming that such Organization Documents remain in full force and effect as of the Closing Date, and (B) that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Bass, Berry & Sims PLC, counsel to the Loan Parties, addressed to the Agent and each Lender and addressing such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vi) a certificate of a Responsible Officer of the Lead Borrower certifying (A) that the representations and warranties of each Loan Party contained in Article V and in each other Loan Document are true and correct in all material respects on and as of the Closing Date, except (1) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date and (2) in the case of any representation or warranty qualified by materiality, such representation or warranty shall be true and correct in all respects, (B) that no Default or Event of Default exists or would result from the entry into this Agreement, the transactions contemplated herein, or from the application of the proceeds thereof, (C) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (D) to the Solvency of the Loan Parties as of the Closing Date after giving effect to the transactions contemplated hereby, and (E) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) an amendment to the ABL Credit Agreement, duly executed by the Persons party thereto;

(viii) an amended and restated Investor Rights Agreement, duly executed by Parent and Beyond;

(ix) an amendment to the Subscription Agreement, duly executed by the Persons party thereto;

(x) an amendment to the License Agreement, duly executed by the Persons party thereto;

(xi) an amended and restated Collaboration Agreement, duly executed by Parent and Beyond;

(xii) the Intellectual Property Purchase Agreement, duly executed by the Persons party thereto;

(xiii) a Notice of Borrowing/Continuation/Conversion duly executed by the applicable Loan Parties;

(xiv) all other Loan Documents, each duly executed by the applicable Loan Parties;

(xv) an amendment to the ABL Intercreditor Agreement, duly executed by the persons party thereto;

(xvi) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the second priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent; and

(xvii) such other assurances, certificates, documents, consents or opinions as the Agent reasonably may require.

(b) No Default or Event of Default shall have occurred and be continuing immediately before and immediately after the funding of the Additional Term Loans, the use of proceeds thereof and the transactions contemplated herein.

(c) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(d) The consummation of the transactions contemplated hereby shall not violate any Law or any Organization Document.

(e) All fees required to be paid to the Agent on or before the Closing Date shall have been paid in full, and all fees required to be paid to the Lenders on or before the Closing Date shall have been paid in full.

(f) The Borrowers shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided, that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agent).

(g) There shall not have occurred any default of any Material Contract of any Loan Party which would reasonably be expected to have a Material Adverse Effect.

(h) Each of the representations and warranties specified in Article V hereof shall be true and correct in all material respects (without duplication of any materiality qualifiers

therein) as of the Closing Date, immediately before and immediately after giving effect to this Agreement and the transactions contemplated herein.

(i) At the request of the Administrative Agent, the Borrowers shall have paid in cash all accrued but unpaid interest and fees in respect of the Term Loans and all accrued but unpaid obligations under the Collaboration Agreement as of the Closing Date.

(j) There shall not have occurred since February 1, 2025 any event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to Delayed Draw Term Loans. The obligation of each Lender to extend any Delayed Draw Term Loan is subject to the following conditions precedent:

(a) The Agent shall have received a Notice of Borrowing/Continuation/Conversion in accordance with the requirements of Section 2.02(a)(i);

(b) No Default or Event of Default shall have occurred and be continuing immediately before and immediately after the funding of the applicable Delayed Draw Term Loans, the use of proceeds thereof and the transactions contemplated in connection therewith;

(c) Immediately before and immediately after giving effect to such Delayed Draw Term Loan, each representation and warranty contained in this Agreement or in any other Loan Document shall be true, correct and complete in all material respect (without duplication of any materiality qualifiers contained therein) as of the applicable Delayed Draw Term Loan Borrowing Date (or, if any such representation or warranty relates to an earlier date, such earlier date);

(d) Immediately before and immediately after giving effect to such Delayed Draw Term Loan, the Loan Parties shall be Solvent on a consolidated basis;

(e) The Agent and the Lenders providing the requested Delayed Draw Term Loans shall be satisfied, in their sole discretion, with the use of proceeds of the requested Delayed Draw Term Loans and any due diligence related thereto; and

(f) The Agent shall have received a closing certificate from an Responsible Officer of the applicable Borrower certifying as to the satisfaction of the conditions in this Section 4.02.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party (a) is a corporation, limited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Original Closing Date, each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and its federal employer identification number.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party, has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the second priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency,

reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Consolidated balance sheet of the Parent and its Subsidiaries dated August 31, 2024, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) To the best knowledge of the Lead Borrower, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) in any financial information delivered or to be delivered to the Agent or the Lenders, (ii) [reserved], (iii) of covenant compliance calculations provided hereunder or (iv) of the assets, liabilities, financial condition or results of operations of the Parent and its Subsidiaries on a Consolidated basis.

(e) The Consolidated forecasted balance sheet and statements of income and cash flows of the Parent and its Subsidiaries delivered pursuant to Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' best estimate of its future financial performance.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens.

(a) Each of the Loan Parties has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business.

(b) Schedule 5.08(b)(1) sets forth the address (including street address, county and state) of all Real Estate (excluding Leases) that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Original Closing Date. Each Loan Party has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the address (including street address, county and state) of all Leases of the Loan Parties, together with the name of each lessor and its contact information with respect to each such Lease as of the Original Closing Date. Each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party, showing as of the Original Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party is subject to no Liens, other than Permitted Encumbrances.

(d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party on the Original Closing Date, showing as of the Original Closing Date the amount, obligor or issuer and maturity, if any, thereof.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party on the Original Closing Date, showing as of the Original Closing Date the amount, obligor or issuer and maturity thereof.

5.09 Environmental Compliance.

(a) No Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the properties currently or formerly owned or operated by any

Loan Party is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party.

(c) No Loan Party is undertaking, and no Loan Party has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party.

5.10 Insurance. The properties of the Loan Parties are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts (after giving effect to any self-insurance), with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Original Closing Date. As of the Original Closing Date, each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.11 Taxes. The Loan Parties have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party that would, if made, have a Material Adverse Effect. No Loan Party or any Subsidiary thereof is a party to any tax sharing agreement.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal

Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Lead Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

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

(c) (i) No ERISA Event has occurred, and neither the Lead Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Lead Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 80% or higher and neither the Lead Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither the Lead Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Lead Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Each Loan Party represents and warrants as of the Closing Date that such Loan Party 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 Commitments or this Agreement.

5.13 Subsidiaries; Equity Interests. As of the Original Closing Date, the Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents. Except as set forth in Schedule 5.13, there are no outstanding rights to purchase any Equity Interests in any Subsidiary. As of the Original Closing Date, the Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Part (c) of Schedule 5.13 and, except for the outstanding Equity Interests in the Parent, are free and clear of all Liens except for those created under the Security Documents.

The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Margin Regulations; Investment Company Act.

(a) No Loan Party is engaged or will be engaged, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the proceeds of the Loans shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any margin stock or for any other purpose that might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulations T, U, or X issued by the FRB.

(b) None of the Loan Parties, any Person Controlling any Loan Party, or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, that with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each of the Loan Parties is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. The Loan Parties own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Lead Borrower, no current Intellectual Property employed, or now contemplated to be employed, by any Loan Party infringes upon any current Intellectual Property rights held by any other Person. No claim or litigation regarding any of the foregoing is pending against any of the Loan Parties or, to the best knowledge of the Lead Borrower, threatened in writing against any of the Loan Parties, which, either individually or in the

aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labor Matters.

There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters except to the extent that any such violation could not reasonably be expected to have a Material Adverse Effect. No Loan Party has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.18, no Loan Party is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound.

5.19 Security Documents.

(a) The Security Agreement creates in favor of the Agent, for the benefit of the Credit Parties, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings are in appropriate form and have been or will be filed in the offices specified in Schedule II of the Security Agreement. Upon such filings and/or the obtaining of "control" (as defined in the UCC), the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected under the UCC (in effect on the date this representation is made) by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the UCC) or by obtaining control, in each case prior and superior in right to any other Person.

(b) When the Security Agreement (or a short form thereof) is filed in the United States Patent and Trademark Office and the United States Copyright Office and when financing

statements, releases and other filings in appropriate form are filed in the offices specified on Schedule II of the Security Agreement, the Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property Collateral (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

5.20 Solvency.

(a) After giving effect to the funding of the Term Loans and the use of proceeds thereof on the Closing Date, the Loan Parties, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

(b) Notwithstanding anything to the contrary in the foregoing, the Agent acknowledges and agrees that it has received a copy of that certain Annual Report on Form 10-K of Kirkland's Inc., a Tennessee corporation, dated and filed on May 2, 2025 with United States Securities and Exchange Commission (the "Annual Report"), pursuant to which the Loan Parties disclosed certain going concern issues related to the audited annual financial statements for the fiscal year ended February 1, 2025.

5.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.21(a) is a list of all DDAs maintained by the Loan Parties as of the Original Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Original Closing Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

5.22 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

5.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations.

5.24 Material Contracts. Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Original Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Original Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

5.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 EEA Financial Institution. None of the Loan Parties is an EEA Financial Institution.

5.27 Sanctions Concerns and Anti-Corruption Laws. (a) No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and applicable Sanctions, and to the knowledge of each Borrower, the Loan Parties and their Subsidiaries are in compliance with such anti-corruption laws and applicable Sanctions in all material respects.

5.28 Beneficial Ownership Certification. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

ARTICLE VI
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) as soon as available, but in any event within 90 days after the end of each Fiscal Year of the Parent, a Consolidated balance sheet of the Parent and its Subsidiaries as at the

end of such Fiscal Year, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be audited and accompanied by a report and unqualified opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (provided that the audited financials for the Fiscal Year of the Parent ended February 1, 2025 may be subject to a "going concern" or like qualification or exception);

(b) as soon as available, but in any event within 45 days after the end of each of the Fiscal Quarters of each Fiscal Year of the Parent, (x) a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Quarter, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows and (y) a detailed calculation of Consolidated EBITDA (including for the avoidance of doubt each component part thereof) for such Fiscal Quarter, and for the portion of the Parent's Fiscal Year then ended and solely with respect to clause (y) above, for the three-month period then ending, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, (B) the corresponding Fiscal Quarter of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Quarter in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and;

(i) as soon as available, but in any event within 30 days after the end of each of the Fiscal Months of each Fiscal Year of the Parent, (x) a Consolidated balance sheet of the Parent and its Subsidiaries as at the end of such Fiscal Month, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows and (y) a detailed calculation of Consolidated EBITDA (including for the avoidance of doubt each component part thereof) for such Fiscal Month, for the portion of the Parent's Fiscal Year then ended and solely with respect to clause (y) above, for the three-month period then ending, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(c) hereof, (B) the corresponding Fiscal Month of the previous Fiscal Year and (C) the corresponding portion of the previous Fiscal Year, all in reasonable detail, such Consolidated statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Parent and its Subsidiaries as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) as soon as available, but in any event no more than 30 days after the end of each Fiscal Year of the Parent, forecasts prepared by management of the Lead Borrower, in form satisfactory to the Agent, of ABL Availability and the Consolidated balance sheets and statements of income or operations and cash flows of the Parent and its Subsidiaries on a monthly basis for the immediately following Fiscal Year (including the fiscal year in which any Maturity Date occurs)

and as soon as available, any significant revisions to such forecast with respect to such Fiscal Year.

6.02 Certificates; Other Information. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(b), (i) a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP and (ii) a copy of management's discussion and analysis with respect to such financial statements;

(b) [reserved];

(c) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its Registered Public Accounting Firm in connection with the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, including, without limitation, specifying any Internal Control Event;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934 or with any national securities exchange;

(e) The financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(f) as soon as available, but in any event within 30 days after the end of each Fiscal Year of the Loan Parties, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Agent, or any Lender through the Agent, may reasonably specify;

(g) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(h) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any Governmental Authority (including, without limitation, the SEC (or comparable agency in any applicable non-U.S. jurisdiction)) concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably expected to have a Material Adverse Effect;

(i) promptly following any request therefor, provide information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with

applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation;

(j) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request;

(k) promptly, to the extent not delivered hereunder, any notices, certificates or other documents delivered to the ABL Agent under Section 6.02, 6.03, 6.10 or 6.14 of the ABL Credit Agreement (including without limitation any Notice of Borrowing/Continuation/Conversion (as defined in the ABL Credit Agreement)); and

(l) commencing with the Original Closing Date and on a monthly basis, by not later than 5:00 pm (ET) on the fifteenth (15th) day of each Fiscal Month, a 13-week cash flow forecast (the "Cash Flow Forecast") in form and substance reasonably satisfactory to the Agent, reflecting the Loan Parties' (i) good faith projections of all weekly cash receipts and disbursements on a line item basis in connection with the operation of their businesses for the following 13-week period, and (ii) calculations of the Borrowing Base, Inventory receipts and Availability for each week of such 13-week period; provided that at any time that an Accelerated Borrowing Base Delivery Event (as defined in the ABL Credit Agreement) has occurred and is continuing, the Cash Flow Forecast shall be delivered on Thursday of each week (or, if Thursday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Saturday.

Documents required to be delivered pursuant to Section 6.01(a) or 6.01(b), or Section 6.02(c) (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 the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided, that: (i) the Lead Borrower shall deliver paper copies of such documents to the Agent or any Lender that requests the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Lead Borrower shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (a) the Agent will make available to the Lenders materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (b) certain of the Lenders may be

"public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties hereby agree that they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Loan Parties shall be deemed to have authorized the Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.03 Notices. Promptly notify the Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect,

(c) (i) of any breach or non-performance of, or any default under, a Material Contract (other than any Investor Document) or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof; (ii) the failure by any Loan Party or any Subsidiary to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Investor Document; or (iii) the failure of any Loan Party or any Subsidiary to observe or perform any material agreement or obligation under any Investor Document in accordance with the terms of such Investor Document,

(d) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority, in each case having a value of more than $250,000; or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws, in each case having a value of more than $250,000;

(e) of the occurrence of any ERISA Event;

(f) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(g) of any change in any Loan Party's senior executive officers;

(h) of the discharge by any Loan Party of its present Registered Public Accounting Firm or any withdrawal or resignation by such Registered Public Accounting Firm;

(i) of any collective bargaining agreement or other labor contract to which a

Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(j) of the filing of any Lien for unpaid Taxes against any Loan Party;

(k) of any casualty or other insured damage to any portion of the Collateral having a value of more than $250,000 or the commencement of any action or proceeding for the taking of any interest in a portion of the Collateral having a value of more than $250,000 under power of eminent domain or by condemnation or similar proceeding or if any portion of the Collateral having a value of more than $250,000 is damaged or destroyed;

(l) of any transaction of the nature contained in Article VII hereof, occurring after the Closing Date, and

(m) of any failure by any Loan Party to pay rent at (i) any of the Loan Parties' distribution centers or warehouses; (ii) five percent (5%) or more of such Loan Party's Store locations or (iii) any of such Loan Party's locations if such failure would be reasonably likely to result in a Material Adverse Effect.

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

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators, and carriers) which, if unpaid, would by Law become a Lien upon its property; and (c) all Material Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except (i) to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties, or (ii) where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material

properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. (a) Maintain with financially sound and reputable insurance companies reasonably acceptable to the Agent that are not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by Law, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

(c) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(d) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

(e) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, the Agent or any other party shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(f) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(g) Deliver to the Agent, prior to the cancellation, modification or non-renewal

of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.

(h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants.

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

(b) at all times retain a Registered Public Accounting Firm which is reasonably satisfactory to the Agent and shall instruct such Registered Public Accounting Firm to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Registered Public Accounting Firm, as may be raised by the Agent.

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its

directors, officers, and Registered Public Accounting Firm, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, however, that when a Default or an Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

(b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) [reserved], (ii) financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (iii) the Loan Parties' business plan, forecasts and cash flows. The Loan Parties shall pay the reasonable fees and expenses of the Agent and such professionals with respect to up to one (1) commercial finance examination in any twelve month period; provided, that in the event that ABL Availability is at any time less than thirty percent (30%) of the ABL Loan Cap during such twelve month period, the Agent may conduct two (2) commercial finance examinations in such twelve month period, at the Loan Parties' expense. Notwithstanding the foregoing, the Agent may cause additional commercial finance examinations to be undertaken (i) as it in its discretion deems necessary or appropriate, at its own expense or, (ii) if required by Law or if a Default or Event of Default shall have occurred and be continuing, at the expense of the Loan Parties.

(c) [Reserved].

(d) Notwithstanding the foregoing provisions of Section 6.10(b) to the contrary, Agent shall not conduct commercial field examinations or appraisals so long as the ABL Agent conducts the maximum number of commercial field examinations and appraisals permitted to be conducted at the Loan Parties' expense under the ABL Credit Agreement as in effect as of the Original Closing Date and the results of such all such commercial field examinations and appraisals are promptly delivered to the Agent (subject to Agent's execution of non-reliance letters with respect thereto in customary form).

6.11 Additional Loan Parties. Notify the Agent at the time that any Person becomes a Subsidiary, and promptly thereafter (and in any event within twenty (20) days or such longer time period as the Agent may agree in its reasonable discretion), cause any such Person (a) which is not a CFC to (i) become a Loan Party by executing and delivering to the Agent a Joinder Agreement to this Agreement or a Joinder to the Facility Guaranty or such other documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness (except that, if such Subsidiary is a CFC, the Equity Interests of such Subsidiary to be pledged may be limited to 65% of the outstanding voting Equity Interests of such Subsidiary and 100% of the non-voting Equity Interests of such Subsidiary), in each case in form, content and scope reasonably

satisfactory to the Agent. In no event shall compliance with this Section 6.11 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.11 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower.

6.12 Cash Management.

(a) Not later than sixty (60) days after the Original Closing Date (or such later date as agreed by the Agent in its sole discretion), enter into a Blocked Account Agreement satisfactory in form and substance satisfactory to the Agent with each Blocked Account Bank (collectively, the "Blocked Accounts"); and

(b) From and after the Original Closing Date, the Loan Parties shall comply in all respects with Section 6.12 of the ABL Credit Agreement, as in effect on the date of this Agreement, including, upon the occurrence of a Cash Dominion Event, to cause all receipts and collections to be transferred daily to the Concentration Account (as defined in the ABL Credit Agreement) for application against the ABL Obligations in accordance with the provisions of the ABL Credit Agreement as in effect as of the date of this Agreement.

6.13 Information Regarding the Collateral.

(a) Furnish to the Agent at least thirty (30) days prior written notice of any change in: (i) any Loan Party's name; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (iv) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties shall not effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected second priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

(b) Should any of the information on any of the Schedules hereto become inaccurate or misleading in any material respect as a result of changes after the Original Closing Date, advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Original Closing Date that, if existing or occurring on the Original Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered materially inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties

to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

6.14 Physical Inventories.

(a) Cause not less than one physical Inventory to be undertaken, at the reasonable expense of the Loan Parties, in each Fiscal Year consistent with past practices, conducted by such Inventory takers as are reasonably satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding Inventory or as otherwise may be reasonably satisfactory to the Agent. The Agent, at the reasonable expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Lead Borrower, within 21 days following the completion of such Inventory, shall provide the Agent with a reconciliation of the results of such Inventory (as well as of any other physical Inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable, in a manner satisfactory to the Agent.

(b) Permit the Agent, in its discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines (each, at the expense of the Loan Parties).

(c) Notwithstanding anything to the contrary in this Section 6.14, Agent shall not conduct any physical inventories so long as the ABL Agent conducts the maximum number of physical inventories permitted to be conducted at the Loan Parties' expense under the ABL Credit Agreement as in effect as of the Original Closing Date and the results of such physical inventories are promptly delivered to the Agent (subject to Agent's execution of non-reliance letters with respect thereto in customary form).

6.15 Environmental Laws.

(a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise materially comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.16 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Law, or which any Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the reasonable expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien or second-priority Lien, as applicable, under the Security Documents upon acquisition thereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by any Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.16, all at the reasonable expense of the Loan Parties. In no event shall compliance with this Section 6.16(b) waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.16(b) if such transaction was not otherwise expressly permitted by this Agreement.

(c) Use, and cause each of the Subsidiaries to use, their commercially reasonable efforts to obtain lease terms in any Lease entered into by any Loan Party after the Closing Date not expressly prohibiting the recording in the relevant real estate filing office of an appropriate memorandum of lease and the encumbrancing of the leasehold interest of such Loan Party in the property that is the subject of such Lease.

6.17 Compliance with Terms of Leaseholds.

Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party to keep such Leases in full force and effect (except those payments or obligations which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP), (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except in the ordinary course of business, consistent with past practices, (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

6.18 Material Contracts. (a) Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect in all material respects except to the extent such Material Contract is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business,

consistent with past practices, (c) enforce each such Material Contract in accordance with its terms, (d) upon request of the Agent, make such demands and requests for information and reports or for action from any other party to each such Material Contract as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and (e) cause each of its Subsidiaries to do the foregoing.

6.19 Post-Closing Obligations. Satisfy the requirements and/or provide to the Agent each of the documents, instruments, agreements and information set forth on Schedule 6.19, in form and substance reasonably acceptable to the Agent, on or before the date specified for such requirement on such Schedule or such later date to be determined by the Agent in its sole discretion.

6.20 Observation Rights.

(a) From the ~~date hereof~~**Closing Date** until the earlier to occur of (i) the date on which all outstanding Obligations (other than unasserted contingent indemnification Obligations) have been paid in full and the Commitments are irrevocably terminated hereunder, or (ii) the date on which neither Beyond nor any of its Affiliates is a Lender or Agent hereunder, the Loan Parties shall cause Beyond to have the right to appoint one (1) individual as a non-voting observer to the board of managers of Parent (the "Board" and such observer, the "Board Observer"), and shall cause the Board Observer to be entitled to attend meetings of the Board and any committee of the Board and to receive all information provided to the members of the Board or its committees (including minutes of previous meetings of the Board or such committees); provided, that (i) the Board Observer shall not be entitled to vote on any matter submitted to the Board or any of its committees nor to offer any motions or resolutions to the Board or such committees; and (ii) the Board may withhold information or materials from the Board Observer and exclude the Board Observer from any meeting or portion thereof (x) if (as reasonably determined by the Board) access to such information or materials or attendance at such meeting would (A) adversely affect the attorney-client or work product privilege between the Parent and its counsel or (B) result in a conflict of interest or is otherwise required to avoid any disclosure that is restricted by any agreement with another Person or (y) (A) when any Agent, any Lender, the Loan Documents or the Obligations are the subject matter under discussion or (B) when such board materials or discussion relate directly to any Loan Party's relationship, contractual or otherwise, with Beyond or any of its Affiliates, any Agent or the Lenders or any actual or potential transactions between or involving any Loan Party and Beyond or any of its Affiliates, any Agent or the Lenders. For the avoidance of doubt, the Board Observer (x) shall not constitute a manager and/or member of a Board committee and (y) shall not be entitled to any rights other than those provided by this Section 6.20.

(b) From the ~~date hereof~~**Closing Date** until the earlier to occur of (i) the date on which all outstanding Obligations (other than unasserted contingent indemnification Obligations) have been paid in full and the Commitments are irrevocably terminated hereunder, or (ii) the date on which neither Beyond nor any of its Affiliates is a Lender or Agent hereunder, at the reasonable expense of the Loan Parties, Beyond shall have the right to appoint one (1) individual to serve as an advisor to the Loan Parties with respect to financial, operational and management activities of the Loan Parties (the "Monitor"). The Monitor shall have access to the books and records of the Loan Parties, and shall be entitled to discuss financial, operational and management

decisions with the officers of the Loan Parties.

6.21 Delivery of Certain Collateral Documents. Deliver executed Collateral Access Agreements and Blocked Account Agreements in favor of the Agent on identical terms, and addressing identical Collateral, as any Collateral Access Agreement (as defined in the ABL Credit Agreement) or Blocked Account Agreement (as defined in the ABL Credit Agreement) entered into by the Loan Parties and delivered to the ABL Agent after the Closing Date, in each instance concurrent with the delivery of such Collateral Access Agreement or Blocked Account Agreement, as applicable, to the ABL Agent.

ARTICLE VII
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification claims for which a claim has not been asserted), no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under the UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Make any Investments, except Permitted Investments; provided, that, (i) no Permitted Investments (other than from a Loan Party to another Loan Party) shall include any Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of Collateral, and (ii) otherwise, if any such Investment is made to a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

7.03 Indebtedness; Disqualified Stock; Equity Issuances.

(a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; (b) issue Disqualified Stock, or (c) issue and sell any other Equity Interests (other than compensatory issuances of Equity Interests to employees, directors or consultants (including under any option plan)) of the Loan Parties unless (i) such Equity Interests shall be issued solely by the Parent, (ii) such Equity Interests provide that all dividends and other Restricted Payments in respect thereof

shall be made solely in additional shares of such Equity Interests in lieu of cash, (iii) such Equity Interests shall not be subject to redemption other than redemption at the option of the Parent issuing such Equity Interests and in accordance with the limitations contained in this Agreement, and (iv) all Restricted Payments in respect of such Equity Interests are expressly subordinated to the Obligations.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, (or agree to do any of the foregoing) (including, in each case, pursuant to a Division), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may merge with (i) a Loan Party, provided, that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided, that when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person;

(b) any Subsidiary which is a Loan Party may merge into any Subsidiary which is a Loan Party or into a Borrower, provided, that in any merger involving a Borrower, a Borrower shall be the continuing or surviving Person;

(c) in connection with a Permitted Acquisition, any Subsidiary of a Loan Party may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of a Loan Party and such Person shall become a Loan Party in accordance with the provisions of Section 6.11 hereof, and (ii) in the case of any such merger to which any Loan Party is a party, such Loan Party is the surviving Person; and

(d) any CFC that is not a Loan Party may merge into any CFC that is not a Loan Party.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions; provided, that, (i) no Permitted Dispositions (other than from a Loan Party to another Loan Party) shall include any Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of Collateral, and (ii) otherwise, if any such Permitted Disposition is made to a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, the purchaser, assignee or other transferee thereof shall agree in writing to be bound by a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that each of the following shall be permitted so long as no Default or Event of Default shall have occurred and be continuing prior, or immediately after giving effect, to the following, or would result therefrom:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party;

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) if (i) (x) no Loans (as defined in the ABL Credit Agreement as in effect on the date of this Agreement) have been outstanding for the six (6) month period immediately preceding such payment, (y) no Loans (as defined in the ABL Credit Agreement as in effect on the date of this Agreement) are projected to be borrowed by the Borrowers pursuant to the projections delivered by the Loan Parties pursuant to Section 6.01(c) hereof for the six (6) month period immediately following such payment, and (z) the Parent uses cash on hand to make such payment, or (ii) the RP Conditions are satisfied, the Loan Parties and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it; and

(d) if (i) (x) no Loans (as defined in the ABL Credit Agreement as in effect on the date of this Agreement) have been outstanding for the six (6) month period immediately preceding such payment, (y) no Loans are projected to be borrowed by the Borrowers pursuant to the projections delivered by the Loan Parties pursuant to Section 6.01(c) hereof for the six (6) month period immediately following such payment, and (z) the Parent uses cash on hand to make such payment, or (ii) the RP Conditions are satisfied, the Parent may declare or pay cash dividends to its stockholders;

provided, that, (i) no Restricted Payment (other than from a Loan Party to another Loan Party) shall include any Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of Collateral, and (ii) otherwise, if any such Restricted Payment is made to a Person who is not a Loan Party and includes Intellectual Property used or useful in connection with the conduct of the Loan Parties' business or use of the Collateral, such Intellectual Property shall be subject to a non-exclusive royalty-free worldwide license of such Intellectual Property in favor of the Agent for use in connection with the exercise of the rights and remedies of the Credit Parties, which license shall be in form and substance reasonably satisfactory to the Agent.

7.07 Prepayments of Indebtedness.

Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (a) as long as no Default or Event of Default then exists, regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (other than Subordinated Indebtedness), and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof, (b) voluntary prepayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (but excluding on account of any Subordinated Indebtedness) as long as the Payment Conditions are satisfied, and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof and as long as the Payment Conditions are satisfied, and (c) Permitted Refinancings of any such Indebtedness.

7.08 Change in Nature of Business.

(a) In the case of the Parent, engage in any business or activity other than (a) the direct or indirect ownership of all outstanding Equity Interests in the other Loan Parties, (b) maintaining its corporate existence, (c) participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties, (d) the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder, and (e) activities incidental to the businesses or activities described in clauses (a) through (d) of this Section 7.08(a).

(b) In the case of each of the Loan Parties, engage in any line of business substantially different from the business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided, that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties, (b) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees, (c) the issuance of Equity Interests in the Parent to any officer, director, employee or consultant of the Parent or any of its Subsidiaries, (d) the payment of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Parent or any of its Subsidiaries, and (e) as long as no Change of Control results therefrom, any issuances of securities of the Parent (other than Disqualified Stock and other Equity Interests not permitted hereunder) or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans (in each case in respect of Equity Interests in the Parent) of the Parent or any of its Subsidiaries.

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clauses (c) or (d) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 Use of Proceeds. Use the proceeds of any Loans, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose, or (b) for any purposes other than (i) **with respect to any Loans not constituting Delayed Draw Term Loans,** the payment on the Closing Date of transaction costs incurred in connection with the Closing Date

transactions, ~~and~~ (ii) **with respect to any Loans not constituting Delayed Draw Term Loans,** to finance Capital Expenditures, ~~and~~ (iii) **with respect to any Loans not constituting Delayed Draw Term Loans,** for general corporate purposes, in each case to the extent expressly permitted under the Loan Documents **and (iv) with respect to any Delayed Draw Term Loan, for the purposes expressly consented to by the Agent and the applicable Lenders providing such Delayed Draw Term Loan**.

7.12 Amendment of Material Documents.

Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner materially adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than on account of any Permitted Refinancing thereof), in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents, would be materially adverse to the Credit Parties, or otherwise would be reasonably likely to have a Material Adverse Effect.

7.13 Fiscal Year.

Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP.

7.14 Deposit Accounts; Credit Card Processors.

Open new DDAs unless the Loan Parties shall have delivered to the Agent Blocked Account Agreements consistent with the provisions of Section 6.12 and otherwise satisfactory to the Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.12 hereof.

7.15 [Reserved].

7.16 Sanctions.

Directly or indirectly, use any Loans or the proceeds of any Loans, or lend, contribute or otherwise make available such Loan or the proceeds of any Loan to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Administrative Agent or otherwise) of Sanctions.

7.17 Anti-Corruption Laws.

Directly or indirectly, use any Loans or the proceeds of any Loans for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

7.18 Bank Product Obligations. Incur any Bank Product Obligations (as defined in the ABL Credit Agreement) without the prior written consent of the Agent (acting in its sole

discretion).

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of, or interest on, any Loan, or (ii) any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Sections 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.19, 6.20 or 6.21 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 10 days after the sooner to occur of Lead Borrower's receipt of notice of such breach or failure from the Agent and the date on which such breach or failure first becomes known to any Loan Party; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness, or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Material Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Material Indebtedness to be made, prior to its stated maturity or such Guarantee to become payable or cash collateral in respect thereof to be demanded, or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined in such Swap Contract) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined in such Swap Contract) and, in either event, the Swap Termination Value owed by the Loan Party or such Subsidiary as a result thereof is greater than $500,000; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries

institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed and the appointment continues undischarged, undismissed or unstayed for 60 calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money in an amount exceeding $250,000 as to any one such judgment or order or in an aggregate amount exceeding $500,000 as to all such judgments and orders (in each case to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of $200,000 or which would reasonably likely result in a Material Adverse Effect, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of $200,000 or which would reasonably likely result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any other

Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document (subject to the terms of the ABL Intercreditor Agreement); or

(k) Change of Control. There occurs any Change of Control; or

(l) Cessation of Business. Except as otherwise expressly permitted hereunder, the Loan Parties, taken as a whole, shall take any action to suspend the operation of their business in the ordinary course, liquidate all or a material portion of their assets or Store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of their business; or

(m) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(n) Breach of Contractual Obligation. (i) Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract (other than any Investor Document) or fails to observe or perform any other agreement or condition relating to any such Material Contract (other than any Investor Document or contained in any instrument or agreement evidencing, securing or relating thereto), or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract (other than any Investor Document) to terminate such Material Contract (other than any Investor Document); (ii) any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Investor Document, provided that, for the avoidance of doubt, the withholding of payment of any amount by any Loan Party or any Subsidiary thereof that is the subject of a good faith dispute between such Person and the Agent shall not be an Event of Default hereunder; or (iii) any Loan Party or any Subsidiary thereof fails to observe or perform any material agreement or obligation under any Investor Document in accordance with the terms of such Investor Document; or

(o) Indictment. (i) Any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any Collateral having a value in excess of $250,000, or (ii) any director or senior officer of any Loan Party is (A) criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, unless such director or senior officer promptly resigns or is removed or replaced or (B) charged by a Governmental Authority under any law that would reasonably be expected to lead to forfeiture of any material portion of Collateral; or

(p) Guaranty. The termination or attempted termination of any Facility Guaranty except as expressly permitted hereunder or under any other Loan Document; or

(q) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower

or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the subordination provisions related to such Subordinated Indebtedness, (B) that such subordination provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of such subordination provisions.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans to be terminated, whereupon such Commitments and obligations shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) [reserved]; and

(d) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

provided, however, that upon the occurrence of any Default or Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans shall automatically terminate, and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

8.03 Application of Funds. After the exercise of any remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent;

Second, to payment of that portion of the Obligations constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders (including Credit Party Expenses to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, [Reserved];

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

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations as provided in Section 10.04(b)), ratably among the Credit Parties in proportion to the respective amounts described in this clause Sixth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

ARTICLE IX
THE AGENT

9.01 Appointment and Authority.

Each of the Lenders (in its capacity as a Lender) hereby irrevocably appoints Agent to act on its behalf as the administrative agent and collateral agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions.

9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

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

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

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties or a Lender. In the event that the Agent obtains such actual knowledge or receives such a notice, the Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of a Default or an Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence

of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

9.04 Reliance by Agent.

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent.

9.06 Resignation of Agent. The Agent may at any time give written notice of its resignation to the Lenders and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided, that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor

Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder with notice of such acceptance provided to the Lead Borrower, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed to in writing between the Lead Borrower and such successor Agent. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring 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 Agent was acting as Agent hereunder.

9.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

9.08 [Reserved].

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Agent, such Credit Parties and their respective agents and counsel and all other reasonable amounts due the Lenders the Agent and such Credit Parties under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other reasonable amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 Collateral and Guaranty Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

(c) to release any Guarantor from its obligations under the Facility Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party or any other Person designated by the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer.

The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 10.06.

9.12 Reports and Financial Statements.

By signing this Agreement, each Lender:

(a) [reserved];

(b) is deemed to have requested that the Agent furnish, and the Agent agrees to furnish, such Lender, promptly after they become available, copies of all financial statements required to be delivered by the Lead Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy of the Reports, and shall not be liable for any information contained in any Report;

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports confidential in accordance with the provisions of Section 10.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Loans that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

9.13 Agency for Perfection.

Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other Law of the United States can be perfected only by possession or control. Should any Lender (other than the Agent) obtain possession or control of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

9.14 Indemnification of Agent. Without limiting the obligations of Loan Parties hereunder, the Lenders shall indemnify the Agent and any Related Party, as the case may be ratably according to their Applicable Percentages, from and against any and all liabilities,

obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent and its Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's and its Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

9.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that 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" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender; third, [reserved]; fourth, as the Lead 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 Agent; fifth, if so determined by the Agent and the Lead Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers 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 in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied

solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans and funded are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 9.16(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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) [Reserved].

(iv) [Reserved].

(v) [Reserved].

(b) Defaulting Lender Cure. If the Lead Borrower and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the 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, 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 Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 9.16(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 Borrowers 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.

9.17 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Agent makes a payment hereunder in error to any other Credit Party, whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

ARTICLE X
MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or

any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a)

(i) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(ii) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including any Maturity Date) of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender, or (ii) any mandatory prepayment of the Term Loans hereunder or under any other Loan Document, without the written Consent of such Lender;

(iii) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, without the written Consent of such Lender; provided, however, that only the Consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate;

(iv) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;

(v) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or under any other Loan Document or make any determination or grant any consent hereunder or thereunder, without the written Consent of each Lender;

(vi) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(vii) except for Permitted Dispositions or as provided in Section 9.10, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(viii) [reserved];

(ix) [reserved]; and

(x) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of any Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or Consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, any Loan Document may be amended and waived with the consent of the Administrative Agent at the request of the Lead Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

(c) If any Lender does not Consent (a "Non-Consenting Lender") to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the Consent of each Lender and that has been approved by the Required Lenders, the Lead Borrower may replace such Non-Consenting Lender in accordance with Section 10.13; provided, that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section 10.06 (together with all other such assignments required by the Lead Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communications.

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

(i) if to the Loan Parties or the Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

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

below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided, that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Lead Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), 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 website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Loan Parties and the Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the

Lead Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Agent and Lenders. The Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, reasonable expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related reasonable expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank

or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related reasonable expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) Payments. All amounts due under this Section shall be payable on demand therefor.

(e) Survival. The agreements in this Section shall survive the resignation of any Agent, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus

interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its ~~Commitment(s)~~**Commitments** and the Loans at the time owing to it); provided, that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000 unless each of the Agent and, so long as no Default or Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a

single assignment for purposes of determining whether such minimum amount has been met;

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

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

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Default or Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund with respect to such Lender; and

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment or Term Loan if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Loan Parties or any of the Loan Parties' Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries or Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the 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 Lead Borrower and the 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 Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with

its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, including, for the avoidance of doubt, the obligation to provide the Lead Borrower and the Agent with any tax forms required by Section 3.01(e) hereof, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any

Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) [Reserved].

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, Approved Funds, and to its and its Affiliates' and Approved Funds' respective partners, directors, officers, employees, agents, funding sources, attorneys, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) [reserved], (g) with the consent of the Lead Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided, that in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Law, including Federal and state securities Laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by Law, to set off and apply any and all deposits (general or

special, time or demand, provisional or final, in whatever currency) or other property at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.12 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 Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided, that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

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

10.11 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or

therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Loans, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. Further, the provisions of Sections 3.01, 3.04, 3.05 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any Obligations that may thereafter arise under Section 10.04 hereof.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(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 and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation

under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with Laws.

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

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY

IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN OR ANY FEDERAL COURT SITTING THEREIN AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

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

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document

(irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, for any payments to any governmental 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, as amended. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

10.18 Foreign Asset Control Regulations. The Loan Parties agree that neither of the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)). Furthermore, none of the Loan Parties or their Affiliates (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Press Releases.

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.21 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.

(b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).

(c) To the fullest extent permitted by Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Each Loan Party is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Borrower with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Borrower unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

10.22 No Strict Construction.

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

10.23 Attachments.

The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

10.24 [Reserved].

10.25 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Facility Guaranty or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under the Facility Guaranty voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

10.26 Acknowledgement and Consent to Bail-In of an Affected Financial Institution.

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 Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender 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 applicable Resolution Authority.

10.27 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).

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.

10.28 Electronic Execution of Certain Other Documents. This Agreement and any

document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "Communication"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each of the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation each of the Loan Parties enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Agent and each of the Credit Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Agent and each of the Credit Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Agent has agreed to accept such Electronic Signature, the Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10.29 Release by the Loan Parties. Each Loan Party for and on behalf of itself and its legal representatives, successors and assigns, fully, unconditionally, and irrevocably waives, releases, relinquishes and forever discharges the Agent, the Lenders and each of their parents, subsidiaries, and affiliates, its and their respective past, present and future directors, officers, managers, agents, employees, insurers, attorneys, representatives and all of their respective heirs, successors and assigns, (collectively, the "Released Parties"), of and from any and all manner of action or causes of action, suits, claims, liabilities, losses, costs, expenses, demands, judgments, damages (including compensatory and punitive damages), levies and executions of whatsoever kind, nature and/or description arising on or before the Closing Date, in each case whether known or unknown, asserted or unasserted, liquidated or unliquidated, joint or several, fixed or contingent, direct or indirect, contractual or tortious, which the Loan Parties, or their legal representatives, successors or assigns, ever had or now has or may claim to have against any of the Released Parties, that relate to the Existing Credit Agreement, the Loan Documents (as defined in the Existing Credit Agreement), the Investor Documents (as defined in the Existing Credit Agreement), the administration of any Loan Documents (as defined in the Existing Credit Agreement), the administration of the Investor Documents (as defined in the Existing Credit

Agreement), the negotiations relating to this Agreement and the other Loan Documents executed in connection herewith and any other instruments and agreements (including the Investor Documents) executed by the Loan Parties in connection therewith or herewith, arising on or before the Closing Date.

10.30 Waiver. Upon the effectiveness of this Agreement, and in reliance on the representations, warranties and covenants set forth herein, the Agent and the Lenders hereby waive the Event of Default arising under the Existing Credit Agreement as a result of the Nonconforming Opinion. Except as expressly provided herein, this limited waiver shall not be deemed to (i) be a consent to any amendment, waiver or modification of any other term or condition of the Existing Credit Agreement, any other Loan Document (as defined in the Existing Credit Agreement, this Agreement or any other Loan Document (except as expressly provided in this Agreement), (ii) operate as a waiver or otherwise prejudice any right, power or remedy that the Agent or Lenders may now have or may have in the future under or in connection with this the Existing Credit Agreement, any Loan Document (as defined in the Existing Credit Agreement), this Agreement or any other Loan Document, except as specifically set forth herein, or (iii) create a course of dealing or otherwise obligate in any respect any Lender or the Agent to execute any consent or grant any amendments or waiver under the same or similar or other circumstances in the future. Except to the extent expressly covered by the foregoing limited waiver, the Agent and the Lenders hereby expressly reserve all of their rights and remedies under the Existing Credit Agreement, the Loan Documents (as defined in the Existing Credit Agreement), this Agreement and the other Loan Documents and applicable law in respect of any and all Defaults or Events of Default now existing or hereafter arising. The failure of the Agent and/or Lenders to exercise any right or remedy shall not constitute a waiver of that or any other right or remedy.

10.31 No Novation; Reaffirmation; Security Grant; Guarantee. The Loan Parties agree that this Agreement amends and restates and is substituted for (and is not executed in novation of) the Existing Credit Agreement and that the outstanding obligations of the Loan Parties under the Existing Credit Agreement, including but not limited to the Existing Term Loans, (as well as any new obligations incurred on the Closing Date) are now evidenced by this Agreement. All amounts owing with respect to Term Loans (as defined in the Existing Credit Agreement) and all obligations in connection therewith, in each case, incurred under the Existing Credit Agreement which remain outstanding on the Closing Date shall continue as Obligations under (and shall be governed by the terms of) this Agreement and under the other Loan Documents. Each Loan Party acknowledges that it has reviewed the terms and provisions of this Agreement, and consents to the restatement of the Existing Credit Agreement effected pursuant to this Agreement and (i) reaffirms its obligations with respect to the payment and performance of all such Obligations which are obligations of such Loan Party now or hereafter existing, (ii) reaffirms the Liens granted as security for, and its guaranty pursuant to the Guarantee of, the outstanding obligations of the Loan Parties arising under the Existing Credit Agreement and (iii) hereby (A) grants a Lien to the Agent as security for the Loan Parties' Obligations hereunder, to be governed by the terms and provisions of the Security Agreement and (B) guarantees the Loan Parties' Obligations hereunder pursuant to the Guarantee.

ARTICLE XI
CONVERSION; EXCHANGE

11.01 Conversion.

(a) At any time on or prior to the Maturity Date, (i) without Shareholder Approval, the Agent shall have the right to convert (any such conversion, a "Conversion") any portion of the principal and accrued interest of the Term Loans into shares of common stock, no par value of Parent ("Parent Common Stock") that represent, in the aggregate in the event of more than one conversion election pursuant to this clause (i), a number of shares not exceeding 19.90% of the outstanding shares of Parent Common Stock as of the ~~date hereof~~**Closing Date** and equaling the total amount of principal and accrued interest of the Term Loans being Converted divided by the Conversion Price upon Agent's delivery of notice of its intent to effectuate such Conversion (any such notice, a "Conversion Notice") and (ii) with Shareholder Approval, the Agent shall have the right to Convert any portion of the principal and accrued interest of the Term Loans into shares of Parent Common Stock in any amount and equaling the total amount of principal and accrued interest of the Term Loans being Converted divided by the Conversion Price upon Agent's delivery of a Conversion Notice. Notwithstanding anything herein to the contrary, if any ABL Obligations are outstanding at the time of such Conversion, the amount of Parent Common Stock held by the Agent shall not exceed the Conversion Cap. Any Conversion shall be treated as a prepayment of Term Loans hereunder and the outstanding balance of the Term Loans shall be reduced by the amount so repaid upon such Conversion. Upon receipt of Agent's Conversion Notice, the Borrowers shall cause the Conversion as promptly as possible and shall use commercially reasonable efforts to promptly (and in any event within sixty (60) days of the applicable Conversion Notice) obtain any Shareholder Approval required to effectuate a Conversion pursuant to clause (ii) hereof.

(b) All costs and expenses (including filing fees) with respect to filings under any applicable antitrust laws shall be borne by Parent. Parent shall pay any documentary, stamp or similar issue or transfer tax due on the issue of the Conversion Shares. Parent shall reserve (and shall keep available and free from preemptive rights) and shall continue to reserve out of its authorized but unissued Parent Common Stock a sufficient number of Parent Common Stock to permit the issuance of the Conversion Shares in full.

(c) Parent shall (i) issue the Conversion Shares to the Lenders on a pro rata basis based on each Lender's portion of the outstanding amount of the Term Loans on the Conversion Date (along with any share certificates with respect thereto) in accordance with the applicable Note with respect thereto and on terms substantially consistent with the Subscription Agreement and such Conversion Shares shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, not subject to any preemptive rights, and, be free from all taxes, Liens, security interests, charges, and other encumbrances with respect to the issuance thereof, other than taxes in respect of any transfer occurring contemporaneously with such issue and those under applicable federal, state or other securities laws and (ii) provide customary representations and warranties to the Lenders in connection with the Conversion pursuant to and in the form set forth in the Subscription Agreement.

11.02 [Reserved].

11.03 Effect of Conversion on Conversion Amount. Without limiting Article II, upon the effectiveness of any Conversion on the applicable Conversion Date, such Conversion shall be

deemed a full repayment of the amount of the Term Loans converted on such Conversion Date.

Exhibit B

Supplement to Schedule 2.01 to Credit Agreement

Lender	Delayed Draw Term Loan Commitment	Applicable Percentage of Delayed Draw Term Loan Commitments
Bed Bath & Beyond, Inc., f/k/a Beyond, Inc.	$20,000,000	100.000000000%
Total	$20,000,000	100.000000000%

Exhibit 10.2

September 15, 2025

The Brand House Collective, Inc. 5310 Maryland Way
Brentwood, Tennessee 37027
Attn: Amy Sullivan, President, Chief Executive Officer
W. Michael Madden, Executive Vice President and Chief Financial Officer

Re: Amendment No. 1 to Asset Purchase Agreement

Ladies and Gentlemen:

Reference is hereby made to that certain Asset Purchase Agreement, dated as of May 7, 2025 (the "Purchase Agreement"), by and between Bed Bath & Beyond, Inc. (f/k/a Beyond, Inc.), a Delaware corporation ("Purchaser"), and The Brand House Collective Inc., a Tennessee corporation (f/k/a Kirkland's Inc.) (the "Seller") (each a "Party", and together, the "Parties"). Capitalized terms used but not defined herein shall have their respective meaning in the Purchase Agreement.

The Parties hereby acknowledge and agree as follows:

1. Amendment to the Purchase Agreement. Pursuant to and in accordance with Section 10.4 of the Purchase Agreement, notwithstanding anything to the contrary set forth in the Purchase Agreement:

   a) "Cash "Payment" as such term is used in the Purchase Agreement shall mean $10,000,000.00; and

   b) Section 1.1(a) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following: the Trademarks, Trademark registrations, and Trademark applications set forth on Schedule 1.1(a), as well as all other Trademarks, Trademark registrations and Trademark applications owned by Seller and its Affiliates that are comprised of or contain the element "Kirkland" or any abbreviation, translation, or derivation thereof, together with all statutory and common law rights in any and all of the foregoing, all registrations and applications therefor and all renewals thereof (collectively, the "Acquired Trademarks"), all goodwill associated with, or symbolized by, such Trademarks, and all other rights, priorities and privileges arising therefrom or pertaining thereto, throughout the world

2. Seller Disclosure Schedules. The disclosure schedules required to be delivered by Seller pursuant to the Purchase Agreement and attached hereto as Exhibit A shall constitute the "Seller Disclosure Schedules" for all purposes under the Purchase Agreement.

3. Effect on the Purchase Agreement: This amendment ("Amendment") constitutes an amendment to the Purchase Agreement, and the Parties hereby agree and acknowledge that this amendment is made in accordance with the requirements thereof. Throughout the Purchase Agreement, references to "Agreement" or similar phrases shall be deemed to refer to the Purchase Agreement, as amended and supplemented by this Amendment. Except as set forth in this Amendment, the Purchase Agreement shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Purchase Agreement, the terms of this Amendment will prevail.

The validity, interpretation, construction, and enforcement of this Amendment shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to conflict of laws principles. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile, .pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Amendment.

[*remainder of page intentionally left blank*]

If this Amendment correctly states our mutual understanding and agreement, please indicate your approval and agreement by executing this Amendment below, as of the date first set forth above, and returning a fully executed copy to the undersigned.

Very truly yours,

BED BATH & BEYOND, INC.

By:_____
Name: Marcus Lemonis
Title: Executive Chairman

Accepted and agreed to as of the date first above written:

THE BRAND HOUSE COLLECTIVE, INC.

By: Andrea K. Courtois
Name: Andrea K. Courtois
Title: Senior Vice President and Chief Financial Officer

Exhibit A

Seller Disclosure Schedule

[Attached.]

SELLER DISCLOSURE SCHEDULE TO THE

ASSET PURCHASE AGREEMENT

DATED AS OF MAY 7, 2025

BY AND BETWEEN

BED BATH & BEYOND, INC. (F/K/A BEYOND, INC.), AS PURCHASER,

AND

THE BRAND HOUSE COLLECTIVE, INC. (F/K/A KIRKLAND'S INC.), AS SELLER

Schedule 1.1
Purchase and Sale of Acquired Assets

(a)

Trademark	Application Number	Application Date	Registration Number	Registration Date	Status	Owner
SIMPLE THINGS BY KIRKLAND'S	88282928	30-JAN-2019	5979530	04-FEB-2020	Registered	The Brand House Collective, Inc.
K (and Design) 	87902340	01-MAY-2018	5747217	07-MAY-2019	Registered	The Brand House Collective, Inc.
BRING HAPPINESS HOME.	87884456	19-APR-2018	5875131	01-OCT-2019	Registered	The Brand House Collective, Inc.
KIRKLAND'S	85169225	04-NOV-2010	3992852	12-JUL-2011	Registered	The Brand House Collective, Inc.
KIRKLAND'S HOME	78152914	09-AUG-2002	2769247	30-SEP-2003	Registered	The Brand House Collective, Inc.
KIRKLAND'S OUTLET	78152920	09-AUG-2002	2819618	02-MAR-2004	Registered	The Brand House Collective, Inc.
THE KIRKLAND COLLECTION	75425158	29-JAN-1998	2312426	25-JAN-2000	Registered	The Brand House Collective, Inc.
KIRKLAND'S (and Design) 	73628849	06-NOV-1986	1450144	28-JUL-1987	Registered	The Brand House Collective, Inc.
KIRKLAND'S HOME	99173572	07-MAY-2025			Pending	The Brand House Collective, Inc.
KIRKLAND'S HOME	99171620	06-MAY-2025			Pending	The Brand House Collective, Inc.

Trade Names:

1. Kirkland's Briar Patch
2. Kirkland's Home
3. Kirkland's Outlet

1. The Kirkland Collection
2. Kirklands.com
3. Kirkland's Texas Retail, LLC

Common Law Trademarks:

1. Briar Patch
2. Kirkland's, Inc.
3. Kirkland's Stores, Inc.
4. kirkland's.com,inc.
5. kirkland's.com
6. Kirkland's - For Your Home
7. Holiday by Kirkland's
8. Tuscan Gardens by Kirkland's

(b)

1. www.kirklands.com
2. www.kirklandshome.com
3. www.my.kirklands.com
4. www.ir.kirklands.com

Schedule 3.3
Conflicts

None.

Schedule 3.4
Consents

1. The BofA Closing Consent.
2. Consents required under the Amended and Restated Term Loan Credit Agreement, by and among Kirkland's Stores, Inc., Purchaser and certain other parties named therein (the "Beyond Credit Agreement").

Schedule 3.5
Title to Properties

1. Encumbrances arising under the Agreement.
2. Encumbrances arising under or in connection with the BofA Credit Agreement
3. Encumbrances arising under or in connection with the Beyond Credit Agreement

Schedule 3.6
Contracts

1. The Amended and Restated Collaboration Agreement, dated as of May 7, 2025, by and between Seller and Purchaser, together with all exhibits and attachments entered into in connection therewith (the "Collaboration Agreement").
2. In the ordinary course of business, Seller may grant to third party manufacturers and marketing vendors the non-exclusive, limited purpose, right to use or reproduce certain of the Acquired Assets for manufacturing and marketing purposes.

Schedule 3.9
Intellectual Property

(a)

Trademark	Application Number	Application Date	Registration Number	Registration Date	Status	Owner
SIMPLE THINGS BY KIRKLAND'S	88282928	30-JAN-2019	5979530	04-FEB-2020	Registered	The Brand House Collective, Inc.
K (and Design) 	87902340	01-MAY-2018	5747217	07-MAY-2019	Registered	The Brand House Collective, Inc.
BRING HAPPINESS HOME.	87884456	19-APR-2018	5875131	01-OCT-2019	Registered	The Brand House Collective, Inc.
KIRKLAND'S	85169225	04-NOV-2010	3992852	12-JUL-2011	Registered	The Brand House Collective, Inc.
KIRKLAND'S HOME	78152914	09-AUG-2002	2769247	30-SEP-2003	Registered	The Brand House Collective, Inc.
KIRKLAND'S OUTLET	78152920	09-AUG-2002	2819618	02-MAR-2004	Registered	The Brand House Collective, Inc.
THE KIRKLAND COLLECTION	75425158	29-JAN-1998	2312426	25-JAN-2000	Registered	The Brand House Collective, Inc.
KIRKLAND'S (and Design) 	73628849	06-NOV-1986	1450144	28-JUL-1987	Registered	The Brand House Collective, Inc.
KIRKLAND'S HOME	99173572	07-MAY-2025			Pending	The Brand House Collective, Inc.
KIRKLAND'S HOME	99171620	06-MAY-2025			Pending	The Brand House Collective, Inc.

(c)

1. Encumbrances arising under the Agreement.
2. Encumbrances arising under or in connection with the BofA Credit Agreement
3. Encumbrances arising under or in connection with the Beyond Credit Agreement

(d)

None.

(f)

1. The Agreement.
2. The Collaboration Agreement.
3. Encumbrances arising under the Agreement.
4. Encumbrances arising under or in connection with the BofA Credit Agreement
5. Encumbrances arising under or in connection with the Beyond Credit Agreement

(f)(ii)

None.

Schedule 5.1
Conduct of Business of Seller

None.

Schedule 11.1(b)
Permitted Encumbrances

1. Encumbrances arising under the Agreement.
2. Encumbrances arising under or in connection with the BofA Credit Agreement
3. Encumbrances arising under or in connection with the Beyond Credit Agreement

Exhibit 10.3

SECOND AMENDED AND RESTATED TRADEMARK LICENSE AGREEMENT

This Second Amended and Restated Trademark License Agreement (this "Agreement") is entered into as of September 15, 2025 (the "Second A&R Effective Date") by and between Bed Bath & Beyond, Inc. (f/k/a Beyond, Inc.), a Delaware corporation ("Licensor"), and The Brand House Collective, Inc., a Tennessee corporation (f/k/a Kirkland's Inc.), a Tennessee corporation ("Licensee") (each a "Party", and together, the "Parties").

WHEREAS, Licensor and Licensee are party to that certain Trademark License Agreement, dated as of October 21, 2024 (the "Original Trademark License Agreement"), which was entered into concurrently with that certain Collaboration Agreement dated as of October 21, 2024 (as amended and restated on May 7, 2025, as further amended and restated August 15, 2025, and as may be further amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Collaboration Agreement");

WHEREAS the Parties entered into the Collaboration Agreement for the purpose of engaging in various collaborative efforts and services regarding their respective business operations, including Licensee's operation of retail concept stores under Licensor's Trademarks identified on Schedule A ("Beyond Licensed Marks"), as may be modified by the Parties, upon the terms and conditions herein;

WHEREAS, on May 7, 2025, Kirkland's Stores, Inc., a Tennessee corporation and a subsidiary of Licensee ("Borrower"), and Licensor entered that certain Amended and Restated Term Loan Credit Agreement, dated as of May 7, 2025 (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Amended Beyond Credit Agreement") pursuant to which, on the terms and subject to the conditions set forth therein, Licensor made additional term loans to Borrower in the aggregate principal amount of $5,232,405.54;

WHEREAS, in connection with the consummation of the transactions contemplated by the Amended Beyond Credit Agreement, the Parties amended and restated the Original Trademark License Agreement on August 15, 2025, such amendment being effective as of May 7, 2025 (the "A&R Trademark License Agreement");

WHEREAS, pursuant to the Collaboration Agreement, the Parties have entered into that certain Asset Purchase Agreement, dated as of May 7, 2025 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), pursuant to which Licensee agreed to sell to Licensor, and Licensor agreed to purchase from Licensee, certain assets, including the "Kirkland" Trademarks identified on Schedule C ("Kirkland Licensed Marks" and together with the Beyond Licensed Marks, the "Licensed Marks"); and

WHEREAS, in connection with the consummation of the sale of the Kirkland Licensed Marks to Licensor pursuant to the Purchase Agreement, Licensor agreed, in accordance with Section 2(i) of the Collaboration Agreement, to amend this Agreement to provide for the license of the Kirkland Licensed Marks by Licensor to Licensee, and in contemplation thereof the Parties increased the Collaboration Fee from 0.25% to 0.5%, and in furtherance thereof, the Parties desire to amend and restate the A&R Trademark License Agreement, effective as of Second A&R Effective Date.

NOW, THEREFORE, in consideration of the foregoing, the mutual conditions and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. DEFINITIONS

As used herein, the following terms shall have the following meanings:

"Affiliate" of any Person means any Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person.

"Business Day" means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"Control" (including its correlative meanings "under common Control with" and "Controlled by") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership or other interests, by contract or otherwise.

"Kirkland Exclusivity Term" means the period beginning on the Second A&R Effective Date and ending on the earlier of (i) the date on which all brick-and-mortar Kirkland Licensed Stores have either been rebranded or closed, and (ii) two (2) years following the Second A&R Effective Date.

"Licensor Products" means those products that are sourced by or on behalf of Licensor for retail sale on Licensor's Bed Bath & Beyond e-commerce site, overstock.com and such other branded retail channels as further described in the Collaboration Agreement.

"Person" means an individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or a government or agency or political subdivision thereof.

"Shop-within-a-Shop" means a space within a Licensee-branded brick-and-mortar retail store that is branded with the Licensed Marks and reflects branding elements associated with the Licensed Marks and in which Licensee promotes, features and sells solely Licensor Products. A "Shop-within-a-Shop" may take the form of a pop-up shop, semi-permanent shop-within-a-shop, designated merchandised or branded areas within stores, end-caps or other merchandising and promotional settings, in each case, as mutually agreed to in writing by the Parties.

"Trademark" means all trademarks, brand names, trade dress, logos and other identifiers of source, together with all registrations and applications for registration thereof.

2 LICENSE GRANTS

2.1 Neighborhood Format Brick-and-Mortar Stores. Subject to the terms and conditions of this Agreement, and subject to Licensee's obligation to pay the Collaboration Fees pursuant to the Collaboration Agreement, Licensor hereby grants to Licensee, during the term of this Agreement, a non-exclusive (except as set forth in Section 2.2), non-transferable, non-sublicensable license to operate brick-and-mortar retail stores branded under the Beyond Licensed Marks, in each case, in an in-store format ranging from 7,000 to 15,000 sq. ft. per store location, (which shall, for avoidance of doubt, exclude Shop-within-a-Shops) (such format, a "Neighborhood Format"), pursuant to the Collaboration Agreement or otherwise approved in writing by Licensor from time to time ("Licensed Stores"), including the advertising, marketing and promotion of such Licensed Stores; provided that the aesthetics of the Licensed Stores, the assortment of products therein and the concentration of the vendors of such products shall be substantially consistent with the historical practice of Licensor and its Affiliates and its or their predecessors in connection with their operation of retail stores under the Beyond Licensed Marks, unless Licensee obtains Licensor's prior written consent to sell other products, which may be given or withheld in Licensor's sole and absolute discretion.

2.2 Exclusivity.

(a) During the term of this Agreement, directly or indirectly, Licensor shall not, and shall not grant a license or right to any Affiliate or third party to, operate any BED BATH & BEYOND, BED BATH & BEYOND HOME, BABY AND BEYOND or BUYBUYBABY branded brick-and-mortar retail stores in the Neighborhood Format in the United States.

(b) During the Kirkland Exclusivity Term, directly or indirectly, Licensor shall not, and shall not grant a license or right to any Affiliate or third party to, operate any brick- and-mortar retail store in the Neighborhood Format under the name KIRKLAND'S or any Kirkland Licensed Mark in the United States.

2.3 Shop-within-a-Shops. Subject to the terms and conditions of this Agreement, and subject to Licensee's obligation to pay the Collaboration Fees pursuant to the Collaboration Agreement, Licensor hereby grants to Licensee, during the term of this Agreement, a non- exclusive, non-transferable, non-sublicensable, license to use the BED BATH & BEYOND marks and associated branding elements owned by Licensor to create and operate a Shop-within-a-Shop at the locations and in the size and format mutually agreed upon by the Parties in writing from time to time, and to advertise, market and promote such Shop-within-a-Shops; provided that, in each Shop-within-a-Shop, Licensee shall solely promote, feature and sell Licensor Products as mutually agreed upon.

2.4 Subsidiaries. The licenses and rights set forth above and other rights set forth herein shall extend to each Licensee Affiliate set forth on Schedule B, but only for so long as they remain Affiliates of Licensee. Licensee shall be responsible for each such Licensee Affiliate's compliance with the terms of this Agreement.

2.5 New Trademarks. Schedule A may be updated by the Parties from time to time upon the Parties' mutual written agreement to reflect (i) a Trademark that uses, incorporates or modifies a Beyond Licensed Mark, and (ii) a Trademark acquired by Licensor and under which Licensee has the right to sell Licensed Products pursuant to Section 8 of the Collaboration Agreement.

2.6 License to Kirkland Licensed Marks. Subject to the terms and conditions of this Agreement, and subject to Licensee's obligation to pay the Collaboration Fees pursuant to the Collaboration Agreement, Licensor hereby grants to Licensee, during the term of this Agreement, a non-exclusive (except as set forth in Section 2.2), non-transferable, non-sublicensable license to (i) operate the brick-and-mortar retail stores and e-commerce websites which are branded under the Kirkland Licensed Marks and operated by Licensee, in each

case as of the Second A&R Effective Date (and excluding, for the avoidance of doubt, any Kirkland-branded e-commerce websites operated by Licensor), and any other retail stores or e-commerce websites approved by Licensor in its sole and absolute discretion (collectively the "Kirkland Licensed Stores"), including the advertising, marketing and promotion of the Kirkland Licensed Stores; provided that the aesthetics of the Kirkland Licensed Stores, the assortment of products therein and the concentration of the vendors of such products shall be substantially consistent with the historical practice of Licensee and its Affiliates and its or their predecessors in connection with their operation of retail stores and e-commerce websites under the Kirkland Licensed Marks, unless Licensee obtains Licensor's prior written consent to sell other products, which may be given or withheld in Licensor's sole and absolute discretion; and (ii) continue to manufacture, market, distribute and sell under the Kirkland Licensed Marks all other goods and services that Licensee and its Affiliates and its or their predecessors manufactured, marketed, distributed and sold historically under the Kirkland Licensed Marks (collectively the "Kirkland Licensed Products"), it being understood and agreed that Licensee shall continue to manufacture, market distribute and sell all such other goods and services during the term of such license, and shall do so in substantially the same manner and through the substantially the same channels (including wholesale distribution of products) as Licensee did during the one-year period prior to the Second A&R Effective Date. The license for Kirkland Licensed Stores shall terminate upon expiration of the Kirkland Exclusivity Term, and Licensor may terminate the license for Kirkland Licensed Products on thirty (30) days' prior written notice following the expiration of the Kirkland Exclusivity Term (such termination effective upon expiration of the thirty (30) day notice period).

3. OWNERSHIP AND USE RESTRICTIONS

3.1 Ownership, Goodwill and Reservation of Rights. Any rights not expressly granted in this Agreement are expressly reserved for Licensor. Licensor reserves all rights to the Licensed Marks except as specifically granted herein to Licensee and Licensor may exercise such rights at any time. Any and all goodwill arising from Licensee's and its sublicensees' use of the Licensed Marks shall inure solely to the benefit of Licensor. Licensee agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Licensed Marks other than the right to use the Licensed Marks in accordance with this Agreement. Licensee is only licensed to use the Licensed Marks, and not any variations, adaptations, translations, abbreviations, localizations or derivatives thereof without the prior written consent of Licensor.

3.2 No Inconsistent Action. Licensee shall not take any action or fail to take any action that would reasonably be expected, in any material respect, to impair or reduce the value or strength of any Licensed Mark, the reputation of Licensor or any of its Affiliates, or the goodwill associated with or symbolized by any Licensed Mark.

3.3 Restrictions. Licensee acknowledges the validity and Licensor's sole and exclusive ownership of the Licensed Marks, and shall not, directly or indirectly, (a) assert any claim of ownership or right in the Licensed Marks, other than the rights expressly granted pursuant to the license hereunder, (b) interfere with, oppose, cancel or otherwise challenge Licensor's or its Affiliates' registrations or applications for registration of the Licensed Marks (including domain name registrations), (c) apply for, or participate with or cause any other entity to apply for, the registration of any Licensed Marks or any logo, symbol, trademark, service mark, company or corporate name, product name, domain name or commercial slogan that comprises or is confusingly similar to any of the Licensed Marks, or (d) challenge the ownership or use of the Licensed Marks by Licensor or its Affiliates or its or their licensees. For avoidance of doubt, (x) except in connection with advertising and promotional campaigns using the Licensed Marks to promote the Licensor Products in the Neighborhood Format or Shop-within-a-Shops locations as approved by the Review Committee on a case-by-case basis, Licensee shall not have the right to use the Beyond Licensed Marks in any domain name or on or in connection with any online, mobile or other electronic stores or social media accounts, and (y) except in connection with the operation of the ecommerce websites included in the Kirkland Licensed Stores, Licensee shall not have the right to use the Kirkland Licensed Marks in any domain name or on or in connection with any online, mobile or other electronic stores or social media accounts. Any violation of the foregoing shall be deemed a material and uncurable default hereunder.

3.4 Confusing Use. Licensee shall not use the Licensed Marks in any manner likely to cause confusion or doubt in the mind of the public as to the ownership and control thereof or in any manner that does not make clear that the Licensed Marks are owned and controlled exclusively by Licensor. In addition, except to the extent approved in writing by Licensor, Licensee shall not use or co-mingle with the Licensed Marks any other trademarks, characters or properties, whether owned by Licensee or another, so as to suggest that such other trademarks, etc. may have been created or may be owned, controlled, licensed or approved by Licensor or that they are in any way related to the Licensed Marks or Licensor.

3.5 Customer Complaints. Licensee shall, in connection with its duty to use the Licensed Marks so as to promote the continuing goodwill thereof, give immediate attention and take necessary action to satisfy all legitimate customer complaints brought against Licensee in connection with the Kirkland Licensed Products, Licensed Stores, Shop-within-a-Shops, or Kirkland Licensed Stores, or products or services provided therein. Licensee shall give Licensor notice within five (5) days of receipt of all complaints that might reasonably be expected to affect the good standing of the Licensed Marks or the reputation of Licensor and also of all complaints that might reasonably be

expected to result in legal action between Licensor and any third party, and cooperate with Licensor upon request to achieve as good a reputation and press for the Licensed Marks as possible.

4. REGISTRATION, INFRINGEMENT AND ENFORCEMENT

4.1 Registration. Licensor shall, in its reasonable discretion, prosecute and maintain the applications and registrations for the Licensed Marks during the term of this Agreement at Licensor's sole cost and expense. Licensor may, in its discretion, seek to apply for the registration of New Trademarks in any jurisdiction. Licensee shall not seek to apply for the registration of the Licensed Marks or any New Trademarks.

4.2 Infringement; Enforcement. Licensee shall promptly inform Licensor in writing of any infringement, dilution, or other violation of a Licensed Mark of which Licensee becomes aware and shall reasonably cooperate with Licensor, at Licensor's reasonable expense, in the protection and defense of the Licensed Marks. Licensor shall, in its reasonable discretion, defend and enforce the Licensed Marks. For avoidance of doubt, Licensor shall have the sole and exclusive right, but not the obligation, to defend and enforce the Licensed Marks.

5. QUALITY CONTROL

5.1 Branding Guidelines.

(a) In General. The Review Committee (as defined in the Collaboration Agreement) shall manage all matters that require the Parties' cooperation or consultation with each other under this Agreement. Licensee shall use the Licensed Marks in accordance with (a) the specifications set forth on Schedule A or Schedule C, as applicable, and (b) in a manner that is consistent with the branding guidelines provided by Licensor to Licensee in writing from time to time (the "Branding Guidelines"). Licensor agrees to consider in good faith any revisions to the Branding Guidelines that are proposed by the Review Committee; however, Licensor shall have the right to accept or reject any such proposals in its sole discretion. Licensee shall obtain Licensor's prior written approval or approval of the Review Committee for all advertising, marketing and promotional materials bearing the Licensed Marks, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Kirkland Licensed Marks. Except to the extent otherwise provided in the Branding Guidelines, Licensee shall use the Kirkland Licensed Marks in the same manner and in connection with the same goods and services as Licensee used the Kirkland Licensed Marks during the one- year period prior to the Second A&R Effective Date.

5.2 Quality Standards.

(a) Beyond Licensed Marks. The quality of the goods and services sold, provided or otherwise commercialized by Licensee in the Licensed Stores and Shop-within-a-Shops will be of the same or higher quality as the goods and services sold, provided, or otherwise commercialized by Licensor and its Affiliates and its or their predecessors in connection with the Beyond Licensed Marks at its or their brick-and-mortar retail stores historically, and at least of a quality so as to maintain the value, reputation and goodwill of Licensor, its Affiliates and the Beyond Licensed Marks. Licensee agrees to undertake any actions that Licensor may reasonably request to assist Licensor in inspecting and monitoring the quality of the goods and services offered in the Licensed Stores and Shop-within-a-Shops and the use of the Beyond Licensed Marks in connection with such goods and services.

(b) Kirkland Licensed Marks. The quality of the goods and services sold, provided or otherwise commercialized by Licensee under the Kirkland Licensed Marks or in the Kirkland Licensed Stores will be of the same or higher quality as the goods and services sold, provided, or otherwise commercialized by Licensee and its Affiliates and its or their predecessors in connection with the Kirkland Licensed Marks at its or their brick-and-mortar retail stores and e-commerce websites historically, as applicable, and at least of a quality so as to maintain the value, reputation and goodwill of Licensor, its Affiliates and the Kirkland Licensed Marks. Licensee agrees to undertake any actions that Licensor may reasonably request to assist Licensor in inspecting and monitoring the quality of the goods and services offered under the Kirkland Licensed Marks or any other products and services offered in the Kirkland Licensed Stores and the use of the Kirkland Licensed Marks in connection with such goods and services.

5.3 Compliance with Law. Licensee shall only use the Licensed Marks in compliance with applicable laws, and shall comply with all applicable laws and obtain all appropriate governmental approvals pertaining to (a) the operation of Licensee's business, (b) the sale, provision, or other commercialization of the Kirkland Licensed Products, or any goods and services in the Licensed Stores, Shop-within-a-Shops, and Kirkland Licensed Stores, and (c) any other activities conducted by Licensee in association with the Licensed Marks.

5.4 Notices and Legends. In all uses of the Licensed Marks, Licensee shall include all notices and legends with respect to the Licensed Marks as reasonably requested by Licensor, and, to the extent practical, shall place the symbols "®", "™" or "℠", as applicable, or other designations legally required or useful for enforcement of trademark or service mark rights, next to the Licensed Marks consistent with the same manner in which Licensor and its Affiliates use such symbols or other designations.

6. BOOKS AND RECORDS; AUDITS.

Licensor and its duly authorized representatives, may, during regular business hours at times agreed upon by the Parties and with at least thirty (30) days prior written notice, for the duration of this Agreement and for three (3) years thereafter, examine all documents and materials in the possession or under the control of Licensee as necessary to verify Licensee's compliance with its obligations under this Agreement; and Licensor shall have free and full access thereto for said purposes and for the purpose of making abstracts therefrom and copies thereof. All copies and information accessed, produced or obtained in connection with such audit is the Confidential Information of Licensee and shall be protected as such under Section 4 of the Collaboration Agreement. Any such audit commenced within such period may continue through completion in the ordinary course; provided, that such audit is conducted in a manner designed to minimize disruption to Licensee's business. All such records and documents, including computer records, shall be kept available by Licensee for at least three (3) years (or such longer period as required by law) after the end of the term of this Agreement and through the completion of any audit commenced prior to the end of such period.

7. TERM AND TERMINATION

7.1 Term. The term of this Agreement commenced on October 21, 2024 and, subject to earlier termination under Section 7.2, will continue until the later of (a) the expiration or termination of the Collaboration Agreement, or (b) the expiration of the then-existing term or initial term (not to exceed five (5) years), as applicable, of the lease(s) for all Licensed Stores.

7.2 Termination for Breach. Without limiting any of Licensor's other remedies at law or in equity, Licensor may terminate this Agreement:

(a) on seven (7) Business Days' prior written notice (such notice effective upon expiration of the seven (7) Business Day notice period) if Licensee fails to timely pay the Collaboration Fee pursuant to the terms of the Collaboration Agreement, such notice of termination shall become effective unless, within such seven (7) Business Day period, Licensee shall completely remedy the breach and furnish the required payments;

(b) on thirty (30) days' prior written notice (such termination effective upon expiration of the thirty (30) day notice period) for any other material breach of this Agreement by Licensee, in the event that Licensee fails to cure such breach within such thirty (30) day period; or

(c) if, in Licensor's reasonable opinion, Licensee's ability to perform under this Agreement is or will be impaired due to Licensee's financial inability to comply with its anticipated obligations under this Agreement; a petition in bankruptcy is filed by or against Licensee; Licensee is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law; Licensee discontinues its business; or a receiver is appointed for Licensee or Licensee's business and such receiver is not discharged within thirty (30) days.

7.3 Bankruptcy.

(a) No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this Agreement or exploit or in any way use the Licensed Marks if Licensor terminates this Agreement pursuant to Section 7.2(c).

(b) of a Licensee bankruptcy proceeding, the Parties acknowledge and agree that: (i) this Agreement is an executory contract within the meaning of Section 365 of Bankruptcy Code; and (ii) as set forth in Section 13.2 below, Licensor, in its interest to safeguard its valuable interests (including, without limitation, the Licensed Marks), has relied on the particular identity, skill and knowledge of the Licensee and, as a result, this Agreement: (A) is personal in nature to the Licensee; (B) is an agreement of the type described by Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code; and (C) may not be assumed or assigned.

7.4 Effect of Termination. Upon expiration or termination of this Agreement, the licenses granted by this Agreement shall immediately and automatically terminate, and Licensee shall cease and desist from all use of the Licensed Marks. Notwithstanding the foregoing, if Licensee is not in breach of this Agreement as of the date of termination or expiration (it being understood and agreed that a breach of Licensee's obligation to pay the Collaboration Fees under the Collaboration Agreement shall be deemed to be a breach of this Agreement), upon request from Licensee, Licensor will grant Licensee an additional six (6) month period to transition off the use of the Licensed Marks (the "Transition Period"), provided that Licensor determines, in its reasonable discretion, that there is no material risk of Licensee failing to pay the Collaboration Fees on applicable revenue generated during the Transition Period. This Agreement shall remain in effect during any such Transition Period. The following provisions shall

survive termination or expiration of this Agreement (or the Transition Period, if applicable): Sections 1, 3, 6 (for the time period set forth therein), 7.3, 7.4, 8, 9, 10, 11, 12, (for the time period set forth therein) and 13.

8. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; and (b) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

9. DISCLAIMER OF WARRANTIES

LICENSEE ACKNOWLEDGES AND AGREES THAT THE LICENSED MARKS ARE LICENSED "AS IS", WITHOUT WARRANTY OF ANY KIND, AND THAT LICENSOR DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE LICENSED MARKS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY IMPLIED WARRANTY OF NONINFRINGEMENT, SUFFICIENCY, QUALITY, USEFULNESS, COMMERCIAL UTILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE).

10. INDEMNIFICATION

10.1 Indemnification by Licensor. Licensor shall indemnify, defend and hold harmless Licensee and its Affiliates and its and their respective officers, directors, equityholders, employees and agents ("Licensee Indemnitees") from and against any and all damages, losses, liabilities, costs, expenses and other payments ("Losses") resulting from a demand, claim, lawsuit, or action asserted by any third Person against any of the Licensee Indemnitees to the extent such Losses arise out of or are in connection with allegations that Licensee's use of a Beyond Licensed Mark in compliance with this Agreement infringes, dilutes or otherwise violates the intellectual property rights of a third Person.

10.2 Indemnification by Licensee. Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates and its and their respective officers, directors, equityholders, employees and agents ("Licensor Indemnitees") from and against any and all Losses resulting from a demand, claim, lawsuit, or action asserted by any third Person against any of the Licensor Indemnitees to the extent such Losses arise out of or are in connection with (a) Licensee's operation of the Licensed Stores, Shop-within-a-Shops, or Kirkland Licensed Stores, including the sale, distribution and other commercialization of products and services through the Licensed Stores, Shop-within-a-Shops, or Kirkland Licensed Stores, with the exception of claims for which Licensor is required to indemnify the Licensee Indemnitees pursuant to Section 10.1, (b) Licensee's sale, distribution and other commercialization of the Kirkland Licensed Products, or (c) Licensee's breach of this Agreement.

10.3 Indemnity Procedures. If any claim or action is asserted against any Licensee Indemnitee or Licensor Indemnitee (each, an "Indemnified Party") that would entitle such Indemnified Party to indemnification pursuant to this Section 10 (a "Proceeding"), the Indemnified Party will give prompt written notice thereof to the other party (the "Indemnifying Party"); provided, however, that the failure of any Indemnified Party to give timely notice hereunder will not affect its rights to indemnification hereunder, except to the extent that the Indemnifying Party demonstrates actual damage caused by such failure. The Indemnifying Party may elect to direct the defense or settlement of any such Proceeding by giving written notice to the Indemnified Party, which election will be effective immediately upon receipt by the Indemnified Party of such written notice of election. The Indemnifying Party will have the right to employ counsel reasonably acceptable to the Indemnified Party to defend any such Proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnifying Party deems it advisable to do so, all at the expense of the Indemnifying Party; provided that the Indemnifying Party will not settle, or consent to any entry of judgment in, any Proceeding without obtaining either: (a) an unconditional release of the Indemnified Party from all liability with respect to all claims underlying such Proceeding; or (b) the prior written consent of the Indemnified Party. An Indemnified Party will not settle, or consent to any entry of judgment, in any Proceeding without obtaining the prior written consent of the Indemnifying Party. Each Indemnifying Party and Indemnified Party will fully cooperate with each other in any such Proceeding and will make available to each other any books or records useful for the defense of any such Proceeding.

11. LIMITATION OF LIABILITY

WITH THE EXCEPTION OF LICENSOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10 AND LIABILITY ARISING FROM LICENSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR SHALL NOT BE LIABLE UNDER THIS AGREEMENT TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS, OR

COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY) OR CONTRIBUTION, AND IRRESPECTIVE OF WHETHER LICENSOR OR ANY RELATED ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

12. INSURANCE

Simultaneously with the execution of this Agreement, Licensee shall promptly obtain and maintain in full force and effect at all times during the term of this Agreement and for at least three (3) years thereafter, at its own cost and expense, commercial general liability insurance on a per occurrence form, including broad form coverage for contractual liability, property damage, products liability and personal injury liability (including bodily injury and death), waiving subrogation, all which is satisfactory to Licensor, in the amount of $5,000,000 of primary and umbrella coverage from one or more insurance companies, each with a Best's rating of "A" or better, and qualified to transact business in the territories where the Licensed Stores, Shop-within- a-Shops and Kirkland Licensed Stores are located and the Kirkland Licensed Products are manufactured, distributed or sold. Licensee also agrees to maintain in full force and effect at all times while this Agreement is in effect such Worker's Compensation Insurance as is required by applicable law and Employer's Liability Insurance with coverage as is customary for similarly situated companies. All insurance shall be primary and not contributory. All of said insurance shall: (a) provide for coverage resulting from claims reported after the policy period; (b) name Licensor as an additional insured; and (c) provide for at least thirty (30) days' prior written notice to Licensor of any cancellation, modification, surrender, or any other action that would affect Licensor's status or benefits thereunder. During the term of this Agreement, Licensee shall promptly furnish or cause to be furnished to Licensor evidence, in form and substance satisfactory to Licensor, of the maintenance and renewal of the insurance required herein, including copies of policies with applicable riders and endorsements, certificates of insurance, and continuing certificates of insurance. Contemporaneously with the execution and delivery of this Agreement, evidence of the full force and effect of the insurance required herein shall be delivered to Licensor. In all events, Licensor shall under no circumstances operate any Licensed Stores, Shop-within-a- Shops, or Kirkland Licensed Stores or manufacture, distribute or sell any Kirkland Licensed Products at any time or times when Licensee knows or should know that the insurance required herein has not been acquired, has been cancelled or for any other reason is not in full force and effect. Nothing contained in this Section 12 shall be deemed to limit in any way the indemnification provisions of Section 10.

13. MISCELLANEOUS

13.1 Independent Contractor. Neither Party is and shall not represent itself to be a subsidiary, affiliate, legal representative, agent, employee, or partner of the other Party or otherwise connected with the other Party, except Licensee as an independent distributor of the Licensor Products in Shop-within-a-Shops, and neither Party shall have the authority to assume, create or incur any obligation or liability on behalf of the other Party.

13.2 Assignment. Nothing herein shall restrict Licensor from assigning or transferring any Licensed Marks to any Person; provided that any such transfer shall have no effect on the license granted to Licensee hereunder, and the Licensed Marks shall remain subject to this Agreement. This Agreement is personal to Licensee, and neither this Agreement nor any of the rights of Licensee hereunder shall be sold, transferred or assigned by Licensee by operation of law or otherwise, without the prior written consent of the Licensor. Any assignment, transfer, hypothecation, pledge or encumbrance of this Agreement by Licensee in violation of the foregoing shall be void from the beginning and constitute a material breach of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors (whether by contract, operation of law or otherwise) and permitted assigns.

13.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the receiving Party from time to time in accordance herewith). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

Licensor shall send notices to Licensee as follows:

The Brand House Collective, Inc.
5310 Maryland Way
Brentwood, Tennessee 37027

Attn: Amy Sullivan, President, Chief Executive Officer

With a copy to:

The Brand House Collective, Inc.

5310 Maryland Way
Brentwood, Tennessee 37027
Attn: General Counsel

Licensee shall send notices to Licensor as follows:

Bed Bath & Beyond, Inc.
433 W. Ascension Way, 3rd Floor
Murray, UT 84123
Attention: Melissa Smith, General Counsel

13.4 Governing Law; Forum; Waiver of Jury Trial. This Agreement shall be governed by the laws of the State of Delaware, without giving effect to the conflict of law provisions of Delaware, and any action or proceeding arising out of, or related to, this Agreement, shall only be brought in an appropriate state or federal court in Delaware. The Parties expressly consent to venue in Delaware and to the personal jurisdiction of the Delaware courts. EACH PARTY HERETO, FOR ITSELF AND ITS AFFILIATES, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE ACTIONS OF THE PARTIES HERETO OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT OR IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

13.5 Waiver. Failure of either Party to enforce or exercise any of its rights with respect to any provisions hereof against the other Party shall not constitute a waiver thereof nor shall it in any way affect the validity of this Agreement or act as a bar to such Party's subsequent enforcement or exercise of any right created hereby. The exercise or enforcement by either Party of any of its rights hereunder shall not preclude or prejudice such Party from thereafter exercising the same or any other right which it may have under this Agreement.

13.6 Headings; Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All words used in this Agreement will be construed to be of such gender or number as the context requires. The word "including" shall be read as "including but not limited to" and otherwise shall be considered illustrative and non-limiting. All references to dollars or "$" in this Agreement will be to U.S. dollars. The language used in this Agreement will be construed, in all cases, according to its fair meaning, and not for or against either Party hereto. The Parties acknowledge that each Party has reviewed this Agreement and that rules of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be available in the interpretation of this Agreement.

13.7 Successors and Assigns. This Agreement is entered into solely between, and may be enforced only by, the Parties and their permitted successors and assigns, and except as expressly set forth herein, this Agreement shall not be deemed to create any rights in third parties, including, without limitation, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

13.8 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, inoperative, or unenforceable, the remainder of this Agreement shall not be affected by such determination, and the remainder of this Agreement shall be given effect as if the invalid, inoperative, or unenforceable provision had not been included in this Agreement.

13.9 Equitable Relief; Cumulative Remedies. Licensee acknowledges that a breach of this Agreement by Licensee may cause Licensor irreparable damages, for which an award of damages would not be adequate compensation. In the event of such breach or threatened breach, Licensor will be entitled to seek equitable relief against Licensee without the obligation to post a bond or other security. Except as expressly set forth in this Agreement, the right and remedies under this Agreement are cumulative and in addition to any other rights or remedies available at law or in equity or otherwise.

13.10 Entire Agreement and Modification. Except as otherwise set forth herein, the Parties agree that this Agreement contains the entire agreement between the Parties and there are no other oral statements, representations, warranties or other agreements between the Parties. This Agreement can only be modified, amended or supplemented in writing signed by authorized representatives of both Parties.

13.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different Parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract between the Parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by each of Parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the Second A&R Effective Date.

LICENSOR:

BED BATH & BEYOND, INC.

By:_____
Name: Marcus Lemonis
Title: Executive Chairman

LICENSEE:

THE BRAND HOUSE COLLECTIVE, INC.

By: Andrea K. Courtois
Name: Andrea K. Courtois
Title: Senior Vice President and Chief Financial Officer

SCHEDULE A
Licensed Marks*

Registration Numbers	Trademarks	Services	IC
2510262	BED BATH & BEYOND	**Retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
1830725	BED BATH & BEYOND	**Retail store** services in the field of linen products, housewares and home furnishings.	42
1831709	BED BATH & BEYOND	**Retail store** services in the field of linen products, housewares and home furnishings.	42
2831985	BED BATH & BEYOND	**retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
2831986	BED BATH & BEYOND	**retail store**, mail order and computer on-line retail services featuring linen products, home furnishings, toys, books, furniture, housewares, house plants, kitchen appliances, office supplies, knapsacks, luggage, lamps, soaps, lotions, toothbrushes, kitchen accessories, bathroom accessories, novelty items, picture frames, candles, aromatherapy products, potpourri, desktop electronics, umbrellas, and apparel.	35
6895084	BED BATH & BEYOND	**Retail store** services and on-line retail store services featuring a wide variety of consumer goods of others	35
6895085	BED BATH & BEYOND	**Retail store** services and on-line retail store services featuring a wide variety of consumer goods of others	35

Trademarks	Registration/Serial Nos	Services
OVERSTOCK.COM	2939764	On-line wholesale and retail store services featuring general consumer merchandise, namely, clothing, shoes, bath and body products, jewelry, electronics, cookware, housewares, appliances, furniture, linens, pillows, decorative accessories, office furniture and accessories, toys, games, sporting goods, tools, outdoor lawn and garden equipment, pet supplies and paper products
BABY AND BEYOND	98373503 (pending)	On-line retail store services featuring baby furniture, pillows, mattresses, sheets, changing pads and covers, swaddle wraps, baby carriers and wraps, nursing cover, bottle warmer, clothes, shoes, toys, bags, car seats, towels, breast pump accessories, baby food makers, baby tableware, pack n plays; gift registry services; retail store services featuring baby furniture, pillows, mattresses, sheets, changing pads and covers, swaddle wraps, baby carriers and wraps, nursing cover, bottle warmer, clothes, shoes, toys, bags, car seats, towels, breast pump accessories, baby food makers, baby tableware, pack n plays
Overstock.com Your Online Outlet	3069011	Online wholesale and retail discount store services in the field of general consumer merchandise
Overstock.com	98452509	Online retail services featuring general consumer merchandise
BUY BUY BABY	2171479	Retail stores featuring baby furniture, clothes, accessories and supplies
buybuyBABY	3855752	Retail store services and computerized on-line retail store services featuring a wide variety of consumer goods of others
buy buy BABY	3855753	Retail store services and computerized on-line retail store services featuring a wide variety of consumer goods of others
BED BATH & BEYOND HOME	99154965 (pending)	Retail store, and on-line retail store services featuring general consumer merchandise

*Licensee acknowledges and agrees (i) that Licensee's rights are limited to the Licensed Marks set forth above in this Schedule A and (ii) that Licensee shall only use the Licensed Marks in the exact form as listed above (including any logos and/or artwork files provided by Licensor, if any), unless otherwise approved in writing by Licensor. Licensee further acknowledges and agrees that this Agreement does not grant, and Licensee shall not have, any rights with respect to any other trademark, label, logo, or the like, owned or used by Licensor, all of which are expressly reserved to Licensor.

SCHEDULE B
Licensee Affiliates

1. Kirkland's DC, Inc., a Tennessee corporation
2. Kirkland's Stores, Inc., a Tennessee corporation
3. Kirkland's Texas, LLC, a Tennessee limited liability company

SCHEDULE C
Kirkland Licensed Marks

Trademark	Application Number	Application Date	Registration Number	Registration Date	Status	Owner
SIMPLE THINGS BY KIRKLAND'S	88282928	30-JAN-2019	5979530	04-FEB-2020	Registered	The Brand House Collective, Inc.
K (and Design) 	87902340	01-MAY-2018	5747217	07-MAY-2019	Registered	The Brand House Collective, Inc.
BRING HAPPINESS HOME.	87884456	19-APR-2018	5875131	01-OCT-2019	Registered	The Brand House Collective, Inc.
KIRKLAND'S	85169225	04-NOV-2010	3992852	12-JUL-2011	Registered	The Brand House Collective, Inc.
KIRKLAND'S HOME	78152914	09-AUG-2002	2769247	30-SEP-2003	Registered	The Brand House Collective, Inc.
KIRKLAND'S OUTLET	78152920	09-AUG-2002	2819618	02-MAR-2004	Registered	The Brand House Collective, Inc.
THE KIRKLAND COLLECTION	75425158	29-JAN-1998	2312426	25-JAN-2000	Registered	The Brand House Collective, Inc.
KIRKLAND'S (and Design) 	73628849	06-NOV-1986	1450144	28-JUL-1987	Registered	The Brand House Collective, Inc.
KIRKLAND'S HOME	99173572	07-MAY-2025			Pending	The Brand House Collective, Inc.
KIRKLAND'S HOME	99171620	06-MAY-2025			Pending	The Brand House Collective, Inc.

Trade Names:

1. Kirkland's Briar Patch
2. Kirkland's Home
3. Kirkland's Outlet

1. The Kirkland Collection
2. Kirklands.com
3. Kirkland's Texas Retail, LLC

Common Law Trademarks:

1. Briar Patch
2. Kirkland's, Inc.
3. Kirkland's Stores, Inc.
4. kirkland's.com,inc.
5. kirkland's.com
6. Kirkland's - For Your Home
7. Holiday by Kirkland's
8. Tuscan Gardens by Kirkland's

All other Acquired Trademarks assigned to Licensor pursuant to the Purchase Agreement.

Exhibit 10.4

AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS AMENDMENT TO LOAN AND SECURITY AGREEMENT (this *"Amendment")* is made to be effective as of September 30, 2025 by and between BED BATH & BEYOND, INC., a Delaware corporation, (formerly known as BEYOND, INC.) *("Borrower")* and BMO BANK, N.A., as lender *("Lender").*

PRELIMINARY STATEMENTS

A. Lender has made a revolving credit loan in the maximum principal amount of $25,000,000.00 (the *"Revolving Loan")* to Borrower pursuant to that certain Loan and Security Agreement dated as of October 18, 2024 (the *"Credit Agreement").*

B. Borrower has requested that Lender extend the Maturity Date from October 18, 2025 to October 18, 2026. Lender, while under no obligation to do so, has agreed to that extension conditioned upon the satisfaction of the conditions set forth herein. Any and *all* capitalized terms in this Amendment that are not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

AGREEMENTS

In consideration of the mutual covenants and provisions of this Amendment, the parties agree as follows:

SECTION 1. AMENDMENT

1.1 The following definition set forth in Section **1.1** of the Credit Agreement IS hereby amended and restated as follows:

"Maturity Date" means October 18, 2026 or any earlier date on which the Revolving Facility Amount is reduced to zero or the Revolving Commitment is otherwise terminated pursuant to the terms hereof.

1.2 Borrower has informed Lender that it has changed its name from Beyond, Inc. to Bed Bath & Beyond, Inc. Subject to the conditions precedent set forth in Section 2 below, Lender hereby consents to such name change.

SECTION 2. CONDITIONS PRECEDENT.

The effectiveness of this Amendment is subject to the satisfaction of all of the following conditions precedent:

2.1 Borrower and Lender shall have executed and delivered this Amendment.

2.2 As of the date of this Amendment, each of the representations and warranties set forth below shall be true and correct, and no Default or Event of Default (except those indicated herein) shall have occurred or shall result from the transactions contemplated hereby.

2.3 The Lender shall have received evidence regarding the Borrower's organization or formation, power and authority, and authorization with respect to the execution, delive1y and performance of this Amendment and the other Loan Documents, which shall include the organizational documents evidencing the name change of Borrower.

2,4 [Reserved].

2.5 The Lender and its counsel shall have completed all financial, business, legal, tax and regulatory due diligence, including all documentation required by bank regulatory authorities under applicable Anti-Corruption Laws and "know your customer" and Anti-Money Laundering Laws and Lender shall have received a fully-executed Beneficial Ownership Certification with respect to each Loan Party.

2.6 [Reserved].

2.7 The Borrower shall have paid all fees and expenses required to be paid by the Borrower under Section 4.4 below.

2.8 No Material Adverse Effect shall have occurred, and no event, development or circumstance shall have occurred that would reasonably be expected to result in a Material Adverse Effect.

2.9 Lender shall have received such documents and ce1tificates as Lender or its counsel may reasonably request relating to this Amendment and any other legal matters relating to the Loan Parties, all in form and substance satisfactory to Lender and its counsel.

SECTION 3. REPRESENTATIONS AND WARRANTIES.

The Loan Parties hereby certify to Lender that as of the date of this Amendment, all of each Loan Party's representations and warranties contained in the Credit Agreement and each of the Loan Documents are true, accurate and complete, and, except as set forth in this Amendment, no Default or Event of Default has occurred under the Credit Agreement or any of the Loan Documents. Without limiting the generality of the foregoing, each Loan Party represents, warrants and agrees, as applicable, that:

3.1 the execution and delivery of this Amendment has been authorized by all necessary action on the part of the Borrower and the other Loan Parties;

3.2 the person executing this Amendment on behalf of Borrower and the other Loan Parties is duly authorized to do so;

3.3 none of the execution, delivery or performance of this Amendment will breach, violate or constitute a default under (i) any laws, rules or regulations applicable to Borrower or any of the other Loan Parties or any of their property or (ii) any contract or agreement to which Borrower or any of the other Loan Parties is a party; and

3.4 this Amendment constitutes the legal, valid, binding and enforceable obligation of Borrower and the other Loan Parties, as applicable.

SECTION 4. MISCELLANEOUS.

4.1 Except as supplemented, modified and amended by this Amendment, the terms and conditions of the Credit Agreement and other Loan Documents shall remain unmodified and shall continue in full force and effect. Borrower and each other Loan Party hereby reaffirm all of their obligations under the Credit Agreement and other Loan Documents, as supplemented, modified and amended hereby.

4.2 This Amendment may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by fax or other electronic transmission (which shall include *"PDF"* or *"TIFF"* format) shall be as effective as delivery of a manually executed counterpart of this Amendment.

4.3 Borrower and the other Loan Parties hereby voluntarily and knowingly forever release, discharge, waive and relinquish any and all claims, demands, causes of action of every kind and nature whatsoever, whether in law, in equity or before an administrative agency, whether known or unknown, direct or indirect, fixed or contingent, whether heretofore asserted or not, and whether arising based on a tort or breach of contractual or other duty, arising under or in connection with this Amendment, any other Loan Document or the transactions contemplated thereby based on the acts or omissions of the Credit Parties and their past and present officers, directors, managers, employees, partners, agents, shareholders, members, trustees, predecessors, successors, and assigns (the *"Released Parties")* existing on or before the date hereof, that Borrower or the Loan Parties ever had, have or may have against the Released Parties.

4.4 As an inducement to the parties entering into this Amendment and as otherwise required under the Loan Documents, Borrower hereby agrees to pay, upon execution and delivery of this Amendment, all cost and expenses of Lender incurred in connection with this Amendment and the matters contemplated herein, including all reasonable attorney's fees.

4.5 This Amendment shall be governed by the laws of the State of Illinois. The governing law, jurisdiction, consent to service of process, waiver of jury trial and waiver of consequential damage provisions set forth in Sections 10.17, 10.18 and 10.19 of the Credit Agreement are incorporated herein by reference and shall apply to this letter to the same extent as if fully set forth herein. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and permissible assigns.

[THE REMAINDER OF THIS PAGE JS INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered by its duly authorized officers as of the day and year first above written.

BORROWER
BED BATH & BEYOND, INC.
a Delaware Corporation
(f/k/a Beyond, Inc.)

By: Adrianne Lee
Name: Adrianne Lee
Title: President & Chief Financial Officer

LENDER:

BMO BANK N.A.
By: _____
Name: JAMES R. KEAN III
Title: DIRECTOR

August 19, 2025

Dear Adrianne,

We are pleased to offer you the position of President and CFO with Beyond, Inc. ("Beyond").

The following is a summary of your compensation, benefits, and the terms and conditions of our employment offer:

Start Date: March 10, 2025

Employment Status: Full time, Exempt

Cash Salary Compensation: $26,923.08 per pay period, ($700,000 annually)

In order to receive the full annual amount of $700,000, you must be employed for all 26 pay periods.

Cash Bonus Plan: In addition to your base salary, you may be eligible to earn, for each fiscal year at the Company ending during the term of your employment with the Company, an annual cash bonus, as approved from time to time by the Company's Board of Directors or Compensation Committee. Your "target" annual bonus for 2025 is currently set at 75% of your base salary. ($525,000) Your actual annual bonus will be determined on the basis of such Company and individual performance criteria established by the Board of Directors or Compensation Committee in accordance with the terms and conditions of any bonus plan adopted from time to time. Your annual bonus will be paid between January 1 and April 1 of the calendar year following the year to which it relates. Except as otherwise provided in the Severance Plan (as defined below), you must be employed by the Company on the date of payment of such annual bonus in order to be eligible to receive such annual bonus. Notwithstanding the foregoing or anything to the contrary in the Severance Plan, in the event of your Qualifying Termination following the end of a fiscal year but prior to the payment of your annual bonus for such fiscal year, you will be entitled to receive a payment equal to the amount of your earned annual bonus based on performance for such completed fiscal year, as determined by the Compensation Committee, which amount shall be payable when annual bonuses are paid to the Company's employees generally, subject to your eligibility for severance benefits under and your compliance with the terms of the Severance Plan (including the requirement to execute and not revoke a general release of claims in favor of the Company as provided in Section 5(a) thereof).

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1 This Corrected Offer Letter corrects inadvertent omissions in the March 10, 2025 original offer letter. The corrections are consistent with the language used in Ms. Lee's Feb. 18, 2024 offer letter for the role of Chief Financial and Administrative Officer. The corrections are also consistent with Ms. Lee's compensation as disclosed in the Company's 2025 Proxy Statement. See 2025 Proxy Statement at p. 71, 84.
2 This sentence was inadvertently omitted from the March 10, 2025 original offer letter.

Equity: We will propose that you receive an incremental equity award of $200,000 comprised of $100,000 of restricted stock units ("RSUs") and $100,000 of performance stock units ("PSUs") under the terms of the Company's 2005 Equity Incentive Plan ("EIP") and the forms of the applicable award agreements which set forth the service periods and performance targets required for the awards to vest, which RSUs and PSUs will be subject to and conditional upon all required targets being achieved and necessary corporate approvals being obtained. (Incremental to the $1,100,000 of equity awards granted on 2/4/2025) Consistent with the EIP you may be eligible for refresh awards to be approved by the Board or Compensation Committee at their discretion

Report to: Marcus Lemonis, Executive Chairman

Work Location: Beyond's corporate offices: Salt Lake City, Utah

Flexible Time Away: Unaccrued, paid time off to be used (without set limits) for purposes such as vacation, relaxation, personal or family needs, and for absences governed by Company leave policies. (subject to the limits specified in those policies)

You will continue to be eligible to participate in the following benefits.

- Medical
- Dental
- Vision
- Supplemental Life and AD&D
- Voluntary Accident, Critical illness, Hospital Indemnity
- Flexible Spending Accounts (FSA)
- Health Savings Account (HSA)
- Prepaid Legal Services
- Basic Life and AD&D- Company Paid
- Short/Long Term Disability- Company Paid
- Employee Assistance Program (EAP)- Company Paid
- Employee Wellness
- Welcome Rewards

You will continue to be eligible to participate in the Beyond 401(k) Plan pursuant to the terms and conditions of such plan.

At-Will Employment; Severance Plan: Beyond, Inc. is an at-will employer. Nothing in this offer shall limit the right of Beyond, Inc. or yourself to terminate the employment relationship. Notwithstanding the foregoing, you may be entitled to severance upon certain qualifying terminations of employment, as outlined in the Company's Key Employee Severance Plan (the "Severance Plan"). You will continue your designation as a Tier 2 Participant (as defined in the Severance Plan) in the Severance Plan and you're understanding that you agree to all the terms and conditions of the Severance Plan. Notwithstanding the foregoing or anything to the contrary in the Severance Plan, in the event of your Qualifying Termination that is not a Change in Control Termination, in addition to the Cash Severance payable to you under the Severance Plan (as defined therein), you will be entitled to receive a payment equal to your target annual bonus for the fiscal year in which your Qualifying Termination occurs, prorated for the portion of such year that has elapsed prior to the date of termination, which amount shall be payable in a lump sum on the 60th day after the date of your Separation from Service (as defined in the Severance Plan), subject to your eligibility for severance benefits under and your compliance with the terms of the Severance Plan (including the requirement to execute and not revoke a general release of claims in favor of the Company as provided in Section 5(a) thereof).[3]

Compliance with Confidentiality Information Agreement and Company Policies: In connection with your employment with the Company, you will receive and have access to Company confidential information and trade secrets. Accordingly, as a condition to your employment with the Company, you agree to continue complying with your obligations set out in the Company's standard form of Employee Confidentiality, Confidential Information and Invention Assignment and Arbitration Agreement (the "Confidentiality Agreements"), previously entered into by you. In addition, you are required to abide by the Company's policies and procedures (including but not limited to the Company's employee handbook), as adopted or modified from time to time within the Company's discretion, and acknowledge in writing that you have read and will comply with such policies and procedures (and provide additional such acknowledgements as such policies and procedures may be modified from time to time). The Company may modify, revoke, suspend or terminate any of the policies and/or procedures at any time, with or without notice.

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3 This sentence was inadvertently omitted from the March 10, 2025 original offer letter.

Nothing in this Agreement or the Confidentiality Agreements shall prevent you from (i) communicating directly with, cooperating with, or providing information to, or receiving financial awards from, any federal, state or local government agency, including without limitation the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, or the U.S. National Labor Relations Board, without notifying or seeking permission from the Company, (ii) exercising any rights you may have under Section 7 of the U.S. National Labor Relations Act, such as the right to engage in concerted activity, including collective action or discussion concerning wages or working conditions, or (iii) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that you have reason to believe is unlawful. In addition, you acknowledge receipt of the following notice of immunity rights under the U.S. Defend Trade Secrets Act, which states: "(1) An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (2) an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose a trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal, and (B) does not disclose a trade secret, except pursuant to court order."

Protection of Third-Party Information: By signing this Agreement, you are representing that you have full authority to accept this position and perform the duties of the position without conflict with any other obligations and that you are not involved in any situation that might create, or appear to create, a conflict of interest with respect to your loyalty to or duties for the Company. You specifically warrant that you are not subject to an employment agreement or restrictive covenant preventing full performance of your duties to the Company. You agree not to make any unauthorized disclosure or use, on behalf of the Company, of any confidential information belonging to any of your former employers. You also represent that you are not in unauthorized possession of any materials containing a third party's confidential and proprietary information.

Indemnification: During your employment you shall be subject to and covered by a written indemnification agreement between you and the Company in the form applicable to the Company's executive officers, which form will be or may have already been provided to you prior to your start date (the "Indemnification Agreement").

Tax Matters; Withholding: All amounts payable to you by the Company will be subject to applicable tax withholding. Section 6(a) of the Severance Plan ("Application of Section 409A") is hereby incorporated herein by reference (as are any defined terms from the Severance Plan used in such section) (with references to the "Plan" in such section amended to refer to this "Agreement" and references to "Participant" amended to refer to you).

Governing Law: The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of State of Utah, without giving effect to principles of conflicts of law.

Entire Agreement: You acknowledge and agree that as of your execution of this Agreement, your sole entitlement to any compensation or benefits from the Company will be as set forth in this Agreement. This Agreement, together with the Confidentiality Agreements, the Indemnification Agreement and the documents governing any equity awards granted to you, sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between you and the Company relating to the subject matter hereof. No amendment or modification to this Agreement shall be effective unless it is in writing and signed by an authorized officer of the Company and by you.

Counterparts: This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Facsimile and electronic image signatures (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) will be deemed an original and valid signature.

Please sign below and return this document via Adobe Sign. If you have any questions, please contact me directly. We look forward to working with you.

Sincerely,	I accept the above terms of employment.	
/s/ ROB CARPENTER	/s/ ADRIANNE B LEE	8/20/2025
Rob Carpenter	Adrianne Lee	Date
Head of HR & Facilities		

CONFIDENTIAL – PROPERTY OF BEYOND, INC. the existence and terms of this letter and all related communications are confidential and intended only for your personal and family consideration.

Exhibit 31.1

CERTIFICATION

I, Marcus A. Lemonis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Bed Bath & Beyond, 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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 27, 2025

/s/ MARCUS A. LEMONIS
Marcus A. Lemonis
Executive Chairman of the Board of Directors
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Adrianne B. Lee, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Bed Bath & Beyond, 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(s) 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 27, 2025

/s/ ADRIANNE B. LEE

Adrianne B. Lee
President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Marcus A. Lemonis, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that the Quarterly Report on Form 10-Q of Bed Bath & Beyond, Inc. for the quarter ended September 30, 2025 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Bed Bath & Beyond, Inc.

Date: October 27, 2025

/s/ MARCUS A. LEMONIS
Marcus A. Lemonis
Executive Chairman of the Board of Directors
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Adrianne B. Lee, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that the Quarterly Report on Form 10-Q of Bed Bath & Beyond, Inc. for the quarter ended September 30, 2025 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Report fairly presents in all material respects the financial condition and results of operations of Bed Bath & Beyond, Inc.

Date: October 27, 2025

/s/ ADRIANNE B. LEE
Adrianne B. Lee
President and Chief Financial Officer
(Principal Financial Officer)