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

FORM 10-Q

☒ **Quarterly Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934**

For the quarterly period ended June 30, 2026

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: 001-33093

LIGAND PHARMACEUTICALS INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware	**77-0160744**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
555 Heritage Drive, Suite 200 **Jupiter** **Florida**	**33458**
(Address of principal executive offices)	*(Zip Code)*

(858) 550-7500

(Registrant's Telephone Number, Including Area Code)

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

Title of each class:	Trading symbol:	Name of each exchange on which registered:
Common Stock, par value $0.001 per share	**LGND**	**The Nasdaq Global Market**

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 definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one)

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 ☒

As of August 4, 2026, the registrant had 19,935,609 shares of common stock outstanding.

LIGAND PHARMACEUTICALS INCORPORATED
QUARTERLY REPORT

FORM 10-Q

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GLOSSARY OF TERMS AND ABBREVIATIONS

Abbreviation	Definition
2025 Annual Report	Annual Report on Form 10-K for the year ended December 31, 2025, filed with the SEC on February 27, 2026
ASC	Accounting Standards Codification
ASU	Accounting Standards Update
Company	Ligand Pharmaceuticals Incorporated, including subsidiaries
CVR	Contingent value right
CyDex	CyDex Pharmaceuticals, Inc.
ESPP	Ligand Pharmaceuticals Incorporated Employee Stock Purchase Plan, as amended and restated, effective June 6, 2019
FASB	Financial Accounting Standards Board
FDA	Food and Drug Administration
GAAP	Generally accepted accounting principles in the United States
Ligand	Ligand Pharmaceuticals Incorporated, including subsidiaries
Metabasis	Metabasis Therapeutics, Inc.
NDA	New Drug Application
Palvella	Palvella Therapeutics, Inc.
Q2 2025	The Company's fiscal quarter ended June 30, 2025
Q2 2026	The Company's fiscal quarter ended June 30, 2026
SBC	Share-based compensation expense
SEC	Securities and Exchange Commission
Takeda	Takeda Pharmaceutical Company Limited
Travere	Travere Therapeutics, Inc.
Viking	Viking Therapeutics, Inc.
YTD 2025	The year-to-date period beginning January 1, 2025 and ending on the date indicated
YTD 2026	The year-to-date period beginning January 1, 2026 and ending on the date indicated

<u>*Cautionary Note Regarding Forward-Looking Statements*</u>*:*

You should read the following report together with the more detailed information regarding our company, our common stock and our financial statements and notes to those statements appearing elsewhere in this document.

This report contains forward-looking statements, as defined in Section 21E of the Securities Exchange Act of 1934, as amended, that involve a number of risks and uncertainties. Although our forward-looking statements reflect the good faith judgment of our management, these statements can only be based on facts and factors currently known by us. Consequently, these forward-looking statements are inherently subject to risks and uncertainties, and actual results and outcomes may differ materially from results and outcomes discussed in the forward-looking statements.

All statements contained herein, other than statements of historical fact, could be deemed to be forward-looking statements. In some instances, forward-looking statements can be identified by the use of forward-looking words such as "believes," "expects," "may," "will," "plan," "intends," "estimates," "would," "continue," "seeks," "pro forma," or "anticipates," or other similar words (including their use in the negative), or by discussions of future matters such as those related to our future results of operations and financial position, royalties and milestones under license agreements, Captisol material sales, product development, and product regulatory filings and approvals, and the timing thereof, Ligand's status as a high-growth company, the imposition and/or announcement of tariffs imposed on the import of certain goods into the U.S. from various countries, as well as other statements that are not historical in nature. You should be aware that the occurrence of any of the events discussed in Part I under Item 1A under the caption "Risk Factors" of this report could negatively affect our results of operations, financial condition and the trading price of our stock.

The cautionary statements made in this report are intended to be applicable to all related forward-looking statements wherever they may appear in this report. We urge you not to place undue reliance on these forward-looking statements, which reflect our good-faith beliefs (or those of indicated third parties) and speak only as of the date of this report. Except as required by law, we assume no obligation to update our forward-looking statements, even if new information becomes available in the future. This caution is made under the safe harbor provisions of Section 21E of the Securities Exchange Act of 1934, as amended.

PART I. FINANCIAL INFORMATION

ı 1. Condensed Consolidated Financial Statements

LIGAND PHARMACEUTICALS INCORPORATED
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(in thousands, except par value)

	June 30, 2026	December 31, 2025
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,006,702	$ 174,927
Short-term investments	351,056	558,594
Accounts receivable, net	67,011	59,601
Inventory	10,263	9,126
Short-term portion of financial royalty assets, net	12,982	22,792
Income taxes receivable	2,911	1,446
Other current assets	6,191	5,785
Total current assets	1,457,116	832,271
Intangible assets, net	209,244	225,438
Goodwill	101,541	101,541
Long-term portion of financial royalty assets, net	194,228	196,877
Noncurrent derivative assets	17,913	15,632
Equity method investments	42,390	46,500
Other investments	114,483	121,451
Deferred income taxes, net	37,119	8,345
Other assets	11,841	12,582
Total assets	$ 2,185,875	$ 1,560,637
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 9,405	$ 3,238
Accrued liabilities	31,867	31,453
Income taxes payable	3,217	1,239
Current contingent liabilities	210	287
Current operating lease liabilities	1,082	1,095
Other current liabilities	955	135
Total current liabilities	46,736	37,447
Long-term contingent liabilities	2,382	2,934
Long-term operating lease liabilities	3,777	4,204
Convertible senior notes, net	1,126,594	446,192
Deferred income taxes, net	21,654	36,019
Other long-term liabilities	17,216	16,629
Total liabilities	1,218,359	543,425
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $0.001 par value; 5,000 shares authorized; zero issued and outstanding at June 30, 2026 and December 31, 2025	—	—
Common stock, $0.001 par value; 60,000 shares authorized; 19,920 and 19,774 shares issued and outstanding at June 30, 2026 and December 31, 2025, respectively	20	20
Additional paid-in capital	379,769	400,649
Accumulated other comprehensive income	4,476	8,455
Retained earnings	583,251	608,088
Total stockholders' equity	967,516	1,017,212
Total liabilities and stockholders' equity	$ 2,185,875	$ 1,560,637

See accompanying notes to unaudited condensed consolidated financial statements.

LIGAND PHARMACEUTICALS INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(in thousands, except per share amounts)

	Three months ended June 30, 2026	Three months ended June 30, 2025	Six months ended June 30, 2026	Six months ended June 30, 2025
Revenues and income:				
Revenue from intangible royalty assets	$ 37,362	$ 30,084	$ 70,293	$ 51,671
Income from financial royalty assets	10,670	6,313	20,697	12,215
Royalties	48,032	36,397	90,990	63,886
Captisol	7,978	8,287	16,632	21,747
Contract revenue and income	7,683	2,943	7,793	7,327
Total revenues and income	63,693	47,627	115,415	92,960
Operating costs and expenses:				
Cost of Captisol	3,214	2,907	6,487	7,756
Amortization of intangibles	8,097	8,258	16,194	16,515
Research and development	14,668	6,567	16,816	56,652
General and administrative	29,123	20,175	49,959	38,976
Fair value adjustments to partner program derivatives	—	1,276	—	833
Total operating costs and expenses	55,102	39,183	89,456	120,732
Operating income (loss)	8,591	8,444	25,959	(27,772)
Non-operating income and expenses:				
Gain (loss) from short-term investments	11,754	939	15,623	(11,428)
Gain (loss) from change in fair value of equity-method investments and other investments	35,727	—	(13,502)	—
Interest income	7,298	1,621	13,953	3,392
Interest expense	(1,748)	(1,153)	(3,495)	(2,020)
Other non-operating expense, net	2,682	1,372	1,507	(1,129)
Total non-operating income (expenses), net	55,713	2,779	14,086	(11,185)
Income (loss) before income taxes	64,304	11,223	40,045	(38,957)
Income tax (expense) benefit	(15,796)	(6,376)	(4,882)	1,353
Net income (loss)	$ 48,508	$ 4,847	$ 35,163	$ (37,604)
Basic net income (loss) per share	$ 2.42	$ 0.25	$ 1.76	$ (1.95)
Shares used in basic per share calculation	20,063	19,327	19,974	19,259
Diluted net income (loss) per share	$ 2.22	$ 0.24	$ 1.63	$ (1.95)
Shares used in diluted per share calculation	21,837	19,926	21,548	19,259

See accompanying notes to unaudited condensed consolidated financial statements.

LIGAND PHARMACEUTICALS INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited)
(in thousands)

	Three months ended June 30,		Six months ended June 30,	
	2026	**2025**	**2026**	**2025**
Net income (loss)	$ 48,508	$ 4,847	$ 35,163	$ (37,604)
Unrealized loss on available-for-sale securities, net of tax	(22)	(49)	(754)	(71)
Foreign currency translation adjustment, net of tax	(892)	10,106	(3,225)	14,507
Comprehensive income (loss)	$ 47,594	$ 14,904	$ 31,184	$ (23,168)

See accompanying notes to unaudited condensed consolidated financial statements.

LIGAND PHARMACEUTICALS INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(in thousands)

	Common Stock		Additional paid in capital	Accumulated other comprehensive income	Retained earnings	Total stockholders' equity
	Shares	Amount				
Balance at December 31, 2025	19,774	$ 20	$ 400,649	$ 8,455	$ 608,088	$ 1,017,212
Issuance of common stock under employee stock compensation plans, net of shares withheld for payroll taxes	255	—	(14,076)	—	—	(14,076)
Share-based compensation	—	—	10,596	—	—	10,596
Unrealized loss on available-for-sale securities, net of tax	—	—	—	(732)	—	(732)
Foreign currency translation adjustment, net of tax	—	—	—	(2,333)	—	(2,333)
Net loss	—	—	—	—	(13,345)	(13,345)
Balance at March 31, 2026	20,029	20	397,169	5,390	594,743	997,322
Issuance of common stock under employee stock compensation plans, net of shares withheld for payroll taxes	120	—	8,256	—	—	8,256
Share repurchase in connection with the 2031 Notes (Note 8)	(229)	—	—	—	(60,000)	(60,000)
2031 Notes hedge and warrant transactions, net of tax (Note 6)	—	—	(39,309)	—	—	(39,309)
Share-based compensation	—	—	13,653	—	—	13,653
Unrealized loss on available-for-sale securities, net of tax	—	—	—	(22)	—	(22)
Foreign currency translation adjustment, net of tax	—	—	—	(892)	—	(892)
Net income	—	—	—	—	48,508	48,508
Balance at June 30, 2026	19,920	$ 20	$ 379,769	$ 4,476	$ 583,251	$ 967,516

	Common Stock		Additional paid in capital	Accumulated other comprehensive loss (income)	Retained earnings	Total stockholders' equity
	Shares	Amount				
Balance at December 31, 2024	19,106	$ 20	$ 337,377	$ (5,942)	$ 498,984	$ 830,439
ASU 2025-07 adoption: impact as of January 1, 2025	—	—	—	—	(438)	$ (438)
Issuance of common stock under employee stock compensation plans, net of shares withheld for payroll taxes	170	—	(4,669)	—	—	(4,669)
Share-based compensation	—	—	7,836	—	—	7,836
Unrealized loss on available-for-sale securities, net of tax	—	—	—	(22)	—	(22)
Foreign currency translation adjustment, net of tax	—	—	—	4,401	—	4,401
Net loss (as reported)	—	—	—	—	(42,451)	(42,451)
ASU 2025-07 adoption: impact on net loss	—	—	—	—	498	498
Balance at March 31, 2025*	19,276	20	340,544	(1,563)	456,593	795,594
Issuance of common stock under employee stock compensation plans, net of shares withheld for payroll taxes	135	—	8,094	—	—	8,094
Share-based compensation	—	—	9,997	—	—	9,997
Unrealized loss on available-for-sale securities, net of tax	—	—	—	(49)	—	(49)
Foreign currency translation adjustment, net of tax	—	—	—	10,106	—	10,106
Net income (as reported)	—	—	—	—	4,847	4,847
ASU 2025-07 adoption: impact on net income	—	—	—	—	(1,276)	(1,276)
Balance at June 30, 2025*	19,411	$ 20	$ 358,635	$ 8,494	$ 460,164	$ 827,313

**Interim equity balances reflect the impact of ASU 2025-07 adoption in Q3 2025 effective January 1, 2025.*

See accompanying notes to unaudited condensed consolidated financial statements.

LIGAND PHARMACEUTICALS INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(in thousands)

	Six months ended June 30, 2026	Six months ended June 30, 2025
Cash flows from operating activities:		
Net income (loss)	$ 35,163	$ (37,604)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Change in estimated fair value of contingent liabilities	(492)	1,931
Depreciation of fixed assets and amortization of intangible assets	16,431	17,292
Accretion of short-term investments	(2,701)	(1,605)
Amortization of debt discount and issuance fees	1,626	261
Non-cash income from financial royalty assets	2,728	(888)
CECL adjustment to financial royalty assets	(201)	(750)
(Gain) loss on derivative instruments	(532)	245
Loss from change in fair value of equity-method investments and other investments	13,502	—
Share-based compensation	24,249	17,833
Deferred income taxes, net	(549)	(9,169)
(Gain) loss from short-term investments	(15,623)	11,428
Lease amortization expense	959	983
Other	(735)	1,736
Changes in operating assets and liabilities:		
Accounts receivable	(7,441)	(3,341)
Inventory	(1,137)	(1,375)
Accounts payable and accrued liabilities	5,960	(2,556)
Income tax receivable and payable	522	2,758
Deferred revenue	—	(578)
Other assets and liabilities	980	(6,247)
Net cash provided by (used in) operating activities	72,709	(9,646)
Cash flows from investing activities:		
Acquisition of financial royalty assets	(2,640)	(1,821)
Proceeds from financial royalty assets	9,500	5,179
Purchases of derivatives	(2,672)	(7,620)
Proceeds from sale of derivatives	1,045	—
Purchases of property and equipment	(254)	(428)
Purchases of short-term investments	(259,327)	(122,717)
Proceeds from sale of short-term investments	242,563	38,414
Proceeds from maturity of short-term investments	239,805	83,220
Purchases of other investments	(1,250)	—
Net cash provided by (used in) investing activities	226,770	(5,773)
Cash flows from financing activities:		
Gross proceeds from issuance of Convertible Senior Notes	700,000	—
Debt discount and payment of debt issuance cost	(20,175)	(73)

Purchase of Convertible Senior Notes hedge	(195,790)	—
Proceeds from issuance of warrants	114,100	—
Repurchase of common stock	(60,000)	—
Payments under finance lease obligations	(14)	(14)
Net proceeds from stock option exercises and ESPP	16,255	12,461
Taxes paid related to net share settlement of equity awards	(22,075)	(9,036)
Proceeds from Pelthos investors	—	6,910
Net cash provided by financing activities	532,301	10,248
Effect of exchange rate changes on cash and cash equivalents	(5)	3,350
Net increase (decrease) in cash, cash equivalents and restricted cash, including cash and cash equivalents classified within assets held for sale	831,775	(1,821)
Less: net increase in cash and cash equivalents classified within assets held for sale	—	(2,817)
Net increase (decrease) in cash, cash equivalents and restricted cash	831,775	(4,638)
Cash, cash equivalents and restricted cash at beginning of period	174,927	72,307
Cash, cash equivalents and restricted cash at end of period	$ 1,006,702	$ 67,669
Supplemental disclosure of cash flow information:		
Interest paid	$ 2,369	$ 201
Taxes paid	$ 3,313	$ 4,554
Supplemental schedule of non-cash investing and financing activities:		
Addition of right-of-use assets and lease liabilities	$ —	$ 2,315
Accrued debt issuance costs	$ 906	$ —
Accrued fixed asset purchases	$ 44	$ 9
Unrealized loss on available-for-sale investments, net of tax	$ (754)	$ (71)

See accompanying notes to unaudited condensed consolidated financial statements.

LIGAND PHARMACEUTICALS INCORPORATED
Notes to Condensed Consolidated Financial Statements
(Unaudited)

Unless the context requires otherwise, references in this report to "Ligand," "we," "us," the "Company," and "our" refer to Ligand Pharmaceuticals Incorporated and its consolidated subsidiaries.

1. Basis of Presentation and Summary of Significant Accounting Policies

Business

We are a biopharmaceutical royalty company focused on deploying capital and licensing technologies to acquire and create diversified royalty streams from high-value medicines. Our primary business is investing in and structuring royalty interests in mid- to late-stage development and commercial biopharmaceutical products, allowing us to generate long-duration, non-dilutive cash flows supported by a lean corporate cost structure. Capital deployment and technology licensing are the primary drivers of our long-term growth.

Basis of Presentation and Principles of Consolidation

Our unaudited condensed consolidated financial statements include the financial statements of Ligand and its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation. We have included all adjustments, consisting only of normal recurring adjustments, which we considered necessary for a fair presentation of our financial results. These unaudited condensed consolidated financial statements and accompanying notes should be read together with the audited consolidated financial statements included in our 2025 Annual Report. Interim financial results are not necessarily indicative of the results that may be expected for the full year.

Segment Information

The Company has one operating and reportable segment: investing in the clinical development and commercialization of high-value medicines. The Company's Chief Operating Decision Maker ("CODM") is Todd Davis, our Chief Executive Officer and director. The CODM uses net income (loss) as a single segment profit or loss measure to evaluate our single segment performance, and in deciding whether to invest in the existing assets, or to new potential opportunities. Our CODM relies on internal management reporting processes that provide information on segment operating income (loss) for making financial decisions and allocating resources. The CODM does not evaluate, manage or measure performance of segments using asset information.

The information on significant segment expenses that are regularly provided to the CODM, and other segment items included within the reported segment profit or loss measure, is presented in a table below:

	Three months ended June 30,		Six months ended June 30,	
	2026	2025	2026	2025
Total revenues and income	$ 63,693	$ 47,627	$ 115,415	$ 92,960
Share-based compensation	(13,653)	(9,997)	(24,249)	(17,833)
Other segment items:				
Amortization of intangibles	(8,097)	(8,258)	(16,194)	(16,515)
Depreciation of property and equipment	(118)	(264)	(237)	(777)
Interest income	7,298	1,621	13,953	3,392
Interest expense	(1,748)	(1,153)	(3,495)	(2,020)
Other *	1,133	(24,729)	(50,030)	(96,811)
Net income (loss)	$ 48,508	$ 4,847	$ 35,163	$ (37,604)

** Other for the three months ended June 30, 2026 and 2025 include the amount of other general, administrative, research and development expenses of $30.0 million and $16.5 million (net of share-based compensation and depreciation expenses), respectively, and additional income and expense items that are presented in the condensed consolidated statements of operations such as fair value adjustments to partner program derivatives, cost of Captisol and other non-operating income and expenses.*

Other for the six months ended June 30, 2026 and 2025 include the amount of other general, administrative, research and development expenses of $42.3 million and $77.0 million (net of share-based compensation and depreciation expenses), respectively, and additional income and expense items that are presented in the condensed consolidated statements of operations such as fair value adjustments to partner program derivatives, cost of Captisol and other non-operating income and expenses.

Significant Accounting Policies

We have described our significant accounting policies in *Note 1, Basis of Presentation and Summary of Significant Accounting Policies* of the Notes to Consolidated Financial Statements in our 2025 Annual Report.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements in conformity with GAAP requires the use of estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and the accompanying notes. Actual results may differ from those estimates and assumptions.

Revenue and Income

Our revenue is generated primarily from royalties on sales of products commercialized by our partners, supplemented by Captisol material sales and contract revenue from license fees and milestone payments. We partner with leading biopharmaceutical companies to leverage their capabilities in late-stage development, regulatory execution, and commercialization, while we focus on disciplined capital deployment, portfolio construction, and risk management. This also allows us to leverage each partner's asset infrastructure in sales and marketing, manufacturing and R&D to avoid high-cost infrastructure ourselves.

For all revenue transactions, we apply the five-step model in accordance with ASC 606, Revenue from Contracts with Customers, to determine revenue: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations, including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation.

Revenue from Intangible Royalty Assets

We receive royalty revenue from intangible royalty assets based on sales by our partners of products covered by patents that we or our partners own under contractual agreements. We do not have future performance obligations under these license arrangements. We generally satisfy our obligation to grant intellectual property rights on the effective date of the contract. However, we apply the royalty recognition constraint required for sales-based royalties, which requires royalties to be recorded no earlier than when the underlying sale occurs. Accordingly, royalties on sales of products commercialized by our partners are recognized in the quarter in which the product is sold. Our partners generally report sales information to us on a one-quarter lag. As a result, we estimate expected royalty proceeds based on an analysis of historical experience and interim data provided by our partners, including publicly announced sales. Differences between actual and estimated royalty revenues, which have not been material, are adjusted in the period in which they become known, typically the following quarter.

Income from Financial Royalty Assets

We recognize income from financial royalty assets when there is a reasonable expectation regarding the timing and amount of cash flows expected to be collected. Income is calculated by multiplying the carrying value of the financial royalty asset by the periodic effective interest rate.

We account for financial royalty assets related to developmental pipeline or recently commercialized products on a non-accrual basis. Developmental pipeline products are non-commercialized, non-approved products that require FDA or other regulatory approval, and thus have uncertain cash flows. Newly commercialized products typically do not have an established and reliable sales pattern, and thus have uncertain cash flows.

Captisol Sales

Revenue from Captisol sales is recognized when control of Captisol material is transferred or intellectual property license rights are granted to our customers in an amount that reflects the consideration we expect to receive in exchange for those products or rights. A performance obligation is considered distinct from other obligations in a contract when it provides a benefit to the customer either on its own or together with other resources that are readily available to the customer and is separately identified in the contract. For Captisol material or intellectual property license rights, we consider our performance obligation satisfied once we have transferred control of the product or granted the intellectual property rights, meaning the customer has the ability to use and obtain the benefit of the Captisol material or intellectual property license rights. We recognize revenue for satisfied performance obligations only when we determine there are no uncertainties regarding payment terms or transfer of control. Sales tax and other taxes we collect concurrent with revenue-producing activities are excluded from revenue. We have elected to recognize the cost of freight and shipping when control over Captisol material has been transferred to the customer as an expense in cost of Captisol. We expense incremental costs of obtaining a contract when incurred if the expected amortization period of the asset is one year or less or the amount is immaterial. We did not incur any incremental costs of obtaining a contract during the periods reported.

Contract Revenue

Our contracts with customers often include variable consideration in the form of contingent milestone payments. We include contingent milestone payments in the estimated transaction price when it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur. These estimates are based on historical experience, anticipated results and our best judgment at the time. If the contingent milestone payment is based on sales, we apply the royalty recognition constraint and record revenue when the underlying sale occurs. Significant judgments are required in determining the transaction price for our sales of intellectual property. Because of the risk that products in development with our partners will not reach development milestones or receive regulatory approval, we generally recognize any contingent payments that would be due to us upon the development milestone or regulatory approval.

Some customer contracts are sublicenses that require us to make payments to an upstream licensor related to license fees, milestones and royalties that we receive from customers. In such cases, we evaluate gross revenue as a principal versus net revenue as an agent based on each individual agreement.

Income

Operating income includes milestone and royalty income received from other royalty transactions and transactions involving our intellectual property including, R&D funding arrangements, dispositions and the related contingent consideration.

Disaggregation of Revenue

The following table represents disaggregation of royalties, Captisol, and contract revenue and income (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2026	2025	2026	2025
Royalties				
Filspari	$ 13,567	$ 6,578	$ 24,889	$ 11,879
Kyprolis	7,044	8,803	13,784	13,526
Ohtuvayre	4,144	2,084	7,131	3,496
Rylaze	3,201	2,864	6,422	5,983
Capvaxive	2,316	2,250	4,285	3,135
Vaxneuvance	1,351	2,643	2,961	3,928
Teriparatide injection	1,470	2,298	2,791	3,489
Other	4,269	2,564	8,030	6,235
Revenue from intangible royalty assets	37,362	30,084	70,293	51,671
Qarziba	6,150	5,885	12,449	11,327
Ohtuvayre inventors	3,294	—	6,341	—
Other	1,226	428	1,907	888
Income from financial royalty assets	10,670	6,313	20,697	12,215
Total royalties	48,032	36,397	90,990	63,886
Captisol	7,978	8,287	16,632	21,747
Contract revenue and income				
Contract revenue	2,683	1,926	2,793	6,310
Income	5,000	1,017	5,000	1,017
Total contract revenue and income	7,683	2,943	7,793	7,327
Total revenues and income	$ 63,693	$ 47,627	$ 115,415	$ 92,960

Short-term Investments

The following table summarizes the various categories of our short-term investments at June 30, 2026 and December 31, 2025 (in thousands):

June 30, 2026	Amortized cost	Gross unrealized gains	Gross unrealized losses	Estimated fair value
U.S. Government Agencies	$ 145,569	$ —	$ (393)	$ 145,176
U.S. Treasuries	65,430	—	(164)	65,266
Corporate notes/bonds	52,307	—	(130)	52,177
Corporate equity securities	20,850	63,477	(3,314)	81,013
Commercial paper	7,430	—	(6)	7,424
Total short-term investments	$ 291,586	$ 63,477	$ (4,007)	$ 351,056
December 31, 2025				
U.S. Government Agencies	$ 175,780	$ 89	$ (38)	$ 175,831
Corporate notes/bonds	124,249	98	(52)	124,295
U.S. Treasuries	113,055	137	(4)	113,188
Commercial paper	74,473	21	(8)	74,486
Corporate equity securities	15,733	58,852	(3,791)	70,794
Total short-term investments	$ 503,290	$ 59,197	$ (3,893)	$ 558,594

Gain (loss) from short-term investments in our condensed consolidated statements of operations includes both realized and unrealized gain (loss) from our short-term investments in corporate equity securities, and realized gain (loss) from available-for-sale debt securities.

The following table summarizes our available-for-sale debt securities by contractual maturity (in thousands):

	June 30, 2026	
	Amortized Cost	Fair Value
Within one year	$ 180,608	$ 180,379
After one year through five years	90,128	89,664
Total	$ 270,736	$ 270,043

Our investment policy is capital preservation and we only invest in U.S.-dollar denominated investments. Allowances are recorded for available-for-sale debt securities with unrealized losses. This limits the amount of credit losses that can be recognized for available-for-sale debt securities to the amount by which carrying value exceeds fair value and requires the reversal of previously recognized credit losses if fair value increases.

We held a total of 103 investments that were in an unrealized loss position with $0.7 million of unrealized losses as of June 30, 2026. We believe that we will collect the principal and interest due on our debt securities that have an amortized cost in excess of fair value. The unrealized losses are largely due to changes in interest rates and not due to unfavorable changes in the credit quality associated with these securities that impacted our assessment of collectability of principal and interest. As of June 30, 2026, we did not intend to sell these securities, and it was not more likely than not that we would be required to sell them before recovery of their amortized cost basis. No credit losses were recognized for the three and six months ended June 30, 2026 and 2025.

Accounts Receivable and Allowance for Credit Losses

Our accounts receivable arise primarily from sales on credit to customers. We establish an allowance for credit losses to present the net amount of accounts receivable expected to be collected. The allowance is determined using the loss-rate method, which requires an estimation of loss rates based on historical loss experience adjusted for factors relevant to determining the expected collectability of accounts receivable. Some of these factors include macroeconomic conditions that correlate with historical loss experience, delinquency trends, aging behavior of receivables and credit and liquidity quality indicators for industry groups, customer classes or individual customers.

During the three months ended June 30, 2026 and 2025, we considered the current and expected future economic and market conditions and determined that increases of $0.2 million and $0.1 million, respectively, were required in the allowance for credit losses. During the six months ended June 30, 2026 and 2025, we considered the current and expected future economic and market conditions and determined that increases of $0.03 million and $0.4 million, respectively, were required in the allowance for credit losses.

Inventory

Inventory, which consists of finished goods (Captisol), is stated at the lower of cost or net realizable value. We determine cost using the specific identification method. We analyze our inventory levels periodically and write down inventory to net realizable value if it has become obsolete, has a cost basis in excess of its expected net realizable value or is in excess of expected requirements. There was no obsolete inventory charge recorded during the three and six months ended June 30, 2026 and 2025. In addition to finished goods, as of June 30, 2026 and December 31, 2025, inventory included prepayments of $1.6 million and $2.1 million, respectively, to our supplier for Captisol.

Goodwill and Intangible Assets, Net

Goodwill and other identifiable intangible assets consist of the following (in thousands):

	June 30, 2026	December 31, 2025
Indefinite-lived intangible assets		
Goodwill	$ 101,541	$ 101,541
Definite-lived intangible assets		
Complete technology	29,619	29,619
Less: accumulated amortization	(21,763)	(20,809)
Trade name	2,642	2,642
Less: accumulated amortization	(2,043)	(1,976)
Customer relationships	29,600	29,600
Less: accumulated amortization	(22,889)	(22,144)
Contractual relationships	360,000	360,000
Less: accumulated amortization	(165,922)	(151,494)
Total definite lived intangible assets	209,244	225,438
Total goodwill and other identifiable intangible assets, net	$ 310,785	$ 326,979

Financial Royalty Assets, net

Financial royalty assets represent a portfolio of future milestone and royalty payment rights acquired that are passive in nature (i.e., we do not own the intellectual property or have the right to commercialize the underlying products).

Although a financial royalty asset does not have the contractual terms typical of a loan (such as contractual principal and interest), we account for financial royalty assets under ASC 310, *Receivables*. Our financial royalty assets are classified similar to loans receivable and are measured at amortized cost using the prospective effective interest method described in ASC 835-30 *Imputation of Interest*.

The effective interest rate is calculated by forecasting the expected cash flows to be received over the life of the asset relative to the initial invested amount. The effective interest rate is recalculated in each reporting period as the difference between expected cash flows and actual cash flows are realized and as there are changes to expected future cash flows.

The gross carrying value of a financial royalty asset is consisting of the opening balance, or net purchase price for a new financial royalty asset, which is increased by accrued interest income (except for assets under the non-accrual method) and decreased by cash receipts during the period to arrive at the ending balance.

We evaluate financial royalty assets for recoverability on an individual basis by comparing the effective interest rate at each reporting date to that of the prior period. If the effective interest rate is lower for the current period than the prior period, and if gross cash flows have declined (expected and collected), we record a provision expense for the change in expected cash flows. The provision is measured as the difference between the financial royalty asset's amortized cost basis and the net present value of the expected future cash flows, calculated using the prior period's effective interest rate. In a subsequent period, if there is an increase in expected future cash flows, or if actual cash flows are greater than cash flows previously expected, we reduce the previously established cumulative allowance in part or in full.

In addition to the above allowance, we recognize an allowance for current expected credit losses under ASC 326, *Financial Instruments – Credit Losses* on our financial royalty assets. The credit rating, which is primarily based on publicly available data and updated quarterly, is the primary credit quality indicator used to determine the credit loss provision.

The carrying value of financial royalty assets is presented net of the cumulative allowances for changes in expected future cash flows and expected credit losses. The initial amount and subsequent revisions to allowances for changes in expected future cash flows and expected credit losses are recorded as part of general and administrative expenses in the condensed consolidated statements of operations.

When we are reasonably certain that a part of a financial royalty asset's net carrying value (or all of it) is not recoverable, we recognize an impairment which is recorded in financial royalty assets impairment on the consolidated statements of operations. To the extent there was an allowance previously recorded for this asset, the amount of such impairment is written off against the allowance at the time that such a determination is made. Any future recoveries from such impairment are recognized when cash is collected in the respective period earnings.

The short-term portion of financial royalty assets represents an estimate for current quarter royalty receipts which are normally collected during the subsequent quarter, and, as applicable, also includes royalty receipts from previous periods that have not been collected.

For additional information, see *Note 4, Financial Royalty Assets, net.*

Research and Development Funding Expense

We enter into transactions where we agree to fund a portion of the research and development ("R&D") performed by our partners for products undergoing late-stage clinical trials in exchange for future royalties or milestones if the products are successfully developed and commercialized. In accordance with ASC 730, *Research and Development*, we account for the funded amounts as R&D expense when we have the ability to obtain the results of the R&D, the transfer of financial risk is genuine and substantive and, at the time of entering into the transaction, it is not yet probable that the product will receive regulatory approval. If these conditions are not met, we may record the funded amounts as a financial royalty asset. We may fund R&D upfront or over time as the underlying products undergo clinical trials.

Royalties earned on successfully commercialized products generated from R&D arrangements are recognized as revenue from intangible royalty assets in the same period in which the sale of the commercialized product occurs. Fixed or milestone payments receivable based on the achievement of contractual criteria for products arising out of our R&D arrangements are recognized as contract revenue and income in the period that the milestone threshold is met.

Derivative Assets

As of June 30, 2026, all our derivative assets are warrants and options that are not used for risk management purposes. For additional information, see *Note 3, Investment Transactions*.

As a result of our early adoption of ASU 2025-07, *Derivatives and Hedging (Topic 815) and Revenue from Contracts with Customers (Topic 606)* ("ASU 2025-07"), certain assets previously accounted for as derivatives qualified for a new derivative scope exception introduced by ASU 2025-07, and are now accounted for as financial royalty assets effective January 1, 2025. Such assets include (1) our rights in future milestone and royalty payments from Agenus partner programs, (2) rights to receive from Primrose Bio 50% of milestone payments on certain contracts previously entered into by Primordial Genetics ("Primrose mRNA"), and (3) the Castle Creek Milestone (as defined in *Note 3, Investment Transactions*). For additional information, see *Note 4, Financial Royalty Assets, net.*

All derivatives are measured at fair value in the condensed consolidated balance sheets. Derivative assets consist of the following (in thousands):

	June 30, 2026	December 31, 2025
LeonaBio Series A Warrant	$ 923	$ —
Total current derivative assets[1]	$ 923	$ —
Orchestra Warrant	$ 6,810	$ 3,799
Castle Creek Warrant	5,250	4,989
Pelthos Conversion Option	3,303	3,432
Agenus Warrant[2]	1,226	1,322
LeonaBio Warrants (noncurrent)	922	1,461
Arecor Warrant	402	629
Total noncurrent derivative assets	$ 17,913	$ 15,632

(1) Current derivative assets are included within other current assets in the condensed consolidated balance sheets.

(2) In connection with the entry into the Purchase and Sale Agreement with Agenus in May 2024, Agenus issued us a five-year warrant ("Agenus Warrant") to purchase 867,052 shares of its common stock, at an exercise price equal to $17.30. On December 22, 2025, we entered into an amendment to the Purchase and Sale Agreement with Agenus reducing the Agenus Warrant exercise price from $17.30 to $7.50. The fair value of the Agenus Warrant is determined using a

Black-Scholes model. The following assumptions were used as of June 30, 2026 and December 31, 2025, respectively: expected term of 2.9 years and 3.4 years, volatility of 102% and 97%, risk-free rate of 4.2% and 3.6%, Agenus stock price of $3.06 and $3.14.

A change in the fair value of warrants and options, which amounted to $1.4 million for the three months ended June 30, 2026, was included within other non-operating expense, net, in the condensed consolidated statement of operations. This amount included $1.9 million related to the conversion option of the Pelthos Convertible Notes (the "Pelthos Conversion Option"), $0.3 million for the Orchestra Warrant, and $0.04 million for the Castle Creek Warrant, partially offset by $(0.6) million related to the LeonaBio Warrants, $(0.2) million for the Agenus Warrant, and $(0.1) million related to the Arecor Warrant.

A change in the fair value of warrants and options, which amounted to $0.5 million for the six months ended June 30, 2026, was included within other non-operating expense, net, in the condensed consolidated statement of operations. This amount included $0.4 million related to the LeonaBio Warrants, $0.3 million related to the Castle Creek Warrant, and $0.3 million related to the Orchestra Warrant, partially offset by $(0.1) million related to the Pelthos Conversion Option, $(0.2) million related to the Arecor Warrant, and $(0.1) million related to the Agenus Warrant.

A change in the fair value of the Agenus partner programs, the Primrose mRNA derivative, and the Castle Creek Milestone, which amounted to $(0.8) million, $(0.7) million, and $0.3 million, respectively, for the three months ended June 30, 2025, was included within fair value adjustments to partner program derivatives in the condensed consolidated statement of operations. A change in the fair value of other derivatives, which amounted to $1.2 million for the three months ended June 30, 2025, was included within other non-operating expense, net, in the condensed consolidated statement of operations. This amount included $1.4 million related to the Agenus Warrant and $(0.2) million related to the Castle Creek Warrant.

A change in the fair value of the Agenus partner programs, the Primrose mRNA derivative, and the Castle Creek Milestone, which amounted to $(0.5) million, $(0.6) million and $0.3 million, respectively, for the six months ended June 30, 2025, was included within fair value adjustments to partner program derivatives in the condensed consolidated statement of operations. A change in the fair value of other derivatives, which amounted to $0.6 million for the six months ended June 30, 2025, was included within other non-operating expense, net, in the condensed consolidated statement of operations. This amount included $0.9 million related to the Agenus Warrant and $(0.3) million related to the Castle Creek Warrant.

Equity Method Investments

The Company accounts for investments in entities over which it has significant influence (generally defined as ownership interest of 20% or more) using the equity method of accounting. Under this method the investment is initially recorded at cost and subsequently adjusted for the Company's share of the investee's earnings or losses and any dividends received, unless the fair value option under ASC 825-10 is elected. Such selection is made on an instrument-by-instrument basis and is irrevocable.

Equity method investments for which the Company has elected the fair value option are measured at fair value, with changes in fair value recognized in earnings each reporting period and presented as gain (loss) from change in fair value of equity method investments and other investments in our condensed consolidated statements of operations. The Company elected the fair value option for its equity method investment in Pelthos. The election was made to simplify the accounting and reporting process, as Pelthos is a publicly traded entity with a readily available market price.

Equity method investments for which the Company has not elected the fair value option are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. Any impairment of equity method investments is presented as gain (loss) from change in fair value of equity method investments and other investments in our condensed consolidated statements of operations. These equity method investments are reviewed for indicators of impairment at each reporting period and are written down to fair value if there is evidence of a loss in value that is other-than-temporary. The Company did not elect the fair value option for its equity method investment in Primrose Bio. There was no impairment to our equity method investment in Primrose Bio during the three and six months ended June 30, 2026 and 2025.

The equity method investment in Primrose Bio is adjusted for the Company's share of the investee's earnings or losses and for any dividends received. The Company's share of Primrose Bio's earnings or losses is presented within other non-operating expense, net, in our condensed consolidated statement of operations. The Company does not record its share of the investee's losses once the investment balance has been reduced to zero. The Company resumes recognition of its share of the investee's earnings only after previously unrecognized losses have been recovered. As of December 31, 2024, the equity method investment in Primrose Bio had been written down to zero. The Company has no outstanding advances, guarantees, or commitments to fund Primrose Bio's losses. Therefore, the Company's proportionate share of Primrose Bio's net loss for the three and six months ended June 30, 2026 and 2025 was not recorded. Ligand owned 31.5% of Primrose Bio's outstanding equity as of both June 30, 2026 and December 31, 2025.

Other Investments

Other investments represent our investments in equity securities of third parties in which we do not have control or significant influence. Our equity securities that do not have a readily determinable or estimable fair value are measured using the measurement alternative in accordance with ASC 321, which is cost less impairment, if any, adjusted for observable price changes in orderly transactions for the identical or similar investment of the same issuer. Any impairment or upward or downward adjustment recognized during the period is presented as gain (loss) from change in fair value of equity method investments and other investments in our condensed consolidated statements of operations.

Our investment in Pelthos Series A preferred shares is measured at fair value, with changes in fair value recognized as gain (loss) from change in fair value of equity method investments and other investments in our condensed consolidated statements of operations. For additional information, see *Note 2, Pelthos Transaction*.

Other investments consist of the following (in thousands):

	June 30, 2026	December 31, 2025
Pelthos Series A convertible preferred shares	$ 96,870	$ 106,262
Equity securities in Primrose Bio	6,501	6,531
InvIOs investment	4,500	4,500
Pelthos loan receivable	5,359	4,158
Cost method investment in Zerion	1,253	—
Total other investments	$ 114,483	$ 121,451

During the three and six months ended June 30, 2026, we recognized a fair value adjustment of $24.9 million and $(9.4) million, respectively, related to our Pelthos Series A preferred shares. During the three and six months ended June 30, 2025, no fair value adjustment was recognized for other investments.

Other Assets

Other assets consist of the following (in thousands):

	June 30, 2026	December 31, 2025
Right-of-use assets	$ 6,440	$ 7,223
Property and equipment, net	3,396	3,571
Other	2,005	1,788
Total other assets	$ 11,841	$ 12,582

Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	June 30, 2026	December 31, 2025
Royalties owed to third parties	$ 11,356	$ 16,202
Professional fees	8,239	1,997
Compensation	4,635	6,388
Value-added tax	1,824	1,753
Subcontractor	1,756	1,756
Accrued interest	863	1,307
Customer deposit	621	621
Other	2,573	1,429
Total accrued liabilities	$ 31,867	$ 31,453

Contingent Liabilities

In connection with the acquisition of CyDex in January 2011, we recorded a contingent liability for amounts potentially due to holders of the CyDex CVRs and former license holders. The liability is periodically assessed based on events and circumstances related to the underlying milestones, royalties and material sales.

In connection with the acquisition of Metabasis in January 2010, we issued Metabasis stockholders four tradable CVRs for each Metabasis share. The fair values of the CVRs are remeasured at each reporting date through the term of the related agreement.

Any change in fair value is recorded as other non-operating expense, net, in our condensed consolidated statements of operations. For additional information, see *Note 5, Fair Value Measurements.*

Other Long-Term Liabilities

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

	June 30, 2026	December 31, 2025
Unrecognized tax benefits	$ 17,182	$ 16,588
Other long-term liabilities	34	41
Total other long-term liabilities	$ 17,216	$ 16,629

Share-Based Compensation

Share-based compensation expense for awards to employees and non-employee directors is a non-cash expense and is recognized on a straight-line basis over the vesting period. The following table summarizes share-based compensation expense recorded as components of research and development expenses and general and administrative expenses for the periods indicated (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2026	2025	2026	2025
SBC - Research and development expenses	$ 1,080	$ 955	$ 2,027	$ 1,859
SBC - General and administrative expenses	12,573	9,042	22,222	15,974
Total SBC expenses	$ 13,653	$ 9,997	$ 24,249	$ 17,833

The fair value for options that were awarded to employees and directors was estimated at the date of grant using the Black-Scholes option valuation model with the following weighted-average assumptions:

	Three months ended June 30,		Six months ended June 30,	
	2026	2025	2026	2025
Risk-free interest rate	4.2%	4.1%	3.6%	4.0%
Dividend yield	—	—	—	—
Expected volatility	42.7%	43.1%	42.3%	45.6%
Expected term (years)	4.8	4.7	4.2	4.2

A limited amount of performance-based restricted stock units (“PSUs”) contain a market condition based on our relative total shareholder return ranked on a percentile basis against the Nasdaq Biotechnology Index over a three-year performance period, with a range of 0% to 200% of the target amount granted to be issued under the award. Share-based compensation cost for these PSUs is measured using the Monte Carlo simulation valuation model and is not adjusted for the achievement, or lack thereof, of the performance conditions.

Net Income (Loss) Per Share

Basic net income (loss) per share is calculated by dividing net income (loss) by the weighted average number of common shares outstanding during the period. Diluted net income per share is computed based on the sum of the weighted average number of common shares and potentially dilutive common shares outstanding during the period. Diluted net loss per share is computed using only the weighted average number of common shares outstanding during the period, as potentially dilutive securities are excluded when a net loss is reported.

Potentially dilutive common shares consist of shares issuable under the 2030 Notes (as defined below), 2031 Notes (as defined below), warrants issued in connection with the 2030 Notes, warrants issued in connection with the 2031 Notes, stock options, and restricted stock. The 2030 Notes and 2031 Notes are considered to be Instrument C, under which the Company must settle the accreted value of the debt instrument in cash upon conversion and may choose to settle the conversion spread in cash, shares, or a combination of cash and shares. The dilutive effect of Instrument C is limited to the conversion premium, which is reflected in the calculation of diluted earnings per share as if it were a freestanding written call option on the Company’s shares. The warrants will have a dilutive effect to the extent the market price per share of common stock exceeds the applicable exercise price of the warrants.

Potentially dilutive common shares from stock options and restricted stock are determined using the average share price for each period under the treasury stock method. In addition, the following amounts are assumed to be used to repurchase shares: proceeds from exercise of stock options and the average amount of unrecognized compensation expense for the awards. For additional information, see *Note 8, Stockholders' Equity*.

The following table presents the calculation of weighted average shares used to calculate basic and diluted earnings per share (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2026	2025	2026	2025
Weighted average shares outstanding:	20,063	19,327	19,974	19,259
Dilutive potential common shares:				
Restricted stock	297	179	336	—
Stock options	1,068	420	1,014	—
2030 Convertible Senior Notes	409	—	224	—
Shares used to compute diluted loss per share	21,837	19,926	21,548	19,259
Potentially dilutive shares excluded from calculation due to anti-dilutive effect:				
Restricted stock	—	133	28	87
Stock options	384	1,227	274	975
2031 Convertible Senior Notes	877	—	441	—
Warrant related to the 2030 Notes	2,362	—	2,362	—
Warrant related to the 2031 Notes	2,094	—	1,053	—
Anti-dilutive shares	5,717	1,360	4,158	1,062

For the six months ended June 30, 2025, due to the net loss for the period, 0.7 million weighted average incremental shares, including stock options, restricted stock awards, and performance stock awards were anti-dilutive.

Foreign Currency Translation

The Euro is the functional currency of Apeiron and the corresponding financial statements have been translated into U.S. dollars in accordance with ASC 830-30, *Translation of Financial Statements*. Assets and liabilities are translated at end-of-period rates while revenues and expenses are translated at average rates in effect during the period in which the activity took place. Equity is translated at historical rates and the resulting cumulative translation adjustments are included as a component of accumulated other comprehensive income (loss).

Accounting Standards Not Yet Adopted

In November 2024, the FASB issued ASU No. 2024-03, *Income Statement—Reporting Comprehensive Income (Subtopic 220-40): Expense Disaggregation Disclosures*. This update requires entities to disaggregate operating expenses into specific categories, such as salaries and wages, depreciation, and amortization, to provide enhanced transparency into the nature and function of expenses. ASU 2024-03 is effective for fiscal years beginning after December 15, 2026, with early adoption permitted. ASU 2024-03 may be applied retrospectively or prospectively. We are currently evaluating the new guidance to determine the impact it may have on our condensed consolidated financial statements and related disclosures.

We do not believe that any other recently issued but not yet effective accounting pronouncements, if adopted, would have a material impact on our condensed consolidated financial statements or disclosures.

2. Pelthos Transaction

In July 2025, we closed our definitive merger agreement to combine Ligand's wholly owned subsidiary, LNHC, Inc., the holding company for the Pelthos Therapeutics business, with CHRO Merger Sub Inc., a wholly owned subsidiary of Channel Therapeutics Corporation ("Channel"). Upon the effectiveness of the merger, LNHC, Inc. became a wholly owned subsidiary of Channel, and Channel changed its name to "Pelthos Therapeutics Inc." ("Pelthos") and began trading on the NYSE American exchange under the ticker symbol "PTHS." We received shares of Pelthos common stock in connection with the merger. The merger was supported by approximately $50.0 million in equity private placement capital raised from a group of strategic investors (including Ligand) led by Murchinson Ltd. ("Investor Group").

In connection with the Pelthos Transaction Ligand also invested $18.0 million and the other members of the Investor Group invested $32.0 million in Pelthos in exchange for shares of Pelthos' Series A convertible preferred stock. Out of the $18.0 million invested by Ligand, $12.7 million was invested by us prior to the closing of the Pelthos Transaction in the form of an intercompany loan. In connection with the closing of the Pelthos Transaction, this intercompany loan was cancelled, and we contributed the remaining $5.3 million to Pelthos. The transactions described herein are collectively referred to as the "Pelthos Transaction." As of June 30, 2026, we owned approximately 40% of Pelthos' outstanding shares of common stock and approximately 66% of its outstanding shares of Series A convertible preferred stock. As of December 31, 2025, we owned approximately 48% of Pelthos' outstanding shares of common stock and approximately 60% of its outstanding shares of Series A convertible preferred stock. Our ownership interest in Pelthos common stock is capped at 49.9% pursuant to the terms of the definitive agreements governing the Pelthos Transaction.

Our CEO and director, Todd Davis, also served as a director on Channel's board of directors. Mr. Davis did not participate in, and recused himself from, both boards' consideration and approval of the Pelthos Transaction, which, in the case of the Company, was approved by an authorized special transaction committee of the Board. Upon the consummation of the Pelthos Transaction, Mr. Davis and Richard Baxter, our Senior Vice President of Investment Operations, were appointed to Pelthos' board of directors. As of June 30, 2026, Mr. Davis and Mr. Baxter continue to serve as members on the board of directors of Pelthos.

We recorded our Pelthos Series A convertible preferred shares and Pelthos common shares within other investments and equity method investments, respectively, in our condensed consolidated balance sheets, and elected to subsequently measure these investments under the fair value option. Changes in fair value are recognized in earnings each reporting period and presented as gain (loss) from change in fair value of equity method investments and other investments in our condensed consolidated statements of operations. Ligand was restricted from engaging in any transactions involving Pelthos common stock during the lock-out period from July 1, 2025 through December 31, 2025.

	Pelthos Series A preferred shares	Pelthos common shares	Total
Fair value on December 31, 2025	$ 106,262	$ 46,500	$ 152,762
Change in fair value	(9,392)	(4,110)	(13,502)
Fair value on June 30, 2026	$ 96,870	$ 42,390	$ 139,260

On July 10, 2025, Pelthos commercially launched Zelsuvmi. We are also entitled to a 13% royalty on worldwide sales of Zelsuvmi and up to an additional $5.0 million in commercial sales milestones.

3. Investment Transactions

Orchestra Transaction: Q3 2025 and Q2 2026

On July 31, 2025, Ligand entered into a definitive agreement to invest up to $40.0 million to support Orchestra BioMed's late-stage, partnered cardiology programs. The initial funding consisted of a $20.0 million cash payment at closing and an additional $5.0 million to purchase shares of Orchestra's common stock in a private placement at $2.75 per share. In exchange, Ligand received a low double-digit royalty on the first $100.0 million of Orchestra's annual revenues related to the AVIM therapy and Virtue SAB programs across all indications. Ligand will also earn a mid-single-digit royalty on annual revenues exceeding $100.0 million from AVIM therapy in the uncontrolled hypertension and increased cardiovascular risk indications, as well as from Virtue SAB in coronary artery disease indications. We also received warrants to purchase shares of Orchestra's common stock (the "Orchestra Warrant"). The transaction closed on August 4, 2025.

The $5.0 million equity private placement is included in our short-term investments and is subsequently measured at fair value at each reporting period. Of the remaining $20.0 million, $2.3 million was allocated to the Orchestra Warrant, which is accounted for as a derivative asset, and $17.8 million was allocated to the research and development funding arrangement and recognized in research and development expense in the third quarter of 2025. The allocated amounts include the related transaction costs.

On May 1, 2026, we funded the second tranche of the Royalty Purchase Agreement by investing an additional $15.0 million. Pursuant to the terms of the original agreement, the second tranche entitled Ligand to an additional $15/35^{\text{ths}}$ portion of the royalty rights and the vesting of an additional portion of the Orchestra Warrant. Management concluded that the second tranche represents a continuation of the original arrangement. Of the $15.0 million second tranche payment, $2.7 million was allocated to the additional Orchestra Warrant and recognized as a derivative asset. The remaining $12.3 million was allocated to the research and development funding arrangement and recognized as research and development expense during the three months ended June 30, 2026.

The Orchestra Warrant is presented within noncurrent derivative assets in our condensed consolidated balance sheets. The warrant was initially recognized at fair value on August 4, 2025, upon closing of the transaction, and additional warrants were recognized at fair value on May 1, 2026 upon funding of the second tranche. The warrants are subsequently remeasured to fair value at each reporting date. The fair value of the Orchestra Warrant was estimated using the Black-Scholes option-pricing model. The significant assumptions used in the valuation as of June 30, 2026, May 1, 2026 and December 31, 2025 were as follows: expected term of 9.1 years, 9.3 years and 9.6 years, volatility of 71%, 71% and 72%, risk-free rate of 4.4%, 4.4% and 4.2%, and underlying stock price of $4.32, $3.97 and $4.15, respectively.

We accounted for the acquired royalty rights as a research and development funding arrangement under ASC 730-20, *Research and Development Arrangements*, because (i) Orchestra is contractually required to use Ligand's funding for the execution of the Phase 3 clinical study for AVIM therapy, and (ii) repayment of Ligand funding is contingent upon the research and development activities resulting in future economic benefit. As Ligand does not control or actively participate in the ongoing research and development activities, the funding was expensed in the period incurred.

Zerion Pharma Transaction: Q2 2026

On June 22, 2026, we invested $3.3 million in Zerion Pharma A/S ("Zerion"), consisting of $2.3 million for royalty rights and $1.0 million for ordinary shares of Zerion (the "Zerion Transaction"). In connection with the Zerion Transaction, a convertible bridge loan previously issued to Zerion in April 2026 converted into ordinary shares of Zerion upon the closing of the Zerion Transaction, resulting in the issuance of an additional $0.3 million of ordinary shares of Zerion to Ligand. Under the royalty agreement, we are entitled to receive royalties equal to 11% of annual revenue up to $15.0 million and 1% of annual revenue above $15.0 million, subject to a minimum annual royalty payment of $0.3 million beginning in 2027.

We identified two separate units of account in the Zerion Transaction consisting of royalty rights and an equity investment. The royalty rights, including allocated transaction costs, were recognized as a financial royalty asset under ASC 310, *Receivables*, and are accounted for using the non-accrual method as management is unable to reliably estimate future cash flows. The equity investment was recorded within other investments and is subsequently accounted for under ASC 321, *Investments – Equity Securities*, using the measurement alternative.

LeonaBio (formerly known as Athira Pharma) Transaction: Q4 2025

On December 18, 2025, we invested $1.0 million to acquire common stock and Series A warrants to acquire common stock ("Series A Warrant") and Series B warrants to acquire common stock ("Series B Warrant") and together with Series A Warrant the "LeonaBio Warrants") of LeonaBio. The common stock is accounted for as equity securities under ASC 321, *Investments—Equity Securities*, and is measured at fair value each reporting period, because we do not have significant influence over the investee and LeonaBio is publicly traded. The LeonaBio Warrants are accounted for as derivative assets under ASC 815, *Derivatives and Hedging.* These warrants were initially recognized at fair value on the transaction date and are subsequently remeasured to fair value each reporting period. The Series A Warrant is classified as a current derivative asset and presented within other current assets in our condensed consolidated balance sheet as of June 30, 2026. The Series B Warrant is presented within noncurrent derivative assets in our condensed consolidated balance sheets. Of the $1.0 million total consideration, $0.7 million was allocated to the common stock, $0.1 million to the Series A Warrant, and $0.2 million to the Series B Warrant.

The fair value of the LeonaBio Series A Warrants is determined using a Black-Scholes model with the following assumptions as of June 30, 2026 and December 31, 2025, respectively: expected term of 0.4 years and 0.9 years, volatility of 90% and 80%, risk-free rate of 4.0% and 3.5%, and LeonaBio stock price of $9.19 and $7.57. The fair value of the LeonaBio Series B Warrants is determined using a Black-Scholes model with the following assumptions as of June 30, 2026 and December 31, 2025, respectively: expected term of 1.1 years and 1.6 years, volatility of 87% and 83%, risk-free rate of 4.0% and 3.5%, and LeonaBio common stock price of $9.19 and $7.57.

Pelthos Convertible Notes Transaction: Q4 2025

On November 6, 2025, Ligand and certain other investors, for an aggregate purchase price of $18.0 million (of which $9.0 million was paid by Ligand), obtained on a proportional basis: (a) Pelthos private convertible notes ("Pelthos Convertible Notes"), (b) low single-digit royalty rights on U.S. net sales of Pelthos' Xepi (the "Xepi Rights"), and (c) milestone rights, and low single-digit royalty rights on net sales of Zelsuvmi in Japan by Sato Pharmaceuticals Co, Ltd., if Zelsuvmi is approved in Japan (the "Sato Rights").

The Pelthos Convertible Notes have a principal amount of $18.0 million (across all investors) and are a secured obligation of Pelthos and bear interest at a rate of 8.5% per annum, payable quarterly in arrears or capitalized and payable at maturity (at Pelthos' election). The Pelthos Convertible Notes will mature on November 6, 2027, unless earlier repurchased, redeemed, or converted into shares of Pelthos common stock in accordance with their terms at a conversion price of $29.73. Ligand's ownership of Pelthos' common stock is capped at 49.9%.

We identified four units of account related to this transaction, (1) the host debt, (2) the embedded conversion option, (3) the Xepi Rights, and (4) the Sato Rights. Out of the $9.0 million Pelthos convertible notes transaction price and the $0.3 million of transaction costs recognized as of the transaction closing date, $4.8 million was allocated to the embedded conversion option at its fair value as of the transaction date, and the remaining amount was allocated among the host debt ($3.8 million), the Xepi Rights ($0.5 million), and the Sato Rights ($0.2 million) based on their relative fair values.

The bifurcated embedded conversion option is accounted for as a derivative asset under ASC 815, *Derivatives and Hedging*, and was recognized at fair value as of the transaction date and will be remeasured at fair value at each subsequent reporting period. The fair value of the embedded conversion option is determined using a Black-Scholes model with the following assumptions as of June 30, 2026 and December 31, 2025, respectively: expected term of 1.4 years and 1.9 years, volatility of 73% and 60%, risk-free rate of 4.1% and 3.5%, and Pelthos' stock price of $28.26 and $31.00. We recognized mark-to-market adjustments of $1.9 million and $(0.1) million, respectively, for the three and six months ended June 30, 2026.

We account for the convertible note as a receivable under ASC 310, *Receivables,* and include it within other investments in our condensed consolidated balance sheets. During the three months ended June 30, 2026, we recognized $0.2 million of coupon interest earned (which was capitalized into the principal amount at Pelthos' election), and $0.4 million of debt discount amortization. During the six months ended June 30, 2026, we recognized $0.4 million of coupon interest earned (which was capitalized into the principal amount at Pelthos' election), and $0.8 million of debt discount amortization. We account for the Xepi Rights and Sato Rights as financial royalty assets (loan receivables) under ASC 310, *Receivables*, and they are currently accounted for under the non-accrual method as management cannot reliably estimate future cash flows from these programs.

Arecor Transaction: Q3 2025

On September 24, 2025, we invested $7.0 million to acquire certain economic rights from Arecor Limited ("Arecor"), with an additional $1.0 million of deferred consideration payable in two equal installments at the six- and twelve-month anniversaries of the closing date. We accounted for the transaction as an asset acquisition.

In connection with the transaction, Ligand acquired economic rights in two partnered programs: 1) a single-digit royalty on global net sales of AT220, an Arestat®-enhanced biosimilar marketed by a global pharmaceutical company; and 2) potential annual technology access fees and milestone payments related to AT292 (efdoralprin alfa/SAR447537/INBRX-101), a partnered program with Sanofi SA ("Sanofi").

We account for the rights to future royalties as financial royalty assets (loan receivables) under ASC 310, *Receivables*. The AT220 financial royalty asset is recognized under the accrual method, because the product is commercially available. In addition, we have the right to collect royalties earned but not yet received by Arecor, which are recorded as a receivable within other current assets in our condensed consolidated balance sheets. The AT292 financial royalty asset is accounted for on non-accrual status, as the program remains in development and management cannot reliably estimate future cash flows.

In addition to the economic rights, Ligand received warrants to purchase 1,002,739 ordinary shares of Arecor Therapeutics Plc, exercisable over a ten-year period ("Arecor Warrant"). We account for the Arecor Warrant as a derivative asset under ASC 815, *Derivatives and Hedging*, recognizing it at fair value as of the transaction date and remeasuring it at fair value at each subsequent reporting period. The Arecor Warrant is presented within noncurrent derivative assets line in our condensed consolidated balance sheets. The fair value of the Arecor Warrant is determined using a Black-Scholes model with the following assumptions as of June 30, 2026 and December 31, 2025, respectively: expected term of 9.2 years and 9.7 years, volatility of 31% and 33%, risk-free rate of 4.8% and 4.6%, and Arecor's stock price of $0.63 and $0.81.

Out of the $7.0 million Arecor transaction price and the $1.0 million of deferred consideration recognized as of the transaction closing date, $0.5 million was assigned to the Arecor Warrant; $4.8 million and $1.9 million were assigned to the AT220 and AT292 financial royalty assets, respectively; and $0.8 million was assigned to the AT220 receivable.

We are also obligated to pay up to $3.0 million in contingent consideration tied to commercial milestones in the AT292 partnered program. We account for this contingent consideration in accordance with ASC 450, *Contingencies,* and will recognize a liability when the contingency is resolved, and the liability becomes payable. No contingent consideration was recognized as of June 30, 2026 or December 31, 2025.

Castle Creek Investment: Q1 2025

On February 24, 2025, we entered into a Purchase and Sale Agreement (the "Castle Creek Investment") with Castle Creek Biosciences, Inc. and Castle Creek Biosciences, LLC (collectively, "Castle Creek"), together with a syndicate of co-investors for which Ligand served as representative (collectively, including Ligand, the "Purchasers"). The Castle Creek Investment supports Castle Creek's Phase 3 clinical study of FCX-007 (dabocemagene autoficel) ("D-Fi"), and autologous human fibroblast, cell-based gene therapy genetically modified to express COL7. D-Fi is Castle Creek's lead candidate for the treatment of dystrophic epidermolysis bullosa ("DEB").

Pursuant to the Castle Creek Investment, Ligand and the other Purchasers obtained, for an aggregate purchase price of $75.0 million ($50.0 million paid by Ligand and $25.0 million paid collectively by the other Purchasers) on a proportional basis: (a) a high single digit royalty on worldwide sales of D-Fi; and (b) a warrant to purchase shares of Castle Creek's Series D-1 Preferred Stock, exercisable until February 24, 2035 ("Castle Creek Warrant"). As part of the Castle Creek Investment, Castle Creek granted the Purchasers a security interest in certain assets related to the programs covered by the agreement, subject to customary exceptions.

In connection with the Castle Creek Investment, on February 24, 2025, we acquired a portion of unsecured subordinated promissory notes (with an aggregate principal amount of $8.3 million payable upon FDA approval of D-Fi) from a Castle Creek related party for $1.8 million ("Milestone Buyout" and such asset, the "Castle Creek Milestone"). Management concluded that the individual prices of the Castle Creek Investment and the Milestone Buyout each reflect the fair value of the related assets acquired on a standalone basis.

We accounted for the Milestone Buyout as a financial royalty asset. We identified two units of account within the Castle Creek Investment: (1) the Castle Creek Warrant, accounted for as a derivative asset; and (2) the D-Fi royalty rights, accounted for as a research and development funding arrangement under ASC 730-20*, Research and Development Arrangements*, because (a) Castle Creek is contractually required to use Ligand's funding to conduct the Phase 3 clinical study for D-Fi and (b) the repayment of Ligand funding depends solely on the research and development results having future economic benefits. Out of the $50.1 million Castle Creek Investment transaction price, including transaction costs, $5.8 million was allocated to the Castle Creek Warrant (based on its estimated fair value as of the effective date), and the remaining $44.3 million was allocated to the D-Fi royalty rights, and recognized as research and development expense for the period, as Ligand does not control or actively participate in the related research and development activities.

The Castle Creek Warrant derivative is presented within noncurrent derivative assets in our condensed consolidated balance sheets. The Castle Creek Warrant was initially recorded at fair value as of February 24, 2025, and is remeasured at fair value at each subsequent reporting period. The fair value of the Castle Creek Warrant is determined using a Black-Scholes model with the following assumptions as of June 30, 2026 and December 31, 2025, respectively: expected term of 4.2 years and 2.7 years, volatility of 90% and 110%, and risk-free rate of 4.2% and 3.5%.

4. *Financial Royalty Assets, net*

Financial royalty assets consist of the following (in thousands):

	June 30, 2026			December 31, 2025		
	Gross carrying value(1)	**Allowance**	**Net carrying value (1)**	**Gross carrying value(1)**	**Allowance**	**Net carrying value(1)**
Qarziba	$ 101,303	$ (468)	$ 100,835	$ 118,593	$ (498)	$ 118,095
Agenus Bot/Bal	40,815	(408)	40,407	40,815	(408)	40,407
Tolerance Therapeutics (Tzield®)	25,470	(99)	25,371	25,257	(98)	25,159
Ohtuvayre inventors	19,957	(179)	19,778	16,921	(151)	16,770
Elutia (CorMatrix)	6,062	(837)	5,225	6,607	(1,107)	5,500
AT220	4,442	(109)	4,333	5,132	(132)	5,000
Primrose mRNA	3,281	(98)	3,183	3,281	(98)	3,183
Zerion	2,640	(79)	2,561	—	—	—
Others	5,729	(212)	5,517	5,769	(214)	5,555
Total financial royalty assets, net	$ 209,699	$ (2,489)	$ 207,210	$ 222,375	$ (2,706)	$ 219,669

(1) The amounts include the short-term portion of financial royalty assets, which represents our estimate of current-quarter royalty receipts expected to be collected in the subsequent quarter. The short-term portion of financial royalty assets totaled $13.0 million and $22.8 million and was presented as a separate line item in our condensed consolidated balance sheets as of June 30, 2026 and December 31, 2025, respectively.

Financial royalty assets represent future economic rights acquired by Ligand in various transactions. Upon the early adoption of ASU 2025-07 on January 1, 2025*,* certain economic rights in partner programs that were previously accounted for as derivative assets (including the Agenus partner programs, Primrose mRNA, and Castle Creek Milestone) are now accounted for as financial royalty assets.

There was no impairment loss recognized for the three and six months ended June 30, 2026 and 2025.

Apeiron Programs

In July 2024, we acquired certain financial royalty assets as part of the Apeiron Acquisition, including Qarziba and certain InvIOs programs, which were recorded at $104.9 million and $1.3 million, respectively, as of the acquisition date. As

Qarziba is a commercial-stage program, we are able to reasonably estimate future cash flows and, accordingly, we recognized income from the Qarziba financial royalty assets starting from the Apeiron Acquisition effective date. We account for the InvIOs financial royalty asset using the non-accrual method until we are able to reliably estimate future cash flows.

Agenus Programs

In May 2024, we acquired a synthetic royalty on future global net sales of Agenus' novel immuno-oncology botensilimab in combination with balstilimab ("Bot/Bal"), which is accounted for as a financial royalty asset. We apply the non-accrual method to the Bot/Bal financial royalty asset until such time as future cash flows can be reliably estimated.

In addition to Bot/Bal, we acquired economic rights in certain partner programs (including UGN-301 with Urogen). These economic rights were initially accounted for as derivative assets but were reclassified to financial royalty assets on January 1, 2025, upon adoption of ASU 2025-07. As of December 31, 2025, we recorded a full impairment of all Agenus partner programs, including UGN-301, which was returned to Agenus by Urogen in the fourth quarter of 2025.

Tzield

In November 2023, we acquired Tolerance Therapeutics for $20.0 million in cash. Tolerance Therapeutics was a holding company, owned by the inventors of Tzield (teplizumab), and is owed a royalty of less than 1% on worldwide net sales of Tzield. Tzield is marketed by Sanofi, starting in 2023. For tax purposes, this transaction was treated as a stock acquisition; accordingly, no step-up in tax basis or other tax attributes was recorded. As a result, a deferred tax liability of $5.5 million was recognized in 2024 for the difference between the book and tax basis, with a corresponding increase to the carrying value of the Tolerance Therapeutics' financial royalty asset. Given the early stages of Tzield's commercialization, management has applied the non-accrual method to this financial royalty asset until such time as future cash flows can be reliably estimated.

Ohtuvayre Inventors

In March 2024, August 2024 and January 2025, we acquired future milestone and royalty rights related to Ohtuvayre from certain Ohtuvayre inventors for a total of $3.8 million, $13.6 million and $1.8 million, respectively. On June 26, 2024, Verona Pharma plc received FDA approval for Ohtuvayre for the maintenance treatment of patients with chronic obstructive pulmonary disease ("COPD"). Verona initiated U.S. commercial sales of Ohtuvayre in the third quarter of 2024 and was subsequently acquired by Merck on October 7, 2025. We began recognizing income from the Ohtuvayre inventor-related financial royalty assets on October 1, 2025, as, at that point in the product's commercialization, management determined that future cash flows could be reliably estimated.

5. Fair Value Measurements

Assets and Liabilities Measured on a Recurring Basis

The following table presents the hierarchy for our assets and liabilities measured at fair value (in thousands):

	June 30, 2026				December 31, 2025			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets:								
Short-term investments[1]	$ 146,279	$ 204,777	$ —	$ 351,056	$ 183,982	$ 374,612	$ —	$ 558,594
Pelthos Series A Preferred Shares	96,870	—	—	96,870	106,262	—	—	106,262
Pelthos Common Shares	42,390	—	—	42,390	46,500	—	—	46,500
Derivative assets[2]	—	13,586	5,250	18,836	—	10,643	4,989	15,632
Total assets	$ 285,539	$ 218,363	$ 5,250	$ 509,152	$ 336,744	$ 385,255	$ 4,989	$ 726,988
Liabilities:								
Contingent liabilities - CyDex	$ —	$ —	$ 352	$ 352	$ —	$ —	$ 395	$ 395
Contingent liabilities - Metabasis[3]	—	2,240	—	2,240	—	2,826	—	2,826
Derivative liabilities	—	824	—	824	—	—	—	—
Total liabilities	$ —	$ 3,064	$ 352	$ 3,416	$ —	$ 2,826	$ 395	$ 3,221

(1) Excluding our investment in corporate equity securities and U.S. government securities, our short-term investments in marketable debt and equity securities are classified as available-for-sale securities based on management's intentions and are classified within level 2 of the fair value hierarchy, as these investment securities are valued based on quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market. We have classified marketable securities with original maturities of greater than one year as short-term investments based on our ability and intent to use any or all of those marketable securities to satisfy the liquidity needs of our current operations.

(2) Castle Creek Warrant is classified within Level 3 of the fair value hierarchy because significant valuation inputs are unobservable in the marketplace. All other derivative assets are classified within Level 2 of the fair value hierarchy because they are valued based on quoted prices for identical or similar instruments in markets that are not active, and on model-based valuation techniques for which all significant assumptions are observable in the market.

(3) In connection with our acquisition of Metabasis in January 2010, we issued Metabasis stockholders four tradable CVRs, one CVR from each of four respective series of CVR, for each Metabasis share. The CVRs entitle Metabasis stockholders to cash payments as frequently as every six months as cash is received by us from proceeds from the sale or partnering of any of the Metabasis drug development programs, among other triggering events. The liability for the CVRs is determined using quoted prices in a market that is not active for the underlying CVR. The carrying amount of the liability may fluctuate significantly based upon quoted market prices, and actual amounts paid under the agreements may be materially different than the carrying amount of the liability. During the three months ended June 30, 2026 and 2025, we recorded a change in the fair value of the Metabasis CVR liability that amounted to $(1.1) million and $0.1 million, respectively, to mark-to-market. During the six months ended June 30, 2026 and 2025, we recorded a change in the fair value of the Metabasis CVR liability that amounted to $(0.5) million and $1.9 million, respectively, to mark-to-market.

A reconciliation of the level 3 financial instruments as of June 30, 2026 is as follows (in thousands):

Assets		
Fair value of level 3 financial instruments as of December 31, 2025	$	4,989
Fair value adjustments to derivative assets		261
Fair value of level 3 financial instruments as of June 30, 2026	$	5,250

Liabilities		
Fair value of level 3 financial instruments as of December 31, 2025	$	395
Payments to CVR holders and other contingent payments		(50)
Fair value adjustments to contingent liabilities		7
Fair value of level 3 financial instruments as of June 30, 2026	$	352

Assets Measured on a Non-Recurring Basis

We apply fair value measurement techniques on a non-recurring basis when evaluating potential impairment losses related to our goodwill, intangible assets with estimated useful lives and other long-lived assets.

We evaluate goodwill annually for impairment and whenever events or changes in circumstances indicate that goodwill may be impaired. We determine the fair value of our reporting unit using a combination of inputs, including the market capitalization of Ligand and Level 3 inputs such as discounted cash flow analyses, which rely on unobservable assumptions.

We evaluate intangible assets with estimated useful lives and other long-lived assets for impairment whenever events or changes in circumstances indicate that such assets may not be recoverable. We perform the impairment assessment using an undiscounted cash flow analysis at the lowest level at which the cash flows of the intangible assets and long-lived assets are largely independent of the cash flows of other asset groups.

There was no impairment of our goodwill, intangible assets with estimated useful lives, or long-lived assets recorded during the three and six months ended June 30, 2026 and 2025.

Fair Value of Financial Instruments

Our cash and cash equivalents, accounts receivable, other current assets, accounts payable, accrued liabilities, deferred revenue, current operating lease liabilities, and current finance lease liabilities are financial instruments and are recorded at cost in the condensed consolidated balance sheets. The estimated fair value of these financial instruments approximates their carrying value.

Financial Assets Not Measured at Fair Value

Financial royalty assets are carried at amortized cost using the effective interest method or on a non-accrual basis. Management estimates the fair value of financial royalty assets using forecasted royalty receipts. The projected future cash flows are derived from expected royalty payments and milestones, and are discounted using asset-specific discount rates. Financial royalty assets are classified as Level 3 within the fair value hierarchy because their fair value is based on inputs that are significant and unobservable.

The estimated fair value and carrying value of financial royalty assets were $306.6 million and $207.2 million, respectively, as of June 30, 2026, and $294.9 million and $219.7 million, respectively, as of December 31, 2025.

To determine the fair value of long-term financial royalty assets, we estimated future underlying product sales, applied probabilities of technical and regulatory success for development stage programs, estimated timelines for development and regulatory milestones, and applied discount rates reflecting partner execution and commercialization risk, which ranged from

13% to 35% as of both June 30, 2026 and December 31, 2025. The weighted average discount rate (weighted by relative fair value) was 17% as of both June 30, 2026 and December 31, 2025.

6. Debt

0.00% Convertible Senior Notes due 2031

In June 2026, we issued $700.0 million aggregate principal amount of 0.00% convertible senior notes due 2031 (the "2031 Notes"). The aggregate principal amount includes $75.0 million of additional notes purchased by the initial purchasers pursuant to their full exercise of the option to purchase additional notes. Net proceeds from the offering were approximately $679.0 million, after deducting fees and expenses.

The 2031 Notes are general senior, unsecured obligations of Ligand and do not bear regular interest. The 2031 Notes will mature on September 15, 2031, unless earlier converted, redeemed or repurchased. Upon conversion, we will pay cash up to the aggregate principal amount of the 2031 Notes being converted and will pay or deliver, as applicable, cash, shares of our common stock, or a combination of cash and shares of our common stock, at our election, in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the 2031 Notes being converted, in the manner and subject to the terms and conditions provided in the Indenture, dated June 25, 2026, entered into in connection with the 2031 Notes issuance (the "2031 Notes Indenture").

Holders may convert their 2031 Notes at their option prior to June 15, 2031, under certain circumstances, and at any time on or after June 15, 2031, until the second scheduled trading day immediately preceding the maturity date. The initial conversion rate is 2.9916 shares of our common stock per $1,000 principal amount of the 2031 Notes (equivalent to an initial conversion price of approximately $334.27 per share), subject to adjustment upon the occurrence of certain events. The maximum conversion rate, subject to adjustment, is 3.8143 shares of our common stock per $1,000 principal amount of the 2031 Notes, equivalent to a conversion price of approximately $262.17 per share.

The 2031 Notes are not redeemable by us prior to September 21, 2029. On or after that date, and prior to the 51st scheduled trading day immediately preceding the maturity date of the 2031 Notes, we may redeem for cash all or part of the 2031 Notes if the last reported sale price of our common stock has been at least 130% of the conversion price for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption.

Holders may require us to repurchase all or a portion of their 2031 Notes for cash at 100% of the principal amount plus accrued and unpaid interest, if any, to, but excluding, the purchase date, upon the occurrence of a "Fundamental Change" (as defined in the 2031 Notes Indenture).

We account for the 2031 Notes in accordance with ASC 470-20, *Debt with Conversion and Other Options*. At issuance, we evaluated the terms of the 2031 Notes and determined that the embedded conversion feature does not require separate accounting as a derivative. The 2031 Notes are recorded as a single liability measured at amortized cost. Interest expense includes amortization of debt issuance costs, as discussed below.

In connection with the issuance of the 2031 Notes in June 2026, we incurred approximately $21.0 million of debt discount and issuance costs, which primarily consisted of underwriting, legal and other professional fees. These costs are netted against the total debt liability and are amortized to interest expense using the effective interest method over the expected life of the 2031 Notes. The annual effective interest rate was 0.6% for the three and six months ended June 30, 2026. During the three and six months ended June 30, 2026, we recognized total interest expense of $0.01 million, consisting primarily of the amortization of debt issuance costs.

The 2031 Notes Indenture contains customary covenants and events of default, including payment defaults, certain bankruptcy events, and failure to comply with other covenants, subject to applicable grace periods.

The following table summarizes information about the 2031 Notes and 2030 Notes as of June 30, 2026 (in thousands):

	June 30, 2026		
	2031 Notes	**2030 Notes**	**Total**
Principal amount of the notes outstanding	$ 700,000	$ 460,000	$ 1,160,000
Unamortized debt discount and debt issuance costs	(21,012)	(12,394)	$ (33,406)
Long-term portion of notes payable	$ 678,988	$ 447,606	$ 1,126,594
Fair value of convertible senior notes outstanding (Level 2)	$ 661,920	$ 746,442	$ 1,408,362

Convertible Note Hedge and Warrant Transactions Related to the 2031 Notes

In connection with the pricing of the 2031 Notes and the initial purchasers' exercise of their overallotment option to purchase additional notes, in June 2026, we entered into convertible note hedge transactions with certain of the initial purchasers of the 2031 Notes or their affiliates and certain other financial institutions (the "2031 Notes option counterparties"), with the intent to reduce the potential dilution to holders of our common stock upon conversion of the 2031 Notes and/or offset any cash payments we may be required to make in excess of the principal amount upon conversion of the 2031 Notes. The convertible note hedges have an exercise price of $334.27 per share and are exercisable when and if the 2031 Notes are converted.

The convertible note hedge transactions are classified as equity instruments and are not accounted for as derivatives under ASC 815 because they meet the criteria for equity classification under ASC 815-40. We paid approximately $195.8 million for these convertible note hedge transactions, which was recorded as a reduction to additional paid-in capital in accordance with ASC 815-40. The convertible note hedge transactions will not be remeasured at fair value after initial recognition.

We also entered into warrant transactions with the 2031 Notes option counterparties in connection with the pricing of the 2031 Notes and the initial purchasers' exercise of their option to purchase additional notes, pursuant to which we issued warrants to purchase 2,094,120 shares of common stock (the "warrants") to the 2031 Notes option counterparties. The warrant transactions may have a dilutive effect on our common stock to the extent that the market price per share of our common stock exceeds the strike price of the warrants. The strike price of the warrants is initially $524.34 per share, subject to customary anti-dilution adjustments under the terms of the warrants. We received approximately $114.1 million from the issuance of these warrants. The warrants have various expiration dates ranging from December 15, 2031 to May 7, 2032. The common stock issuable upon exercise of the warrants has not been registered under the Securities Act, and we do not have an obligation, and do not intend, to file any registration statement with the SEC registering the issuance of the shares under the warrants.

The convertible note hedge transaction and the issuance of the warrants described above are each a separate transactions entered into by us and the 2031 Notes options counterparties and are not part of the terms of the 2031 Notes.

0.75% Convertible Senior Notes due 2030

In August 2025, we issued $460.0 million aggregate principal amount of 0.75% convertible senior notes due 2030 (the "2030 Notes"). The aggregate principal amount includes $60.0 million of additional notes purchased by the initial purchasers pursuant to their full exercise of the option to purchase additional notes. Net proceeds from the offering were approximately $445.1 million, after deducting the initial purchasers' discount and debt issuance cost.

The 2030 Notes are general senior, unsecured obligations of Ligand and accrue interest at a rate of 0.75% per year, payable semiannually in arrears on April 1 and October 1 of each year, beginning on April 1, 2026. The 2030 Notes will mature on October 1, 2030, unless earlier converted, redeemed or repurchased. Upon conversion, we will pay cash up to the aggregate principal amount of the 2030 Notes being converted and will pay or deliver, as applicable, cash, shares of our common stock, or a combination of cash and shares of our common stock, at our election, in respect of the remainder, if any, of our conversion obligation in excess of the aggregate principal amount of the 2030 Notes being converted, in the manner and subject to the terms and conditions provided in the Indenture entered into in connection with the 2030 Notes issuance (the "2030 Notes Indenture").

Holders may convert their 2030 Notes at their option prior to July 1, 2030, under certain circumstances, and at any time on or after July 1, 2030, until the second scheduled trading day immediately preceding the maturity date. The initial conversion rate is 5.1338 shares of our common stock per $1,000 principal amount of the 2030 Notes (equivalent to an initial conversion price of approximately $194.79 per share), subject to adjustment upon the occurrence of certain events. The maximum conversion rate, subject to adjustment, is 6.8022 shares of our common stock per $1,000 principal amount of the 2030 Notes, equivalent to a conversion price of approximately $147.01.

The 2030 Notes are not redeemable by us prior to October 6, 2028. On or after that date, and prior to the 51st scheduled trading day immediately preceding the maturity date of the 2030 Notes, we may redeem for cash all or part of the 2030 Notes if the last reported sale price of our common stock has been at least 130% of the conversion price for at least 20 trading days during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which we provide notice of redemption.

Holders may require us to repurchase all or a portion of their 2030 Notes for cash at 100% of the principal amount plus accrued and unpaid interest to, but excluding, the purchase date, upon the occurrence of a "Fundamental Change" (as defined in the 2030 Notes Indenture).

We account for the 2030 Notes in accordance with ASC 470-20, *Debt with Conversion and Other Options*. At issuance, we evaluated the terms of the 2030 Notes and determined that the embedded conversion feature does not require separate accounting as a derivative. The 2030 Notes are recorded as a single liability measured at amortized cost. Interest expense includes interest recognized at the stated coupon rate, and amortization of the debt discount and issuance costs, as discussed below.

In connection with the issuance of the 2030 Notes in August 2025, we incurred $14.9 million of debt discount and issuance costs, which primarily consisted of underwriting, legal, and other professional fees. These costs are netted against the total debt liability and are amortized to interest expense using the effective interest method over the five-year expected life of the 2030 Notes. The annual effective interest rate, including the coupon portion, was 1.4% for the three and six months ended June 30, 2026. During the three months ended June 30, 2026, we recognized a total of $1.6 million in interest expense, which includes $0.9 million in coupon expense and $0.7 million in amortized issuance costs. During the six months ended June 30, 2026, we recognized a total of $3.1 million in interest expense, which includes $1.7 million in coupon expense and $1.4 million in amortized issuance costs.

The 2030 Notes Indenture contains customary covenants and events of default, including payment defaults, certain bankruptcy events, and failure to comply with other covenants, subject to applicable grace periods.

Convertible Note Hedge and Warrant Transactions Related to the 2030 Notes

In connection with the pricing of the 2030 Notes and the initial purchasers' exercise of their overallotment option to purchase additional notes, in August 2025, we entered into convertible note hedge transactions with certain of the initial purchasers of the 2030 Notes or their affiliates and certain other financial institutions (the "2030 Notes option counterparties"), with the intent to reduce the potential dilution to holders of our common stock upon conversion of the 2030 Notes and/or offset any cash payments we may be required to make in excess of the principal amount upon conversion of the 2030 Notes. The convertible note hedges have an exercise price of $194.79 per share and are exercisable when and if the 2030 Notes are converted. If upon conversion of the 2030 Notes, the price of our common stock is above the exercise price of the convertible note hedges, the 2030 Notes option counterparties will deliver shares of common stock and/or cash with an aggregate value approximately equal to the difference between the price of common stock at the conversion date and the exercise price, multiplied by the number of shares of common stock related to the convertible note hedges being exercised.

The convertible note hedge transactions are classified as equity instruments and are not accounted for as derivatives under ASC 815, because they meet the criteria for equity classification under ASC 815-40. We paid $113.3 million for these convertible note hedges, which were recorded as a reduction to additional paid-in capital in accordance with ASC 815-40. The convertible note hedge transactions are not remeasured at fair value after initial recognition.

We also entered into warrant transactions with the 2030 Notes option counterparties in connection with the pricing of the 2030 Notes and the initial purchasers' exercise of their option to purchase additional notes, pursuant to which we issued warrants to purchase 2,361,548 shares of common stock (the "warrants") to the 2030 Notes option counterparties. The warrant transactions may have a dilutive effect on our common stock to the extent that the market price per share of our common stock exceeds the strike price of the warrants. The strike price of the warrants will initially be $294.02 per share, subject to certain adjustments under the terms of the warrants. We received $67.4 million from the issuance of these warrants. The warrants have various expiration dates ranging from January 2, 2031 to May 27, 2031. The common stock issuable upon exercise of the warrants has not been registered under the Securities Act, and we do not have an obligation, and do not intend, to file any registration statement with the SEC registering the issuance of the shares under the warrants.

The convertible note hedges and warrants described above are separate transactions entered into by us and are not part of the terms of the 2030 Notes. Holders of the 2030 Notes or warrants will not have any rights with respect to the convertible note hedges.

Revolving Credit Facility

On October 12, 2023, we entered into a $75.0 million revolving credit facility (the "Revolving Credit Facility") with Citibank, N.A. as the Administrative Agent (as defined in the Credit Agreement). We, our material domestic subsidiaries, as Guarantors (as defined in the Credit Agreement), and the Lenders (as defined in the Credit Agreement) entered into a credit agreement (as amended from time to time, the "Credit Agreement") with the Administrative Agent, under which the Lenders, the Swingline Lender and the L/C Issuer (each as defined in the Credit Agreement) agreed to make revolving loans, swingline loans and other financial accommodations to us (including the issuance of letters of credit) in an aggregate amount of up to $75.0 million to fund the Revolving Credit Facility.

Borrowings under the Revolving Credit Facility accrue interest at a rate equal to either the Term Secured Overnight Financing Rate ("Term SOFR") or a specified base rate, in each case plus an applicable margin linked to our leverage ratio, ranging from 1.75% to 2.50% per annum for Term SOFR loans and 0.75% to 1.50% per annum for base rate loans. The Revolving Credit Facility is subject to a commitment fee on unused commitments ranging from 0.30% to 0.45%, depending on our leverage ratio. During the term of the Revolving Credit Facility, we may borrow, repay and re-borrow amounts available under the Revolving Credit Facility, subject to voluntary reductions in the swingline, letter of credit and revolving credit commitments.

Borrowings under the Revolving Credit Facility are secured by certain of our collateral and that of the Guarantors. In specified circumstances, additional guarantors are required to be added to the Credit Agreement. The Credit Agreement contains customary affirmative and negative covenants, including financial maintenance covenants, and events of default applicable to us. In the event of a violation of the representations, warranties and covenants made in the Credit Agreement, we may not be able to utilize the Revolving Credit Facility or the repayment of amounts outstanding thereunder could be accelerated.

Amendments to Revolving Credit Facility

On July 8, 2024, we entered into the first amendment to the Credit Agreement, which, among other things, increases the aggregate Revolving Credit Facility amount from $75.0 million to $125.0 million. In connection with the offering of the 2030 Notes, on August 11, 2025, we entered into the second amendment to the Credit Agreement, which, among other things, permits certain cash settlement payments on the 2030 Notes, subject to customary conditions set forth therein. On September 12, 2025, we entered into the third amendment to the Credit Agreement, which, among other things, extends the maturity date of the Revolving Credit Facility to September 12, 2028 and modifies the minimum consolidated EBITDA (as defined in the Credit Agreement) covenant to require us to maintain not less than $55.0 million of consolidated EBITDA for the trailing four-quarter period ended September 30, 2025 and each trailing four-quarter period ending thereafter. In connection with the issuance of the 2031 Notes, on June 22, 2026, we entered into the fourth amendment to the Credit Agreement, which, among other things, permits the issuance of the 2031 Notes and modifies the minimum Consolidated EBITDA for the four consecutive fiscal quarter periods ending June 30, 2026, September 30, 2026, December 31, 2026, and March 31, 2027 to be $100.0 million and for the fiscal quarter periods ending June 30, 2027 and thereafter, $150.0 million.

As of June 30, 2026, and December 31, 2025, we had $124.4 million of available borrowing capacity under the Revolving Credit Facility and $0.6 million of letters of credit outstanding.

7. Income Tax

Our effective tax rate may vary from the U.S. federal statutory tax rate due to the change in the mix of earnings in various foreign and state jurisdictions with different statutory rates, the use of tax loss carryforwards to reduce foreign taxes, the tax impact of non-deductible expenses, stock award activities and other permanent differences between income before income taxes and taxable income. The effective tax rate for the three months ended June 30, 2026 and 2025 was 24.6% and 56.8%, respectively. The effective tax rate for the six months ended June 30, 2026 and 2025 was 12.2% and 3.5%, respectively. The variance from the U.S. federal statutory tax rate of 21% for the three and six months ended June 30, 2026 was primarily due to Section 162(m) limitation on deduction for officer compensation, other non-deductible items, income from foreign operations, which were partially offset by the foreign derived intangible income deduction. The variance from the U.S. federal statutory tax rate of 21% for the three and six months ended June 30, 2025 was primarily due to Section 162(m) limitation on deduction for officer compensation, other non-deductible items and income from foreign operations, which were partially offset by the foreign derived intangible income deduction.

8. Stockholders' Equity

We grant options and awards to employees and non-employee directors pursuant to a stockholder-approved stock incentive plan, which is described more fully in *Note 11, Stockholders' Equity*, to the consolidated financial statements included in our 2025 Annual Report.

In June 2026, the Company's stockholders approved an amendment and restatement of the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, which increased the number of shares of common stock available for issuance under the plan by 0.6 million shares.

The following is a summary of our stock options and restricted stock awards activities and related information:

	Stock Options		Restricted Stock Awards	
	Shares	Weighted-Average Exercise Price	Shares	Weighted-Average Grant Date Fair Value
Balance as of December 31, 2025	2,001,011	$ 84.48	455,547	$ 98.86
Granted	346,010	$ 204.55	268,467	$ 167.54
Options exercised/RSUs vested	(202,032)	$ 78.68	(290,202)	$ 95.57
Forfeited	—	$ —	—	$ —
Balance as of June 30, 2026	2,144,989	$ 104.39	433,812	$ 143.56

As of June 30, 2026, outstanding options to purchase 1.1 million shares were exercisable with a weighted average exercise price of $78.00.

Employee Stock Purchase Plan

The purchase price of shares of common stock under the Amended Employee Stock Purchase Plan ("ESPP") is equal to 85% of the fair market value of the common stock on the first or last day of the offering period, whichever is lower. As of June 30, 2026, 17,424 shares remained available for future issuance under the ESPP.

At-the-Market Equity Offering Program

On February 27, 2026, we filed a registration statement on Form S-3 (the "Shelf Registration Statement"), which became automatically effective upon filing, covering the offering of common stock, preferred stock, debt securities, warrants and units.

On February 27, 2026, we also entered into an At-The-Market Equity Offering Sales Agreement (the "Sales Agreement") with Leerink Partners LLC (the "Agent"), pursuant to which we may, from time to time, offer and sell shares of our common stock having an aggregate offering price of up to $100.0 million in "at the market" offerings through the Agent (the "ATM Offering"). The Shelf Registration Statement includes a prospectus covering the offer and sale of up to $100.0 million of our common stock from time to time pursuant to the ATM Offering. No shares of our common stock had been sold as of June 30, 2026.

Share Repurchases

In April 2023, our Board of Directors approved a stock repurchase program authorizing, but not requiring, the repurchase of up to $50.0 million of our common stock from time to time through April 2026. We may acquire shares, if at all, primarily through open-market transactions in accordance with all applicable requirements of Rule 10b-18 under the Securities Exchange Act of 1934, as amended. The timing and amount of repurchase transactions will be determined by management based on its evaluation of market conditions, share price, legal requirements and other factors. During the three and six months ended June 30, 2026 and 2025, we did not repurchase any shares of common stock under the stock repurchase program. The stock repurchase program expired in April 2026.

In connection with the issuance of the 2031 Notes in June 2026, we used approximately $60.0 million of the net proceeds from the offering to repurchase 228,859 shares of our common stock at a price of $262.17 per share. Refer to *Note 6, Debt,* for additional information regarding the 2031 Notes offering.

In connection with the issuance of the 2030 Notes in August 2025, we used approximately $15.0 million of the net proceeds from the offering to repurchase 102,034 shares of our common stock at a price of $147.01 per share. Refer to *Note 6, Debt,* for additional information regarding the 2030 Notes offering.

9. Commitment and Contingencies

We record an estimate of a loss when the loss is considered probable and estimable. Where a liability is probable and there is a range of estimated loss and no amount in the range is more likely than any other number in the range, we record the minimum estimated liability related to the claim in accordance with ASC 450, *Contingencies*. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. Revisions in our estimates of potential liability could materially impact our results of operations.

On October 31, 2019, we received three civil complaints filed in the U.S. District Court for the Northern District of Ohio on behalf of several Indian tribes. The Judicial Panel on Multi-District Litigation ("JPML") has assigned the Court of Northern District of Ohio more than one thousand civil cases which have been designated as a Multi-District Litigation ("MDL") and captioned In Re: National Prescription Opiate Litigation. The allegations in these complaints focus on the activities of defendants other than the Company and no individualized factual allegations have been advanced against us in any of the three complaints. We reject all claims raised in the complaints and intend to vigorously defend these matters.

On August 22, 2024, CyDex Pharmaceuticals, Inc. filed a Verified Complaint in the Delaware Court of Chancery against Bexson Biomedical, Inc. ("Bexson"), asserting claims for declaratory relief and breach of contract arising out of a Captisol In Vivo Agreement (the "In Vivo Agreement") between the parties, pursuant to which CyDex provided Bexson with research-grade Captisol and related confidential and proprietary information for a potential new formulation of ketamine being developed by Bexson. CyDex alleges that Bexson breached its obligations under the In Vivo Agreement, including by misusing confidential information and materials provided by CyDex and by using CyDex's confidential information and materials to file patent applications that purport to cover formulations that are "not ketamine". CyDex also asserts that Bexson failed to return and destroy CyDex's confidential information and materials as required by the In Vivo Agreement. CyDex seeks relief including specific performance of certain co-ownership provisions of the In Vivo Agreement and disgorgement from Bexson for any benefits obtained in violation of the In Vivo Agreement. On September 27, 2024, Bexson filed a Motion to Dismiss the Verified Complaint. A Verified Amended Complaint was filed by CyDex on November 6, 2024, and a Motion to Dismiss the

Verified Amended Complaint was filed by Bexson on January 17, 2025. On May 23, 2025, Bexson withdrew its pending Motion to Dismiss and filed a Verified Counterclaim, Answer, and Affirmative Defenses. On July 17, 2025, CyDex and Bexson agreed to a joint stipulation for a schedule on judgment on the pleadings, providing for briefing to be complete by November 17, 2025. CyDex filed its reply to Bexson's counterclaim on July 23, 2025. On August 22, 2025, Bexson filed its opening brief in support of its motion for judgment on the pleadings. On September 25, 2025, CyDex filed its partial cross-motion for judgment on the pleadings and opposition to Bexson's motion, and on October 27, 2025 Bexson filed its combined answering brief in opposition to CyDex's motion and reply in support of its motion. CyDex filed a reply brief on November 17, 2025. On April 22, 2026, the Court heard argument on the motions for judgment on the pleadings. Following argument, the Court issued a bench ruling denying Bexson's motion for judgment on the pleadings and granting in part CyDex's motion for judgment on the pleadings. The Court entered orders to this effect on April 22, 2026. The case is expected to proceed to discovery.

On July 18, 2025, CyDex received a letter from PH Health Limited ("PH Health"), a wholly-owned indirect subsidiary of Endo, Inc., stating that PH Health had submitted to the U.S. Food and Drug Administration an Abbreviated New Drug Application ("ANDA") referencing New Drug Application No. 022235, owned by Baxter Healthcare Corp. ("Baxter") for Captisol®-enabled Nexterone® (amiodarone hydrochloride, 150 mg/100 mL, premixed for injection). In its Notice Letter, PH Health stated that its ANDA includes a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) that, in PH Health's opinion, CyDex's U.S. Patent No. 7,635,773 ("the '773 patent") is invalid, unenforceable and/or will not be infringed by Par Heath's ANDA product. The Notice Letter included an explanation intended to support PH Health's position that its ANDA product would not infringe the '773 patent but did not include detailed explanations regarding invalidity or unenforceability. On August 29, 2025, during the 45-day period for filing a lawsuit pursuant to the Hatch-Waxman Act, Baxter and CyDex filed a lawsuit in the United States District Court for the Distinct of New Jersey against Par Health Ltd., Par Health USA, Endo USA, Inc., Endo Operations Limited, and Endo, Inc., asserting that the ANDA filing infringed the '773 patent. *See* Case No. 3:25-cv-15120-MCA. The case was assigned to District Court Judge Madeline Cox Arleo. On October 27, 2025, Defendants Par Health Ltd., Par Health USA, Endo USA, Inc., Endo Operations Limited, and Endo, Inc. filed an Answer denying infringement and asserting several affirmative defenses. On January 8, 2026, the initial scheduling conference was held before Magistrate Judge Cari Fais. On March 23, 2026, the parties submitted a Joint Stipulation to strike Defendants' Third Affirmative Defense, meaning that Defendants would be "precluded from asserting invalidity" with respect to any claim of the '773 patent. On May 18, 2026, Par Health amended its ANDA to replace the certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) as to the '773 patent with a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(III) and, thus, agreed to not seek approval of its ANDA until the expiration of the '773 patent. The amended ANDA also included certifications under 21 U.S.C. § 355(j)(2)(A)(vii)(III) as to the following patents, each of which Baxter had recently listed in the Orange Book for Captisol®-enabled Nexterone®: U.S. Patent No. 8,410,077; 9,200,088; 9,493,582; 9,750,822; and 10,117,951. On June 16, 2026, the parties jointly submitted a Stipulation and Order of Dismissal Without Prejudice. On July 23, 2026, Judge Arleo entered that Stipulation and Order of Dismissal Without Prejudice, ending the litigation.

From time to time, we may also become subject to other legal proceedings or claims arising in the ordinary course of our business. We currently believe that none of the claims or actions pending against us is likely to have, individually or in aggregate, a material adverse effect on our business, financial condition or results of operations. Given the unpredictability inherent in litigation, however, we cannot predict the outcome of these matters.

10. Subsequent Events

Acquisition of XOMA Royalty Corporation

On July 14, 2026, we completed our previously announced merger pursuant to the terms of that certain Agreement and Plan of Merger, dated April 27, 2026, as amended by Amendment No. 1 to the Agreement and Plan of Merger, dated May 16, 2026 (as amended, the "Xoma Merger Agreement"), by and among Ligand, XOMA Royalty Corporation, a Nevada corporation ("XOMA Royalty"), Flex Merger Sub, Inc., a Nevada corporation and wholly owned subsidiary of Ligand ("Merger Sub"), and XOMA Royalty Holdings Corporation, a Nevada corporation ("HoldCo"). Pursuant to the Xoma Merger Agreement, XOMA Royalty effected the Holding Company Reorganization (as defined in the Xoma Merger Agreement), and Merger Sub merged with and into HoldCo (the "Xoma Merger"), with HoldCo surviving the Xoma Merger as a wholly owned subsidiary of Ligand (the "XOMA Acquisition"). Under the terms of the Xoma Merger Agreement, each outstanding share of XOMA Royalty common stock was converted into the right to receive (i) $39.00 in cash and (ii) one contingent value right ("CVR") representing the holder's right to receive potential future payments derived from the CVR Trust's (as defined in the Xoma Merger Agreement) interest in XOMA Royalty LLC in connection with the Holding Company Reorganization (as defined in the Xoma Merger Agreement). The XOMA Acquisition was funded with available cash on hand.

In connection with the closing of the XOMA Acquisition, the Company, as borrower, entered into that certain Amended and Restated Credit Agreement, dated July 14, 2026 (the "Amended Credit Agreement"), by and among the Company, certain of its subsidiaries, as Guarantors (as defined therein), the Lenders (as defined therein) party thereto, and Citibank, N.A., as Administrative Agent, Swingline Lender and L/C Issuer (each as defined therein), which amends and restates in its entirety the

Credit Agreement and Revolving Credit Facility. The Amended Credit Agreement provides for a $125.0 million revolving credit facility with a maturity date of September 12, 2028 (the “Amended Revolving Credit Facility”).

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

Caution: *This discussion and analysis may contain predictions, estimates and other forward-looking statements that involve a number of risks and uncertainties, including those discussed in Part II, Item 1A. Risk Factors. This outlook represents our current judgment on the future direction of our business. These statements include those related to our future results of operations and financial position, Captisol-related revenues and Kyprolis and other product royalty revenues and milestones under license agreements, product development, and product regulatory filings and approvals, and the timing thereof. Actual events or results may differ materially from our expectations. For example, there can be no assurance that our revenues or expenses will meet any expectations or follow any trend(s), that we will be able to retain our key employees or that we will be able to enter into any strategic partnerships or other transactions. We cannot assure you that we will receive expected Kyprolis, Captisol and other product revenues to support our ongoing business or that our internal or partnered pipeline products will progress in their development, gain marketing approval or achieve success in the market. In addition, ongoing or future arbitration, litigation or disputes with third parties may have a material adverse effect on us. Such risks and uncertainties, and others, could cause actual results to differ materially from any future performance suggested. We undertake no obligation to make any revisions to these forward-looking statements to reflect events or circumstances arising after the date of this quarterly report. This caution is made under the safe harbor provisions of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act").*

We use our trademarks, trade names and services marks in this report as well as trademarks, trade names and service marks that are the property of other organizations. Solely for convenience, trademarks and trade names referred to in this report appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trade marks and trade names.

References to "Ligand Pharmaceuticals Incorporated," "Ligand," the "Company," "we" or "our" include Ligand Pharmaceuticals Incorporated and our wholly-owned subsidiaries.

Overview

We are a biopharmaceutical royalty company focused on deploying capital and licensing technologies to acquire and create diversified royalty streams from high-value medicines. Our primary business is investing in and structuring royalty interests in mid- to late-stage development and commercial biopharmaceutical products, allowing us to generate long-duration, non-dilutive cash flows supported by a lean corporate cost structure. Capital deployment and technology licensing are the primary drivers of our long-term growth.

We partner capital through a range of transaction structures—including royalty purchases, development-stage financing arrangements, and acquisitions of companies or assets with embedded royalty rights—designed to create cash flowing royalties and produce attractive risk-adjusted returns. Our goal is to provide investors with exposure to biopharmaceutical innovation through a diversified portfolio of royalty interests while mitigating the binary risk and capital intensity traditionally associated with drug development.

In addition to our royalty investment activities, we operate two infrastructure-light, royalty-generating platform technologies, Captisol® and NITRICIL®. These technologies exemplify our platform technology investment criteria: infrastructure-light, scalable intellectual property with existing royalty streams and the potential to generate incremental royalties through partner-driven development and commercialization.

Our revenue is generated primarily from royalties on sales of products commercialized by our partners, supplemented by Captisol material sales and contract revenue from license fees and milestone payments. We partner with leading biopharmaceutical companies to leverage their capabilities in late-stage development, regulatory execution, and commercialization, while we focus on disciplined capital deployment, portfolio construction, and risk management. This also allows us to leverage our partner's asset infrastructure in sales and marketing, manufacturing and R&D to avoid infrastructure ourselves.

2031 Convertible Debt Financing

On June 25, 2026, we completed the offering of $700.0 million aggregate principal amount of 0.00% convertible senior notes due 2031 (the "2031 Notes"). The aggregate principal amount of the 2031 Notes includes the full exercise of the option to purchase an additional $75.0 million aggregate principal amount of 2031 Notes by the initial purchasers.

Net proceeds from the offering were $679.0 million, after deducting fees and expenses. Of that amount, we used $81.7 million of the proceeds to enter into a call spread overlay consisting of convertible note hedge and warrant transactions, and approximately $60 million to repurchase 228,859 shares of our common stock at a price of $262.17 per share. The convertible note hedge transactions intended to reduce the potential for dilution from the 2031 Notes upon conversion. As a result of the warrants transactions, there will be no dilution to our stock until the share price exceeds $524.34 per share. We expect to use the remaining net proceeds from the offering of the 2031 Notes for general corporate purposes, including investing in complementary businesses, companies, products and technologies, although we have no present commitments or agreements to do so beyond the XOMA Acquisition. See Note 6, *Debt*, for additional information regarding the 2031 Notes.

XOMA Acquisition

On July 14, 2026, we announced completion of the acquisition of XOMA Royalty, a biotechnology royalty aggregator. Details of the transaction are as follows:

- Each outstanding share of XOMA Royalty common stock was converted into the right to receive (i) $39.00 in cash and (ii) one contingent value right (CVR) representing the holder's right to receive potential future payments derived from the CVR trust's interest in XOMA Royalty LLC in connection with the Holding Company Reorganization (as defined in the merger agreement);
- The closing of the transaction met our original timeline expectations. Management believes that the transaction is expected to be immediately accretive; and
- We funded the transaction through cash on hand and expects to retain sufficient capital capacity to continue executing our capital deployment strategy of investing approximately $150 million to $250 million annually in high-value royalty assets.

We believe that the XOMA Acquisition strengthens our royalty portfolio by adding seven commercial products, including Roche's VABYSMO® (faricimab-svoa), Servier's OJEMDA™ (tovorafenib), and Zevra Therapeutics' MIPLYFFA® (arimoclomol). Additionally, the acquisition adds 14 late-stage development programs, featuring Takeda's mezagitamab and certain assets from Takeda's externalized asset portfolio, such as osavampator, volixibat, and OHB-607, along with more than 100 assets in various stages of development to Ligand's portfolio. As a result, our portfolio has more than doubled in size, now comprising over 200 commercial, clinical, and preclinical stage royalty assets.

Concurrently with the closing of the XOMA Acquisition, we entered into the Amended Credit Agreement, which amends and restates in its entirety the Credit Agreement. The Amended Credit Agreement provides for a $125.0 million revolving credit facility maturing on September 12, 2028. The Amended Revolving Credit Facility is secured by certain collateral of Ligand and the guarantors and is guaranteed by all of our material domestic subsidiaries, each of whom will derive substantial benefit from the Amended Revolving Credit Facility.

Key Portfolio Development

Filspari	• On April 13, 2026, Travere announced the FDA approved Filspari to reduce proteinuria in adult and pediatric patients aged 8 years and older with focal segmental glomerulosclerosis (FSGS), in patients without nephrotic syndrome. Filspari is currently the first and only medicine approved by the FDA for the treatment of FSGS, marking its expansion beyond IgA nephropathy (IgAN) into a second rare kidney disease. • On June 19, 2026, Chugai announced that it filed a new drug application in Japan for sparsentan for the treatment of IgA Nephropathy. • On August 4, 2026, Travere reported U.S. net product sales of Filspari of $141 million, representing 96% year-over-year growth driven by the strong FSGS launch and continued IgAN growth.
Ohtuvayre	• On August 4, 2026, Merck reported net sales of Ohtuvayre of $204 million with net product sales including a benefit from the timing of specialty pharmacy purchases in the U.S.

Qtorin rapamycin	• On May 4, 2026, Palvella announced the first patients have been dosed in LOTU, a Phase 2 clinical trial designed to evaluate the safety and efficacy of Qtorin rapamycin for the treatment of clinically significant angiokeratomas. Clinically significant angiokeratomas represent a rare, chronic and debilitating lymphatic malformation with no FDA approved therapies and an estimated more than 50,000 diagnosed patients in the U.S. Topline results from the Phase 2 trial are expected in the second half of 2027. • On June 29, 2026, Palvella announced submission of the first module of its rolling NDA to the FDA seeking approval of Qtorin 3.9% rapamycin for the treatment of microcystic lymphatic malformations (microcystic LMs). Palvella remains on track to submit the remaining modules and complete the NDA submission in the second half of 2026. • On August 4 2026, Palvella announced the Phase 3 trial of Qtorin rapamycin for the treatment of cutaneous venous malformations is planned for the fourth quarter of 2026.
Capvaxive	• On June 18, 2026, Merck announced the FDA approved an expanded indication for Capvaxive to include children and adolescents aged 2 through 17 years who have completed a primary pediatric pneumococcal vaccination series and have one or more chronic medical conditions that put them at an increased risk for pneumococcal disease. With this approval, Capvaxive is the only pneumococcal conjugate vaccine (PCV) specifically indicated and studied in the U.S. for use in this patient population. • On August 4, 2026, Merck reported net sales of Capvaxive of $184 million, an increase of 42% with the increase primarily driven by launch uptake in several international markets, particularly Asia Pacific and Europe as well as in the U.S.
Tzield	• On June 12, 2026, Sanofi announced the FDA granted accelerated approval in children aged 8 to 17 years recently diagnosed with stage 3 type 1 diabetes (“T1D”) to delay the decline in endogenous insulin production. Tzield is the first disease-modifying therapy for patients recently diagnosed with stage 3 T1D.
AVIM Therapy/VIRTUE SAB	• On May 6, 2026, Ligand fulfilled the previously scheduled tranche payment of $15 million to Orchestra BioMed under the royalty-based financing agreement. • On May 12, 2026, Orchestra BioMed announced that it is targeting enrollment completion in the AVIM Therapy BACKBEAT trial in the third quarter of 2026. The updated timeline is supported by FDA approval of a reduction in sample size for the BACKBEAT trial to a target total of 284 evaluable randomized subjects, with a total enrollment target of 316 patients accounting for potential loss to follow-up. Orchestra BioMed is targeting top line data in the second quarter of 2027.
BOT/BAL	• On July 13, 2026, Agenus entered into a securities purchase agreement for a private placement of approximately $85 million in upfront gross proceeds, before the deduction of private placement expenses, and up to an additional $255 million upon the full exercise of purchase warrants. The financing was led by Commodore Capital, with participation from RA Capital Management, TCGX, Invus, and Ligand. • On July 13, 2026 Agenus announced the discontinuation of the BATTMAN Phase 3 trial evaluating BOT/BAL in late-line metastatic microsatellite-stable (MSS) colon cancer and has reached alignment on key elements of the new ROBBIN Phase 3 trial design with the FDA. First dosing of the ROBBIN trial for the neoadjuvant treatment of MSS colon cancer is expected in the first quarter of 2027.
Lasofoxifene	• On May 7, 2026, LeonaBio announced it is amending the ELAINE-3 trial protocol to increase the sample size from 500 participants to up to 600 participants. The primary goal of the amendment is to help ensure that the trial will have the appropriate number of disease progression events. The Company expects to complete enrollment of the Phase 3 ELAINE-3 clinical trial in the fourth quarter of 2026 and to have topline data in the second half of 2027.
Ojemda	• On April 22, 2026, Ipsen announced Ojemda was granted conditional marketing authorization in the European Union as monotherapy for the treatment of patients 6 months of age and older with pediatric low-grade-glioma harboring a BRAF fusion or rearrangement, or BRAF V600 mutation, who have progressed after one or more prior systemic therapies.

Volixibat	• On May 4, 2026, our partner announced the primary endpoint was met in the VISTAS Phase 2b study evaluating volixibat, an investigational oral ileal bile acid transporter (IBAT) inhibitor, in patients with primary sclerosing cholangitis (PSC). Volixibat demonstrated a statistically significant and clinically meaningful 2.72 point reduction in the primary endpoint of cholestatic pruritus. • On August 5, 2026, our partner announced volixibat was granted Breakthrough Therapy Designation for cholestatic pruritus due to PSC. Additionally, a pre-NDA meeting was held for volixibat in cholestatic pruritus due to PSC and additional discussions are planned before potential NDA submission. • On August 5, 2026, our partner announced enrollment was completed in the VANTAGE Phase 2b study of volixibat in cholestatic pruritus due to primary biliary cholangitis (PBC) with topline results expected in Q1 2027.
Ersodetug	• On June 2, 2026, Rezolute announced positive interim data for its Phase 3 Uplift study in Tumor hyperinsulinism. The company expects to announce topline results for the fully enrolled open-label study in the second half of 2026.

Results of Operations

Revenue and Income

(Dollars in thousands)	Q2 2026	Q2 2025	Change	% Change	YTD 2026	YTD 2025	Change	% Change
Revenue from intangible royalty assets	$ 37,362	$ 30,084	$ 7,278	24 %	$ 70,293	$ 51,671	$ 18,622	36 %
Income from financial royalty assets	10,670	6,313	4,357	69 %	20,697	12,215	8,482	69 %
Royalties	48,032	36,397	11,635	32 %	90,990	63,886	27,104	42 %
Captisol	7,978	8,287	(309)	(4)%	16,632	21,747	(5,115)	(24)%
Contract revenue and income	7,683	2,943	4,740	161 %	7,793	7,327	466	6 %
Total revenue and income	$ 63,693	$ 47,627	$ 16,066	34 %	$ 115,415	$ 92,960	$ 22,455	24 %

Q2 2026 vs. Q2 2025

Total revenue and income increased by $16.1 million, or 34%, to $63.7 million in Q2 2026 compared to $47.6 million in Q2 2025. Royalties increased by $11.6 million, or 32%, to $48.0 million in Q2 2026 compared to $36.4 million in Q2 2025, primarily attributable to royalties earned on Filspari, Zelsuvmi, and Ohtuvayre. Captisol sales decreased by $0.3 million, or 4%, to $8.0 million in Q2 2026 compared to $8.3 million in Q2 2025, primarily attributable to the timing of customer orders. Contract revenue and income increased by $4.7 million, or 161%, to $7.7 million in Q2 2026 compared to $2.9 million in Q2 2025, primarily attributable to the timing of milestone events under partner agreements.

YTD 2026 vs. YTD 2025

Total revenue and income increased by $22.5 million, or 24%, to $115.4 million in YTD 2026 compared to $93.0 million in YTD 2025. Royalties increased by $27.1 million, or 42%, to $91.0 million in YTD 2026 compared to $63.9 million in YTD 2025, primarily attributable to royalties earned on Filspari, Zelsuvmi, Ohtuvayre, Capvaxive and Kyprolis. Captisol sales decreased by $5.1 million, or 24%, to $16.6 million in YTD 2026 compared to $21.7 million in YTD 2025, primarily attributable to the timing of customer orders. Contract revenue and income remained steady at $7.8 million in YTD 2026 compared to $7.3 million in YTD 2025.

Revenue from intangible royalty assets is based on our partners' product sales and the applicable royalty rates. The following table presents revenue from intangible royalty assets by program (in millions):

(in millions)	Q2 2026 Estimated Partner Product Sales	Effective Royalty Rate	Q2 2026 Royalty Revenue	Q2 2025 Estimated Partner Product Sales	Effective Royalty Rate	Q2 2025 Royalty Revenue
Filspari	**$ 151.1**	**9.0 %**	**$ 13.6**	$ 73.3	9.0 %	$ 6.6
Kyprolis	**339.0**	**2.1 %**	**7.0**	398.0	2.2 %	8.8
Ohtuvayre(1)	**204.0**	**2.0 %**	**4.1**	102.9	2.0 %	2.1
Rylaze	**99.5**	**3.2 %**	**3.2**	103.2	2.8 %	2.9
Capvaxive	**184.0**	**1.3 %**	**2.3**	129.0	1.8 %	2.3
Teriparatide injection(2)	**6.0**	**25.0 %**	**1.5**	7.4	31.1 %	2.3
Vaxneuvance	**148.0**	**0.9 %**	**1.4**	229.0	1.1 %	2.6
Other	**95.9**	**4.5 %**	**4.3**	86.5	2.9 %	2.5
Total	**$ 1,227.5**		**$ 37.4**	$ 1,129.3		$ 30.1

(in millions)	YTD 2026 Estimated Partner Product Sales	Effective Royalty Rate	YTD 2026 Royalty Revenue	YTD 2025 Estimated Partner Product Sales	Effective Royalty Rate	YTD 2025 Royalty Revenue
Filspari	**$ 276.7**	**9.0 %**	**$ 24.9**	$ 132.2	9.0 %	$ 11.9
Kyprolis	**694.2**	**2.0 %**	**13.8**	751.8	1.8 %	13.5
Ohtuvayre(1)	**338.2**	**2.1 %**	**7.1**	174.2	2.0 %	3.5
Rylaze	**203.2**	**3.1 %**	**6.4**	197.5	3.0 %	6.0
Capvaxive	**323.9**	**1.3 %**	**4.3**	233.7	1.3 %	3.1
Vaxneuvance	**343.1**	**0.9 %**	**3.0**	452.6	0.9 %	3.9
Teriparatide injection(2)	**12.1**	**23.1 %**	**2.8**	12.1	28.9 %	3.5
Other	**201.3**	**4.0 %**	**8.0**	194.2	3.2 %	6.3
Total	**$ 2,392.7**		**$ 70.3**	$ 2,148.3		$ 51.7

(1) Our royalty rate on Ohtuvayre is 3%, of which 2% is recognized in revenue from intangible royalty assets and the remaining 1% is accounted for as financial royalty asset.

(2) We receive tiered profit sharing of 25% on quarterly profits less than $3.75 million, 35% on quarterly profits greater than $3.75 million but less than $7.5 million and 40% on quarterly profits greater than $7.5 million.

Operating Costs and Expenses

(Dollars in thousands)	Q2 2026	Q2 2025	Change	% Change	YTD 2026	YTD 2025	Change	% Change
Cost of Captisol	$ 3,214	$ 2,907	$ 307	11 %	$ 6,487	$ 7,756	$ (1,269)	(16)%
Amortization of intangibles	8,097	8,258	(161)	(2)%	16,194	16,515	(321)	(2)%
Research and development	14,668	6,567	8,101	123 %	16,816	56,652	(39,836)	(70)%
General and administrative	29,123	20,175	8,948	44 %	49,959	38,976	10,983	28 %
Fair value adjustments to partner program derivatives	—	1,276	(1,276)	(100)%	—	833	(833)	(100)%
Total operating costs and expenses	$ 55,102	$ 39,183	$ 15,919	41 %	$ 89,456	$ 120,732	$ (31,276)	(26)%
% of Revenue	87%	82%			78%	130%		

Q2 2026 vs. Q2 2025

Total operating costs and expenses increased by $15.9 million, or 41%, to $55.1 million in Q2 2026 compared to $39.2 million in Q2 2025.

Cost of Captisol increased by $0.3 million, or 11%, to $3.2 million in Q2 2026 compared to $2.9 million in Q2 2025, primarily due to lower gross margins resulting from changes in the mix of customers served during the period. Amortization of intangibles decreased by $0.2 million, or 2%, to $8.1 million in Q2 2026 compared to $8.3 million in Q2 2025, primarily attributable to the deconsolidation of LNHC, Inc. on July 1, 2025 in connection with the Pelthos Transaction. See Note 2, *Pelthos Transaction*, for additional information.

Research and development expenses increased by $8.1 million, or 123%, to $14.7 million in Q2 2026 compared to $6.6 million in Q2 2025. The increase was primarily driven by the $12.3 million research and development funding arrangement with Orchestra BioMed, partially offset by the absence of research and development expenses associated with our former Pelthos business following the deconsolidation of LNHC, Inc. on July 1, 2025. See Note 3, *Investment Transactions*, and Note 2, *Pelthos Transaction*, for additional information.

General and administrative expenses increased by $8.9 million, or 44%, to $29.1 million in Q2 2026 compared to $20.2 million in Q2 2025. The increase was primarily attributable to transaction costs associated with the XOMA Acquisition, as well as higher employee-related costs, including increased headcount and share-based compensation, reflecting the Company's continued investment in its origination and portfolio management functions. Fair value adjustments to partner program derivatives were zero for Q2 2026 compared to $1.3 million for Q2 2025.

YTD 2026 vs. YTD 2025

Total operating costs and expenses decreased by $31.3 million, or 26%, to $89.5 million in YTD 2026 compared to $120.7 million in YTD 2025.

Cost of Captisol decreased by $1.3 million, or 16%, to $6.5 million in YTD 2026 compared to $7.8 million in YTD 2025, primarily attributable to the lower Captisol sales. Amortization of intangibles decreased by $0.3 million, or 2%, to $16.2 million in YTD 2026 compared to $16.5 million in YTD 2025, primarily attributable to the deconsolidation of LNHC, Inc. on July 1, 2025 in connection with the Pelthos Transaction.

Research and development expenses decreased by $39.8 million, or 70%, to $16.8 million in YTD 2026 compared to $56.7 million in YTD 2025. The decrease was primarily driven by the absence of the $44.3 million research and development funding charge recognized in the first quarter of 2025 in connection with the D-Fi royalty rights acquired in the Castle Creek Transaction and the absence of $6.4 million research and development expenses associated with our former Pelthos business following the deconsolidation of LNHC, Inc. on July 1, 2025 in connection with the Pelthos Transaction. These decreases were partially offset by the $12.3 million research and development funding arrangement expense recognized in the second quarter of 2026 related to Orchestra BioMed. See Note 3, *Investment Transactions*, and Note 2, *Pelthos Transaction*, for additional information.

General and administrative expenses increased by $11.0 million, or 28%, to $50.0 million in YTD 2026 compared to $39.0 million in YTD 2025. The increase was primarily attributable to transaction costs associated with the XOMA Acquisition, as well as higher employee-related costs, including increased headcount and share-based compensation, reflecting the Company's continued investment in its origination and portfolio management functions. Fair value adjustments to partner program derivatives were zero for YTD 2026 compared to $0.8 million for YTD 2025.

Operating income was $26.0 million in YTD 2026, compared to an operating loss of $27.8 million in YTD 2025, an improvement of $53.7 million. The improvement was primarily driven by (1) the non-recurrence in the current period of the $44.3 million research and development funding charge recognized in connection with the Castle Creek Investment in YTD 2025, and (2) continued growth of royalty revenues. These increases were partially offset by the $12.3 million research and development funding arrangement expense recognized in the second quarter of 2026 related to Orchestra BioMed.

Non-operating Income and Expenses

(Dollars in thousands)	Q2 2026	Q2 2025	Change	% Change	YTD 2026	YTD 2025	Change	% Change
Gain (loss) from short-term investments	$ 11,754	$ 939	$ 10,815	1152 %	$ 15,623	$ (11,428)	$ 27,051	(237)%
Gain (loss) from change in fair value of equity-method investments and other investments	35,727	—	35,727	N/M(1)	(13,502)	—	(13,502)	N/M(1)
Interest income	7,298	1,621	5,677	350 %	13,953	3,392	10,561	311 %
Interest expense	(1,748)	(1,153)	(595)	52 %	(3,495)	(2,020)	(1,475)	73 %
Other non-operating expense, net	2,682	1,372	1,310	95 %	1,507	(1,129)	2,636	(233)%
Total non-operating Income (expenses), net	$ 55,713	$ 2,779	$ 52,934	1905 %	$ 14,086	$ (11,185)	$ 25,271	(226)%

(1) N/M = Not meaningful. Percentage change is not meaningful as no corresponding amount was recognized in the prior year period.

Q2 2026 vs. Q2 2025

The gain from short-term investments was $11.8 million in Q2 2026 compared to a gain of $0.9 million in Q2 2025. The increase was primarily driven by favorable mark-to-market adjustments on Palvella and Viking common stock. Palvella common stock resulted in an unrealized gain of $7.3 million in Q2 2026 compared to an unrealized loss of $1.3 million in Q2 2025, and Viking common stock resulted in an unrealized gain of $5.2 million in Q2 2026 compared to an unrealized gain of $2.4 million in Q2 2025.

The gain from change in fair value of equity-method investments and other investments was $35.7 million in Q2 2026. This gain reflects the change in fair value of the Pelthos common stock and Pelthos Series A convertible preferred stock that we acquired in connection with the Pelthos Transaction in July 2025. For additional information, see *Note 2, Pelthos Transaction.*

Interest income consists primarily of interest earned on our short-term investments and on the Pelthos Convertible Notes acquired in November 2025. Interest income increased by $5.7 million to $7.3 million in Q2 2026 compared to $1.6 million in Q2 2025, primarily due to higher average investment balances resulting from the issuance of our 2030 Notes as well as interest earned on the Pelthos Convertible Notes.

Interest expense consists primarily of coupon interest and non-cash amortization of debt discount and issuance costs related to our 2030 Notes issued in August 2025, as well as interest accrued under a royalty and milestone payments purchase agreement entered into by Novan, Inc. in 2019, which Ligand assumed in connection with the Novan acquisition in September 2023. Interest expense increased by $0.6 million to $1.7 million in Q2 2026 compared to $1.2 million in Q2 2025. The increase was primarily attributable to interest expense on the 2030 Notes, which were not outstanding during the prior-year period, partially offset by the absence of interest expense related to the Novan-assumed obligation following the deconsolidation of LNHC, Inc. on July 1, 2025, in connection with the Pelthos Transaction.

Other non-operating expense, net primarily consists of fair value adjustments on derivatives (excluding the partner program derivatives) and CVRs. Other non-operating expense, net was income of $2.7 million in Q2 2026 compared to income of $1.4 million in Q2 2025, primarily attributable to favorable changes in the fair value of CVR liabilities, which resulted in a $1.1 million gain in Q2 2026 compared to a $0.1 million loss in Q2 2025, as well as higher gains on derivatives of $1.4 million in Q2 2026 compared to $1.2 million in Q2 2025.

YTD 2026 vs. YTD 2025

The gain from short-term investments was $15.6 million in YTD 2026 compared to a loss of $11.4 million in YTD 2025. The increase was primarily driven by favorable mark-to-market adjustments on Palvella and Viking common stock. Palvella common stock resulted in an unrealized gain of $12.0 million in YTD 2026 compared to an unrealized gain of $2.6 million in YTD 2025, and Viking common stock resulted in an unrealized gain of $2.5 million in YTD 2026 compared to an unrealized loss of $13.7 million in YTD 2025.

The loss from change in fair value of equity-method investments and other investments was $13.5 million in YTD 2026. This loss reflects the change in fair value of the Pelthos common stock and Pelthos Series A convertible preferred stock that we acquired in connection with the Pelthos Transaction in July 2025. For additional information, see *Note 2, Pelthos Transaction.*

Interest income consists primarily of interest earned on our short-term investments and on the Pelthos Convertible Notes acquired in November 2025. Interest income increased by $10.6 million to $14.0 million in YTD 2026 compared to $3.4 million in YTD 2025, primarily due to higher average investment balances resulting from the issuance of our 2030 Notes as well as interest earned on the Pelthos Convertible Notes.

Interest expense consists primarily of coupon interest and non-cash amortization of debt discount and issuance costs related to our 2030 Notes issued in August 2025, as well as interest accrued under a royalty and milestone payments purchase agreement entered into by Novan, Inc. in 2019, which Ligand assumed in connection with the acquisition of our Pelthos Therapeutics Business from Novan in September 2023. Interest expense increased by $1.5 million to $3.5 million in YTD 2026 compared to $2.0 million in YTD 2025. The increase was primarily attributable to interest expense on the 2030 Notes, which were not outstanding during the prior-year period, partially offset by the absence of interest expense related to the Novan-assumed obligation following the deconsolidation of LNHC, Inc. on July 1, 2025, in connection with the Pelthos Transaction.

Other non-operating expense, net primarily consists of fair value adjustments on derivatives (excluding the partner program derivatives) and CVRs. Other non-operating expense, net was income of $1.5 million in YTD 2026 compared to expense of $1.1 million in YTD 2025, primarily attributable to favorable changes in the fair value of CVR liabilities, which resulted in a $0.5 million gain in YTD 2026 compared to a $1.9 million loss in YTD 2025.

Income Tax Expense

(Dollars in thousands)	Q2 2026	Q2 2025	Change	% Change	YTD 2026	YTD 2025	Change	% Change
Income (loss) before income taxes	$ 64,304	$ 11,223	$ 53,081	473 %	$ 40,045	$ (38,957)	$ 79,002	(203)%
Income tax (expense) benefit	(15,796)	(6,376)	(9,420)	148 %	(4,882)	1,353	(6,235)	(461)%
Income (loss) from operations	$ 48,508	$ 4,847	$ 43,661	901 %	$ 35,163	$ (37,604)	$ 72,767	(194)%
Effective tax rate	24.6 %	56.8 %			12.2 %	3.5 %		

We compute our income tax provision by applying the estimated annual effective tax rate to income (loss) from operations and adjusting for the effects of any discrete income tax items recognized in the period. The effective tax rate for the three months ended June 30, 2026 and 2025 was 24.6% and 56.8%, respectively. The effective tax rate for the six months ended June 30, 2026 and 2025 was 12.2% and 3.5%, respectively. The variance from the U.S. federal statutory tax rate of 21% for the three and six months ended June 30, 2026 was primarily due to Section 162(m) limitation on deduction for officer compensation, other non-deductible items, and income from foreign operations, which were partially offset by the foreign derived intangible income deduction. The variance from the U.S. federal statutory tax rate of 21% for the three and six months ended June 30, 2025 was primarily due to Section 162(m) limitation on deduction for officer compensation, other non-deductible items and income from foreign operations, which were partially offset by the foreign derived intangible income deduction.

Liquidity and Capital Resources

As of June 30, 2026, we had approximately $1,357.8 million in cash, cash equivalents, and short-term investments, an increase of $624.2 million from $733.5 million as of December 31, 2025. The increase was primarily attributable to the cash flow activity described in the “Cash Flow Summary” below. In addition, as of June 30, 2026, we had $124.4 million of available borrowing capacity under our Revolving Credit Facility and $0.6 million of letters of credit outstanding. Our principal sources of liquidity are our existing cash, cash equivalents, and short-term investments; cash flows generated from operations; and available borrowing capacity under our Revolving Credit Facility. We believe these sources provide us with the financial flexibility necessary to meet our operating, investing, and financing needs.

In addition to cash flows generated from operations, we have historically supplemented our liquidity by liquidating short-term investments and by issuing debt and equity securities. Our short-term investments consist of U.S. government debt securities, equity securities of publicly traded companies, investment-grade corporate debt securities, commercial paper, and certificates of deposit. We maintain investment guidelines governing the diversification and maturities of our portfolio to provide both safety of principal and liquidity. These guidelines are reviewed periodically and updated as appropriate to reflect prevailing yields and interest rate conditions.

On June 25, 2026, we issued the 2031 Notes. The $700.0 million aggregate principal amount of the 2031 Notes includes the purchase of an additional $75.0 million aggregate principal amount by the initial purchasers pursuant to the full exercise of their overallotment option. The net proceeds from the 2031 Notes offering were approximately $679.0 million, after deducting fees and expenses.

On February 27, 2026, we entered into an At-the-Market Equity Offering Sales Agreement (the “Sales Agreement”) with Leerink Partners LLC (the “Agent”), pursuant to which we may, from time to time, offer and sell shares of our common stock having an aggregate offering price of up to $100.0 million through the Agent (the “ATM Offering”). Sales of our common stock under the ATM Offering, if any, will be made pursuant to a prospectus supplement filed with the SEC under our existing effective shelf registration statement. As of June 30, 2026, no shares had been sold under the ATM Offering.

In April 2023, our Board approved a stock repurchase program (the “Repurchase Program”) authorizing, but not requiring, the repurchase of up to $50.0 million of our common stock from time to time through April 2026. Repurchases under the Repurchase Program may be made, if at all, primarily through open-market transactions in accordance with the requirements of Rule 10b-18 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The timing and amount of any repurchases will be determined by management based on its evaluation of market conditions, our share price, applicable legal requirements, and other factors. We did not repurchase any shares of common stock under the Repurchase Program during either of the three and six months ended June 30, 2026 or 2025.

On August 14, 2025, we issued the 2030 Notes. The $460.0 million aggregate principal amount of the 2030 Notes includes the purchase of an additional $60.0 million aggregate principal amount by the initial purchasers pursuant to the full exercise of their overallotment option. The net proceeds from the 2030 Notes offering were approximately $445.1 million, after deducting the initial purchasers’ discounts and commissions and the debt issuance costs incurred by Ligand.

Concurrently with the closing of the XOMA Acquisition, we entered into the Amended Credit Agreement, which amends and restates in its entirety the Credit Agreement and provides for a $125.0 million revolving credit facility maturing on

September 12, 2028. The Amended Revolving Credit Facility is secured by certain collateral of us and the guarantors and is guaranteed by all of our material domestic subsidiaries, each of whom will derive substantial benefit from the Amended Revolving Credit Facility.

As of June 30, 2026, we had $2.6 million in contingent consideration liabilities, measured at fair value, associated with prior acquisitions to be settled in future periods.

We believe that our existing cash, cash equivalents, and short-term investments, together with cash generated from operations and available borrowing capacity under our Revolving Credit Facility, will be adequate to fund our working capital needs, capital expenditures, debt service requirements, and other business initiatives we plan to strategically pursue, including acquisitions and strategic investments, over the next twelve months and into 2027.

Cash Flow Summary

(Dollars in thousands)	YTD 2026	YTD 2025
Net cash provided by (used in):		
Operating activities	$ 72,709	$ (9,646)
Investing activities	$ 226,770	$ (5,773)
Financing activities	$ 532,301	$ 10,248

During the six months ended June 30, 2026, we generated cash from operations primarily from revenue and other operating income. We generated cash from investing activities primarily from proceeds from the sale and maturity of short-term investments, partially offset by purchases of short-term investments. We generated cash from financing activities primarily from the issuance of our 2031 Notes.

During the six months ended June 30, 2025, we used cash in operating activities primarily for the Castle Creek Investment, partially offset by cash generated from revenue and other operating income. We used cash in investing activities primarily for purchases of short-term investments, partially offset by proceeds from the sale and maturity of short-term investments. We generated cash from financing activities primarily from net proceeds from stock option exercises and ESPP purchases, as well as proceeds from Pelthos investors.

Critical Accounting Policies and Estimates

Certain of our policies require the application of management judgment in making estimates and assumptions that affect the amounts reported in our consolidated financial statements and the disclosures made in the accompanying notes. Those estimates and assumptions are based on historical experience and various other factors deemed applicable and reasonable under the circumstances. The use of judgment in determining such estimates and assumptions is, by nature, subject to a degree of uncertainty. Accordingly, actual results could differ materially from the estimates made. There have been no material changes in our critical accounting policies and estimates as compared to the critical accounting policies and estimates described in our 2025 Annual Report.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

There were no material changes to our market risks in the three months ended June 30, 2026, when compared to the disclosures in Item 7A of our 2025 Annual Report.

Item 4. Controls and Procedures

We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures as of June 30, 2026 were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

There were no changes in our internal control over financial reporting that occurred during the quarter ended June 30, 2026 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

On May 19, 2026, we initiated litigation against Viking relating to the termination of the TR-Beta Program, a Metabasis drug development program outlicensed to Viking under that certain Master License Agreement, dated May 21, 2014, by and among Ligand, Metabasis Therapeutics, Inc. and Viking, as amended (the “Viking License Agreement”), including, but not limited to, VK2809, a novel selective TR-β agonist with potential in multiple indications, including hypercholesterolemia, dyslipidemia, NASH, and X-ALD, and VK0214. On July 2, 2026, Viking filed an answer to Ligand’s complaint against it generally denying all claims and asserting various affirmative defenses. That same date, Viking also filed a cross-complaint against Ligand. Viking asserts three causes of action against Ligand: (1) Declaratory Relief seeking an order declaring that: (i) Viking did not breach the Viking License Agreement; (ii) Ligand’s termination of the Viking License Agreement was invalid and without force or effect; (iii) Ligand is not entitled to the remedies provided for in Section 10.4(c) of the Viking License Agreement; and (iv) Viking retains its exclusive rights under the Viking License Agreement to Develop and Commercialize Licensed Products in the TR-Beta Program; (2) Breach of Contract alleging breach of the Viking License Agreement by Ligand for allegedly failing to follow certain contractual procedures when terminating the Viking License Agreement and (3) Breach of the Implied Covenant of Good Faith and Fair Dealing. Ligand’s responsive pleading is due on August 19, 2026. Given the early stage of this matter, we cannot estimate the potential outcome or potential losses.

On October 31, 2019, we received three civil complaints filed in the U.S. District Court for the Northern District of Ohio on behalf of several Indian tribes. The Judicial Panel on Multi-District Litigation (“JPML”) has assigned the Court of Northern District of Ohio more than one thousand civil cases which have been designated as a Multi-District Litigation (“MDL”) and captioned In Re: National Prescription Opiate Litigation. The allegations in these complaints focus on the activities of defendants other than the Company and no individualized factual allegations have been advanced against us in any of the three complaints. We reject all claims raised in the complaints and intend to vigorously defend these matters.

On August 22, 2024, CyDex Pharmaceuticals, Inc. filed a Verified Complaint in the Delaware Court of Chancery against Bexson Biomedical, Inc. (“Bexson”), asserting claims for declaratory relief and breach of contract arising out of a Captisol In Vivo Agreement (the “In Vivo Agreement”) between the parties, pursuant to which CyDex provided Bexson with research-grade Captisol and related confidential and proprietary information for a potential new formulation of ketamine being developed by Bexson. CyDex alleges that Bexson breached its obligations under the In Vivo Agreement, including by misusing confidential information and materials provided by CyDex and by using CyDex’s confidential information and materials to file patent applications that purport to cover formulations that are “not ketamine”. CyDex also asserts that Bexson failed to return and destroy CyDex’s confidential information and materials as required by the In Vivo Agreement. CyDex seeks relief including specific performance of certain co-ownership provisions of the In Vivo Agreement and disgorgement from Bexson for any benefits obtained in violation of the In Vivo Agreement. On September 27, 2024, Bexson filed a Motion to Dismiss the Verified Complaint. A Verified Amended Complaint was filed by CyDex on November 6, 2024, and a Motion to Dismiss the Verified Amended Complaint was filed by Bexson on January 17, 2025. On May 23, 2025, Bexson withdrew its pending Motion to Dismiss and filed a Verified Counterclaim, Answer, and Affirmative Defenses. On July 17, 2025, CyDex and Bexson agreed to a joint stipulation for a schedule on judgment on the pleadings, providing for briefing to be complete by November 17, 2025. CyDex filed its reply to Bexson’s counterclaim on July 23, 2025. On August 22, 2025, Bexson filed its opening brief in support of its motion for judgment on the pleadings. On September 25, 2025, CyDex filed its partial cross-motion for judgment on the pleadings and opposition to Bexson’s motion, and on October 27, 2025 Bexson filed its combined answering brief in opposition to CyDex’s motion and reply in support of its motion. CyDex filed a reply brief on November 17, 2025. On April 22, 2026, the Court heard argument on the motions for judgment on the pleadings. Following argument, the Court issued a bench ruling denying Bexson’s motion for judgment on the pleadings and granting in part CyDex’s motion for judgment on the pleadings. The Court entered orders to this effect on April 22, 2026. The case is expected to proceed to discovery.

On July 18, 2025, CyDex received a letter from PH Health Limited (“PH Health”), a wholly-owned indirect subsidiary of Endo, Inc., stating that PH Health had submitted to the FDA an Abbreviated New Drug Application (“ANDA”) referencing New Drug Application No. 022235, owned by Baxter Healthcare Corp. (“Baxter”) for Captisol®-enabled Nexterone® (amiodarone hydrochloride, 150 mg/100 mL, premixed for injection). In its Notice Letter, PH Health stated that its ANDA includes a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) that, in PH Health’s opinion, CyDex’s U.S. Patent No. 7,635,773 (“the ’773 patent”) is invalid, unenforceable and/or will not be infringed by Par Heath’s ANDA product. The Notice Letter included an explanation intended to support PH Health’s position that its ANDA product would not infringe the ’773 patent but did not include detailed explanations regarding invalidity or unenforceability. On August 29, 2025, during the 45-day period for filing a lawsuit pursuant to the Hatch-Waxman Act, Baxter and CyDex filed a lawsuit in the United States District Court for the Distinct of New Jersey against Par Health Ltd., Par Health USA, Endo USA, Inc., Endo Operations Limited, and Endo, Inc., asserting that the ANDA filing infringed the ’773 patent. *See* Case No. 3:25-cv-15120-MCA. The case was assigned to District Court Judge Madeline Cox Arleo. On October 27, 2025, Defendants Par Health Ltd., Par Health USA, Endo USA, Inc., Endo Operations Limited, and Endo, Inc. filed an Answer denying infringement and asserting several affirmative defenses. On January 8, 2026, the initial scheduling conference was held before Magistrate Judge Cari Fais. On March 23, 2026, the parties submitted a Joint Stipulation to strike Defendants’ Third Affirmative Defense, meaning that Defendants would be “precluded from asserting invalidity” with respect to any claim of” the ’773 patent. On May 18, 2026, Par Health amended its

ANDA to replace the certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) as to the ’773 patent with a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(III) and, thus, agreed to not seek approval of its ANDA until the expiration of the ’773 patent. The amended ANDA also included certifications under 21 U.S.C. § 355(j)(2)(A)(vii)(III) as to the following patents, each of which Baxter had recently listed in the Orange Book for Captisol®-enabled Nexterone®: U.S. Patent No. 8,410,077; 9,200,088; 9,493,582; 9,750,822; and 10,117,951. On June 16, 2026, the parties jointly submitted a Stipulation and Order of Dismissal Without Prejudice. On July 23, 2026, Judge Arleo entered that Stipulation and Order of Dismissal Without Prejudice, ending the litigation.

From time to time, we may also become subject to other legal proceedings or claims arising in the ordinary course of our business. We currently believe that none of the claims or actions pending against us is likely to have, individually or in aggregate, a material adverse effect on our business, financial condition or results of operations. Given the unpredictability inherent in litigation, however, we cannot predict the outcome of these matters.

Item 1A. Risk Factors

We do not believe that there have been any material changes to the risk factors disclosed in Part I, Item 1A of our 2025 Annual Report, except as described below. The risk factors described in our 2025 Annual Report and in this Quarterly Report on Form 10-Q are not the only risks we face. Factors we currently do not know, factors that we currently consider immaterial or factors that are not specific to us, such as general economic and political conditions, may also materially adversely affect our business or our consolidated operating results, financial condition or cash flows.

Certain of our royalty and milestone arrangements are subject to contractual rights held by our licensees or sublicensees to reduce, buy down, or buy out royalty obligations upon payment of specified amounts, which may be less than the net present value of future royalties we would otherwise be entitled to receive.

Certain of our royalty and milestone arrangements may provide our licensees or sublicensees with the right to reduce, buy down or buy out their future royalty or other payment obligations upon payment of predetermined amounts. In some cases, the applicable buyout price may increase over time or as specified thresholds are achieved but may nevertheless be less than the aggregate amount, or net present value, of the future royalties or other payments we otherwise might have received. Accordingly, a counterparty may elect to exercise such a right before its cumulative royalty obligations exceed the applicable buyout price, which could terminate or materially reduce the future payments to which we would otherwise be entitled. The timing and likelihood of any such exercise may be difficult to predict and may depend on factors outside our control, including the commercial performance of the applicable product and the counterparty’s assessment of its future sales prospects. Any exercise of these rights could limit the economic value of the applicable arrangement, reduce or eliminate an anticipated source of recurring revenue and have a material adverse effect on our business, financial condition and results of operations.

We may not successfully integrate the business, operations and royalty portfolio acquired in the XOMA Acquisition or realize the anticipated benefits of the acquisition.

On July 14, 2026, we completed the XOMA Acquisition. The success of this acquisition will depend, in part, on our ability to successfully integrate XOMA Royalty's operations, personnel, systems and royalty portfolio into our existing business and to manage the combined company efficiently. The integration process may be more costly or time-consuming than anticipated and may result in the diversion of management's attention from our existing business and strategic initiatives.

We may encounter difficulties in integrating financial reporting, accounting, internal control, compliance, legal, information technology and other administrative systems and processes. In addition, we may experience challenges retaining key employees, maintaining relationships with counterparties, licensors, licensees and other business partners, or effectively administering the significantly expanded royalty portfolio acquired in the transaction. We also may fail to identify or adequately manage contractual, operational, tax, regulatory or other risks associated with the acquired assets.

We may not realize the anticipated strategic, operational or financial benefits of the acquisition within the expected timeframe, or at all. If the integration is not successful, if the acquired assets do not perform as expected, or if the costs of integration exceed our expectations, our business, financial condition, results of operations and cash flows could be materially adversely affected.

Litigation in connection with the XOMA Acquisition.

We expect litigation in connection with the XOMA Acquisition. We do not currently expect any such litigation, individually or in the aggregate, to have a material adverse effect on our business, financial condition or results of operations.

Our ability to satisfy debt obligations depends on our future performance.

Our ability to make scheduled payments of the principal of, to pay interest on, or to refinance our indebtedness, including our 2030 Notes and 2031 Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. If the assumptions underlying our cash flow guidance are incorrect, our business may not continue to generate cash flow from operations sufficient to service our debt. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or issuing additional equity, equity-linked or debt instruments on terms that may be onerous or highly dilutive. In addition, certain holders of the 2030 Notes and the 2031 Notes may engage in hedging or arbitrage transactions, including short sales of our common stock, in connection with their investment in the notes. These activities could increase volatility or place downward pressure on the market price of our common stock, particularly during the period when the notes are convertible or following any conversion. This pressure could occur even if our business performance and prospects are strong. We may also be required to repurchase the 2030 Notes and the 2031 Notes for cash upon the occurrence of certain events, which could adversely affect our liquidity. The indentures governing the 2030 Notes and the 2031 Notes may require us to repurchase the notes for cash upon the occurrence of specified events, such as a fundamental change. Any such repurchase obligation could require us to use a significant portion of our available cash or obtain additional financing, which may not be available on favorable terms or at all. Our ability to satisfy these obligations could be constrained by existing debt agreements or market conditions. Additionally, conversion of the 2030 Notes or the 2031 Notes could dilute the ownership interest of our existing stockholders or may otherwise depress the price of our common stock. Any sales in the public market of our common stock issuable upon such conversion of our 2030 Notes or 2031 Notes could adversely affect prevailing market price.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

(a) There were no other unregistered sales of equity securities by the Company during the three months ended June 30, 2026, other than those reported in Current Reports on Form 8-K.

(c) The following table contains information regarding the Company’s repurchase of its common stock during the three months ended June 30, 2026:

Issuer Purchases of Equity Securities

	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Dollar Value of Shares that May Yet Be Purchased Under the Program (in thousands)[(2)]
April 1 - April 30, 2026	—	$ —	—	$ —
May 1 - May 31, 2026	—	$ —	—	$ —
June 1 - June 30, 2026[(1)]	228,859	$ 262.17	—	$ —
Total	228,859	$ 262.17	—	

(1) The Company used approximately $60.0 million of the net proceeds from the offering of the 2031 Notes, together with cash on hand, to repurchase 228,859 shares of its common stock at a price of $262.17 per share, which is equal to the last reported price per share of common stock as of the date of pricing of the 2031 Notes, from certain purchasers of the 2031 Notes in privately negotiated transactions effected through one of the initial purchasers or an affiliate thereof concurrently with the pricing of the 2031 Notes.

(2) In April 2023, the Board approved the Repurchase Program authorizing, but not requiring, the repurchase of up to $50.0 million of the Company’s common stock from time to time. The Repurchase Program expired in April 2026.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Rule 10b5-1 Trading Arrangements

From time to time, our officers (as defined in Rule 16a-1(f) of the Exchange Act) and directors may enter into Rule 10b5-1 or non-Rule 10b5-1 trading arrangements (as each such term is defined in Item 408 of Regulation S-K).

During the three months ended June 30, 2026, none of our directors or officers adopted, terminated or materially modified a plan for the purchase or sale of our securities intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or a non-Rule 10b5-1 trading arrangement for the purchase or sale of our securities.

Item 6. Exhibits

Exhibit Number	Description of Exhibit	Incorporated by Reference				Filed Herewith
		Form	File Number	Date of Filing	Exhibit Number	
2.1*	Agreement and Plan of Merger, dated as of April 27, 2026, by and among XOMA Royalty Corporation, Ligand Pharmaceuticals Incorporated and Flex Merger Sub, Inc.	8-K	001-33093	4/27/2026	2.1	
2.2	Amendment No. 1 to the Agreement and Plan of Merger, dated as of May 16, 2026, by and among XOMA Royalty Corporation, XOMA Royalty Holdings Corporation, Ligand Pharmaceuticals Incorporated and Flex Merger Sub, Inc.	8-K	001-33093	5/18/2026	2.1	
4.1	Indenture, dated as of June 25, 2026, by and between Ligand Pharmaceuticals Incorporated and U.S. Bank National Association, as Trustee.	8-K	001-33093	6/25/2026	4.1	
4.2	Form of Global Note, representing Ligand Pharmaceuticals Incorporated's 0.00% Convertible Senior Notes due 2031 (included as Exhibit A to the Indenture filed as Exhibit 4.1).	8-K	001-33093	6/25/2026	4.1	
10.1*	Form of Support Agreement, dated as of April 27, 2026, entered into by Ligand Pharmaceuticals Incorporated, Flex Merger Sub, Inc. and the Supporting Stockholders.	8-K	001-33093	4/27/2026	10.1	
10.2	Consent and Fourth Amendment to Credit Agreement, dated as of June 22, 2026, to that certain Credit Agreement, dated as of October 12, 2023, by and among Ligand Pharmaceuticals Incorporated, certain of its subsidiaries, as Guarantors (as defined therein), the Lenders (as defined therein) party thereto, and Citibank, N.A., as Administrative Agent, Swingline Lender and L/C Issuer (each as defined therein), as amended by that certain First Amendment to Credit Agreement, dated as of July 8, 2024, that certain the Second Amendment to Credit Agreement dated as of August 11, 2025 and that certain Third Amendment to Credit Agreement, dated as of September 12, 2025.	8-K	001-33093	6/22/2026	10.1	
10.3	Form of Convertible Note Hedge Transaction Confirmation	8-K	001-33093	6/25/2026	10.1	
10.4	Form of Warrant Transaction Confirmation.	8-K	001-33093	6/25/2026	10.2	
10.5	Amended and Restated Credit Agreement, dated July 14, 2026, by and among the Company, certain of its subsidiaries, as guarantors, the lenders party thereto, and Citibank, N.A., as administrative agent, swingline lender and L/C issuer.					X
31.1	Certification by Principal Executive Officer, Pursuant to Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification by Principal Financial Officer, Pursuant to Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1**	Certifications by Principal Executive Officer and Principal Financial Officer, Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X

101	The following financial information from our Quarterly Report on Form 10-Q for the quarter ended June 30, 2026, formatted in iXBRL (inline eXtensible Business Reporting Language): (i) Consolidated Condensed Balance Sheets, (ii) Consolidated Condensed Statements of Operations, (iii) Consolidated Condensed Statement of Comprehensive Income, (iv) Consolidated Condensed Statements of Stockholders' Equity, (v) Consolidated Condensed Statements of Cash Flows, and (vi) the Notes to Consolidated Condensed Financial Statements.	X
104	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2026, formatted in Inline XBRL and contained in Exhibit 101.	X

* Certain exhibits and schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted exhibit or schedule to the SEC upon request; provided, however, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Exchange Act for any schedule so furnished.

** These certifications are deemed not filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, nor shall they be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act.

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:	August 7, 2026	By:	/s/ Octavio Espinoza
			Octavio Espinoza
			Chief Financial Officer
			Duly Authorized Officer and Principal Financial Officer

WARNING: The following actions may trigger Austrian stamp duty:

(a) this document is signed in Austria;

(b) the original, or a certified copy, of this document or of a Substitute Document (as defined below) (all such documents being "**Stamp Duty Sensitive Documents**") is brought into Austria (including by way of fax and email); and/or

(c) a Substitute Document is created in Austria.

"**Substitute Document**" means any signed document in writing by a party to this document (including further agreements, letters, faxes or email) referencing a Stamp Duty Sensitive Document (including other Substitute Documents) or the transactions documented in such Stamp Duty Sensitive Document.

Contact the legal department / legal advisors prior to making a reference to this Agreement or the transactions documented therein (including fax or email and even if the written reference is only for personal purposes and not directed to third parties) and obtain confirmation, that no stamp duty will be incurred by such action.

AMENDED AND RESTATED

CREDIT AGREEMENT

Dated as of July 14, 2026

among

LIGAND PHARMACEUTICALS INCORPORATED,
as the Borrower,

THE SUBSIDIARIES OF THE BORROWER PARTY HERETO,
as the Guarantors,

CITIBANK, N.A.,
as Administrative Agent, Swingline Lender and
L/C Issuer,

and

THE LENDERS PARTY HERETO

****

CITIBANK, N.A.,
as Sole Lead Arranger and Sole Bookrunner

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AMENDED AND RESTATED
CREDIT AGREEMENT

This **AMENDED AND RESTATED CREDIT AGREEMENT** is entered into as of July 14, 2026, among **LIGAND PHARMACEUTICALS INCORPORATED**, a Delaware corporation (the "Borrower"), the Guarantors (defined herein), the Lenders (defined herein), and **CITIBANK, N.A.**, as Administrative Agent, Swingline Lender and L/C Issuer.

PRELIMINARY STATEMENTS:

WHEREAS, the Loan Parties, the Administrative Agent, the Swingline Lender, the L/C Issuer and certain of the Lenders entered into that certain Credit Agreement dated as of October 12, 2023 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement").

WHEREAS, the Loan Parties, the Administrative Agent, the Lenders, the Swingline Lender and the L/C Issuer have agreed to make loans and other financial accommodations to the Loan Parties and amend and restate the Existing Credit Agreement on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, 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:

"*Acquisition*" means the acquisition, whether through a single transaction or a series of related transactions, of (a) a majority of the Voting Stock or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

"*Additional Secured Obligations*" means (a) all obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements, (b) all obligations arising under bilateral letters of credit issued by any Lender or any Affiliate of a Lender, and (c) all documented costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of outside counsel, 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, expenses and fees 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, expenses and fees are allowed claims in such proceeding; provided that Additional Secured Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

"*Adjusted Covenant Period*" has the meaning specified in Section 7.11(b).

"*Administrative Agent*" means Citibank in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"*Administrative Agent's Office*" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 1.01(a), or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"*Administrative Questionnaire*" means an administrative questionnaire in a form supplied by the Administrative Agent.

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

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

"*Aggregate Commitments*" means the Commitments of all the Lenders.

"*Agreement*" means this Credit Agreement, including all schedules, exhibits and annexes hereto.

"*All-In Yield*" means, as to any Indebtedness, the effective all-in yield applicable thereto as reasonably determined by the Borrower and the Administrative Agent in a manner consistent with generally accepted financial practices, taking into account: (a) interest rate margins, (b) original issue discount ("OID") and upfront or similar fees (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the lenders under, or holders of, such Indebtedness in the initial primary syndication thereof (with OID and upfront fees being equated to interest based on assumed four-year life to maturity (or, if less, the stated weighted average life to maturity at the time of its incurrence of the applicable Indebtedness)), and (c) any interest rate floor, but excluding (i) any arrangement, commitment, structuring, agency or underwriting fees that are not paid to or shared with all relevant lenders generally in connection with the commitment or syndication of such Indebtedness, (ii) any ticking, unused line or similar fees or (iii) any other fee that is not paid directly by the Borrower generally to all relevant lenders ratably in the primary syndication of such Indebtedness; provided that (A) to the extent that any interest rate specified for such Indebtedness that is subject to a floor (in each case, without giving effect to any such floor on the date on which the All-In Yield is being calculated) is less than such floor, the amount of such difference will be deemed added to the interest rate margin applicable to such Indebtedness for purposes of calculating the All-In Yield and (B) to the extent that any interest rate specified for such Indebtedness that is subject to a floor (in each case, without giving effect to any such floor on the date on which the All-In Yield is being calculated) is equal to or greater than such floor, the floor will be disregarded in calculating the All-In Yield.

"APEIRON" means APEIRON Biologics GmbH, an Austrian limited liability company (*Gesellschaft mit beschränkter Haftung*) registered with the Austrian companies register under the number FN 242223 k and with the registered address Campus-Vienna-Biocenter 5, 1030 Vienna, Austria.

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

"*Applicable Percentage*" means, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender's Revolving Commitment at such time, subject to adjustment as provided in Section 2.15. If the Commitment of all of the Revolving Lenders to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender in respect of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments and to any Lender's status as a Defaulting Lender at the time of determination. The Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule

1.01(b) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto or in any documentation executed by such Lender pursuant to Section 2.16, as applicable.

"*Applicable Rate*" means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Total Net Leverage Ratio), it being understood that the Applicable Rate for (a) Revolving Loans that are Base Rate Loans shall be the percentage set forth under the column "Base Rate", (b) Revolving Loans that are Term SOFR Loans shall be the percentage set forth under the column "Term SOFR & Letter of Credit Fee", (c) the Letter of Credit Fee shall be the percentage set forth under the column "Term SOFR & Letter of Credit Fee", and (d) the Commitment Fee shall be the percentage set forth under the column "Commitment Fee":

Level	Consolidated Total Net Leverage Ratio	Commitment Fee	Term SOFR and Letter of Credit Fee	Base Rate
Level 1	≤ 1.00 to 1.00	0.300%	1.75%	0.75%
Level 2	> 1.00 to 1.00 but ≤ 2.00 to 1.00	0.350%	2.00%	1.00%
Level 3	> 2.00 to 1.00 but ≤ 2.50 to 1.00	0.400%	2.25%	1.25%
Level 4	> 2.50 to 1.00	0.450%	2.50%	1.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Total Net Leverage Ratio shall become effective as of the third (3rd) Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); provided that if a Compliance Certificate is not delivered when due in accordance with Section 6.02(b), then Pricing Level 4 shall apply as of the third (3rd) Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the third (3rd) Business Day following the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, (i) the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b) and (ii) the initial Applicable Rate shall be set at Pricing Level 4 until the third (3rd) Business Day immediately following the date a Compliance Certificate is delivered to the Administrative Agent pursuant to Section 6.02(b) for the first full fiscal quarter to occur following the Closing Date. Any adjustment in the Applicable Rate shall be applicable to all Credit Extensions then existing or subsequently made or issued.

The Applicable Rate set forth above shall be increased as, and to the extent, required by Section 2.16.

"*Appropriate Lender*" means, at any time, (a) a Revolving Lender, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03, the Revolving Lenders and (c) with respect to the Swingline Sublimit, (i) the Swingline Lender and (ii) if any Swingline Loans are outstanding pursuant to Section 2.04(a), the Revolving Lenders.

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

"*Arranger*" means Citibank, in its capacity as sole lead arranger and sole bookrunner.

"*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 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B or any other form (including an electronic documentation form generated by use of an electronic platform) approved by the Administrative Agent.

"*Attributable Indebtedness*" means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (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 or other agreement or instrument were accounted for as a Capitalized Lease, (c) all Synthetic Debt of such Person, and (d) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

"*Audited Financial Statements*" means the audited Consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2023, December 31, 2024, and December 31, 2025, and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Austrian Capital Maintenance Rules" has the meaning specified in Section 10.12(a).

"Austrian Guarantor" has the meaning specified in Section 10.12(a).

"*Availability Period*" means the period from and including the Closing Date to the earliest of (a) the Revolving Credit Termination Date for the Revolving Facility, (b) the date of termination of the Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the Commitment of each Revolving Lender to make Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"*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, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"*Base Rate*" means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate *plus* 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Citibank as its "prime rate," and (c) Term SOFR with an Interest Period of one month *plus* 1.00%, subject to the interest rate floors set forth therein; provided that if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The "prime rate" is a rate set by Citibank based upon various factors including Citibank'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 Citibank 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 Revolving Loan that bears interest based on the Base Rate.

"*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.

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

"*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.

"*Borrower*" has the meaning specified in the introductory paragraph hereto.

"*Borrower Materials*" has the meaning specified in Section 6.02(p).

"*Borrowing*" means a Revolving Borrowing or a Swingline Borrowing, as the context may require.

"*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 Administrative Agent's Office is located.

"*Capital Expenditures*" means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

"*Capitalized Lease*" means any lease that has been or is required to be, in accordance with GAAP, recorded, classified and accounted for as a capitalized lease or financing lease.

"*Cash Collateral*" shall have a meaning correlative to the defined term "Cash Collateralize" and shall include the proceeds of such Cash Collateral and other credit support.

"*Cash Collateralize*" means to deposit in a Controlled Account or pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or Swingline Lender (as applicable) or the Lenders, as Collateral for L/C Obligations, the Obligations in respect of Swingline Loans, or obligations of the Revolving Lenders to fund participations in respect of L/C Obligations or Swingline Loans (as the context may require), (a) cash or deposit account balances, (b) backstop letters of credit entered into on terms, from issuers and in amounts satisfactory to the Administrative Agent and the applicable L/C Issuer, or (c) if the Administrative Agent and the applicable L/C Issuer or Swingline Lender shall agree, in their sole discretion, other credit support, in each case, in Dollars and pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer or the Swingline Lender (as applicable).

"*Cash Equivalents*" means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than three hundred sixty (360) days from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States, 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, 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 (c) 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 ninety (90) days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States 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 one hundred eighty (180) days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.

"*Cash Management Agreement*" means any agreement that is not prohibited by the terms hereof to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"*Cash Management Bank*" means any Person in its capacity as a party to a Cash Management Agreement that, (a) at the time it enters into a Cash Management Agreement with a Loan Party or any Subsidiary, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement with a Loan Party or any Subsidiary, in each case in its capacity as a party to such Cash Management Agreement (even if such Person ceases to be a Lender or such Person's Affiliate ceased to be a Lender); provided that for any of the foregoing to be included as a "Secured Cash Management Agreement" on any date of determination by the Administrative Agent, the applicable Cash Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent (with a copy of such written notice sent by email to secured.designationnotice@citi.com) prior to such date of determination.

"*CFC*" means a Person that is a controlled foreign corporation under Section 957 of the Code in which the Borrower or any Loan Party is a United States shareholder within the meaning of Section 951(b) of the Code.

"*Change in Law*" means the occurrence, after the Closing Date, 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, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"*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) 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 40% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such "person" or "group" has the right to acquire pursuant to any option right); or

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower 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 nominated, appointed or approved by 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 (iii) whose election or nomination to that board or other equivalent governing body was nominated, appointed or approved by 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

(c) a "Change of Control" (or equivalent term) as defined in any Convertible Note Indenture has occurred.

"*Citibank*" means Citibank, N.A. and its successors.

"*Closing Date*" means the date hereof.

"*Closing Date Joinder Agreement*" has the meaning specified in Section 4.01(a).

"Closing Date Merger" means the merger of Closing Date Merger Sub with and into Closing Date Merger HoldCo and following such merger, the separate corporate existence of Closing Date Merger Sub shall cease and Closing Date Merger HoldCo shall continue as the surviving corporation in such merger and a wholly-owned Subsidiary of the Borrower pursuant to the Closing Date Merger Documents.

"Closing Date Merger Agreement" means that certain Agreement and Plan of Merger, dated as of April 27, 2026, among the Borrower, the Closing Date Merger Sub, and the Closing Date Merger Target (as amended by that certain Amendment No. 1 to Agreement and Plan of Merger, dated as of May 16, 2026, by and among the Borrower, the Closing Date Merger Sub, the Closing Date Merger Target and Closing Date Merger HoldCo), together with all exhibits thereto and all schedules delivered in connection therewith, and as may be further amended and restated from time to time.

"Closing Date Merger Documents" means the Closing Date Merger Agreement and all material agreements, and instruments executed and delivered by the Borrower or any other Loan Parties pursuant thereto or in connection therewith.

"Closing Date Merger HoldCo" means XOMA Royalty Holdings Corporation, a Nevada corporation.

"Closing Date Merger Sub" means Flex Merger Sub, Inc., a Nevada corporation.

"Closing Date Merger Target" means XOMA Royalty Corporation, a Nevada corporation.

"*CME*" means CME Group Benchmark Administration Limited.

"*Code*" means the Internal Revenue Code of 1986.

"*Collateral*" means all of the "Collateral" referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

"*Collateral Documents*" means, collectively, the Security Agreement, the Qualifying Control Agreements, each of the Existing Austrian Collateral Documents, each Joinder Agreement, each of the collateral assignments, security agreements, pledge agreements, account control agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.14, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

"*Commitment*" means a Revolving Commitment.

"*Commodity Exchange Act*" means the Commodity Exchange Act (7 U.S.C. § 1 *et seq*.), as amended from time to time, and any successor statute.

"*Communication*" has the meaning specified in Section 11.18.

"Competitor" means any Person that is a bona fide direct competitor of the Borrower, any other Loan Party or their Subsidiaries in the same industry or a substantially similar industry which offers a substantially similar product or service as the Borrower, any other Loan Party or any of their Subsidiaries.

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

"*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 Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative 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 Administrative 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.

"*Consolidated*" means, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person (and its Subsidiaries), such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

"*Consolidated EBITDA*" means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP, (a) Consolidated Net Income for the most recently completed Measurement Period plus (b) the following to the extent deducted (other than clauses (iii) and (x) below) in calculating such Consolidated Net Income (and without duplication):

(i) Consolidated Interest Charges,

(ii) provision for taxes based on income, profits or capital gains, including, without limitation, federal, state, local, foreign, franchise and similar taxes and foreign withholding, franchise and like income taxes, including tax settlements, penalties and interest related to such taxes or arising from any tax examinations,

(iii) the amount of "run rate" cost savings, operating expense reductions, other operating improvements and cost synergies (but not revenue related synergies) (collectively, *"Cost Saving Synergies"*) related to any Specified Transaction or the implementation of an operational initiative, operational change or cost reduction program after the Existing Closing Date that are projected by the Borrower in good faith to reasonably be expected to be realized from actions that have been taken within twelve (12) months after the consummation of such Specified Transaction, operational initiative, operational change or cost reduction program (calculated on a pro forma basis as though such Cost Saving Synergies had been realized on the first day of such period and as if such Cost Saving Synergies were realized during the entirety of such period), net of the amount of actual benefits realized during such period from such actions; provided that (A) such Cost Saving Synergies are reasonably identifiable, factually supportable, expected to have a continuing impact on the operations of Borrower and its Subsidiaries and have been determined by Borrower in good faith to be reasonably expected to be realized within 12 months following any such action, in each case, as set forth in reasonable detail on a certificate of a Responsible Officer of Borrower delivered to the Administrative Agent, (B) no Cost Saving Synergies shall be added back pursuant to this clause (iii) to the extent duplicative of any items otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise for such period and (C) the aggregate amount added back pursuant to this clause (iii) together with clauses (iv) and (xiii) below shall not exceed 10% of Consolidated EBITDA for any Measurement Period (prior to giving effect to the addbacks set forth in this clause (iii) and clauses (iv) and (xiii) below),

(iv) one-time non-recurring severance, retention, completion, recruiting, relocation and signing bonuses, stay bonuses in connection with any Specified Transaction or the implementation of an operational initiative, operational change or cost reduction program after the Existing Closing Date, any one-time expense relating to enhanced accounting and tax function (including state taxes) and other similar transaction costs; provided that (A) no amounts shall be added pursuant to this clause (iv) to the extent duplicative of any items otherwise added back to Consolidated EBITDA, whether through a pro forma adjustment or otherwise for such period, (B) such amounts shall only be added back to the extent paid within 12 months of the event giving rise to such obligation for payment, and (C) the aggregate amount added back pursuant to this clause (iv) together with clause (iii) above and clause (xiii) below shall not exceed 10% of Consolidated EBITDA for any Measurement Period (prior to giving effect to the addbacks set forth in this clause (iv), clause (iii) above and clause (xiii) below),

(v) depreciation and amortization expense,

(vi) non-cash charges and losses, including but not limited to stock compensation, warrant reevaluations and non-cash charges and losses in connection with finance leases (excluding any such non-cash charges or losses to the extent (A) constituting write-offs from receivables, (B) there were cash charges with respect to such charges and losses in past accounting periods or (C) there is a reasonable expectation that there will be cash charges with respect to such charges and losses in future accounting periods),

(vii) any non-cash losses (net of gains) associated with changes in foreign currency exchange rates;

(viii) adjustments pursuant to GAAP resulting from purchase accounting in relation to Investments not prohibited by this Agreement, or the amortization or write-off of any amounts thereof, net of Taxes, in each case, which does not represent a cash item in such period or any future period,

(ix) any non-cash losses (net of gains) related to non-operational hedging, including, without limitation, resulting from hedging transactions for (x) interest rate risks associated with this Agreement, or (y) Convertible Notes,

(x) to the extent actually received and not already included in Consolidated Net Income, proceeds of business interruption insurance,

(xi) costs and expenses incurred pursuant to any management equity plan, stock option plan, or other management employee benefit plan, to the extent such costs or expenses are either non-cash or are funded with net cash proceeds of the issuance of Equity Interests by Borrower or such Subsidiary or is funded with net cash proceeds contributed by the relevant Person as a capital contribution,

(xii) losses and expenses associated with the reevaluation of earnouts, milestones, contingent or deferred payments or other similar contingent obligations incurred in connection with Permitted Acquisitions or any other Investment not prohibited by this Agreement (including upfront, earnout or milestone payments),

(xiii) one-time non-recurring payments and expenses (including rationalization, legal, tax, structuring and other fees, costs and expenses and non-operating or non-recurring professional fees, costs and expenses related thereto), related to Acquisitions (other than the Closing Date Merger), Investments, Dispositions, issuances of Equity Interests and issuances, amendments, modifications, refinancings or repayments of Indebtedness (including, any such transaction undertaken but not completed and to the extent paid within 12 months of the effectiveness of such transaction (or the date such transaction fails to be completed, as the case may be)); provided that the aggregate amount added back pursuant to this clause (xiii) together with clauses (iii) and (iv) above shall not exceed 10% of Consolidated EBITDA for any Measurement Period (prior to giving effect to the addbacks set forth in this clause (xiii) and clauses (iii) and (iv) above),

(xiv) any non-recurring charges, costs, losses, fees and expenses directly incurred or paid directly as a result of discontinued, disposed, abandoned operations, product lines, divested joint ventures, divested investments or any sale or disposition of any asset of the Borrower or any of its Subsidiaries,

(xv) all transaction fees, charges and other amounts related to the Loan Documents and any amendment or other modification to the Loan Documents in each case to the extent paid within twelve (12) months of the Closing Date or the effectiveness of such amendment or other modification, including, for the avoidance of doubt, the "Loan Documents" as defined in the Existing Credit Agreement and the "Closing Date" as defined therein,

(xvi) one-time non-recurring payments and expenses (including rationalization, legal, tax, structuring and other fees, costs and expenses and non-operating or non-recurring professional fees, costs and expenses related thereto) related to the Closing Date Merger,

less (c) without duplication and to the extent reflected as a gain or otherwise included in the calculation of Consolidated Net Income for such period, non-cash gains (excluding any such non-cash gains to the extent (i) there were cash gains with respect to such gains in past accounting periods or (ii) there is a reasonable expectation that there will be cash gains with respect to such gains in future accounting periods).

"Consolidated Funded Indebtedness" means, as of any date of determination, for the Borrower and its Subsidiaries on a Consolidated basis, the sum of: (a) the outstanding principal amount of all Indebtedness, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all purchase money Indebtedness; (c) all drawn and unreimbursed obligations under issued and outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (d) all obligations (including, without limitation, earnout obligations and other similar contingent obligations, but with respect to earnout obligations and similar contingent obligations solely to the extent the payment thereof becomes a liability on the balance sheet of such Person in accordance with GAAP) 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 not past due for more than ninety (90) days after the date on which such trade account was created); (e) all Attributable Indebtedness in respect of Capitalized Leases, Synthetic Debt and Synthetic Lease Obligations (regardless of whether they are accounted for as indebtedness under GAAP); (f) all mandatory obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Revolving Credit Termination Date in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the applicable liquidation preference plus accrued and unpaid dividends; (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than the Borrower or any Subsidiary; and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary.

"*Consolidated Interest Charges*" means, for any Measurement Period, without duplication, the sum of (a) 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, (b) all interest paid or payable with respect to discontinued operations, (c) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, (d) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed)), (e) amortization of deferred financing fees, debt issuance costs, commissions (f) amortization of original issue discount resulting from the issuance of Indebtedness at less than par and (g) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances and costs of surety bonds in connection with financing activities.

"*Consolidated Net Income*" means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) unusual and infrequent gains and unusual and infrequent losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income (i) is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, or (ii) would be subject to any taxes payable on such dividends or distributions, but only to the extent of such taxes, (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso, (d) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or any of its Subsidiaries or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person's assets are acquired by the Borrower or any of its Subsidiaries, (e) the net income (or loss) of any Subsidiary that is not a wholly-owned Subsidiary of the Borrower to the extent such net income (or loss) is attributable to the minority interest in such Subsidiary) and (f) any gains or losses (less all fees and expenses chargeable thereto) attributable to any sales or dispositions of assets (including asset retirement costs) or of returned surplus assets, in each case, not in the ordinary course of business.

"*Consolidated Senior Secured Funded Indebtedness*" means, as of any date of determination, all Consolidated Funded Indebtedness at such time that is not subordinated in right of payment to the Secured Obligations (including, for the avoidance of doubt, Indebtedness outstanding under this Agreement) outstanding as of such date and which is secured by a Lien on any assets of Borrower or any of its Subsidiaries.

"*Consolidated Senior Secured Net Leverage Ratio*" means, as of any date of determination, the ratio of (a) Consolidated Senior Secured Funded Indebtedness as of such date, less Unrestricted Cash as of such date to (b) Consolidated EBITDA of the Borrower and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period.

"*Consolidated Total Assets*" means the aggregate amount of all current and long-term assets of a Person and its Subsidiaries, on a Consolidated basis.

"*Consolidated Total Net Leverage Ratio*" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date, less Unrestricted Cash as of such date to (b) Consolidated EBITDA of the Borrower and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period.

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

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

"*Controlled Account*" means each deposit account and securities account that is subject to a Qualifying Control Agreement.

"Convertible Indebtedness Documents" means, collectively, any Convertible Note Indenture and the Convertible Notes.

"Convertible Note Indenture" means any indenture or purchase agreement entered into by the Borrower in connection with Convertible Notes or a Permitted Convertible Note Refinancing.

"Convertible Notes" means, collectively, all notes issued by the Borrower after the Existing Closing Date pursuant to a Convertible Note Indenture.

"Corresponding Debt" has the meaning specified in Section 9.14(b).

"*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).

"*Credit Extension*" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"CVR Trust" has the meaning specified in the Closing Date Merger Agreement.

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

"*Default*" 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) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate *plus* the Applicable Rate for Revolving Loans that are Base Rate Loans *plus* two percent (2%), in each case, to the fullest extent permitted by Applicable Law.

"*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 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the L/C Issuer or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) 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 Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and 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 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer, the Swingline Lender and each other Lender promptly following such determination.

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

"Director's Liability" has the meaning specified in Section 10.12(b).

"*Disposition*" or "*Dispose*" means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) (and whether effected pursuant to a Division or otherwise) of any property by any Loan Party or Subsidiary (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.

"*Disqualified Lenders*" means, on any date (a) those Persons identified by the Borrower by written notice, from time to time, to the Administrative Agent as Competitors (which such notice shall specify such Person by exact legal name) not less than two (2) Business Days prior to such date and (b) banks, financial institutions, other institutional lenders and other Persons that are identified in writing by the Borrower to the Administrative Agent on or prior to the Closing Date; provided that (i) except to the extent separately identified pursuant to clause (b) above, Disqualified Lenders shall exclude any bona fide debt fund affiliates or investment vehicle of any such Competitor identified pursuant to clause (a) above that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business which is managed, sponsored or advised by any Person Controlling, Controlled by or under common Control with such Competitor or its Controlling owner and for which no personnel involved with the competitive activities of such Competitor or Controlling owner (x) makes any investment decisions for such debt fund or (y) has access to any confidential information (other than publicly available information) relating to the Borrower and its Subsidiaries, (ii) to the extent Persons are identified as Disqualified Lenders pursuant to clause (a) above in writing by the Borrower after the Closing Date, the inclusion of such Persons as Disqualified Lenders shall not retroactively apply to prior assignments or participations made in compliance with Section 11.06 and (iii) Disqualified Lenders shall exclude any Person that the Borrower has designated as no longer being a "Disqualified Lender" by written notice delivered to the Administrative Agent from time to time.

"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.

"Division Successor" means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

"*Dollar*" and "*$*" mean lawful money of the United States.

"*Domestic Subsidiary*" means any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia.

"*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 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.

"*Eligible Assignee*" means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

"*Environment*" means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

"*Environmental Laws*" means any and all federal, state, local, and foreign statutes, laws, regulations, governmental standards, ordinances, rules, judgments, court or governmental interpretations, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution or the protection of the Environment or public health (to the extent related to exposure to Hazardous Materials), including those related to Hazardous Materials or wastes, air emissions and discharges to waste or public systems.

"*Environmental Liability*" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the 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 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.

"*Environmental Permit*" means any permit, certification, registration, approval, identification number, license or other authorization required under any Environmental Law.

"*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; provided that Convertible Notes issued and permitted under Section 7.02(l) and any other convertible notes issued under Permitted Convertible Notes Refinancing shall not constitute Equity Interests.

"*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 Sections 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) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity 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 insolvent; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (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; (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 or; (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

"*Erroneous Payment*" has the meaning specified in Section 9.13(a).

"*Erroneous Payment Deficiency Assignment*" has the meaning specified in Section 9.13(d).

"*Erroneous Payment Impacted Class*" has the meaning specified in Section 9.13(d).

"*Erroneous Payment Return Deficiency*" has the meaning specified in Section 9.13(d).

"*Erroneous Payment Subrogation Rights*" has the meaning specified in Section 9.13(d).

"*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.

"*EU Borrower*" has the meaning specified in Section 3.06(c)(i).

"*EU Borrowing Request*" has the meaning specified in Section 3.06(c)(iii).

"*EU Funding Obligations*" has the meaning specified in Section 3.06(c)(ii).

"*EU Lender*" has the meaning specified in Section 3.06(c)(i).

"*EU Lender Provisions*" has the meaning specified in Section 3.06(c)(ii).

"*EU Notice*" has the meaning specified in Section 3.06(c)(i).

"*Event of Default*" has the meaning specified in Section 8.01.

"Excluded Accounts" has the meaning specified in Section 6.14(c).

"*Excluded Property*" means, with respect to any Loan Party, (a) any leased real property and any improvements at such locations, including, but not limited to, any solar panels, (b) any owned real property not constituting Material Real Property, (c) any owned real property which is located outside of the United States or any territory thereof, (d) unless reasonably requested by the Administrative Agent or the Required Lenders, any Intellectual Property for which a perfected Lien thereon is not effected either by filing of a UCC financing statement or by appropriate evidence of such Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office; (e) the Equity Interests of any Foreign Subsidiary that is a CFC of any Loan Party to the extent not required to be pledged to secure the Secured Obligations pursuant to the Collateral Documents, (f) [reserved], (g) motor vehicles, airplanes and other assets subject to certificates of title to the extent perfection of the security interest in such assets cannot be accomplished by the filing of a UCC financing statement (or equivalent), (h) any lease, license or other agreement or any property subject to a purchase money security interest, capital lease obligation or similar arrangements, in each case to the extent permitted under the Loan Documents (any of the foregoing, an "arrangement"), to the extent that pursuant to the terms thereof a grant of a security interest therein would violate or invalidate such lease, license or agreement, purchase money, capital lease or a similar arrangement or create a right of termination in favor of any other party thereto (other than the Borrower or any of its Subsidiaries) and such arrangement was not entered into in contemplation of this Agreement or the other Loan Documents, in each case, after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Law, but excluding the proceeds and receivables thereof, the assignment of which is expressly deemed effective under applicable Law notwithstanding such prohibition, (i) any lease, license, permit, property or agreement to the extent that a grant of a security interest therein is prohibited by Applicable Law (including restrictions in respect of margin stock and financial assistance, fraudulent conveyance, preference, thin capitalization or other similar laws or regulations), or any governmental licenses or state or local franchises, charters and authorizations to the extent that security interests in such licenses, franchises, charters or authorizations are prohibited or restricted by applicable Law or by the terms thereof, after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Law, but excluding the proceeds and receivables thereof, the assignment of which is expressly deemed effective under applicable Law, or requires governmental or third party consents required pursuant to applicable Law that have not been obtained, (j) margin stock, and to the extent not prohibited by the terms of such Person's Organization Documents (and to the extent such restriction or prohibition was not entered into in contemplation of this Agreement or the Loan Documents, and to the extent consent is not obtained) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Law, Equity Interests in any Person other than Subsidiaries of the Borrower, but excluding the proceeds and dividends on account thereof, the assignment of which is expressly deemed effective under Applicable Law notwithstanding such prohibition, (k) any property or assets to the extent that the creation or perfection of pledges of, or security interests in, such property or assets would reasonably be expected to result in material adverse tax consequences to any Loan Party or any of their Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent, (l) Equity Interests in Pelthos Therapeutics and RemainCo, but excluding the proceeds and dividends on account thereof, the assignment of which is expressly deemed effective under Applicable Law notwithstanding such prohibition, (m) any intent-to-use trademark application prior to the filing and acceptance of a "Statement of Use" or an "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of, or void, such intent-to-use trademark application, or any registration that may issue therefrom, under applicable federal law, (n) assets where the cost of creating or perfecting such pledges or security interests in such assets exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Administrative Agent in consultation with the Borrower, (o) Equity Interests issued by captive insurance subsidiaries, (p) the CVR Trust, (q) Equity Interests of not-for-profit Subsidiaries, and special purpose securitization vehicles (and similar entities) used for permitted securitization facilities, (r) Equity Interests of any direct or indirect Subsidiary of a direct or indirect Foreign Subsidiary of the Borrower that is not a Guarantor, (s) letter-of-credit rights except to the extent a security interest therein can be perfected by the filing of a UCC financing statement and (t) Excluded Accounts; provided, however, that Excluded Property shall not include any Proceeds, products, substitutions or replacements of any Excluded Property referred to in clauses (a) through (t) (unless such Proceeds, substitutions or replacements would independently constitute Excluded Property referred to in clauses (a) through (t)). Notwithstanding anything in the Loan Documents to the contrary, no actions in any non-U.S. jurisdiction shall be required in order to create or perfect any security interests in any assets located or titled outside of the U.S. (it being understood that there shall be no guarantees, security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction) with respect to Foreign Subsidiaries that are Immaterial Subsidiaries unless the Loan Parties shall reasonably agree.

"*Excluded Subsidiary*" means, collectively, (a) any Immaterial Subsidiary, (b) any Subsidiary solely to the extent (and only for so long as such prohibition, restriction of requirement is in effect) such Subsidiary (x) is prohibited or restricted by applicable law or by its Organizational Documents existing on the Closing Date (or, in the case of any Subsidiary acquired or formed after the Closing Date pursuant to a Permitted Acquisition, the Organizational Documents in existence at the time of such Permitted Acquisition or formation (including in any Indebtedness assumed in connection therewith)), and with respect to the Organizational Documents, so long as any such Organizational Documents were not entered into for the purpose of evading compliance with provisions of any Loan Document that would otherwise be applicable to such Subsidiary, (y) would require governmental (including regulatory) or third party consent, approval, license or authorization (it being understood there is no requirement to obtain such consent, approval, increase or authorization) to guarantee the Obligations or (z) could reasonably be expected to incur a material adverse tax or regulatory consequences (as reasonably determined by the Borrower in good faith) in respect of the application of the Loan Documents to such Subsidiary, (c) any Subsidiary that is a captive insurance company, (d) any Joint Venture (including, without limitation, Pelthos Therapeutics, RemainCo and CVR Trust) and Subsidiaries thereof, and (e) any other Subsidiary with respect to which, in the reasonable judgment of the Borrower and the Administrative Agent in its reasonable discretion, the burden or cost of compliance with provisions of any Loan Document that would otherwise be applicable to such Subsidiary would be excessive in view of the benefits to be obtained by the Lenders therefrom. Notwithstanding anything to the contrary contained herein, in no event shall any Excluded Subsidiary own or otherwise have an exclusive license or any other exclusive rights to use (or owns or controls the Equity Interests of any Person that owns, exclusively licenses or otherwise has other exclusive rights to use) any Intellectual Property or other assets, in each case, material to the operation of the Borrower and its Subsidiaries, taken as a whole.

"*Excluded Swap Obligation*" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading

Commission (or the application or official interpretation thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 10.11 and any other "keepwell", support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or grant by such Guarantor of a Lien, 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 Lien is or becomes excluded in accordance with the first sentence of this definition.

"*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 Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, 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(f) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"*Existing Austrian Collateral Documents*" means those Collateral Documents listed on Schedule 11.24.

"*Existing Austrian Guarantee Agreement*" means that certain Austrian law guarantee agreement dated December 20, 2024 made by APEIRON in favor of the Secured Parties.

"*Existing Austrian Loan Documents*" means, collectively, the Existing Austrian Collateral Documents and the Existing Austrian Guarantee Agreement.

"*Existing Closing Date*" means October 12, 2023.

"*Existing Closing Date Merger Credit Agreement*" means that certain Loan Agreement, dated as of December 15, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the Closing Date), by and among XRL 1, LLC, a Delaware limited liability company, the lenders from time to time party thereto and Blue Owl Capital Corporation, as administrative agent.

"*Existing Credit Documents*" has the meaning specified in Section 11.23(b).

"*Existing Letters of Credit*" has the meaning specified in Section 11.23(b).

"*Existing Loans*" has the meaning specified in Section 11.23(b).

"*Existing Revolving Loans*" has the meaning specified in Section 11.23(b).

"*Existing Swingline Loan*" has the meaning specified in Section 11.23(b).

"*Facility Termination Date*" means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated, (b) all Obligations have been paid in full (other than contingent indemnification obligations), and (c) all Letters of Credit have terminated, cancelled or expired (other than Letters of Credit as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the L/C Issuer shall have been made).

"*FASB ASC*" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"*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) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, as of the date of this Agreement (or any amended or successor version described above) and any intergovernmental agreement (and related fiscal or regulatory legislation, or related official rules or practices) implementing the foregoing.

"FDA" means the United States Food and Drug Administration and any successor thereto.

"FDA Laws" means Laws regulating drugs and pharmaceutical Products and product development, including the United States Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq., the Prescription Drug Marketing Act of 1987, the federal Controlled Substances Act, 21 U.S.C. §801 et seq., and policies and guidances issued by the FDA as amended from time to time.

"FDA Permits" has the meaning set forth in Section 5.26(a).

"*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 zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"*Fee Letter*" means, collectively, (i) that certain letter agreement, dated as of June 7, 2023, among the Borrower, the Administrative Agent and the Arranger, (ii) that certain letter agreement, dated as July 8, 2024, among the Borrower, the Administrative Agent and the Arranger, (iii) that certain letter agreement, dated as of September 12, 2025, among the Borrower, the Administrative Agent and the Arranger, and (iv) that certain letter agreement, dated as of the Closing Date, among the Borrower, the Administrative Agent and the Arranger.

"Flood Insurance Laws" collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 and (v) the Biggert –Waters Flood Insurance Reform Act of 2012, as now or hereafter in effect or any successor statute thereto, in each case, together with all statutory and regulatory provisions consolidating, amending, replacing, supplementing, implementing or interpreting any of the foregoing, as amended or modified from time to time.

"*Foreign Lender*" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"*Foreign Subsidiary*" means any Subsidiary that is not a Domestic Subsidiary.

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

"*Fronting Exposure*" means, at any time there is a Defaulting Lender that is a Revolving Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender's Applicable Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof.

"*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 activities.

"*Funding Indemnity Letter*" means a funding indemnity letter, substantially in the form of Exhibit N.

"*GAAP*" means generally accepted accounting principles in the United States set forth from time to time 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 agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

"Good Clinical Practices" means the FDA's standards for the design, conduct, performance, monitoring, auditing, recording, analysis, and reporting of clinical trials contained in 21 C.F.R. Parts 50, 54, 56 and 312 and other applicable regulations promulgated under FDA Laws and the Public Health Services Act (42 U.S.C. §§201 et. seq).

"*Governmental Authority*" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, 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 of the kind described in clauses (a) through (g) of the definition thereof 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 of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into after the Closing Date, in each case, in connection with any acquisition, disposition or other transaction permitted under this Agreement (other than such obligations with respect to Indebtedness). 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.

"*Guaranteed Obligations*" has the meaning set forth in Section 10.01.

"*Guarantors*" means, collectively, (a) the Subsidiaries of the Borrower as are or may from time to time become parties to this Agreement pursuant to Section 6.13, and (b) with respect to Additional Secured Obligations owing by any Loan Party or any of its Subsidiaries and any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.11) under the Guaranty, the Borrower.

"*Guaranty*" means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Secured Parties, together with the Existing Austrian Guarantee Agreement and each other guaranty delivered pursuant to Section 6.13.

"*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, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

"Healthcare Laws" means, collectively, all local, state, federal, national, and supranational, and foreign healthcare laws, manual provisions, policies and administrative guidance relating to the regulation of the Loan Parties including, without limitation, FDA Laws), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Anti-Inducement Law (42 U.S.C. § 1320a- 7a(a)(5)), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (§§ 13400-13424 of the American Recovery and Reinvestment Act of 2009), the Stark Law (42 U.S.C. § 1395nn), the exclusion laws (42 U.S.C. § 1320a-7), Social Security Act § 1128 (42 U.S.C. § 1320a-7), Medicare (Title XVIII of the Social Security Act), and Medicaid (Title XIX of the Social Security Act), comparable state Laws, and all regulations promulgated pursuant to such Laws.

"*Hedge Bank*" means any Person in its capacity as a party to a Swap Contract that, (a) at the time it enters into a Swap Contract not prohibited under Articles VI or VII, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Swap Contract not prohibited under Articles VI or VII, in each case, in its capacity as a party to such Swap Contract (even if such Person ceases to be a Lender or such Person's Affiliate ceased to be a Lender); provided that in the case of a Secured Hedge Agreement with a Person who is no longer a Lender (or Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Secured Hedge Agreement and provided further that for any of the foregoing to be included as a "Secured Hedge Agreement" on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent (with a copy of such written notice sent by email to secured.designationnotice@citi.com) prior to such date of determination.

"*Immaterial Subsidiary*" means any Subsidiary designated in writing by the Borrower to the Administrative Agent as an Immaterial Subsidiary that is not already a Guarantor and that does not, as of the last day of the most recently completed Measurement Period, have Consolidated Total Assets (without duplication of any intercompany assets) with a value in excess of 5.0% of the Consolidated Total Assets of the Borrower and its Subsidiaries and did not, as of the most recently completed Measurement Period, have consolidated revenues (excluding any intercompany revenues) exceeding 5.0% of the consolidated revenues of the Borrower and its Subsidiaries; provided that if (a) such Subsidiary shall have been designated in writing by the Borrower to the Administrative Agent as an Immaterial Subsidiary, and (b) if (i) the aggregate Consolidated Total Assets (without duplication of any intercompany assets) then owned by all Subsidiaries of the Borrower that would otherwise constitute Immaterial Subsidiaries (other than Subsidiaries that are Excluded Subsidiaries by virtue of any of clauses (b) through (e) of the definition of "Excluded Subsidiary") shall have a value in excess of 10.0% of the Consolidated Total Assets of the Borrower and its Subsidiaries as of the last day of such Measurement Period or (ii) the aggregate consolidated revenues (excluding any intercompany revenues) of all Subsidiaries of the Borrower that would otherwise constitute Immaterial Subsidiaries shall exceed 10.0% of the consolidated revenues of the Borrower and its Subsidiaries (other than Subsidiaries that are Excluded Subsidiaries by virtue of any of clauses (b) through (e) of the definition of "Excluded Subsidiary") for such Measurement Period, the Borrower shall re-designate one or more of such Subsidiaries to not be Immaterial Subsidiaries with the delivery of the Compliance Certificate for such fiscal quarter such that, with the exception of any Subsidiaries are Excluded Subsidiaries by virtue of any of clauses (b) through (e) of the definition of "Excluded Subsidiary", only those Subsidiaries as shall then have aggregate Consolidated Total Assets (without duplication of any intercompany assets) of less than 10.0% of the Consolidated Total Assets of the Borrower and its Subsidiaries and aggregate consolidated revenues (excluding any intercompany revenues) of less than 10.0% of the consolidated revenues of the Borrower and its Subsidiaries shall constitute Immaterial Subsidiaries.

"*Incremental Amendment*" has the meaning specified in Section 2.16(f).

"*Incremental Commitment*" has the meaning specified in Section 2.16(a).

"*Incremental Effective Date*" has the meaning specified in Section 2.16(d).

"*Incremental Revolving Commitment*" has the meaning specified in Section 2.16(a).

"*Incremental Term Loan*" means any term loan made pursuant to any Incremental Term Loan Commitments.

"*Incremental Term Loan Commitment*" has the meaning specified in Section 2.16(a).

"*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) all direct or contingent obligations of such Person arising under letters of credit, bankers' acceptances, bank guaranties, surety bonds and similar instruments;

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

(d) all obligations (including, without limitation, earnout obligations and other similar contingent obligations, but with respect to earnout obligations and similar contingent obligations solely to the extent the payment thereof becomes a liability on the balance sheet of such Person in accordance with GAAP) of such Person to pay the deferred purchase price of property or services (other than trade accounts and trade obligations payable in the ordinary course of business and not past due for more than ninety (90) days after the date on which such trade account or trade obligation was created);

(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 in respect of Capitalized Leases, Synthetic Lease Obligations and Synthetic Debt 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 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, (A) 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; (B) "Indebtedness" shall exclude (i) accrued expenses payable in the ordinary course of business, (ii) accruals for payroll and other liabilities accrued in the ordinary course of business, (iii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller and (iv) deferred or prepaid revenue; and (C) the amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (i) the aggregate unpaid principal amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

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

"*Indemnitee*" has the meaning specified in Section 11.04(b).

"*Information*" has the meaning specified in Section 11.07(a).

"*Intellectual Property*" has the meaning set forth in the Security Agreement.

"*Intercompany Debt*" has the meaning specified in Section 7.02(d).

"*Interest Payment Date*" means, (a) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the Revolving Credit Termination Date; provided that if any Interest Period for a Term SOFR Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or Swingline Loan, the last Business Day of each March, June, September and December and the Revolving Credit Termination 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 Borrower in its Loan Notice (in the case of each requested Interest Period, 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 immediately 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 Revolving Credit Termination Date.

"*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 (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guaranties Indebtedness of such other Person), or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any returns or distributions of capital or repayment of principal actually received in cash by such other Person with respect thereto (but only to the extent that the aggregate amount of all such returns, distributions and repayments with respect to such Investment does not exceed the principal amount of such Investment).

"*IRS*" means the United States Internal Revenue Service.

"*ISP*" means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

"*Issuer Documents*" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

"*Joinder Agreement*" means a joinder agreement substantially in the form of Exhibit D executed and delivered in accordance with the provisions of Section 6.13.

"*Joint Venture*" means any joint venture whose Equity Interests are owned directly by one or more Loan Party and such Loan Party or Loan Parties directly own and control fifty percent (50.0%) or less than fifty percent (50.0%) of the Equity Interests issued thereby. The Joint Ventures as of the Closing Date are set forth on Schedule 5.19(a).

"*Landlord Waiver*" means a landlord or warehouse waiver substantially in the form of Exhibit O or in such other form reasonably satisfactory to the Administrative Agent.

"*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.

"*L/C Advance*" means, with respect to each Revolving Lender, such Lender's funding of its participation in any L/C Disbursement in accordance with its Applicable Percentage.

"*L/C Commitment*" means the commitment of the L/C Issuer to issue Letters of Credit hereunder. The initial amount of the L/C Issuer's Letter of Credit Commitment is set forth on Schedule 2.03. The Letter of Credit Commitment of the L/C Issuer may be modified from time to time by agreement between the L/C Issuer and the Borrower, and notified to the Administrative Agent.

"*L/C Credit Extension*" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"*L/C Disbursement*" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing.

"*L/C Issuer*" means Citibank, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

"*L/C Obligations*" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts (including all L/C Disbursements). For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"*LCA Election*" has the meaning specified in Section 1.09.

"*LCA Test Date*" has the meaning specified in Section 1.09.

"*Lender*" means each of the Persons identified as a "Lender" on the signature pages hereto, each other Person that becomes a "Lender" in accordance with this Agreement and, their successors and assigns and, unless the context requires otherwise, includes the Swingline Lender.

"*Lender Party*" means collectively, the Lenders, the Swingline Lender and the L/C Issuer.

"*Lending Office*" means, as to the Administrative Agent, the L/C Issuer or any Lender, the office or offices of such Person described as such in such Person's Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Borrower and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

"*Letter of Credit*" means any standby letter of credit issued hereunder.

"*Letter of Credit Application*" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"*Letter of Credit Fee*" has the meaning specified in Section 2.03(l).

"*Letter of Credit Sublimit*" means, as of any date of determination, an amount equal to the lesser of (a) $10,000,000 and (b) the Revolving Facility. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Facility.

"*Lien*" means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), 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 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).

"*Limited Condition Acquisition*" means any Acquisition permitted under this Agreement that is not conditioned on the availability of, or on obtaining, third party financing.

"*Loan*" means an extension of credit by a Lender to the Borrower under Article II in the form of a Revolving Loan or a Swingline Loan.

"*Loan Documents*" means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) each Issuer Document, (g) each Joinder Agreement, (h) any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14, (i) each of the Existing Austrian Loan Documents, and (j) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement) and any amendments, modifications or supplements thereto or to any other Loan Document or waivers hereof or to any other Loan Document; provided that for purposes of Section 11.01, "Loan Documents" shall mean this Agreement, the Guaranty and the Collateral Documents.

"*Loan Notice*" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Term SOFR Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit E or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"*Loan Parties*" means, collectively, the Borrower and each Guarantor.

"*Marketable Securities*" means Investments in Equity Interests issued by any Person which (a) are publicly traded on a national exchange and (b) at any date, are, in conformity with GAAP, categorized as "Marketable Securities" on a consolidated balance sheet of the Borrower and its Subsidiaries at such date.

"*Master Agreement*" has the meaning set forth 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) or financial condition of the Borrower, individually, or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or 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 adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"*Material Contract*" means each contract, agreement, permit or license of the Borrower and its Subsidiaries as to which the breach, nonperformance, cancellation or failure to renew by any party thereto, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The Material Contracts as of the Closing Date are set forth on Schedule 5.20(h).

"*Material Permitted Acquisition*" means any Permitted Acquisition (other than the Closing Date Merger), or the last to occur of a series of Permitted Acquisitions consummated within a period of twelve consecutive months, if the aggregate consideration (including maximum potential total amount of all deferred payment obligations (including earn-outs, seller notes and similar obligations) and Indebtedness assumed or incurred) paid or to be paid in respect of such Permitted Acquisition (or, if applicable Permitted Acquisitions) exceeds $50,000,000 and the Borrower has designated such Permitted Acquisition (or, if applicable, Permitted Acquisitions) as a "Material Permitted Acquisition" by written notice to the Administrative Agent, together with a description of such Permitted Acquisition or series of Permitted Acquisitions, which shall include the name of the target (or targets) or a summary description of the assets to be acquired and shall confirm that the aggregate purchase consideration (including maximum potential total amount of all deferred payment obligations (including earn-outs, seller notes and similar obligations) and Indebtedness assumed or incurred) for such Permitted Acquisitions or series of Permitted Acquisitions exceeds $50,000,000. For the avoidance of doubt, once any Permitted Acquisition has been so designated as (or as a part of) a Material Permitted Acquisition, it may not be designated as (or as a part of) any other Material Permitted Acquisition.

"Material Real Property" means any real property located in the United States that is owned in fee (or similarly, under Applicable Law) by a Loan Party that has a fair market value (as determined in good faith by the Borrower) in excess of $7,500,000 (or such greater amount as the Administrative Agent may agree in its sole discretion).

"*Measurement Period*" means, as of any date of determination, the period of four (4) consecutive fiscal quarters ended on or immediately prior to such date for which financial statements of the Borrower and its Subsidiaries have been delivered to the Administrative Agent hereunder.

"*Minimum Collateral Amount*" means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their commercially reasonable discretion.

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

"Mortgaged Property" means any real property that is subject to a Mortgage.

"Mortgages" means the collective reference to each mortgage, deed of trust or other real property security document, encumbering any real property now or hereafter owned by any Loan Party, in each case, in form and substance reasonably satisfactory to the Administrative Agent and executed by such

Loan Party in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as any such document may be amended, restated, supplemented or otherwise modified from time to time.

"*Multiemployer Plan*" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) 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 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.

"*New Lender*" has the meaning specified in Section 2.16(c).

"*Non-Consenting Lender*" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders, in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

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

"*Note*" means a promissory note made by the Borrower in favor of a Revolving Lender evidencing Revolving Loans or Swingline Loans, as the case may be, made by such Revolving Lender, substantially in the form of Exhibit G.

"*Notifying Lender*" has the meaning specified in Section 3.06(c)(i).

"*Notice of Loan Prepayment*" means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit K or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

"*Obligations*" means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, or Letter of Credit (including any Erroneous Payment Subrogation Rights) and (b) all documented costs and expenses incurred in connection with enforcement and collection of the foregoing, including the reasonable and documented fees, charges and disbursements of outside counsel, 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, expenses and fees that accrue after the commencement by or against any Loan Party or any Subsidiary thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, expenses and fees are allowed claims in such proceeding; provided that, without limiting the foregoing, the Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

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

"*Organization Documents*" means, (a) with respect to any corporation, the charter or 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 or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (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 (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, 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 (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

“*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).

“*Outbound Investment Rules*” means the regulations administered and enforced, together with any related public guidance issued, by the United States Treasury Department under U.S. Executive Order 14105 of August 9, 2023, or any similar law or regulation, and as codified at 31 C.F.R. § 850.101 et seq.

“*Outstanding Amount*” means (a) with respect to Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Loans and Swingline Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Parallel Debt” has the meaning specified in Section 9.14(a).

“*Participant*” has the meaning specified in Section 11.06(d).

“*Participant Register*” has the meaning specified in Section 11.06(d).

“*Patriot Act*” has the meaning specified in Section 11.19.

“*Payment Recipient*” has the meaning specified in Section 9.13(a).

“*PBGC*” means the Pension Benefit Guaranty Corporation.

“Pelican Joint Venture” means Primordial Genetics, Inc., a California corporation (together with any successors thereto), which is a Joint Venture between Pfenex and the other equityholders of Primordial Genetics, Inc.

“Pelthos Therapeutics” means Pelthos Therapeutics Inc., a Nevada corporation.

“*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 Borrower or 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 (i) the Closing Date Merger, and (ii) each other Acquisition by a Loan Party (the Person or division, line of business or other business unit of the Person to be acquired in such Acquisition shall be referred to herein as the “*Target*”), in each case that is a type of business (or assets used in a type of business) permitted to be engaged in by the Borrower and its Subsidiaries pursuant to the terms of this Agreement, in each case so long as (which in the case of a Limited Condition Acquisition shall be subject to Section 1.09) (with respect to clause (ii)):

(a) no Default or Event of Default shall then exist or would exist after giving effect thereto;

(b) the Loan Parties shall demonstrate to the reasonable satisfaction of the Administrative Agent that, after giving effect to the Acquisition on a Pro Forma Basis, subject to the proviso of Section 7.11(b), (i) the Loan Parties are in Pro Forma Compliance with the financial covenants in Section 7.11 and (ii) the Consolidated Senior Secured Net Leverage Ratio shall be at least 0.25 to 1.0 less than the then applicable level set forth in Section 7.11(b), calculated using the same Measurement Period used to determine Pro Forma Compliance;

(c) the Administrative Agent, on behalf of the Secured Parties, shall have received (or shall receive in connection with the closing of such Acquisition), (A) a first priority perfected security interest in all property other than Excluded Property (subject to Permitted Liens) including, without limitation, Equity Interests) acquired with respect to the Target, if required under, and in accordance with, the terms of Section 6.14 and the Collateral Documents and (B) a Joinder Agreement, if required under, and in accordance with, the terms of Section 6.13 if the Target is a Person;

(d) the Administrative Agent and the Lenders shall have received not less than fifteen (15) days (or such shorter period as may be agreed to by the Administrative Agent in its sole discretion) prior to the consummation of any such Acquisition (i) a description of the material terms of such Acquisition, (ii) audited consolidated balance sheets and related consolidated statements of income, shareholder's equity and cash flows of the Target for the most recently completed fiscal year of the Target ended at least 150 days prior to the closing date of such Acquisition, (iii) unaudited consolidated balance sheets and related consolidated statements of income and cash flows of the Target for each interim fiscal quarter (including if available for the last fiscal quarter) ended (A) since the last audited financial statements of the Target and (B) at least 60 days prior to the closing date of such Acquisition, (iv) in respect of any Material Permitted Acquisition, Consolidated projected income statements of the Borrower and its Subsidiaries (giving effect to such Acquisition), and (v) a Permitted Acquisition Certificate, executed by a Responsible Officer of the Borrower certifying that such Permitted Acquisition complies with the requirements of this Agreement; and

(e) such Acquisition shall not be a "hostile" Acquisition and shall have been approved by the board of directors (or equivalent) and/or shareholders (or equivalent) of the applicable Loan Party and the Target.

"*Permitted Acquisition Certificate*" means a certificate substantially the form of Exhibit F or any other form approved by the Administrative Agent.

"*Permitted Bond Hedge Transaction*" means any bond hedge, call or capped call option (or substantively equivalent derivative transaction) relating to Borrower's common stock (or other securities or property following a merger event or other change of the common stock of Borrower) purchased by Borrower in connection with the issuance of any Permitted Convertible Indebtedness and settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower; provided, that the purchase price of any such Permitted Bond Hedge Transaction is made with, and the purchase price thereof less the proceeds received by Borrower from the sale of any substantially concurrent Permitted Warrant Transaction, shall not exceed, the net proceeds received by Borrower from the issuance of such Permitted Convertible Indebtedness and issued in connection with such Permitted Bond Hedge Transaction; provided further that the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by the Borrower in good faith).

"*Permitted Convertible Indebtedness*" means any Convertible Notes permitted hereunder and Permitted Convertible Note Refinancings.

"*Permitted Convertible Note Refinancing*" means Indebtedness constituting a refinancing or extension of the Convertible Notes that (a) does not have a maturity date prior to 91 days after the Revolving Credit Termination Date or require any payment of principal in respect thereof in any manner materially different from the repayment requirements set forth in the Convertible Notes, (b) does not require or permit any cash payment of interest in respect thereof at a rate in excess of the then prevailing market rate payable by a similarly situated corporate issuer issuing similar convertible indebtedness, (c) is not supported by guaranties that are more favorable than the guaranties supporting the Obligations, (d) does not require representations, warranties, covenants or events of default that are more restrictive, taken as a whole, than those set forth herein, (e) does not contain a cross-default to any Loan Document (other than the occurrence of an Event of Default under Sections 8.01(a), to the extent such Event of Default is not discharged, cured, rescinded or annulled within a period of thirty (30) days after notice of its occurrence) and (f) is unsecured.

"*Permitted Liens*" has the meaning set forth in Section 7.01.

"*Permitted Transfers*" means (a) Dispositions of inventory and equipment in the ordinary course of business (including, without limitation, Dispositions of inventory and equipment from one Subsidiary to another, which transactions shall be on an arms-length basis unless the transferor and the transferee are both Loan Parties); (b) Dispositions of property to the Borrower or any of its respective Subsidiaries; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party; (c) Dispositions of accounts receivable in connection with the collection or compromise thereof; (d) leases or subleases granted to others not interfering in any material respect with the business of the Borrower and its Subsidiaries; (e) the sale or disposition of Cash Equivalents for fair market value; (f) licensing and cross-licensing arrangements involving any technology or Intellectual Property of the Borrower or any Subsidiary in the ordinary course of business which does not materially restrict the ability of the Borrower or any Subsidiary to use such technology or Intellectual Property so licensed; (g) terminations or unwinds of Swap Contracts; (h) Dispositions of real estate assets and related assets in the ordinary course of business in connection with relocation activities for directors, officers, employees, members of management, managers or consultants of the Borrower, the Borrower and/or any Subsidiary; and (i) Dispositions made to comply with any order or any agency of the U.S. federal government, any state, authority or other regulatory body or any applicable Requirement of Law.

"*Permitted Warrant Transaction*" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to Borrower's common stock (or other securities or property following a merger event or other change of the common stock of Borrower) sold by Borrower substantially concurrently with any purchase by Borrower of a Permitted Bond Hedge Transaction and settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower; provided that the terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by the Borrower in good faith).

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

"*Pfenex*" means Pfenex Inc., a Delaware corporation.

"*Plan*" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained by the Borrower or any ERISA Affiliate for the benefit of any of its employees or any such Plan to which the 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(p).

"*Pledged Equity*" has the meaning specified in the Security Agreement.

"Products" means any product that is manufactured, distributed, marketed or sold, or is currently under preclinical or clinical development, as applicable.

"*Pro Forma Basis*" and "*Pro Forma Effect*" means, for any Disposition of all or substantially all of a division or a line of business or for any Acquisition, whether actual or proposed (each, a "Specified Transaction"), for purposes of determining compliance with a ratio, test or covenant or other calculations (including measurements of Consolidated EBITDA), each such Specified Transaction or proposed Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) shall be deemed to have occurred on and as of the first day of the relevant Measurement Period and subject to the following pro forma adjustments shall be made:

(a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period;

(b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period;

(c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period; and

(d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination) and shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period.

"*Pro Forma Compliance*" means, with respect to any transaction, that such transaction does not cause, create or result in a Default after giving Pro Forma Effect, based upon the results of operations for the most recently completed Measurement Period, to (a) such transaction and (b) all other transactions which are contemplated or required to be given Pro Forma Effect hereunder that have occurred on or after the first day of the relevant Measurement Period.

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

"*Public Lender*" has the meaning specified in Section 6.02(p).

"*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 11.21.

"*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.

"*Qualifying Control Agreement*" means an agreement, among a Loan Party, a depository institution or securities intermediary and the Administrative Agent, which agreement is in form and substance reasonably acceptable to the Administrative Agent and which provides the Administrative

Agent with "control" (as such term is used in Article 9 of the UCC) over the deposit account(s) or securities account(s) described therein.

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

"Refinancing" has the meaning specified in Section 4.01(r).

"*Register*" has the meaning specified in Section 11.06(c).

"*Regulation U*" means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

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

"*Release*" means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

"RemainCo" has the meaning specified in the Closing Date Merger Agreement.

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

"*Request for Credit Extension*" means (a) with respect to a Borrowing, conversion or continuation of Revolving Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swingline Loan, a Swingline Loan Notice.

"*Required Lenders*" means, at any time, Lenders having Total Revolving Exposures representing more than 50% of the Total Revolving Exposures of all Lenders; provided that if there are two or more Lenders, then Required Lenders shall be at least two Lenders (Lenders that are Affiliates of one another being considered as one Lender). The Total Revolving Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that, the amount of any participation in any Swingline Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swingline Lender or the L/C Issuer, as the case may be, in making such determination; provided further that, this definition is subject to Section 3.03.

"*Rescindable Amount*" has the meaning as defined in Section 2.12(b)(ii).

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

"*Resignation Effective Date*" has the meaning set forth in Section 9.06(a).

"*Responsible Officer*" means the chief executive officer, president, chief financial officer, treasurer or controller of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01(b), the secretary or any assistant secretary of a Loan Party. 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. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance reasonably satisfactory to the Administrative Agent.

“*Restricted Payment*” means (a) any dividend or other distribution, direct or indirect, on account of any shares or membership rights (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, (d) any payment with respect to any earnout obligation, seller notes or other similar obligations and (e) any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance sinking fund or similar payment with respect to, the Convertible Notes, Permitted Warrant Transactions, Permitted Bond Hedge Transactions, or any Permitted Convertible Note Refinancings.

“*Revolving Borrowing*” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01.

“*Revolving Commitment*” means, as to each Revolving Lender, its obligation to (a) make Revolving Loans to the Borrower pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swingline Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Revolving Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Commitment of all the Revolving Lenders on the Closing Date shall be $125,000,000.

“*Revolving Credit Termination Date*” means the earlier of (i) September 12, 2028 and (ii) the Springing Maturity Date; provided that if such date is not a Business Day, the Revolving Credit Termination Date shall be the next preceding Business Day.

“*Revolving Exposure*” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in L/C Obligations and Swingline Loans at such time.

“*Revolving Facility*” means, at any time, the aggregate amount of the Revolving Lenders’ Revolving Commitments at such time.

“*Revolving Lender*” means, at any time, (a) so long as any Revolving Commitment is in effect, any Lender that has a Revolving Commitment at such time or (b) if the Revolving Commitments have terminated or expired, any Lender that has a Revolving Loan or a participation in L/C Obligations or Swingline Loans at such time.

“*Revolving Loan*” has the meaning specified in Section 2.01.

“*S&P*” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

“*Sale and Leaseback Transaction*” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“*Sanction(s)*” means any sanction or other economic or restrictive measures enacted, 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.

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

"*Secured Cash Management Agreement*" means any Cash Management Agreement between the any Loan Party and any of its Subsidiaries and any Cash Management Bank.

"*Secured Hedge Agreement*" means any interest rate, currency, foreign exchange, or commodity Swap Contract required by or not prohibited under Article VI or VII between any Loan Party and any of its Subsidiaries and any Hedge Bank. Notwithstanding the foregoing and for the avoidance of doubt, no Permitted Bond Hedge Transaction or Permitted Warrant Transaction shall be considered a Secured Hedge Agreement.

"*Secured Obligations*" means all Obligations and all Additional Secured Obligations.

"*Secured Parties*" means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

"*Secured Party Designation Notice*" means a notice from any Lender or an Affiliate of a Lender substantially in the form of Exhibit H.

"*Securities Act*" means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

"*Security Agreement*" means the amended and restated security and pledge agreement, dated as of the Closing Date, executed in favor of the Administrative Agent by each of the Loan Parties.

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

"*Social Security Act*" means the Social Security Act of 1965.

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

"*Solvency Certificate*" means a solvency certificate in substantially in the form of Exhibit I.

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

"*Specified Intra-Group Loan Agreements*" has the meaning specified in Section 7.02(t).

"*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 10.11).

"*Specified Existing Pelican Products*" means, collectively Rylaze™ recombinant asparaginase, Pneumosil® pneumococcal polysaccharide conjugate vaccine, Vaxneuvance™ pneumococcal polysaccharide conjugate vaccine, Alvogen™ Teriparatide injection, MenFive®, JZP-431, SPRX-001, SPRX-002 and SPRX-003.

"Specified Transaction" has the meaning specified in the definition of "Pro Forma Basis".

"Springing Maturity Date" means the date that is ninety-one (91) days prior to the stated maturity of any of the Convertible Notes.

"*Subordinated Indebtedness*" means any unsecured Indebtedness owing to a Person that is subordinated in right of payment to the prior payment of the Secured Obligations pursuant to subordination provisions approved in writing by the Administrative Agent in its reasonable discretion, which Indebtedness shall have interest rates, payment terms, maturities, amortization schedules, covenants, defaults, remedies and other material terms that are acceptable in form and substance to the Administrative Agent and which subordination provisions shall contain restrictions on enforcement, restrictions on payment, subordination terms, and other material terms that are reasonably acceptable in form and substance to the Administrative Agent.

"*Subsidiary*" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is 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 the Borrower.

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

"*Supported QFC*" has the meaning specified in Section 11.21.

"*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, (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, (c) any Permitted Bond Hedge Transaction, and (d) any Permitted Warrant Transaction.

"*Swap Obligations*" means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"*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).

"*Swingline Borrowing*" means a borrowing of a Swingline Loan pursuant to Section 2.04.

"*Swingline Commitment*" means, as to the Swingline Lender, (a) the amount set forth opposite the Swingline Lender's name on Schedule 2.01 hereof or (b) if the Swingline Lender has entered into an Assignment and Assumption or has otherwise assumed a Swingline Commitment after the Closing Date, the amount set forth for such Lender as its Swingline Commitment in the Register maintained by the Administrative Agent pursuant to Section 11.06(c). The Swingline Commitment of the Swingline Lender may be modified from time to time by agreement between the Swingline Lender and the Borrower, and notified to the Administrative Agent.

"*Swingline Lender*" means Citibank, in its capacity as provider of Swingline Loans, or any successor swingline lender hereunder.

"*Swingline Loan*" has the meaning specified in Section 2.04(a).

"*Swingline Loan Notice*" means a notice of a Swingline Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit J or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"*Swingline Sublimit*" means an amount equal to the lesser of (a) $10,000,000 and (b) the Revolving Facility. The Swingline Sublimit is part of, and not in addition to, the Revolving Facility.

"*Synthetic Debt*" means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds but are not otherwise included in the definition of "Indebtedness" or as a liability on the Consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

"*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).

"*Target*" has the meaning set forth in the definition of "Permitted Acquisition."

"*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 SOFR*" means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate on the day (such day, the "Periodic Term SOFR Determination Day") that is two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 5:00 p.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month on the day (such day, the "Base Term SOFR Determination Day") that is two U.S. Government Securities Business Days prior to such day; provided that if the rate is not published prior to 5:00 p.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior to such determination date 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 Base Term SOFR Determination Day;

provided that if the Term SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, the Term SOFR shall be deemed zero for purposes of this Agreement.

"*Term SOFR Loan*" means a Loan that bears interest at a rate based on clause (a) of the definition of Term SOFR.

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

"*Threshold Amount*" means $25,000,000.

"*Total Revolving Exposure*" means, as to any Revolving Lender at any time, the unused Commitments and Revolving Exposure of such Revolving Lender at such time.

"*Total Revolving Outstandings*" means the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and L/C Obligations.

"*Trade Date*" has the meaning specified in Section 11.06(b)(i).

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

"*UCC*" means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "*UCC*" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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

"*Unreimbursed Amount*" has the meaning specified in Section 2.03(f).

"*Unrestricted Cash*" means, as of any date of determination, an aggregate amount not to exceed $75,000,000 of domestic cash and Cash Equivalents of the Borrower and its Domestic Subsidiaries that (i) do not appear (and are not required to appear) as "restricted" on the consolidated balance sheet of the Borrower or such Subsidiaries (unless such appearance is related to the Liens granted to the

Administrative Agent to secure the Secured Obligations), (ii) are not subject to any Lien in favor of any person other than (1) the Administrative Agent and (2) bankers' liens arising in connection with depository accounts or securities accounts entered into in the ordinary course of business and (iii) are otherwise generally available for use by the Borrower and its Subsidiaries, in each case, solely to the extent any such cash and Cash Equivalents are (or would be) included on the balance sheet of the Borrower or such Subsidiaries as of such date of determination.

"*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. Loan Party*" means any Loan Party that is organized under the laws of the United States, any state thereof or the District of Columbia.

"*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 11.21.

"*U.S. Tax Compliance Certificate*" has the meaning specified in Section 3.01(f)(ii)(B)(3).

"*Voting Stock*" means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right to so vote has been suspended by the happening of such contingency.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining scheduled installment, sinking fund, serial maturity or other required payments of principal, including payment at final scheduled maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness, in each case of clauses (a) and (b) without giving effect to the application of any prior prepayment to such scheduled installment, sinking fund, serial maturity or other required scheduled payment of principal.

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

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 the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (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 "hereto," "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, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, 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, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified, extended, restated, replaced 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 to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

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. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (i) Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470–20 on financial liabilities shall be disregarded, and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 "Financial Instruments" (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Borrower or any Subsidiary at "fair value", as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to any election by the Borrower to measure an item of Indebtedness using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification 825–10–25 (formerly known as FASB 159) or any similar accounting standard).

(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 Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the 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 Borrower shall provide to the Administrative 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. Notwithstanding anything to the contrary contained in the definition of "Capitalized Lease" or otherwise contained herein, any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) ("FAS 842"), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith; provided however that all financial statements delivered to the Administrative Agent and the Lenders shall be in accordance with GAAP as required hereunder, and at the Administrative Agent's request, the Borrower shall provide a schedule showing the modifications necessary to reconcile the adjustments made pursuant to this sentence with such financial statements.

(c) Pro Forma Treatment. Each Disposition of all or substantially all of a line of business, and each Acquisition, by the Borrower and its Subsidiaries that is consummated during any Measurement Period shall, for purposes of determining compliance with the financial covenants set forth in Section 7.11 and for purposes of determining the Applicable Rate, be given Pro Forma Effect as of the first day of such Measurement Period.

(d) Divisions. Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.04 Rounding.

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

1.05 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 Letter of Credit Amounts.

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided that with respect to any

Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07 **Interest Rates.**

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any 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 alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

1.08 **UCC Terms**.

Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

1.09 **Limited Condition Acquisitions**. In the event that any proposed Acquisition is a Limited Condition Acquisition and the Borrower wishes to test the conditions to such Acquisition, any Incremental Term Loans and any other Indebtedness (other than the Revolving Facility, including, without limitation, any Incremental Revolving Commitments), if any, being incurred substantially concurrently with such Limited Condition Acquisition that is to be used primarily to finance such Limited Condition Acquisition (and any related transaction costs and expenses incurred in connection with such Limited Condition Acquisition) in accordance with this Section 1.09, then, at the option of the Borrower, the following provisions shall apply:

(a) any condition to such Limited Condition Acquisition or such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing at the time of such Limited Condition Acquisition or the incurrence of such Indebtedness, shall be satisfied if (i) no Default or Event of Default shall have occurred and be continuing at the time of the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Limited Condition Acquisition (the *"LCA Test Date"*) and (ii) no Event of Default under any of Section 8.01(a), Section 8.01(f), or Section 8.01(g) shall have occurred and be continuing both immediately before and immediately after giving effect to such Limited Condition Acquisition and any Indebtedness incurred in connection therewith (including any such additional Indebtedness);

(b) any condition to such Limited Condition Acquisition or such Indebtedness that the representations and warranties in this Agreement and the other Loan Documents shall be true and correct at the time of consummation of such Limited Condition Acquisition or the incurrence of such Indebtedness shall be deemed satisfied if (i) the representations and warranties of the Borrower and each other Loan Party contained in Article II or Article V of this Agreement or any other Loan Document are true and correct in all material respects (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be true and correct in all respects) on and as of the LCA Test Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be true and correct in all respects) as of such earlier date, and except that, the representations and warranties contained in Sections 5.05(a) and (c), and Section 5.05(b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and Section 6.01(b), respectively and (ii) as of the date of consummation of such Limited Condition Acquisition, (x) the representations and warranties under the relevant definitive agreement governing such Limited Condition Acquisition as are material to the lenders providing such Indebtedness (if any) shall be true and correct, but only to the extent that the Borrower or its applicable Subsidiary has the right to terminate its obligations under such agreement or otherwise decline to close such Limited Condition Acquisition as a result of a breach of such representations and warranties or the failure of those representations and warranties to be true and correct and (y) certain of the representations and warranties in this Agreement and the other Loan Documents which are customary for similar "funds certain" financings and required by the lenders providing such Indebtedness (if any) shall be true and correct in all material respects (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be true and correct in all respects);

(c) any financial ratio test or condition to be tested in connection with such Limited Condition Acquisition and the availability of such Indebtedness will be tested as of the LCA Test Date, in each case, after giving effect to the relevant Limited Condition Acquisition and related incurrence of Indebtedness, on a Pro Forma Basis where applicable, and, for the avoidance of doubt, (i) such ratios and baskets shall not be tested at the time of consummation of such Limited Condition Acquisition and (ii) if any of such ratios are exceeded or conditions are not met following the LCA Test Date, but prior to the closing of such Limited Condition Acquisition, as a result of fluctuations in such ratio or amount (including due to fluctuations in Consolidated EBITDA of the Borrower or the Person subject to such Limited Condition Acquisition), at or prior to the consummation of the relevant transaction or action, such ratios will not be deemed to have been exceeded and such conditions will not be deemed unmet as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken;

(d) except as provided in the next sentence, in connection with any subsequent calculation of any ratio or basket on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated and the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated (i) on a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have been consummated and (ii) assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated. Notwithstanding the foregoing, any calculation of a ratio in connection with determining the Applicable Rate and determining whether or not the Borrower is in compliance with the financial covenants set forth in Section 7.11 shall, in each case be calculated assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated.

(e) The foregoing provisions shall apply with similar effect during the pendency of multiple Limited Condition Acquisitions such that each of the possible scenarios is separately tested.

Article II

COMMITMENTS AND CREDIT EXTENSIONS

2.01 Loans.

Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Borrower, in Dollars, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; provided that after giving effect to any Revolving Borrowing, (i) the Total Revolving Outstandings shall not exceed the Revolving Facility, and (ii) the Revolving Exposure of any Lender shall not exceed such Revolving Lender's Revolving Commitment. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Loans may be Base Rate Loans or Term SOFR Loans, as further provided herein; provided that any Revolving Borrowings made on the Closing Date or any of the three (3) Business Days following the Closing Date shall be made as Base Rate Loans unless the Borrower delivers a Funding Indemnity Letter not less than three (3) Business Days prior to the date of such Revolving Borrowing.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Notice of Borrowing. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Term SOFR Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone or (B) a Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three (3) U.S. Government Securities Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Term SOFR Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Except as provided in Sections 2.03(f) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Loan Notice and each telephonic notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Term SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or 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 Borrower requests a Borrowing of, conversion to, or continuation of Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Advances. Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction (or waiver pursuant to Section 11.01(a)) of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) wire transfer of such funds to the deposit account maintained by the Borrower with the Administrative Agent or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided that if, on the date the Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Disbursements outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Disbursements, and second, shall be made available to the Borrower as provided above.

(c) Term SOFR Loans. 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, no Loans may be requested as, converted to or continued as Term SOFR Loans without the consent of the Required Lenders.

(d) Interest Rates. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate.

(e) Interest Periods. After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than eight (8) Interest Periods in effect with respect to Loans.

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

(g) Conforming Changes. With respect to SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

2.03 Letters of Credit.

(a) The L/C Commitment. Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request that the L/C Issuer, in reliance on the agreements of the Revolving Lenders set forth in this Section 2.03, issue, at any time and from time to time during the Availability Period, Letters of Credit for its own account or the account of any of its Subsidiaries in such form as is acceptable to the Administrative Agent and the L/C Issuer in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Revolving Commitments.

(b) Notice of Issuance, Amendment, Extension, Reinstatement or Renewal.

(i) To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, or reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the L/C Issuer) to the L/C Issuer and to the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with clause (d) of this Section 2.03), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the L/C Issuer, the Borrower also shall submit a letter of credit application and reimbursement agreement on the L/C Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application and reimbursement agreement or other agreement submitted by the Borrower to, or entered into by the Borrower with, the L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Limitations on Amounts, Issuance and Amendment. A Letter of Credit shall be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (w) the aggregate amount of the outstanding Letters of Credit issued by the L/C Issuer shall not exceed its L/C Commitment, (x) the aggregate L/C Obligations shall not exceed the L/C Sublimit, (y) the Revolving Exposure of any Lender shall not exceed its Revolving Commitment and (z) the Total Revolving Exposure shall not exceed the total Revolving Commitments.

(i) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than $500,000;

(D) any Revolving Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(ii) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(d) Expiration Date. Each Letter of Credit shall have a stated expiration date no later than the earlier of (ix) the date twelve (12) months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, twelve months after the then-current expiration date of such Letter of Credit) and (x) the date that is five (5) Business Days prior to the Revolving Credit Termination Date; provided that upon the Borrower's request, any such Letter of Credit which is issued in the final year prior to the Revolving Credit Termination Date may have an expiration date no later than one (1) year after the Revolving Credit Termination Date if the Borrower deposits into the Collateral Account an amount in cash equal to 103% of such L/C Obligations as of such date or if such Letter of Credit is covered by a standby letter of credit five (5) Business Days prior to the Revolving Credit Termination Date.

(e) Participations.

(i) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the L/C Issuer or the Lenders, the L/C Issuer hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the L/C Issuer, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (e) in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments.

(ii) In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for account of the L/C Issuer, such Lender's Applicable Percentage of each L/C Disbursement made by the L/C Issuer not later than 1:00 p.m. on the Business Day specified in the notice provided by the Administrative Agent to the Revolving Lenders pursuant to Section 2.03(f) until such L/C Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason, including after the Revolving Credit Termination Date. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.02 with respect to Loans made by such Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders pursuant to this Section 2.03), and the Administrative Agent shall promptly pay to the L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.03(f), the Administrative Agent shall distribute such payment to the L/C Issuer or, to the extent that the Revolving Lenders have made payments pursuant to this clause (e) to reimburse the L/C Issuer, then to such Lenders and the L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this clause (e) to reimburse the L/C Issuer for any L/C Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such L/C Disbursement.

(iii) Each Revolving Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such

Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to the operation of Section 2.16, as a result of an assignment in accordance with Section 11.06 or otherwise pursuant to this Agreement.

(iv) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(e), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the *greater of* the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (e)(iv) shall be conclusive absent manifest error.

(f) Reimbursement. If the L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall reimburse the L/C Issuer in respect of such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 12:00 noon on (i) the Business Day that the Borrower receives notice of such L/C Disbursement, if such notice is received prior to 10:00 a.m. or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time, provided that, if such L/C Disbursement is not less than $1,000,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.02 or Section 2.04 that such payment be financed with a Borrowing of Base Rate Loans or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Borrowing of Base Rate Loans or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof (the "*Unreimbursed Amount*") and such Lender's Applicable Percentage thereof. Promptly upon receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the Unreimbursed Amount pursuant to Section 2.03(e)(ii), subject to the amount of the unutilized portion of the aggregate Revolving Commitments. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(f) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(g) Obligations Absolute. The Borrower's obligation to reimburse L/C Disbursements as provided in clause (f) of this Section 2.03 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit required that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC or the ISP, as applicable;

(vii) payment by the L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit; or

(viii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.

(h) Examination. The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(i) Liability. None of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the L/C Issuer or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the L/C Issuer; provided that the foregoing shall not be construed to excuse the L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the L/C Issuer (as finally determined by a court of competent jurisdiction), the L/C Issuer shall be deemed to have exercised care in each such determination, and that:

(i) the L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation;

(ii) the L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;

(iii) the L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iv) this sentence shall establish the standard of care to be exercised by the L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by Applicable Law, any standard of care inconsistent with the foregoing).

(j) Without limiting the foregoing, none of the Administrative Agent, the Lenders, the L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of (A) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (B) the L/C Issuer declining to take-up documents and make payment, (C) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor, (D) following a Borrower's waiver of discrepancies with respect to such documents or request for honor of such documents or (E) the L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to the L/C Issuer.

(k) Applicability of ISP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued by it, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(l) Benefits. The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (i) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the L/C Issuer.

(m) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "*Letter of Credit Fee*") for each Letter of Credit equal to the Applicable Rate *times* the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any standby Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) payable on the first Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit and (ii) accrued through and including the last day of each calendar quarter in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(n) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate per annum equal to 0.125%, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the first Business Day following the end of each March, June, September and December in the most recently- ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Credit Termination Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the L/C Issuer, for its own account, the customary issuance, presentation, amendment, administrative and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(o) Disbursement Procedures. The L/C Issuer for any Letter of Credit shall, within the time allowed by Applicable Law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. The L/C Issuer shall promptly after such examination notify the Administrative Agent and the Borrower in writing of such demand for payment if the L/C Issuer has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the L/C Issuer and the Lenders with respect to any such L/C Disbursement.

(o) Interim Interest. If the L/C Issuer for any standby Letter of Credit shall make any L/C Disbursement, then, unless the Borrower shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; provided that if the Borrower fails to reimburse such L/C Disbursement when due pursuant to clause (f) of this Section 2.03, then Section 2.08(b) shall apply. Interest accrued pursuant to this clause (p) shall be for account of the L/C Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to clause (f) of this Section 2.03 to reimburse the L/C Issuer shall be for account of such Lender to the extent of such payment.

(p) Replacement of the L/C Issuer. The L/C Issuer may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Lenders of any such replacement of the L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer pursuant to Section 2.03(m). From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to include such successor or any previous L/C Issuer, or such successor and all previous L/C Issuer, as the context shall require. After the replacement of the L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(q) Cash Collateralization.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with L/C Obligations representing at least 66-2/3% of the total L/C Obligations) demanding the deposit of Cash Collateral pursuant to this clause (q), the Borrower shall immediately deposit into an account established and maintained on the books and records of the Administrative Agent (the "*Collateral Account*") an amount in cash equal to 103% of the total L/C Obligations as of such date *plus* any accrued and unpaid interest thereon, provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (f) of Section 8.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. In addition, and without limiting the foregoing or clause (d) of this Section 2.03, if any L/C Obligations remain outstanding after the expiration date specified in said clause (d), the Borrower shall immediately deposit into the Collateral Account an amount in cash equal to 103% of such L/C Obligations as of such date *plus* any accrued and unpaid interest thereon.

(ii) The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the Collateral Account. Moneys in the Collateral Account shall be applied by the Administrative Agent to reimburse the L/C Issuer for L/C Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Obligations at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with L/C Obligations representing 66-2/3% of the total L/C Obligations), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

(r) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, indemnify and compensate the L/C Issuer hereunder for any and all drawings under such Letter of Credit as if such Letter of Credit had been issued solely for the account of the Borrower. The Borrower irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(r) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 Swingline Loans.

(a) The Swingline. Subject to the terms and conditions set forth herein, the Swingline Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans to the Borrower (each such loan, a "*Swingline Loan*").

Each such Swingline Loan may be made, subject to the terms and conditions set forth herein, to the Borrower, in Dollars, from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swingline Sublimit; provided that (i) after giving effect to any Swingline Loan, (A) the Total Revolving Outstandings shall not exceed the Revolving Facility at such time, (B) the Revolving Exposure of any Revolving Lender at such time shall not exceed such Lender's Revolving Commitment and (C) the aggregate amount of all Swingline Loans outstanding shall not exceed the Swingline Commitment of the Swingline Lender, (ii) the Borrower shall not use the proceeds of any Swingline Loan to refinance any outstanding Swingline Loan, and (iii) the Swingline Lender shall not be under any obligation to make any Swingline Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swingline Loan shall bear interest only at a rate based on the Base Rate plus the Applicable Rate. Immediately upon the making of a Swingline Loan, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swingline Lender a risk participation in such Swingline Loan in an amount equal to the product of such Revolving Lender's Applicable Percentage times the amount of such Swingline Loan.

(b) Borrowing Procedures. Each Swingline Borrowing shall be made upon the Borrower's irrevocable notice to the Swingline Lender and the Administrative Agent, which may be given by: (i) telephone or (ii) a Swingline Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Swingline Lender and the Administrative Agent of a Swingline Loan Notice. Each such Swingline Loan Notice must be received by the Swingline Lender and the Administrative Agent not later than 2:00 p.m. on the requested borrowing date, and shall specify (A) the amount to be borrowed, which shall be a minimum of $250,000, and (B) the requested date of the Borrowing (which shall be a Business Day). Promptly after receipt by the Swingline Lender of any Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Lender) prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (1) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (2) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender may make the amount of its Swingline Loan available to the Borrower at its office by crediting the account of the Borrower on the books of the Swingline Lender in immediately available funds.

(c) Refinancing of Swingline Loans.

(i) The Swingline Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Facility and the conditions set forth in Section 4.02. The Swingline Lender shall furnish the Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swingline Loan) for the account of the Swingline Lender at the Administrative Agent's

Office not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender.

(ii) Notwithstanding anything to the contrary in the foregoing, if for any reason any Swingline Loan cannot be refinanced by such a Revolving Borrowing in accordance with Section 2.04(c)(i) (including, without limitation, the failure to satisfy the conditions set forth in Section 4.02), the request for Base Rate Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Revolving Lenders fund its risk participation in the relevant Swingline Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swingline Lender in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving Borrowing or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (c)(iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Loan Notice). No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Percentage thereof in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Percentage thereof on demand of the

Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swingline Lender. The Swingline Lender shall be responsible for invoicing the Borrower for interest on the Swingline Loans. Until each Revolving Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Percentage of any Swingline Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swingline Lender.

(f) Payments Directly to Swingline Lender. The Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

2.05 Prepayments.

(a) Optional.

(i) The Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) two (2) Business Days prior to any date of prepayment of Term SOFR Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Term SOFR Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Term SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative 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 Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that a notice of optional prepayment to result in the Facility Termination Date pursuant to this Section 2.05(a)(i) may be, if expressly so stated to be, conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in which case such notice of optional prepayment may be revoked or extended by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date of prepayment) if such event or condition is not satisfied; provided further that the delay or failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 3.05. Any prepayment of any Term SOFR 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 Loans of the Lenders in accordance with their respective Applicable Percentages.

(ii) The Borrower may, upon notice to the Swingline Lender pursuant to delivery to the Swingline Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swingline Loans in whole or in part without premium or penalty; provided that, unless otherwise agreed by the Swingline Lender, (A) such notice must be received by the Swingline Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of $100,000 or a whole multiple of $100,000 in excess hereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) Revolving Outstandings. If for any reason the Total Revolving Outstandings at any time exceed the Revolving Facility at such time, the Borrower shall, immediately upon notice from the Administrative Agent, prepay Revolving Loans, Swingline Loans and L/C Disbursements and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b) unless, after the prepayment of the Revolving Loans and Swingline Loans, the Total Revolving Outstandings exceed the Revolving Facility at such time.

(ii) Application of Other Payments. Except as otherwise provided in Section 2.15, prepayments of the Revolving Facility made pursuant to this Section 2.05(b), *first*, shall be applied ratably to the L/C Disbursements and the Swingline Loans, *second*, shall be applied to the outstanding Revolving Loans, and, *third*, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the L/C Issuer or the Revolving Lenders, as applicable.

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.05(b) shall be applied first to Base Rate Loans and then to Term SOFR Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.06 Termination or Reduction of Commitments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit, or from time to time permanently reduce the Revolving Facility, the Letter of Credit Sublimit or the Swingline Sublimit, without premium or penalty; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of $1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Revolving Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swingline Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swingline Loans would exceed the Letter of Credit Sublimit; provided, further that a notice of termination of commitments to result in the Facility Termination Date pursuant to this Section 2.06 may be, if expressly so stated to be, conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable and specified event or condition, in which case such notice of termination may be revoked or extended by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date of prepayment) if such event or condition is not satisfied; provided further that the delay or failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 3.05.

(b) Mandatory. If after giving effect to any reduction or termination of Revolving Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swingline Sublimit exceeds the Revolving Facility at such time, the Letter of Credit Sublimit or the Swingline Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swingline Sublimit or the Revolving Commitment under this Section 2.06. Upon any reduction of the Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Lender's Applicable Percentage of such amount reduced from the Revolving Commitments. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) Revolving Loans. The Borrower shall repay to the Revolving Lenders on the Revolving Credit Termination Date for the Revolving Facility the aggregate principal amount of all Revolving Loans outstanding on such date.

(b) Swingline Loans. The Borrower shall repay each Swingline Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Revolving Credit Termination Date for the Revolving Facility.

2.08 Interest and Default Rate.

(a) Interest. Subject to the provisions of Section 2.08(b), (i) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable Borrowing date at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swingline Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate. To the extent that any calculation of interest or any fee required to be paid under this Agreement shall be based on (or result in) a calculation that is less than zero, such calculation shall be deemed zero for purposes of this Agreement.

(b) Default Rate.

(i) While any Event of Default of the type referred to in clause (a), (f) or (g) of Section 8.01 exists, all outstanding Obligations (including Letter of Credit Fees) shall accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Law.

(ii) With respect to any other Event of Default, at the election of the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), while any such Event of Default exists, all outstanding Obligations (including Letter of Credit Fees) shall accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Law.

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

(c) Interest Payments. 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.

2.09 Fees.

In addition to certain fees described in Section 2.03:

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage, a commitment fee equal to the Applicable Rate *times* the actual daily amount by which the Revolving Facility exceeds the *sum of* (i) the Outstanding Amount of Revolving Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.15. For the avoidance of doubt, the Outstanding Amount of Swingline Loans shall not be counted towards or considered usage of the Revolving Facility for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Revolving Credit Termination Date. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees.

(i) The Borrower shall pay to the Administrative Agent and the Arranger for its own account fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.

(a) Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Term SOFR) 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 three hundred sixty (360) day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year). 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, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) Financial Statement Adjustments or Restatements. If, as a result of any restatement of or other adjustment to the financial statements of the Borrower and its Subsidiaries or for any other reason, the Borrower, or the Lenders determine that (i) the Consolidated Total Net Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Total Net Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This clause (b) shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under any provision of this Agreement to payment of any Obligations hereunder at the Default Rate or under Article VIII. The Borrower's obligations under this clause (b) shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.11 Evidence of Debt.

(a) Maintenance of Accounts. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 11.06(c). The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower 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 Borrower 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 Register, the Register shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative 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.

(b) Maintenance of Records. In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 3:00 p.m. on the date specified herein. The Administrative 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 Administrative Agent after 3:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Except as otherwise specifically provided for in this Agreement, if any payment to be made by the Borrower 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)

(i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Term SOFR Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative 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 Borrower to but excluding the date of payment to the Administrative 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 Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Administrative 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 Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, 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 Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and Swingline Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) 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.

(f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing (other than Swingline Borrowings) shall be made from the Appropriate Lenders, each payment of fees under Section 2.09 and Section 2.03 shall be made for account of the Appropriate Lenders, and each termination or reduction of the amount of the Commitments shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (ii) each Borrowing shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Revolving Loans) or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrower shall be made for account of the Appropriate Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by the Borrower shall be made for account of the Appropriate Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Appropriate Lenders.

2.13 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and sub-participations in L/C Obligations and Swingline Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

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

(ii) the provisions of this Section 2.13 shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or a Disqualified Lender), (B) the application of Cash Collateral provided for in Section 2.14, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in L/C Obligations or Swingline Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section 2.13 shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such 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 Cash Collateral.

(a) Obligation to Cash Collateralize. At any time there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or the L/C Issuer (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.14(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, the Swingline Lender or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (determined in the case of Cash Collateral provided pursuant to Section 2.15(a)(v), after giving effect to Section 2.15(a)(v) and any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more Controlled Accounts at Citibank. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.14 or Sections 2.03, 2.05, 2.15 or 8.02 in respect of Letters of Credit and Swingline Loans shall be held and applied to the satisfaction of the specific L/C Obligations and Swingline Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent, the Swingline Lender and the L/C Issuer that there exists excess Cash Collateral, including as a result of full or partial cash collateralization of such Fronting Exposure as a result of the application of payments pursuant to Section 2.15(a)(ii); provided that (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (B) the Person providing Cash Collateral, the Swingline Lender and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.15 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 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or the Swingline Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.14; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.14; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.15(a)(v). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Letter of Credit Fees. Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.14.

(C) Defaulting Lender Fees. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the L/C Issuer and the Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 11.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (a)(v) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, (A) *first*, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (B) *second*, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with their Revolving Commitments (without giving effect to Section

2.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided further that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the L/C Issuer shall not be required to issue, extend, increase, reinstate or renew any letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

2.16 Incremental Facilities.

(a) Request for Increase. Upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may from time to time after the Closing Date, request (x) an increase in the Revolving Facility (each, an "*Incremental Revolving Commitment*") and/or (y) one or more new term loan commitments (each, an "*Incremental Term Loan Commitment*"; and together with the Incremental Revolving Commitments, the "*Incremental Commitments*") by an aggregate amount (for all such Incremental Commitments) not exceeding the greater of $125,000,000 and 100% of Consolidated EBITDA for the most recently completed Measurement Period; provided that (i) any such request for an Incremental Commitment shall be in a minimum amount of $10,000,000 (or such lesser amount representing all remaining capacity of the Incremental Commitment) and (ii) the Borrower may make a maximum of four (4) such requests. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent), shall specify the time period within which each Lender or any New Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the applicable Lenders).

(b) Lender Elections to Increase. Each applicable Lender shall notify the Administrative Agent within such time period set forth in the applicable notice described in Section 2.16(a) whether or not it agrees to increase, or provide, as applicable, an Incremental Commitment. Any Lender may elect or decline, in its sole discretion, to provide an Incremental Commitment. Any Lender not responding within such time period shall be deemed to have declined to provide an Incremental Commitment.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. In its discretion, the Borrower may also invite additional financial institutions that are Eligible Assignees to become Lenders ("*New Lenders*").

(d) Increase Effective Date.

(i) If an Incremental Commitment is provided in accordance with this Section, the Administrative Agent and the Borrower shall determine the effective date (the "*Incremental Effective Date*") and the final allocation of such Incremental Commitment. The Administrative Agent shall promptly notify the Borrower and the Lenders and the New Lenders, as applicable, of the final allocation of such Incremental Commitment and the Incremental Effective Date.

(ii) Each Revolving Lender (including any New Lenders) that is increasing its Revolving Commitment or providing an Incremental Commitment on the Incremental Effective Date shall make a Revolving Loan, the proceeds of which will be used to prepay the Revolving Loans of the other Revolving Lenders on such Incremental Effective Date, so that, after giving effect thereto, the Revolving Loans outstanding are held by the Revolving Lenders pro rata based on their Revolving Commitments after giving effect to such Incremental Effective Date (and in connection therewith the Borrower shall pay any additional amounts required pursuant to Section 3.05). If there is a new borrowing of Revolving Loans on such Incremental Effective Date, the Revolving Lenders after giving effect to such Incremental Effective Date shall make such Revolving Loans in accordance with Section 2.01.

(iii) The Loans and Commitments established pursuant to this paragraph shall constitute Loans and Commitments hereunder, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Loan Documents. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such Incremental Commitments.

(iv) Notwithstanding the foregoing, any Incremental Term Loans may be treated as part of the same class as any other Existing Term Loans if such Incremental Term Loans are fungible for United States federal income tax purposes with such other Existing Term Loans.

(v) Conditions to Effectiveness of Increase. As a condition precedent to an Incremental Commitment, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Incremental Effective Date signed by a Responsible Officer of such Loan Party:

(A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Incremental Commitment;

(B) certifying that, before and after giving effect to such Incremental Commitment and subject to Section 1.09, (A) the representations and warranties of the Borrower and each other Loan Party contained in Article II, Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be true and correct in all respects) on and as of the Incremental Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.16, the representations and warranties contained in Sections 5.05(a) and (c), and Section 5.05(b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and Section 6.01(b), respectively, and (B) no Default or Event of Default exists; and

(C) subject to Section 1.09, on a Pro Forma Basis (assuming that such Incremental Commitment is fully drawn and without netting of any cash proceeds thereof in computing Consolidated Senior Secured Net Leverage Ratio), the Borrower shall be in Pro Forma Compliance with each of the covenants set forth in Section 7.11 (and attaching a pro forma Compliance Certificate evidencing the calculations thereof). The Borrower shall deliver or cause to be delivered any other customary certificates and documents (including, without limitation, legal opinions) as reasonably requested by the Administrative Agent in connection with any Incremental Commitment.

(e) Incremental Amendment. The Incremental Commitment shall be effected by an amendment (or in the case of any Incremental Term Loan, an amendment and/or restatement) (the "*Incremental Amendment*") executed by the Borrower, the other Loan Parties, the Administrative Agent and each Lender (including, any New Lenders) committing to such Incremental Commitment, in form and substance reasonably satisfactory to each of them. Notwithstanding the provisions of Section 11.01, the Incremental Amendment may, without the consent of any other Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.16. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Revolving Loans or, if applicable, term loans shall be deemed, unless the context otherwise requires, to include references to Revolving Loans made pursuant to Incremental Revolving Commitments and Incremental Term Loans.

(f) Terms of Incremental Commitment. The terms and conditions of Incremental Commitments shall be as follows:

(i) all of the terms and conditions applicable to any Incremental Revolving Commitment shall be identical to the terms and conditions applicable to the then existing Revolving Facility, including maturity, Applicable Rate and Commitment Fees; provided that (x) any upfront fees payable by the Borrower to the Lenders under any Incremental Revolving Commitment may differ from those payable under the then existing Revolving Commitments and (y) the Applicable Rate or Commitment Fees or interest rate floor applicable to any Incremental Revolving Commitment may be higher than the Applicable Rate or Commitment Fees or interest rate floor applicable to the Revolving Facility if the Applicable Rate or Commitment Fees or interest rate floor applicable to the Revolving Facility are increased to equal the Applicable Rate and Commitment Fees and interest rate floor applicable to such Incremental Revolving Commitment;

(ii) (x) any Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Lenders making such Incremental Term Loan and the Borrower, but in any event the Weighted Average Life to Maturity of any Incremental Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the then existing term loans, if any (the "*Existing Term Loan*"), and (y) the maturity of any such Incremental Term Loan shall not be earlier than the Revolving Credit Termination Date or the latest scheduled maturity date of any outstanding Existing Term Loans in effect as of the Increase Effective Date; provided that the foregoing condition in this clause (ii) shall not apply to the extent such Incremental Term Loan constitutes a customary bridge, escrow or similar arrangement, in each case, with a maturity not more than one (1) year, which would either automatically be converted or required to be exchanged into notes or other permitted Indebtedness that otherwise would satisfy this clause (ii) so long as such conversion or exchange is subject only to conditions customary for similar conversions and exchanges;

(iii) the All-In Yield and Applicable Rate for such Incremental Term Loan shall be determined by the Administrative Agent, the applicable Lenders providing such Incremental Term Loan and the Borrower; provided that if the All-In Yield in respect of any Incremental Term Loan exceeds the All-In Yield for any then Existing Term Loans by more than 0.50%, then the Applicable Rate for such Existing Term Loans shall be increased so that the All-In Yield in respect of such Existing Term Loan is equal to the All-In Yield for such Incremental Term Loan minus 0.50%;

(iv) the inclusion of any mandatory prepayments, if applicable, for such Incremental Term Loan shall be determined by the Borrower, the Administrative Agent and the Lenders of such Incremental Term Loan (provided that any such mandatory prepayment provisions for any Incremental Term Loans shall be consistent with any mandatory prepayment terms of any then outstanding Incremental Term Loans and the Lenders of such Incremental Term Loans may choose to participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any mandatory prepayments of Incremental Term Loans hereunder, as specified in the applicable Incremental Amendment);

(v) except as provided above, all other terms and conditions applicable to any Incremental Term Loan shall be reasonably satisfactory to the Administrative Agent, the Borrower and the Lenders of the Incremental Term Loans.

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

Article III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Defined Terms. For purposes of this Section 3.01, the term "Applicable Law" includes FATCA and the term "Lender" includes any L/C Issuer.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable withholding agent) require the deduction or withholding of any Tax from any such payment by the applicable withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including such withholdings and 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.

(c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 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 Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error. Each of the Loan Parties shall also, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(d)(ii) below.

(ii) Each Lender shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the

Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (d)(ii).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) 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 Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W–9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

(2) executed copies of IRS Form W–8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M–1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "*U.S. Tax Compliance Certificate*") and (y) executed copies of IRS Form W–8BEN–E (or W–8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W–8IMY, accompanied by IRS Form W–8ECI, IRS Form W–8BEN–E (or W–8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit M–2 or Exhibit M–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 M–4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies (or originals, as required) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section

1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for the purposes of this clause (f)(ii)(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 Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall the Administrative 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 such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such 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, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to such 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 clause (g), in no event will the applicable Recipient be required to pay any amount to such Loan Party pursuant to this clause (g) 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 clause (g) 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.

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

3.02 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make, maintain or fund Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended, and (b) 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 Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative 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 Administrative 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 Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loan and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, the Administrative 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 Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

3.03 Inability to Determine Rates.

(a) If in connection with any request for a Term SOFR Loan or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any of such Loans, as applicable, (i) the Administrative 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 Administrative 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 Administrative Agent will promptly so notify the 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 Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, 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 Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods 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 Administrative 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 Administrative 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 and six month interest periods 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 Administrative 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 Section 3.03(b)(ii) above, (i) no later than the Scheduled Unavailability Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or Section 3.03(b)(ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the 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 Administrative 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 Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

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 Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

For purposes of this Section 3.03, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in Dollars shall be excluded from any determination of Required Lenders.

3.04 Increased Costs.

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

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

(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 L/C Issuer any other condition, cost or expense affecting this Agreement or Term SOFR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in clause (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer'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 (9) 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 Administrative Agent) from time to time, the Borrower 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 Borrower (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 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 Borrower pursuant to Section 11.13;

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 Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower, such Lender or the L/C Issuer shall, as applicable, 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 or the L/C Issuer, 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 or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 11.13.

(c) EU CRD VI Art. 21c Provisions.

(i) EU Lender Designation. To the extent any Commitment is to be made available to, or any Credit Extension is contemplated to be made to, the Borrower or for the account of any Subsidiary, as applicable, in an EEA Member Country within the meaning of Article 21c of Directive (EU) 2024/1619 amending Directive (EU) 2013/36 (each such Borrower or Subsidiary, an *"EU Borrower"*), each Lender, in its capacity as a Lender and, where applicable, as an L/C Issuer or Swingline Lender (each such Lender, a *"Notifying Lender"*) may identify one or more Lending Offices established in an EEA Member Country (each, an *"EU Lender"*) to provide and/or make, as applicable, such Commitments and Credit Extensions to one or more EU Borrowers by delivering a notice (each, an *"EU Notice"*) to the Administrative Agent and the Borrower, prior to or simultaneously with the establishment of such Commitment and/or the making of such Credit Extension, duly executed by the applicable Notifying Lender and its corresponding EU Lender(s) identifying one or more EU Borrowers for which such EU Notice shall apply. An EU Notice may bifurcate the applicable Commitments and Credit Extensions among different EU Lenders and EU Borrowers in a single EU Notice so long as such EU Notice identifies each applicable EU Lender and its corresponding EU Borrower. An EU Notice delivered on the date hereof shall be deemed simultaneous with the applicable Notifying Lender's execution of this Agreement, and a Notifying Lender executing this Agreement on the date hereof may either (A) deliver an EU Notice simultaneously with such execution or (B) note on its signature page thereto that it is executing as both a Lender and a Notifying Lender and appointing the corresponding EU Lender, which shall countersign as an EU Lender under this Section 3.06(c). Each EU Notice shall designate the applicable EU Lender as the party responsible for making such Commitments available to, and/or making the applicable Credit Extensions to, or for the account of, the identified EU Borrower under this Section 3.06(c) and shall include the information required by the Administrative Questionnaire and any tax compliance certificates required under Section 3.01(f). No consent of the Borrower, the Administrative Agent, any L/C Issuer or the Swingline Lender is required to deliver or revoke any EU Notice. Upon delivery of the applicable EU Notice or revocation notice delivered pursuant to the terms of this Section 3.06(c), the Administrative Agent shall annotate the Register (or other applicable list of Lenders) to identify each Notifying Lender's EU Lender(s) and any revocations, and Schedule 1.01(b) (or other applicable schedule of Commitments and/or Credit Extensions) shall be deemed annotated to reflect each applicable EU Lender's Commitment made available to, and/or Credit Extensions made to, or for the account of, as applicable, the applicable EU Borrower. For the avoidance of doubt, no Lender is required to deliver an EU Notice or otherwise utilize the provisions of this Section 3.06(c) nor to deliver an EU Notice for all EU Borrowers hereunder.

(ii) Effect of Notice. Upon execution and delivery of an EU Notice: (A) the applicable EU Lender shall be deemed a Lender and, where applicable, an L/C Issuer or Swingline Lender hereunder and under the other Loan Documents with respect to the applicable Commitments made available to, and Credit Extensions made to, or for the account of, the applicable EU Borrower (and for avoidance of doubt the Notifying Lender shall not be deemed to hold any such Commitment or Credit Extension in respect of the applicable EU Borrower), (B) the applicable Notifying Lender's other Commitments made available to, and/or Credit Extensions made to, or for the account of, if any, to the

Borrower shall remain in full force and effect, and (C) the applicable EU Lender shall be subject to, afforded and extended any and all rights, obligations and duties arising as a Lender or, where applicable, L/C Issuer or Swingline Lender in respect of the applicable Commitments made available to, and/or Credit Extensions made to, or for the account of, the applicable EU Borrower hereunder and under the other Loan Documents. The rights, obligations and duties described in the foregoing clause (C) shall severally include, without limitation, (x) the obligations to make any and all Commitments and/or Credit Extensions to such EU Borrower, on a ratable basis as among the EU Lenders holding the applicable Commitments and/or Credit Extensions to such EU Borrower, and provide any other related funding services such EU Borrower requests pursuant to the terms and conditions of this Agreement required by a Lender or, where applicable, L/C Issuer or Swingline Lender in connection with such Commitment or Credit Extension (the *"EU Funding Obligations"*) and (y) the obligation to comply with the terms hereof and to receive the contractual rights and ability to exercise the remedies conferred hereunder (including under Sections 3.01, 3.04, 3.05 and 11.07) (the foregoing clauses (x) and (y), collectively, the *"EU Lender Provisions"*).

(iii) Administration Through Notifying Lender. By delivery of an EU Notice (A) the applicable EU Lender shall, to the fullest extent permitted by Applicable Law, exercise all EU Lender Provisions other than its EU Funding Obligations through the applicable Notifying Lender, and hereby irrevocably appoints such Notifying Lender as its agent under this Agreement to administer such provisions on its behalf and (B) the Borrower and the Administrative Agent shall treat such Notifying Lender and any corresponding EU Lender as a single Lender for all purposes hereunder (including, but not limited to, calculation of Commitments, delivery of payments and notices, Defaulting Lender determinations, and voting), except for purposes of the EU Funding Obligations, which shall not be performed by such Notifying Lender and the parties shall not be treated as a single Lender for purposes of such EU Funding Obligations. Any request from the Administrative Agent to advance Loans in connection with any Borrowing, or to advance amounts in respect of any Letter of Credit, with respect to an EU Borrower for which an EU Lender has been appointed shall be deemed made to the applicable EU Lender, and the applicable Notifying Lender shall promptly forward each such request (each, an "EU Borrowing Request") to the applicable EU Lender, identifying the amount for the applicable EU Borrower's account, and the applicable EU Lender shall fund it in accordance with the terms thereof. For purposes of Section 11.13 and the definition of Defaulting Lender, a Notifying Lender and its EU Lender(s) shall be treated as a single Lender, any replacement under Section 11.13 shall replace both, and a default by either shall render both Defaulting Lenders.

(iv) Payments. The Administrative Agent shall endeavor to remit all payments from an EU Borrower for which an EU Lender has been appointed (including prepayments, premiums, interest, and penalties) directly to the applicable EU Lender. If any such funds are received by a Notifying Lender, it shall promptly turn them over to any such applicable EU Lender; provided that delivery to a Notifying Lender in compliance with the terms hereof shall discharge the applicable EU Borrower's obligations with respect to the relevant Credit Extension as if paid directly to the EU Lender.

(v) Revocation. Upon delivery to the Borrower and the Administrative Agent of a revocation notice signed by both the Notifying Lender and its applicable EU Lender and identifying one or more EU Borrowers for which revocation is applicable, the identified EU Lender (A) shall cease to hold the applicable Commitments made available to, and/or the Credit Extensions made to, or for the account of, each such identified EU Borrower, (B) shall no longer be deemed a Lender hereunder with respect to each such identified EU Borrower or under the other Loan Documents, and (C) shall be released from its obligations under this Agreement with respect to each such identified EU Borrower; provided that it shall retain the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances arising prior to such release.

(vi) Funding Cap. In no event shall a Notifying Lender and its applicable EU Lenders be required to make Credit Extensions under the Revolving Facility in an amount, either individually or in the aggregate, exceeding its Commitment (or, if applicable, its L/C Commitment or the Swingline Sublimit) (as in effect, and as adjusted hereunder, from time to time) in respect of the Revolving Facility.

3.07 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

Article IV

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension.

The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each Lender, (ii) for the account of each Lender requesting a Note, a Note executed by a Responsible Officer of the Borrower, (iii) counterparts of the Security Agreement and each other Collateral Document required to be delivered on the Closing Date, executed by a Responsible Officer of the applicable Loan Parties and a duly authorized officer of each other Person party thereto, as applicable, (iv) substantially concurrently with the consummation of this Agreement (but after giving effect to the Closing Date Merger), counterparts of a Joinder Agreement executed by a Responsible Officer of Closing Date HoldCo and each Subsidiary thereof (other than Excluded Subsidiaries) (it being understood that such Joinder Agreement shall not be effective until immediately after giving effect to the Closing Date Merger) (the "Closing Date Joinder Agreement"), and (v) counterparts of any other Loan Document required to be delivered on the Closing Date, executed by a Responsible Officer of the applicable Loan Party and a duly authorized officer of each other Person party thereto.

(b) Secretary's Certificate. The Administrative Agent shall have received an Secretary's Certificate dated the Closing Date, certifying as to the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party, the good standing, existence or its equivalent (if applicable) of each Loan Party in its jurisdiction of organization and of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party.

(c) Legal Opinions of Counsel. The Administrative Agent shall have received an opinion or opinions (including, if requested by the Administrative Agent, local counsel opinions) of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent.

(d) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the financial statements referred to in Section 5.05.

(e) Personal Property Collateral. The Administrative Agent shall have received, in form and substance reasonably satisfactory to the Administrative Agent:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party and each jurisdiction where any material portion of the Collateral is located or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches;

(ii) searches of ownership of Intellectual Property in the appropriate governmental offices and such patent/trademark/copyright filings as requested by the Administrative Agent in order to perfect the Administrative Agent's security interest in the Intellectual Property;

(iii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iv) subject to Section 6.19(b), stock or membership certificates, if any, evidencing the Pledged Equity and undated stock or transfer powers duly executed in blank; in each case to the extent such Pledged Equity is certificated; and

(v) subject to Section 6.19(c), to the extent required to be delivered, filed, registered or recorded pursuant to the terms and conditions of the Loan Documents, all instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to create and perfect the Administrative Agent's and the Lenders' security interest in the Collateral.

(f) Liability, Casualty, Property, Terrorism and Business Interruption Insurance. The Administrative Agent shall have received copies of certificates of insurance, evidencing liability, casualty and property insurance meeting the requirements set forth herein and in the Loan Documents.

(g) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate signed by a Responsible Officer of the Borrower as to the financial condition, solvency and related matters of the Borrower and its Subsidiaries, on a Consolidated basis, after giving effect to the initial Borrowings under the Loan Documents, the Closing Date Merger and the other transactions contemplated hereby.

(h) Closing Certificate. The Administrative Agent shall have received a certificate executed by a Responsible Officer of the Borrower as of the Closing Date, as to certain conditions to closing, substantially in the form of Exhibit P.

(i) Material Adverse Effect. Since December 31, 2025, there has been no event or condition, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(j) [Reserved].

(k) Loan Notice. The Administrative Agent shall have received a Loan Notice with respect to the Loans to be made on the Closing Date.

(l) [Reserved].

(m) Anti-Money-Laundering; Beneficial Ownership. (i) At least three (3) Business Days prior to the Closing Date, the Loan Parties shall have provided to each Lender, and such Lender shall be satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case to the extent requested at least seven (7) days prior to the Closing Date and (ii) at least three (3) Business Days prior to the Closing Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial

Ownership Regulation shall have delivered to each Lender a Beneficial Ownership Certification in relation to such Loan Party.

(n) Consents. The Administrative Agent shall have received evidence that all members, boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement have been obtained.

(o) Fees. The Administrative Agent, the Arranger and the Lenders shall have received all fees owing pursuant to the Fee Letter and Section 2.09.

(p) Expenses. The Borrower shall have paid all reasonable and documented out-of-pocket fees, charges and disbursements of external counsel to the Administrative Agent and the Arranger as required pursuant to Section 11.04(a) (directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least two (2) Business Days prior to 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 proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(q) Closing Date Merger. The Administrative Agent and the Arranger shall have received:

(i) a true and complete copy, certified by a Responsible Officer of the Borrower as true and complete, of the Closing Date Merger Agreement and the documents evidencing the CVR Spin, in each case, as in effect on the Closing Date; and

(ii) evidence reasonably satisfactory to them that the Closing Date Merger and the "CVR Spin" (as defined in the Closing Date Merger Agreement) shall have been consummated, or substantially simultaneously with the availability of the Revolving Facility on the Closing Date shall be consummated, in each case in accordance with the terms of the Closing Date Merger Agreement and the documents evidencing the CVR Spin, in each case, as in effect on the date of execution thereof, after giving effect to any modifications, amendments, consents or waivers, other than those modifications, amendments, consents or waivers that are materially adverse to the interests of the Lenders, the Administrative Agent and the Arranger (unless consented to by the Lenders, the Administrative Agent and the Arranger, such consent not to be unreasonably withheld).

(r) Existing Indebtedness of the Loan Parties. The Administrative Agent shall have received evidence satisfactory to it that (i) all Indebtedness outstanding under the Existing Closing Date Merger Credit Agreement, shall have been refinanced (the *"Refinancing"*) prior to, or shall be consummated substantially simultaneously with the consummation of the Closing Date Merger (and the initial Credit Extension hereunder), and the Administrative Agent shall have received customary payoff letters in connection therewith confirming that all such Indebtedness with respect thereto shall have been fully repaid and all commitments thereunder shall have been terminated and cancelled and all liens in connection therewith shall have been terminated and released, in each case prior to or concurrently with the consummation of the Closing Date Merger (and the initial Credit Extension hereunder), and (ii) on the Closing Date, after giving effect to the Closing Date Merger and the Refinancing, neither the Borrower nor any of its Subsidiaries (including Closing Date Merger HoldCo and its Subsidiaries) shall have any outstanding Indebtedness (other than Indebtedness permitted under Section 7.02).

Without limiting the generality of the provisions of Section 9.03(c), 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 Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions.

Subject to Section 1.09 solely with respect to any Incremental Term Loans incurred to finance a substantially concurrent Limited Condition Acquisition, the obligation of each Lender and the L/C Issuer to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Term SOFR Loans) is subject to the following conditions precedent:

(a) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article II, Article V or any other Loan Document shall be true and correct in all material respects (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be true and correct in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation or warranty shall be true and correct in all respects) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) and (c), and Section 5.05(b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and Section 6.01(b), respectively.

(b) Default. No Default or Event of Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Request for Credit Extension. The Administrative Agent and, if applicable, the L/C Issuer or the Swingline Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Term SOFR Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

Article V

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders, as of the date made or deemed made, that:

5.01 Existence, Qualification and Power.

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. As of the date hereof, the copy of the Organization Documents of each Loan Party provided to the Administrative Agent pursuant to the terms of this Agreement is a true and correct copy of each such document, each of which is valid and in full force and effect.

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 have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of in any material respect, or the creation of (or the requirement to create) any Lien under, or require any payment to be made under (i) any material Contractual Obligation 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; or (c) violate any Applicable Law in any material respect.

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 (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, or (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof, subject to Permitted Liens), other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained and (ii) filings to perfect the Liens created by the Collateral Documents.

5.04 Binding Effect.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party 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 principals of equity.

5.05 Financial Statements; No Material Adverse Effect.

(a) Audited Financial Statements. 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 in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in Shareholders' Equity 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 Borrower and its Subsidiaries as of the date thereof as determined in accordance with GAAP, including liabilities for taxes, material commitments and Indebtedness.

(b) Quarterly Financial Statements. The unaudited Consolidated balance sheet of the Borrower and its Subsidiaries dated March 31, 2026 and the related Consolidated statements of income or operations, Shareholders' Equity and cash flows for each such 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 in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations, cash flows and changes in Shareholders' Equity 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) Material Adverse Effect. Since December 31, 2025, 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) Forecasted Financials. The Consolidated forecasted balance sheet, statements of income and cash flows of the Borrower and its Subsidiaries delivered pursuant to Section 4.01 (in such case, is prepared after giving effect to the Closing Date Merger and through and including the end of the Borrower's 2029 fiscal year) or Section 6.01, 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 Borrower's reasonable, good faith estimate of its future financial condition and performance.

5.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any Subsidiary or against any of their 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) if adversely determined, either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.07 No Default.

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

5.08 Ownership of Property.

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property 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.

5.09 Environmental Matters.

Except as could not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect on any of the Loan Parties or any of their respective Subsidiaries, the Loan Parties and their respective Subsidiaries: (i) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current or intended operations or for any property owned, leased, or otherwise operated by any of them; (iii) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits; (iv) to the extent within the control of the Loan Parties and their respective Subsidiaries, will timely renew and comply with each of their Environmental Permits and any additional Environmental permits that may be required of any of them without material burden or expense, and timely comply with any current, future or potential Environmental Law without material burden or expense; and (v) are not aware of any requirements proposed for adoption or implementation under any Environmental Law.

5.10 Insurance.

The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates. The general liability, casualty, property, terrorism and business interruption insurance coverage of the Loan Parties as in effect on the Closing Date, and as of the last date such Schedule was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 5.10 and such insurance coverage complies with the requirements set forth in this Agreement and the other Loan Documents. If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower shall, or shall cause the applicable Loan Party to, (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws, (ii) reasonably cooperate with the Administrative Agent and provide information reasonably required by the Administrative Agent and the Lenders to comply with the Flood Insurance Laws, (iii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent, including evidence of annual renewals of such insurance and (iv) furnish to the Administrative Agent prompt written notice of any re-designation of any such Mortgaged Property into or out of a special flood hazard area.

5.11 Taxes.

Each Loan Party and each of its Subsidiaries have timely filed all federal, state and other material tax returns and reports required to be filed, and have timely paid all federal, state and other material Taxes, including in its capacity as a withholding agent, levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect, nor is there any tax sharing agreement applicable to the Borrower or any Subsidiary.

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 or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS. To the knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the knowledge of the Loan Parties, 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 no Loan Party 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 or Multiemployer Plan; (ii) 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 60% or higher and no Loan Party 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 60% as of the most recent valuation date; (iii) no Loan Party 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; (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (v) 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) Neither the Borrower nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (i) on the Closing Date, those listed on Schedule 5.12 hereto and (ii) thereafter, Pension Plans not otherwise prohibited by this Agreement.

(e) The Borrower represents and warrants as of the Closing Date that the Borrower is not and will not be using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to the Borrower’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement.

5.13 Margin Regulations; Investment Company Act.

(a) Margin Regulations. Neither the Borrower nor any of its Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower or any of its Subsidiaries and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.

(b) Investment Company Act. None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.14 Disclosure.

The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries or any other Loan Party 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 Administrative 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 materially misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.15 Compliance with Laws.

Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Applicable Law and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted.

5.16 Solvency.

The Loan Parties are on a Consolidated basis, Solvent.

5.17 Sanctions Concerns; Anti-Corruption Laws; Outbound Investment Rules.

(a) Sanctions Concerns. No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. The Borrower and its Subsidiaries have conducted their businesses in compliance with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

(c) Outbound Investment Rules. Neither the Borrower nor any of its Subsidiaries (i) is, or has any present intention to become, a "covered foreign person" as that term is used in the Outbound Investment Rules or (ii) currently engages, or has any present intention to engage in the future, directly or indirectly, in (x) a "covered transaction", as such term is defined in the Outbound Investment Rules, (y) any transaction that would constitute a "covered transaction", as such term is defined in the Outbound Investment Rules, if such Person were a United States Person or (z) any other activity that would cause the Administrative Agent or the Lenders to be in violation of the Outbound Investment Rules or cause the Administrative Agent or the Lenders to be legally prohibited by the Outbound Investment Rules from performing under this Agreement.

5.18 Responsible Officers.

Set forth on Schedule 1.01(c) are Responsible Officers, holding the offices indicated next to their respective names, as of the Closing Date and as of the last date such Schedule 1.01(c) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14 and such Responsible Officers are the duly elected and qualified officers of such Loan Party and are duly authorized to execute and deliver, on behalf of the respective Loan Party, this Agreement, the Notes and the other Loan Documents.

5.19 Subsidiaries; Equity Interests; Loan Parties.

(a) Subsidiaries, Joint Ventures, Partnerships and Equity Investments. Set forth on Schedule 5.19(a), is the following information as of the Closing Date: (i) a complete and accurate list of all Subsidiaries (including a description if such Subsidiary is an Excluded Subsidiary and which type of Excluded Subsidiary), Joint Ventures and partnerships and other equity investments of the Loan Parties, (ii) the number of shares of each class of Equity Interests in each Subsidiary that is a Loan Party outstanding, (iii) the number and percentage of outstanding shares of each class of Equity Interests owned by the Loan Parties and their Subsidiaries and (iv) with respect to Loan Parties, the class or nature of such Equity Interests (*i.e*., voting, non-voting, preferred, etc.). The outstanding Equity Interests in all Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens, other than Permitted Liens. As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to the Equity Interests of any Loan Party or any Subsidiary thereof, except as contemplated in connection with the Loan Documents or as set forth on such Schedule.

(b) Loan Parties. Set forth on Schedule 5.19(b) is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party): (i) the exact legal name, (ii) any former legal names of such Loan Party in the five (5) years prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the jurisdictions in which such Loan Party is qualified to do business, (vi) the address of its chief executive office, (vii) the address of its principal place of business, (viii) its U.S. federal taxpayer identification number (if any) or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation or organization, (ix) the organization identification number, (x) ownership information (*e.g*., publicly held or if private or partnership, the owners and partners of each of the Loan Parties) and (xi) the industry or nature of business of such Loan Party.

5.20 Collateral Representations.

(a) Collateral Documents. As of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, the provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Permitted Liens and the provisions of the Collateral Documents) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

(b) Intellectual Property. Set forth on Schedule 5.20(b), as of the Closing Date and as of the last date such Schedule was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a list of all registered or issued Intellectual Property (including all applications for registration and issuance) owned by each of the Loan Parties or that each of the Loan Parties has the right to (including the name/title, current owner, registration or application number, and registration or application date and such other information as reasonably requested by the Administrative Agent).

(c) Documents, Instrument, and Tangible Chattel Paper. Set forth on Schedule 5.20(c), as of the Closing Date and as of the last date such Schedule 5.20(c) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a description of all Documents, Instruments, and Tangible Chattel Paper (each as defined in the UCC) of the Loan Parties with a face, stated or fair market value in excess of $2,500,000 individually (including the Loan Party owning such Document, Instrument and Tangible Chattel Paper and such other information as reasonably requested by the Administrative Agent).

(d) Deposit Accounts, Electronic Chattel Paper, Letter-of-Credit Rights, and Securities Accounts.

(i) Set forth on Schedule 5.20(d)(i), as of the Closing Date and as of the last date such Schedule 5.20(d)(i) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a description of all deposit accounts and securities accounts of the Loan Parties, including the name of (A) the applicable Loan Party, (B) in the case of a deposit account, the depository institution and average amount held in such deposit account and whether such account is a zero balance account or a payroll account, and (C) in the case of a securities account, the securities intermediary or issuer and the average aggregate market value held in such securities account, as applicable.

(ii) Set forth on Schedule 5.20(d)(ii), as of the Closing Date and as of the last date such Schedule 5.20(d)(ii) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a description of all Electronic Chattel Paper (as defined in the UCC) and Letter-of-Credit Rights (as defined in the UCC) of the Loan Parties with a face, stated or fair market value in excess of $2,500,000 individually, including the name of (A) the applicable Loan Party, (B) in the case of Electronic Chattel Paper (as defined in the UCC), the account debtor and (C) in the case of Letter-of-Credit Rights (as defined in the UCC), the issuer or nominated person, as applicable.

(e) Commercial Tort Claims. Set forth on Schedule 5.20(e), as of the Closing Date and as of the last date such Schedule 5.20(e) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a description of all Commercial Tort Claims (as defined in the UCC) with a face, stated or fair market value in excess of $2,500,000 individually of the Loan Parties (detailing such Commercial Tort Claim in such detail as reasonably requested by the Administrative Agent).

(f) Pledged Equity Interests. Set forth on Schedule 5.20(f), as of the Closing Date and as of the last date such Schedule 5.20(f) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a list of (i) all Pledged Equity and (ii) all other Equity Interests required to be pledged to the Administrative Agent pursuant to the Collateral Documents (in each case, detailing the Grantor (as defined in the Security Agreement), the Person whose Equity Interests are pledged, the number of shares of each class of Equity Interests, the certificate number and percentage ownership of outstanding shares of each class of Equity Interests and the class or nature of such Equity Interests (*i.e.*, voting, non-voting, preferred, etc.)).

(g) Properties. Set forth on Schedule 5.20(g), as of the Closing Date and as of the last date such Schedule 5.20(g) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a list of (A) each headquarter location of the Loan Parties, (B) each other location where any significant administrative or governmental functions are performed, (C) each other location where the Loan Parties maintain any books or records (electronic or otherwise) and (D) each location where any personal property Collateral is located at any premises owned or leased by a Loan Party with a Collateral value in excess of $2,500,000 (in each case, including (1) an indication if such location is leased or owned, (2), if leased, the name of the lessor and which Loan Party is the lessee, and if owned, the name of the Loan Party owning such property, (3) the address of such property (including, the city, county, state and zip code) and (4) to the extent owned, the approximate fair market value of such property).

(h) Material Contracts. Set forth on Schedule 5.20(h), as of the Closing Date and as of the last date such Schedule 5.20(h) was required to be updated in accordance with Sections 6.02, 6.13 and 6.14, is a complete and accurate list of all Material Contracts of the Borrower and its Subsidiaries.

5.21 EEA Financial Institutions.

No Loan Party is an EEA Financial Institution.

5.22 Covered Entities.

No Loan Party is a Covered Entity.

5.23 Beneficial Ownership Certification.

The information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.24 Intellectual Property; Licenses; Etc.

The Borrower and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses and other intellectual property rights that are required to operate their respective businesses in all material respects, without conflict with the rights of any other Person. Neither the operation of the business, nor any product, service, process, method, substance, part or other material now used by any Loan Party or any of its Subsidiaries infringes, misappropriates or otherwise violates upon any rights held by any other Person in any material respect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened in writing, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There has been no unauthorized use, access, interruption, modification, corruption or malfunction of any information technology assets or systems (or any information or transactions stored or contained therein or transmitted thereby) owned or used by any Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing, Pfenex (or the Borrower) holds all material licensing rights (including, without limitation to, all economic rights and Intellectual Property), as licensee and sub-licensor, with respect to the Specified Existing Pelican Products.

5.25 Labor Matters.

There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries as of the Closing Date and neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years preceding the Closing Date.

5.26 Regulatory Matters.

(a) The Loan Parties and their Subsidiaries hold, and are operating in compliance with, such material permits, registrations, licenses, franchises, approvals, authorizations and clearances of the FDA, if any, required for the conduct of their business as currently conducted (collectively, the "FDA Permits"), and all such FDA Permits, if any, are in full force and effect. The Loan Parties and their Subsidiaries have fulfilled and performed, in all material respects, all of their obligations with respect to the FDA Permits, and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any FDA Permit.

(b) The Loan Parties and their Subsidiaries, and to the knowledge of the Loan Parties and their Subsidiaries, each of their licensed employees and contractors, are in compliance with all applicable Healthcare Laws in all material respects. Except as disclosed to the Administrative Agent from time to time pursuant to Section 6.03, neither any of the Loan Parties nor their Subsidiaries have received notice of any pending or threatened claim, suit, proceeding, hearing, enforcement, audit, inspection, investigation, arbitration or other action from the FDA or any other applicable Governmental Authority or applicable foreign regulatory agency with jurisdiction over the Loan Parties or their Subsidiaries, alleging that any operation or activity of the Loan Parties or their Subsidiaries is in violation of any applicable Healthcare Law in any material respect.

(c) All applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all requests for a FDA Permit or other permit or license from the FDA or other Governmental Authority with jurisdiction over the Loan Parties or their Subsidiaries and relating to the Loan Parties or their Subsidiaries, their business and their Products, when submitted to the FDA or other Governmental Authority were true, complete and correct in all material respects as of the date of submission and any necessary or required material updates, changes, corrections or modification to such applications, submissions, information and data have been timely submitted to the FDA or other Governmental Authority.

(d) Neither any of the Loan Parties nor any of their Subsidiaries have had any product or manufacturing site (whether owned by the Loan Parties or that of a contract manufacturer) subject to a Governmental Authority (including FDA) shutdown or import or export prohibition, nor received any FDA Form 483 or other Governmental Authority notice of inspectional observations (other than with respect to routine inspections that are not related to any actual or potential violation of any Applicable Law), “warning letters,” “untitled letters” or requests or requirements to make material changes to any of the Loan Parties’ or their Subsidiaries’ Products, or similar correspondence or notice from the FDA or other Governmental Authority with jurisdiction over the Loan Parties or their Subsidiaries in respect of the Loan Parties’ and their Subsidiaries’ business and alleging or asserting noncompliance with any Applicable Law, permit or such requests or requirements of such Governmental Authority, and, to the knowledge of the Loan Parties and their Subsidiaries, neither the FDA nor any such Governmental Authority is considering such action, in each case, which would reasonably be expected to have a Material Adverse Effect.

(e) Except as set forth on Schedule 5.26, there are no recalls, field notifications, field corrections, field safety corrective actions, market withdrawals or replacements, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the Loan Parties’ and their Subsidiaries’ Products (“Safety Notices”) or, to the Loan Parties’ or their Subsidiaries’ knowledge, material product complaints with respect to the Loan Parties’ or their Subsidiaries’ Products, and to the Loan Parties’ and their Subsidiaries’ knowledge, there are no facts that would be reasonably likely to result in (i) a material Safety Notice with respect to the Loan Parties’ or their Subsidiaries’ Products, (ii) a material change in labeling of any of the Loan Parties’ or their Subsidiaries’ Products; or (iii) a termination or suspension of marketing or testing of any of the Loan Parties’ or their Subsidiaries’ Products, in each case, which would reasonably be expected to have a Material Adverse Effect..

(f) None of the Loan Parties or any of their Subsidiaries is the subject of any pending or, to the Loan Parties’ or their Subsidiaries’ knowledge, threatened investigation in respect of the Loan Parties, their Subsidiaries or their Products, by the FDA pursuant to its “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities” Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto and neither the Loan Parties, their Subsidiaries nor any of their officers, employees or agents has been convicted of any crime or engaged in any conduct that could result in a material debarment or exclusion (i) under 21 U.S.C. Section 335a, or (ii) under any similar law applicable to the Loan Parties or their Subsidiaries, in each case, which would reasonably be expected to have a Material Adverse Effect. As of the Closing Date, no claims, actions, proceedings or investigations that would reasonably be expected to result in such a material debarment or exclusion are pending or threatened against the Loan Parties, their Subsidiaries or any of their officers, employees or agents.

(g) All clinical studies, tests and preclinical and clinical trials being conducted by the Loan Parties and their Subsidiaries, or in which any Product or Product candidate has participated, have been and are being conducted in material compliance with Applicable Law, including the applicable requirements of Good Laboratory Practices or Good Clinical Practices. Except as set forth on Schedule 5.26, the Loan Parties and its Subsidiaries have not received any written notices, correspondence or other communication from any institutional review board, the FDA or any other Governmental Authority, recommending or requiring the termination, suspension, or material modification of any ongoing or planned clinical trials conducted by, or on behalf of, any Loan Party or its Subsidiaries.

(h) Except as set forth on Schedule 5.26, the Loan Parties, their Subsidiaries, and the managers, officers, employees and, to the knowledge of the Loan Parties and their Subsidiaries, agents of the Loan Parties and their Subsidiaries, have not been convicted of any crime or engaged in any conduct that could result in a material debarment or exclusion (i) under 21 U.S.C. § 335a, or (ii) any similar state law, rule or regulation. As of the Closing Date, no claims, actions, proceedings or investigations that would reasonably be expected to result in such a material debarment or exclusion are pending or threatened against the Loan Parties, their Subsidiaries, or the managers, officers, employees or, to the knowledge of the Loan Parties and their Subsidiaries, agents of the Loan Parties and the Subsidiaries.

Article VI

AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of its Subsidiaries to:

6.01 Financial Statements.

Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) Audited Financial Statements. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower (or, if earlier, fifteen (15) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)) (commencing with the fiscal year ended December 31, 2026), a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, changes in 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, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Administrative 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 (except for any such qualification or exception with respect to, or resulting from, the impending maturity date of any Indebtedness permitted hereunder of the Loan Parties occurring within 12 months of such audit) or any qualification or exception as to the scope of such audit.

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower (or, if earlier, five (5) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)) (commencing with the fiscal quarter ending June 30, 2026), a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of income or operations, changes in Shareholders' Equity and cash flows for such fiscal quarter and for the portion of the Borrower fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP and including management discussion and analysis of operating results inclusive of operating metrics in comparative form, certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of the Borrower and its Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Business Plan and Budget. As soon as available, but in any event within sixty (60) days after the end of each fiscal year of the Borrower, an annual business plan and budget of the Borrower and its Subsidiaries on a Consolidated basis, including forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent, of Consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries on a quarterly basis for the immediately following fiscal year

As to any information contained in materials furnished pursuant to Section 6.02(g), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02 Certificates; Other Information.

Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent:

(a) Accountants' Certificate. Concurrently with the delivery of the financial statements referred to in Section 6.01(a) (commencing with the delivery of the financial statements for the fiscal year ended December 31, 2026), a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Default or, if any such Default shall exist, stating the nature and status of such event.

(b) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ending June 30, 2026), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller which is a Responsible Officer of the Borrower. Delivery of the Compliance Certificate may be by electronic communication including fax or email and shall be deemed to be an original and authentic counterpart thereof for all purposes.

(c) Updated Schedules. Concurrently with the delivery of the Compliance Certificate referred to in Section 6.02(b) for (i) each fiscal quarter, an updated Schedule 5.20(b) to this Agreement (which may be attached to the Compliance Certificate) to the extent required to make the representation related to such Schedule true and correct as of the date of such Compliance Certificate, and (ii) the fiscal quarter ended each December 31st, the following updated Schedules to this Agreement (which may be attached to the Compliance Certificate) to the extent required to make the representation related to such Schedule true and correct as of the date of such Compliance Certificate: Schedules 1.01(c), 5.10, 5.19(a), 5.19(b), 5.20(c), 5.20(d)(i), 5.20(d)(ii), 5.20(e), 5.20(f), 5.20(g) and 5.20(h).

(d) Calculations. Concurrently with the delivery of the Compliance Certificate referred to in Section 6.02(b) required to be delivered with the financial statements referred to in Section 6.01(a), a certificate (which may be included in such Compliance Certificate) including the amount of all Restricted Payments, Investments (including Permitted Acquisitions), Dispositions, and Capital Expenditures that were made during the prior fiscal year.

(e) Changes in Entity Structure. Within twenty (20) days (or such later date as agreed to by the Administrative Agent) prior to any merger, consolidation, dissolution or other material change in entity structure of any Loan Party or any of its Subsidiaries permitted pursuant to the terms hereof, provide notice of such change in entity structure to the Administrative Agent, along with such other information as reasonably requested by the Administrative Agent. Provide notice to the Administrative Agent, within ten (10) days following such event (or such extended period of time as agreed to by the Administrative Agent) of any change in any Loan Party's legal name, state of organization, or organizational existence.

(f) Audit Reports; Management Letters; Recommendations. Promptly after receipt thereof by the Borrower, copies of any detailed final audit reports, final management letters or final written recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them.

(g) Annual Reports; Etc. Promptly after the same are available, ensure electronic access of the Administrative Agent to download copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower 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, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto.

(h) Debt Securities Statements and Reports. Promptly after the furnishing thereof, copies of any material statement or material report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02. For purposes of this clause (h) and without limitation, any financial deliverables, notices of default or any other statement or report relating to events, either individually or in the aggregate, that would reasonably be expected to have a Material Adverse Effect or a material adverse effect however defined under any such indenture, loan or credit or similar agreement shall be deemed material.

(i) SEC Notices. Promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other non-routine inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof.

(j) Notices. Not later than five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all material notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could have a Material Adverse Effect.

(k) Environmental Notice. Promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect.

(i) FDA Notice. Promptly (i) after FDA initiating any enforcement action against any Loan Party or its Subsidiaries or any material supplier of a Loan Party or any of its Subsidiaries, in each case, that causes any Loan Party to recall, withdraw, remove or discontinue marketing any of its Products; (ii) FDA issues a warning letter, 483, untitled letter, or dear manufacturer letter to any Loan Party or any of its Subsidiaries with respect to any of its activities or Products which could reasonably be expected to result in a Material Adverse Effect, or liability to the Loan Parties or its Subsidiaries in excess of the Threshold Amount or the same by any Governmental Authority; and (iii) the revocation by the FDA of any material Permit, or any Loan Party withdrawing any material Permit, except as could not reasonably be expected to result in a Material Adverse Effect, or liability to the Loan Parties in excess of the Threshold Amount, and

(iv) any issuance of an Establishment Inspection Report (EIR) by the FDA or equivalent Governmental Authority.

(l) Anti-Money-Laundering; Beneficial Ownership Regulation. Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act.

(m) Beneficial Ownership. To the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification.

(n) Additional Information. Promptly after any reasonable and reasonably detailed request by the Administrative Agent (on behalf of itself or any Lender), such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents.

(o) Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(g) (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 Borrower posts such documents, or provides a link thereto on the Borrower’s website on the Internet at the website address listed on Schedule 1.01(a); or (ii) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that the Borrower shall notify the Administrative Agent (by fax transmission or e-mail transmission) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and each Lender shall be solely responsible for timely accessing posted documents or maintaining its copies of such documents.

(p) The Borrower hereby acknowledges that (i) the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “*Borrower Materials*”) by posting the Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the “*Platform*”) and (ii) certain of the Lenders (each, a “*Public Lender*”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (A) 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; (B) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arranger, the L/C Issuer 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 Borrower or its securities for purposes of United States federal and state securities laws (provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (C) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (D) the Administrative Agent and any Affiliate thereof and the Arranger shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

(q) Notwithstanding anything to the contrary set forth herein, the Borrower shall not be required to provide or disclose any information (i) that constitutes non-financial trade secrets or non-financial proprietary information of the Borrower and/or any of its Subsidiaries, customers and/or suppliers, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective representatives or contractors) is prohibited by Applicable Law, provided that, with respect to this clause (ii), the Borrower shall (A) make the Administrative Agent aware that information is being withheld (to the extent permitted by Applicable Law) and (B) use commercially reasonable efforts to communicate the relevant information in a way that does not violate such Applicable Law, (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product, provided that, with respect to this clause (iii), the Borrower shall (A) make the Administrative Agent aware that information is being withheld and (B) use commercially reasonable efforts to communicate the relevant information in a way that does not violate such attorney-client or similar privilege or (iv) in respect of which the Borrower or any Subsidiary owes confidentiality obligations (to the extent not created in contemplation of such party's obligations hereunder) to any third party, provided that, with respect to this clause (iv), the Borrower shall (A) make the Administrative Agent aware of such confidentiality obligations (to the extent permitted under the applicable confidentiality obligation) and (B) use commercially reasonable efforts to communicate the relevant information in a way that does not violate such confidentiality obligations.

6.03 <u>Notices</u>.

Promptly, but in any event within three (3) Business Days after a Responsible Officer of a Loan Party has knowledge thereof, notify the Administrative Agent on behalf of each Lender:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or would reasonably be expected to result in a Material Adverse Effect;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(e) [reserved];

(f) the commencement of, or any material adverse development in, any litigation or proceeding affecting any Loan Party or any Subsidiary of any Loan Party (i) in which the amount of damages claimed exceeds the Threshold Amount (including, without limitation, with respect to violations of Healthcare Laws), (ii) in which injunctive or similar relief is sought and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement, any other Loan Document; and

(g) (i) the receipt by any Loan Party of any notice of violation of, or potential liability under, any Environmental Law or similar notice, which would reasonably be expected to result in Environmental Liabilities exceeding the Threshold Amount, and (ii)(A) the occurrence of Releases in violation of Environmental Law, (B) the existence of any condition that would reasonably be expected to result in violations of or Environmental Liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, demand, dispute alleging a violation of or Environmental Liability under any Environmental Law which, in the case of clauses (A), (B) and (C) above, in the aggregate for all such clauses, would reasonably be expected to result in Environmental Liabilities exceeding the Threshold Amount.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations.

Pay and discharge as the same shall become due and payable, (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property not otherwise permitted under Section 7.01; and (c) all Indebtedness, individually or in the aggregate, having an aggregate outstanding principal amount at more than the Threshold Amount, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

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 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;

(c) preserve or renew all of its Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect; and

(d) hold all material licensing rights (including, without limitation to, all economic rights and Intellectual Property), as licensee and sub-licensor, with respect to the Specified Existing Pelican Products.

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, casualty and condemnation excepted; and

(b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons.

(b) Evidence of Insurance. Cause the Administrative Agent to be named as lenders' loss payable, loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing liability coverage or coverage in respect of any Collateral (other director and officer insurance, worker's compensation insurance, any policy that provides coverage exclusively for any Property of the Loan Parties which is not Collateral and any policy that provides coverage exclusively for Subsidiaries that are not Loan Parties), and cause, unless otherwise agreed to by the Administrative Agent, each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be altered or cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums). Annually, any time prior to the expiration of current insurance coverage, the Loan Parties shall provide, or cause to be provided, to the Administrative Agent, such evidence of insurance as reasonably requested by the Administrative Agent, including, but not limited to: (i) certified copies of such insurance policies, (ii) evidence of such insurance policies (including, without limitation and as applicable, ACORD Form 28 certificates (or similar form of insurance certificate), and ACORD Form 25 certificates (or similar form of insurance certificate)), (iii) declaration pages for each insurance policy and (iv) additional insured and lender's loss payable endorsements if the Administrative Agent for the benefit of the Secured Parties is not on the declarations page for such policy.

6.08 <u>Compliance with Laws</u>.

Comply with the requirements of all Applicable Law and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such Applicable 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 could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, each Loan Party and its Subsidiaries shall comply with all applicable Healthcare Laws and their implementation by any applicable Governmental Authority and all lawful requests of any Governmental Authority applicable to its Products, in each case, in all material respects. All Products developed, manufactured, tested, distributed or marketed by or on behalf of any Loan Party or any of its Subsidiaries that are subject to the jurisdiction of the FDA or comparable Governmental Authority shall be developed, tested, manufactured, distributed and marketed in compliance with all applicable Healthcare Laws and any other requirements of Law, including, without limitation, product approval or premarket notification, good manufacturing practices, labeling, advertising, record-keeping, and adverse event reporting, and have been and are being tested, investigated, distributed, marketed, and sold in compliance with all applicable Healthcare Laws and all other requirements of Applicable Law, in each case, in all material respects.

6.09 <u>Books and Records</u>.

(a) Maintain proper books of record and account, in which full, true and correct in all material respects entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of this Section 6.09); and

(b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

6.10 <u>Inspection Rights</u>.

(a) Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided so long as no Event of Default shall have occurred and be continuing, such visit and inspection shall occur no more than one (1) time per year and the Borrower shall not be obligated to pay the expenses of the Administrative Agent and the Lenders for more than one (1) such visit and inspection per year; provided, further, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and with reasonable advance notice.

(b) If requested by the Administrative Agent in its commercially reasonable discretion, permit the Administrative Agent and its representatives, upon reasonable advance notice to the Borrower, to conduct, at the reasonable expense of the Borrower, an annual (i) personal property asset appraisal on personal property Collateral of the Borrower and its Subsidiaries, (ii) real estate appraisal on real estate Collateral of the Borrower and its Subsidiaries and (iii) field exam on the accounts receivable, inventory, payables, controls and systems of the Borrower and its Subsidiaries.

(c) If requested by the Administrative Agent in its commercially reasonable discretion, permit the Administrative Agent, and its representatives, upon reasonable advance notice to the Borrower, to conduct an annual audit of the Collateral at the reasonable expense of the Borrower.

6.11 Use of Proceeds.

Use the proceeds of the Credit Extensions to finance (a) fees and expenses incurred in connection with the closing of the Revolving Facility and the execution and delivery of the Loan Documents and (b) Permitted Acquisitions (other than the Closing Date Merger), working capital and general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 Material Contracts.

Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon reasonable request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.13 Covenant to Guarantee Obligations.

The Loan Parties will cause each of their Subsidiaries (other than any Excluded Subsidiary) whether newly formed, after acquired or otherwise existing (including, without limitation, (x) upon the formation of any Subsidiary that is a Division Successor, and (y) any Person ceasing to be an Excluded Subsidiary) to promptly (and in any event within sixty (60) days after such Subsidiary is formed or acquired (or such longer period of time as agreed to by the Administrative Agent in its sole discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement; provided that no Foreign Subsidiary that is a CFC (or any Domestic Subsidiary thereof) shall be required to become a Guarantor to the extent such Guaranty would reasonably be expected to result in a material adverse U.S. Tax consequence for the Borrower pursuant to Section 956 of the Code or otherwise (as reasonably determined in good faith by the Borrower). In connection therewith, the Loan Parties shall give notice to the Administrative Agent not less than fifteen (15) days (or such shorter period of time as agreed to by the Administrative Agent in its sole discretion) prior to creating a Subsidiary, or acquiring the Equity Interests of any other Person. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to the applicable clauses of Sections 4.01 and 6.14 and such other documents or agreements as the Administrative Agent may reasonably request.

6.14 Covenant to Give Security.

Except in each case with respect to Excluded Property:

(a) Equity Interests and Personal Property. Each Loan Party will cause the Pledged Equity and all of its tangible and intangible personal property now owned or hereafter acquired by it to be subject at all times to a first priority, perfected Lien (subject to Permitted Liens to the extent permitted by or provided in the Loan Documents and except as otherwise permitted by or provided in the Security Agreement) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to the terms and conditions of the Collateral Documents. Each Loan Party shall provide opinions of counsel and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Administrative Agent.

(b) Landlord Waivers. In the case of (i) each headquarters location of the Loan Parties, (ii) each other location that contains material books and records of any Loan Party, and (iii) any personal property Collateral located at any other premises leased by a Loan Party containing personal property Collateral with a value in excess of $5,000,000, the Loan Parties will provide the Administrative Agent with such estoppel letters, consents and waivers from the landlords on such real property to the extent (A) reasonably requested by the Administrative Agent and (B) the Loan Parties are able to secure such letters, consents and waivers after using commercially reasonable efforts (such letters, consents and waivers shall be in form and substance reasonably satisfactory to the Administrative Agent, it being acknowledged and agreed that any Landlord Waiver is satisfactory to the Administrative Agent).

(c) Account Control Agreements. Each of the Loan Parties shall not open, maintain or otherwise have any deposit or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money or securities are or may be deposited or maintained with any Person, other than (i) deposit accounts that are maintained at all times with (A) Citibank or (B) any other depositary institutions as to which the Borrower shall have used commercially reasonable efforts to deliver to the Administrative Agent a Qualifying Control Agreement, (ii) securities accounts that are maintained at all times with (A) Citibank or (B) any other financial institutions as to which the Borrower shall have used commercially reasonable efforts to deliver to the Administrative Agent a Qualifying Control Agreement or, with respect to each of the foregoing clauses (i) and (ii), in any jurisdiction where Qualifying Control Agreements are not customary, the respective Loan Party has entered into a Collateral Document that creates a Lien over such deposit, securities or other accounts, (iii) deposit accounts established solely as payroll and other zero balance accounts, (iv) deposit accounts from which amounts on deposit therein are swept on a daily basis into a deposit account of the Loan Parties maintained with Citibank or which are otherwise subject to a Qualifying Control Agreement and (v) other deposit accounts, so long as at any time the aggregate balance in all such accounts does not exceed $5,000,000 on a rolling 30-day average basis (such accounts described in the foregoing clauses (iii), (iv) and (v), the *"Excluded Accounts"*).

(d) Real Property. (i) Promptly after the acquisition of any owned Material Real Property (or after any owned real property becomes Material Real Property) by any Loan Party that is not subject to a Mortgage (and, in any event, within ten (10) days after such acquisition or event, as such time period may be extended by the Administrative Agent in its sole discretion), notify the Administrative Agent and (ii) promptly thereafter (and in any event, within sixty (60) days of such acquisition or event (as such time period may be extended by the Administrative Agent, or such requirement is waived by the Administrative Agent, in each case in its sole discretion), deliver the following with respect such Material Real Property: (A) a Mortgage duly executed and delivered by the record owner of such Material Real Property (together with UCC fixture filings, if requested by the Administrative Agent), (B) a policy or policies of title insurance (or marked up title insurance commitments having the effect of policies of title insurance) in the amount equal to the fair market value of such Material Real Property and fixtures, as determined by the Administrative Agent in its reasonable discretion, or such other amount as is acceptable to the Administrative Agent and issued by a nationally recognized title insurance company reasonably acceptable to the Administrative Agent (the *"Title Company"*) insuring the Lien of each such Mortgage as a first priority Lien on the Material Real Property described therein, free of any other Liens except Liens permitted under Section 7.01, together with such customary endorsements as the Administrative Agent may reasonably request, together with evidence reasonably satisfactory to the Administrative Agent of payment of all expenses and premiums of the Title Company and all other sums required in connection with the issuance of each title policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording such Mortgage in the appropriate real estate records, (C) such affidavits, certificates, information (including financial data and environmental reports if requested by the Title Company) and instruments of indemnification as shall be reasonably required to induce the Title Company to issue the title policies and endorsements contemplated above and which are reasonably requested by such Title Company, (D) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each such Material Real Property (together with a notice about special flood hazard area status and flood disaster assistance, which, if applicable, shall be duly executed by the applicable Loan Party relating to such Material Real Property), (E) if any such Material Real Property is located in an area determined by the Federal Emergency Management Agency to have special flood hazards, evidence of such flood insurance as may be required under applicable Law, including Regulation H of the FRB and the other Flood Insurance Laws and as required under Section 5.10, (F) a survey for each such Material Real Property, together with an affidavit of no change, if applicable, in favor of the Title Company, sufficient to allow the Title Company to issue the applicable policy of title insurance without a standard survey exception and (G) customary legal opinions and evidence of organizational approval in form and substance reasonably satisfactory to the Administrative Agent with respect to the mortgagor of such Mortgage and the enforceability and perfection of such Mortgage. Notwithstanding anything contained in this Section 6.14(d) to the contrary, the Administrative Agent shall not enter into any Mortgages on real property owned in fee simple after the Closing Date until the earlier of (i) the date that occurs forty-five (45) days after the Administrative Agent has delivered to the Lenders (which may be delivered electronically) the following documents in respect of such real property: (A) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each such Material Real Property (together with a notice about special flood hazard area status and flood disaster assistance, which, if applicable, shall be duly executed by the applicable Loan Party relating to such Material Real Property), and (B) if any such Material Real Property is located in an area determined by the Federal Emergency Management Agency to have special flood hazards, evidence of such flood insurance as may be required under applicable Law, including Regulation H of the FRB and the other Flood Insurance Laws and as required under Section 5.10 and (ii) the Administrative Agent's receipt of written confirmation from each Lender that flood insurance due diligence and flood insurance compliance has been satisfactorily completed by such Lender (such written confirmation not to be unreasonably conditioned, withheld or delayed). Additionally, each Loan Party shall, upon the reasonable request of any Lender, interact directly with such Lender to assist such Lender in completing its flood insurance due diligence and flood insurance compliance and promptly provide, or cause to be provided, to such Lender all information reasonably and customarily required for the completion thereof.

(e) Updated Schedules. Concurrently with the delivery of any Collateral pursuant to the terms of this Section 6.14, the Borrower shall provide the Administrative Agent with the applicable updated Schedule(s): 5.19(a), 5.19(b), 5.20(b), 5.20(c), 5.20(d)(i), 5.20(d)(ii), 5.20(e), 5.20(f), 5.20(g) and 5.20(h).

(f) Further Assurances. At any time upon reasonable request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable to maintain in favor of the Administrative Agent, for the benefit of the Secured Parties, Liens and insurance rights on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Loan Parties under, the Loan Documents and all Applicable Law.

6.15 Compliance with Environmental Laws.

Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with all Environmental Laws; provided that neither the Borrower 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 appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.16 Anti-Corruption Laws; Sanctions.

(a) Conduct its business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

(b) Notify the Administrative Agent immediately if it, any of its Subsidiaries or Affiliates, or their officers, directors or employees is or becomes (i) the target or subject of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction

6.17 Further Assurances.

Promptly upon reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by Applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any

Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

6.18 Flood Insurance Matters.

The parties hereto acknowledge and agree that, if there is any Mortgaged Property, any increase, extension, or renewal of any of the Loans or Commitments (including any Incremental Commitment, but excluding (a) any continuation or conversion of borrowings, (b) the making of any Revolving Loans or Swingline Loans or (c) the issuance, renewal or extension of Letters of Credit) may, in the sole discretion of the Administrative Agent, be subject to (and conditioned upon): (i) the prior delivery of all flood zone determination certifications, acknowledgements and evidence of flood insurance and other flood-related documentation with respect to such Mortgaged Property reasonably sufficient to evidence compliance with Flood Insurance Laws and as otherwise reasonably required by the Administrative Agent and (ii) the earlier to occur of (A) the date that occurs thirty (30) days after the Administrative Agent has delivered the documentation set forth in clause (i) of this Section to the Lenders (which may be delivered electronically) or (B) the Administrative Agent's receipt of written confirmation from each of the Lenders that flood insurance due diligence and flood insurance compliance has been completed by such Lender (such written confirmation not to be unreasonably withheld, conditioned or delayed).

6.19 Post-Closing Matters.

The Borrower will, and will cause each of its Subsidiaries to, as applicable, ensure that promptly, and in any event within:

(a) Within thirty (30) days of the Closing Date (or such later date agreed to by the Administrative Agent in its sole discretion), deliver to the Administrative Agent endorsements of insurance naming Administrative Agent as an additional insured or lenders loss payee, as the case may be, in form and substance reasonably acceptable to the Administrative Agent;

(b) Within thirty (30) days of the Closing Date (or such later date agreed to by the Administrative Agent in its sole discretion), deliver to the Administrative Agent stock or membership certificates, if any, evidencing the Pledged Equity and undated stock or transfer powers duly executed in blank, in each case to the extent such Pledged Equity is certificated;

(c) Within thirty (30) days of the Closing Date (or such later date agreed to by the Administrative Agent in its sole discretion), deliver to the Administrative Agent to the extent required to be delivered pursuant to the terms and conditions of the Loan Documents, all instruments in the possession of any of the Loan Parties (if any), together with allonges or assignments as may be necessary or appropriate to create and perfect the Administrative Agent's security interest in such Collateral;

(d) Within thirty (30) days of the Closing Date (or such later date agreed to by the Administrative Agent in its sole discretion), deliver to the Administrative Agent fully executed perfection certificate by the Borrower with respect to the Loan Parties, in form and substance reasonably acceptable to the Administrative Agent;

(e) Within sixty (60) days of the Closing Date (or such later date agreed to by the Administrative Agent in its sole discretion), in the case of any personal property Collateral located at premises leased by a Loan Party and set forth on Schedule 5.20(g) or the Closing Date Joinder Agreement, use commercially reasonable efforts to deliver to the Administrative Agent such estoppel letters, consents and waivers from the landlords of such real property to the extent required to be delivered in connection with Section 6.14 (such letters, consents and waivers shall be in form and substance reasonably satisfactory to the Administrative Agent, it being acknowledged and agreed that any Landlord Waiver is satisfactory to the Administrative Agent); and

(f) Within ninety (90) days of the Closing Date (or such later date as agreed to by the Administrative Agent in its sole discretion), use commercially reasonable efforts to deliver to the Administrative Agent Qualifying Control Agreements satisfactory to the Administrative Agent to the extent required to be delivered pursuant to Section 6.14.

Article VII

NEGATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, 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, except for the following (the "*Permitted Liens*"):

(a) Liens securing the Secured Obligations, including arising pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(b);

(c) Liens for Taxes not yet due or Liens for Taxes which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) Statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings diligently conducted; provided that adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) pledges or deposits in the ordinary course of business in connection with (i) workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA, (ii) public utility services provided to the Borrower or a Subsidiary or (iii) securing liability for reimbursement or indemnification obligations (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers, providing property, casualty or liability insurance to the Borrower or any Subsidiary;

(f) 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;

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

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h); provided the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review;

(i) Liens securing Indebtedness permitted under Section 7.02(c); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries with any Lender or any other financial institution, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; provided that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall only secure Indebtedness permitted pursuant to Section 7.02(f);

(l) any interest or title of a lessor, licensor or sublessor under any lease, license or sublease entered into by any Loan Party or any Subsidiary thereof in the ordinary course of business and covering only the assets so leased, licensed or subleased;

(m) Liens of a collection bank arising under Section 4–210 of the UCC on items in the course of collection;

(n) non-exclusive licenses and sublicenses granted by a Loan Party or any Subsidiary of a Loan Party and leases and subleases (by a Loan Party or any Subsidiary of a Loan Party as lessor or sublessor) to third parties in the ordinary course of business not interfering with the business of the Loan Parties or any of their Subsidiaries in any material respect taken as a whole, and in each case, not securing any Indebtedness;

(o) Liens arising from the filing of precautionary uniform commercial code financing statements with respect to any lease permitted by this Agreement

(p) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of business;

(q) pledges of cash or Cash Equivalents in the ordinary course of business securing insurance premiums under insurance policies, in each case, payable to insurance carriers that provide insurance to the Borrower and its Subsidiaries in an aggregate amount not to exceed the amount of insurance premiums secured by such pledges;

(r) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business and not prohibited by this Agreement;

(s) Liens securing any Swap Contract permitted pursuant to Section 7.02(g);

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

(u) Liens of landlords or mortgagees of landlords on fixtures, equipment and movable property located on premises leased by the Borrower or any Subsidiary in the ordinary course of business;

(v) Liens solely on any cash earnest money deposits made by any Loan Party or any of their Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(w) Liens on the property of Subsidiaries that are not Loan Parties and not constituting Collateral securing Indebtedness of the type referred to in Section 7.02(l); and

(x) other Liens securing Indebtedness not for borrowed money outstanding in an aggregate principal amount not to exceed $20,000,000.

7.02 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness in respect of the Secured Obligations, including arising under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and, still further, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination, standstill and related terms (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties, the Administrative Agent or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed $20,000,000;

(d) unsecured Indebtedness of a Subsidiary of the Borrower owed to the Borrower or a Subsidiary of the Borrower, which Indebtedness shall (i) be evidenced by promissory notes which shall be pledged to the Administrative Agent as Collateral for the Secured Obligations in accordance with the terms of the Security Agreement, (ii) be on terms (including subordination terms) acceptable to the Administrative Agent and (iii) be otherwise permitted under the provisions of Section 7.03(c) ("*Intercompany Debt*");

(e) Guarantees of the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor;

(f) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the date hereof in a transaction permitted hereunder in an aggregate principal amount not to exceed $5,000,000 at any time outstanding for all such Subsidiaries; provided that such Indebtedness is existing at the time such Person becomes a Subsidiary of the Borrower and was not incurred solely in contemplation of such Person's becoming a Subsidiary of the Borrower;

(g) obligations (contingent or otherwise) existing or arising under (1) any Permitted Bond Hedge Transaction, (2) any Permitted Warrant Transaction, or (3) any other Swap Contract, provided that in the case of such other Swap Contracts under clause (3) only (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 (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; and

(h) Guarantees (i) by any Loan Party of Indebtedness of any Subsidiary that is not a Loan Party to the extent such guarantees constitute Investments and subject to the limitations of Section 7.03(c), Section 7.03(r) or Section 7.03(x), (ii) by any Subsidiary that is not a Loan Party of Indebtedness of any other Subsidiary that is not a Loan Party, and (iii) by any Subsidiary of the Borrower of Indebtedness of the Borrower or any other Loan Party;

(i) Indebtedness owed to insurance carriers at any time incurred in connection with financing insurance premiums in the ordinary course of business;

(j) indemnification, purchase price adjustment or similar obligations incurred in connection with Permitted Acquisitions, other Investments permitted by Section 7.03 or Dispositions permitted under Section 7.05;

(k) Indebtedness consisting of any earnout, seller note or similar instrument in connection with any Permitted Acquisition; provided that at the time of incurrence thereof, (a) no Default shall have occurred and be continuing or would result from the incurrence thereof and (b) such earnouts, seller notes or similar instruments executed in connection with any Permitted Acquisition are Subordinated Indebtedness;

(l) Indebtedness of any Subsidiaries that are not Loan Parties in an aggregate principal amount (on a cumulative basis for all such Subsidiaries) not to exceed $5,000,000 at any time outstanding; provided that, both before and immediately after giving effect to the incurrence of any such Indebtedness, (A) no Default shall have occurred and be continuing and (B) the Borrower shall be in Pro Forma Compliance with the financial covenants set forth in Section 7.11;

(m) Indebtedness representing deferred compensation or stock-based compensation to employees of the Borrower or any Subsidiary incurred in the ordinary course of business;

(n) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds or from the endorsement of instruments for deposit, in each case, in the ordinary course of business;

(o) Indebtedness in respect of any netting services, overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing-house transfers of funds in the ordinary course of business;

(p) [reserved];

(q) to the extent constituting Indebtedness, obligations under Cash Management Agreements entered into in the ordinary course of business;

(r) Indebtedness in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business and not supporting obligations in respect of Indebtedness, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(s) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of its Subsidiaries in the ordinary course of business;

(t) unsecured intercompany Indebtedness of the Borrower owing to (i) Ligand UK Limited, under that certain Amended and Restated Intra-Group Loan Agreement, dated as of October 12, 2023, in an aggregate outstanding principal amount not to exceed $26,681,395.00 as of the Existing Closing Date plus any interest payable in kind that has been capitalized to the outstanding principal thereof and (ii) Vernalis Limited, under that certain Amended and Restated Intra-Group Loan Agreement, dated as of October 12, 2023, in an aggregate outstanding principal amount not to exceed $22,000,000.00 as of the Existing Closing Date plus any interest payable in kind that has been capitalized to the outstanding principal thereof (collectively, the "Specified Intra-Group Loan Agreements"); provided that, in each case, (i) subject to Section 6.19(a), such Indebtedness is subject to a subordination agreement (or other subordination provisions) in form and substance reasonably acceptable to the Administrative Agent, (ii) such Indebtedness remains unsecured, (iii) all interest accruing on such Indebtedness shall be payable in kind and (iv) all accrued interest and principal, in each case, to be paid in cash with respect to such Indebtedness shall be due and payable no earlier than 91 days after the Facility Termination Date;

(u) Convertible Notes outstanding on the Closing Date, unsecured Convertible Notes issued after the Closing Date in an unlimited aggregate amount and any Permitted Convertible Note Refinancings thereof; provided that (1) such Convertible Notes issued after the Closing Date (i) do not have a maturity date prior to ninety-one (91) days after the Revolving Credit Termination Date or require any payment of principal in respect thereof (other than any prepayment or payment on (and as required by) such Permitted Convertible Indebtedness as a result of (x) the satisfaction of a customary conversion contingency, (y) the exercise by a holder of such Permitted Convertible Indebtedness of a conversion right resulting from the satisfaction of a customary conversion contingency or (z) a required repurchase under such Permitted Convertible Indebtedness upon a customary "fundamental change"), (ii) do not require or permit any cash payment of interest in respect thereof at a rate in excess of the then prevailing market rate payable by a similarly situated corporate issuer issuing similar convertible indebtedness, (iii) are not supported by guaranties that are more favorable than the guaranties supporting the Obligations, (iv) do not require representations, warranties, covenants or events of default that are more restrictive, taken as a whole, than those set forth herein, (v) do not contain a cross-default to any Loan Document (other than the occurrence of an Event of Default under Section 8.01(a), to the extent such Event of Default is not discharged, cured, rescinded or annulled within a period of thirty (30) days after notice of its occurrence), and (vi) are unsecured, (2) after giving effect to the incurrence of such Convertible Notes issued after the Closing Date, the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis (without netting of any cash proceeds thereof) as of the end of the most recently ended Measurement Period shall not be greater than 4.75 to 1.00, (3) no Default or Event of Default shall exist and be continuing at the time of incurrence, and (4) after giving effect to the incurrence of such Convertible Notes issued after the Closing Date, the Loan Parties are in Pro Forma Compliance with the financial covenants in Section 7.11 determined on a Pro Forma Basis (without netting of any cash proceeds thereof) as of the end of the most recently ended Measurement Period; and

(v) other unsecured Indebtedness in an aggregate principal amount not to exceed $20,000,000 at any time outstanding.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Loan Party shall be permitted to create, incur, assume, guaranty or otherwise become or remain directly or indirectly liable with respect to any Indebtedness that is from or of a Subsidiary that is not a Loan Party (such creation, incurrence, assumption or guaranty being referred to as "Non-Loan Party Indebtedness of Loan Parties"), in each case, to the extent that the structuring of any claims with respect to any Indebtedness created, assumed, incurred or guaranteed by such Loan Parties, together with any Non-Loan Party Indebtedness of Loan Parties, could reasonably be expected to result in two or more bankruptcy claims against the same Loan Party or a double claim for direct and indirect obligations against the same Loan Party, arising from one transaction or series of transactions relating to the same underlying Non-Loan Party Indebtedness of Loan Parties.

7.03 Investments.

Make or hold any Investments, except:

(a) Investments held by the Borrower and its Subsidiaries in the form of cash or Cash Equivalents;

(b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed $3,000,000 in the aggregate at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties, and (iv) so long as no Event of Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in Subsidiaries that are not Loan Parties in an aggregate amount invested from the Existing Closing Date not to exceed $20,000,000;

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

(e) Guarantees permitted by Section 7.02;

(f) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03 and any modification, replacement, renewal, reinvestment or extension of any of the foregoing, provided that the amount of any Investment permitted pursuant to this clause (f) is not increased from the amount of such Investment;

(g) the Closing Date Merger and other Permitted Acquisitions (other than of Excluded Subsidiaries, CFCs and Subsidiaries held directly or indirectly by a CFC which Investments are covered by Section 7.03(c)(iv), (r) and (x));

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(i) Investments consisting of the indorsement by the Borrower or any Subsidiary of negotiable instruments payable to such Person for deposit or collection in the ordinary course of business;

(j) Investments held by the Loan Parties in Marketable Securities, which Investments are (i) managed by Administrative Agent or any Lender (or any investment management affiliate of such Person), (ii) subject to a securities account control agreement in accordance with Section 6.14(c) and (iii) made and held in the ordinary course of business and otherwise consistent with past practice (including with the Loan Parties' established investments policies and practices);

(k) Investments (including debt obligations) received or acquired as the non-cash portion of consideration received in connection with transactions permitted pursuant to Section 7.05(f);

(l) Investments consisting of any transaction expressly permitted under the terms and conditions of Section 7.04;

(m) Investments consisting of non-cash loans made by the Borrower to officers, directors, employees and consultants of a Loan Party which are used by such Persons to purchase simultaneously Equity Interests of the Borrower;

(n) Investments by the Borrower in Swap Contracts permitted under Section 7.02(g);

(o) Investments of any Person that becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower as a result of a Permitted Acquisition or another Investment permitted under this Section 7.03 on or after the date hereof; provided that (i) such Investments exist at the time such Person becomes (or is merged or consolidated or amalgamated with) a Subsidiary of the Borrower, and (ii) such Investments are not made in anticipation or contemplation of such Person becoming (or merging or consolidating or amalgamated with) a Subsidiary of the Borrower;

(p) Investments in Joint Ventures, provided that the aggregate outstanding amount of all such Investments shall not exceed $10,000,000 at any time;

(q) [reserved];

(r) additional Investments so long as (i) at the time of making such Investment, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (ii) on a Pro Forma Basis, immediately after giving effect to the making of such Investment (together with any related issuance or incurrence of Indebtedness (without netting of any cash proceeds thereof) and the consummation of any other related transaction), the Consolidated Senior Secured Net Leverage Ratio shall be no greater than 1.50:1.00 as of the end of the most recently ended Measurement Period, and (iii) after giving effect to the making of such Investments (together with any related issuance or incurrence of Indebtedness (without netting of any cash proceeds thereof) and the consummation of any other related transaction), the Loan Parties are in Pro Forma Compliance with the financial covenants in Section 7.11 determined on a Pro Forma Basis as of the end of the most recently ended Measurement Period;

(s) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors and suppliers in the ordinary course of business;

(t) loans or advances to officers, directors, employees and consultants of any Loan Party or any of its Subsidiaries in connection with such Person's purchase of Equity Interests of the Borrower or to permit the payment of taxes with respect thereto; provided that the aggregate outstanding principal amount of such loans and advances does not exceed $3,000,000 at any time;

(u) Investments in deposit accounts and securities accounts maintained by the Borrower or any of its Subsidiaries;

(v) to the extent constituting an Investment, (i) Liens permitted by Section 7.01, (ii) Indebtedness permitted by Section 7.02, (iii) transactions permitted by Section 7.04, (iv) Dispositions permitted by Section 7.05, (v) Restricted Payments permitted by Section 7.06 and (vi) transactions with Affiliates permitted by Section 7.08; provided that no Investments may be made solely pursuant to or in reliance upon this Section 7.03(v);

(w) the Investment by Pfenex consisting solely of its ownership in the Equity Interests of the Pelican Joint Venture; provided that any other Investment by any Loan Party or any of their Subsidiaries to the Pelican Joint Venture (or any Subsidiaries thereof) shall only be permitted pursuant to Section 7.03(p), Section 7.03(r) or Section 7.03(x); and

(x) other Investments not to exceed, in any fiscal year of the Borrower, $15,000,000; provided that at the time of and immediately after giving effect to the making of such Investments on a Pro Forma Basis, (x) no Default shall exist or would result therefrom and (y) the Borrower and its Subsidiaries shall be in Pro Forma Compliance with the financial covenants set forth in Section 7.11.

7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except that, so long as no Default exists or would result therefrom:

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

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;

(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

(d) in connection with any Permitted Acquisition, any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of the Borrower and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person; and

(e) each of the Borrower and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Borrower is a party, the Borrower is the surviving Person and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving Person.

7.05 Dispositions.

Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Permitted Transfers;

(b) Dispositions of surplus, obsolete or worn out property and Dispositions of property that is no longer used or useful in the Business of the Borrower or its Subsidiaries, whether now owned or hereafter acquired, in the ordinary course of business, including the abandonment, cancellation, lapse or other Disposition of Intellectual Property, in each case, which, in the reasonable judgment of the Borrower, is no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and its Subsidiaries, taken as a whole;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions permitted by Section 7.03 and Section 7.04;

(e) non-exclusive licenses and sub-licenses of trademarks, service marks, trade names, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses and other intellectual property rights (including the provision of software under an open source license) in the ordinary course of business and substantially consistent with past practice for terms not exceeding five years;

(f) Dispositions of non-core assets (including real estate assets) acquired in connection with any Permitted Acquisition or other Investments permitted hereunder; provided that such Dispositions shall be consummated within one year of the consummation of such Permitted Acquisition; provided further that (i) the consideration received for such assets shall be in an aggregate amount at least equal to the fair market value thereof (as determined in good faith by the board of directors of the Borrower) and (ii) no less than 75% thereof shall be paid in cash; and

(g) other Dispositions so long as (i) at the time of such Disposition, no Event of Default shall exist or shall result therefrom, (ii) at least 75% of the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneously with consummation of the transaction and shall be in an amount not less than the fair market value of the property disposed of, (iii) such transaction does not involve the sale or other disposition of any Equity Interests in any Subsidiary, (iv) such transaction does not involve a sale or other disposition of receivables other than receivables owned by or attributable to other property concurrently being disposed of in a transaction otherwise permitted under this Section 7.05, and (v) the aggregate net book value of all of the assets sold or otherwise disposed of by the Loan Parties and their Subsidiaries in all such transactions in any fiscal year of the Borrower shall not exceed $10,000,000.

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, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Subsidiary may make Restricted Payments to any Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in common Equity Interests of such Person;

(c) the Borrower may purchase, redeem or otherwise acquire Equity Interests pursuant to and in accordance with the Borrower's stock repurchase program as in effect on the Closing Date in an aggregate amount not to exceed $20,000,000 in any fiscal year so long as both before and after giving effect to such purchase, redemption or other acquisition of Equity Interests on a Pro Forma Basis, no Default shall have occurred and be continuing or would result therefrom;

(d) to the extent constituting a Restricted Payment, the Borrower may issue Equity Interests in connection with the cashless exercise of warrants and option grants;

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

(f) the Loan Parties may make a payment in respect of any earnout, seller note or similar instrument in connection with any Permitted Acquisition, so long as both before and after giving effect to such payments in respect of any earnout, seller note or similar instrument on a Pro Forma Basis, (i) the Borrower shall be in Pro Forma Compliance with the financial covenants set forth in Section 7.11 and (ii) no Default shall have occurred and be continuing or would result therefrom;

(g) the Borrower may make other Restricted Payments not to exceed, in any fiscal year of the Borrower, $10,000,000; provided that at the time of and immediately after giving effect to the making of such Restricted Payments on a Pro Forma Basis, (x) no Default shall exist or would result therefrom and (y) the Borrower and its Subsidiaries shall be in Pro Forma Compliance with the financial covenants set forth in Section 7.11;

(h) the Borrower may repurchase Equity Interests issued by it, which redemption is deemed to occur upon (i) the exercise of stock options if the Equity Interests represent a portion of the exercise price thereof or (ii) the withholding of a portion of Equity Interests issued to employees and other participants under an equity compensation program of the Borrower or its Subsidiaries, in each case to cover tax obligations of such persons in respect of such issuance;

(j) the Borrower may pay, as and when due and payable, interest payments required with respect to the Convertible Notes and any Permitted Convertible Note Refinancings;

(k) the Borrower may (i) to the extent constituting a Restricted Payment, effect the conversion of any Convertible Notes and Permitted Convertible Notes Refinancings into Equity Interests of the Borrower, (ii) settle conversions of Convertible Notes in accordance with the applicable Convertible Indebtedness Documents or settle conversions of Permitted Convertible Notes Refinancings in accordance with the documents evidencing the Permitted Convertible Notes Refinancings and (iii) repurchase fractional shares of any Equity Interests arising out of the conversion of the Convertible Notes and Permitted Convertible Notes Refinancings into any such Equity Interests;

(l) the Borrower may (i) repurchase or repay any Convertible Notes and Permitted Convertible Notes Refinancings (x) at the maturity thereof or otherwise, that the Borrower is are required to repurchase or repay in accordance with the applicable Convertible Indebtedness Documents or the documents evidencing the Permitted Convertible Notes Refinancings (including, for the avoidance of doubt, any prepayment or payment on (and as required by) such Permitted Convertible Indebtedness as a result of (1) the satisfaction of a customary conversion contingency, or (2) a required repurchase under such Permitted Convertible Indebtedness upon a customary “fundamental change”); and (y) in connection with a Permitted Convertible Note Refinancing, as the case may be, and (ii) make Restricted Payments in respect of any Swap Contracts entered into in connection with any Convertible Notes issued after the Closing Date under Section 7.02(u) and any Permitted Convertible Notes Refinancing thereof;

(m) the Loan Parties may make additional Restricted Payments in cash or Cash Equivalents so long as (i) at the time of making such Restricted Payment, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (ii) on a Pro Forma Basis, immediately after giving effect to the making of such Restricted Payment (together with any related issuance or incurrence of Indebtedness (without netting of any cash proceeds thereof) and the consummation of any other related transaction), the Consolidated Senior Secured Net Leverage Ratio shall be no greater than 1.50:1.00 as of the end of the most recently ended Measurement Period, and (iii) after giving effect to the making of such Restricted Payments (together with any related issuance or incurrence of Indebtedness (without netting of any cash proceeds thereof) and the consummation of any other related transaction), the Loan Parties are in Pro Forma Compliance with the financial covenants in Section 7.11 determined on a Pro Forma Basis as of the end of the most recently ended Measurement Period;

(n) the Borrower may pay the premium in respect of, and otherwise perform its obligations under, any Permitted Bond Hedge Transaction so long as at the time of making such Restricted Payment, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(o) the Borrower may make any Restricted Payments and/or payments or deliveries required by the terms of, and otherwise perform its obligations under, any Permitted Warrant Transaction (including making payments and/or deliveries due upon exercise and settlement or termination thereof) so long as at the time of making such Restricted Payment, no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(p) Restricted Payments necessary to consummate the Closing Date Merger.

7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related, complementary or incidental thereto or a reasonable extension, development or expansion thereof.

7.08 Transactions with Affiliates.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) advances of working capital to any Loan Party, (b) transfers of cash and assets to any Loan Party, (c) intercompany transactions expressly permitted by this Agreement or any other Loan Document, (d) normal and reasonable compensation and reimbursement of expenses of officers and directors, and (e) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arm's length transaction with a Person other than an officer, director or Affiliate, (f) transactions solely between or among Loan Parties, (g) transactions solely between or among Subsidiaries that are not Loan Parties, (h) in the ordinary course of business, (1) employment or severance agreement or compensatory (including profit sharing) arrangement entered into by the Borrower or any of its Subsidiaries with their respective current or former officers, directors, members of management, managers, employees, consultants or independent contractors or those of the Borrower, (2) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (3) transactions pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement, (i) the payment of customary and reasonable fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers, employees, members of management, managers, consultants and independent contractors of the Borrower and any of its Subsidiaries in the ordinary course of business, (j) any issuance of securities or rights pursuant to stock options, stock ownership plans (including restricted stock plans), stock grants, directed share programs and other equity based incentive plans to any officer, director, employee or consultant approved by the board of directors of the Borrower, and (k) transactions involving payments not to exceed $3,000,000 in the aggregate for all such transactions in any fiscal year.

7.09 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation (except for this Agreement and the other Loan Documents) that (a) encumbers or restricts the ability of any such Person to (i) to act as a Loan Party; (ii) make Restricted Payments to any Loan Party, (iii) pay any Indebtedness or other obligation owed to any Loan Party, (iv) make loans or advances to any Loan Party, or (v) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired, except, for any document or instrument governing Indebtedness incurred pursuant to Section 7.02(c); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith; or (b) other than Permitted Liens, requires the grant of any Lien on property for any obligation if a Lien on such property is given as security for the Secured Obligations; provided, further, the foregoing shall not apply to (1) restrictions and limitations imposed by Applicable Law, (2) customary restrictions contained in the organizational documents of any Subsidiary that is not a Guarantor as of the Closing Date so long as such restrictions are not entered into in contemplation of this Agreement, (3) customary restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (4) obligations that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such obligations are not entered into in contemplation of such Person becoming a Subsidiary, (5) customary restrictions contained in an agreement related to the sale of assets (to the extent such sale is permitted pursuant to Section 7.05) that limit the transfer of such asset pending the consummation of such sale, (6) customary restrictions in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such restrictions relate only to the assets subject thereto, (7) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (8) customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to such joint venture and the Equity Interests issued thereby and (9) restrictions and conditions contained in any Convertible Indebtedness Documents permitted under Section 7.02 to the extent that such restrictions and limitations are not more restrictive, taken as a whole, than the restrictions limitations contained herein.

7.10 Use of Proceeds.

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

(a) Minimum Consolidated EBITDA. Permit Consolidated EBITDA for the most recently ended four (4) consecutive fiscal quarter period as of the end of any Measurement Period ending as of the end of any fiscal quarter of the Borrower to be less than (i) from the fiscal quarter ended June 30, 2026 to (and including) the fiscal quarter ending March 31, 2027, $100,000,000, and (ii) from and after the fiscal quarter ending June 30, 2027, $150,000,000.

(b) Consolidated Senior Secured Net Leverage Ratio. Permit the Consolidated Senior Secured Net Leverage Ratio as of the end of any Measurement Period ending as of the end of any fiscal quarter of the Borrower to be greater than 2.50 to 1.00; provided that, to the extent a Material Permitted Acquisition is consummated by the Borrower or any other Loan Party in any fiscal quarter, at the election of the Borrower upon written notice to the Administrative Agent no later than ten (10) Business Days prior to the date in which the financial statements and the related Compliance Certificate are required to be delivered pursuant to Section 6.01(a) or Section 6.01(b), as applicable, and Section 6.02(b) for the fiscal quarter in which such Material Permitted Acquisition is consummated, the Consolidated Senior Secured Net Leverage Ratio shall be no greater than 3.00 to 1.00 (but solely for purposes of compliance with this Section 7.11(b), the definition of "Permitted Acquisition" and the incurrence test with respect to any Incremental Term Loans used to finance a Permitted Acquisition only and for no other purposes herein or in the other Loan Documents) with respect to the fiscal quarter in which the Material Permitted Acquisition is consummated and the immediately subsequent three (3) fiscal quarters thereafter (such period, the "*Adjusted Covenant Period*") (it being understood and agreed that following the end of the Adjusted Covenant Period, the required Consolidated Senior Secured Net Leverage Ratio shall revert to 2.50 to 1.00 as of the end of each subsequent three (3) fiscal quarters until another Adjusted Covenant Period (if any) occurs); provided further that (i) there may only be two (2) such Adjusted Covenant Periods during the term of the Revolving Facility, (ii) there shall be at least two (2) full fiscal quarters between Adjusted Covenant Periods, and (iii) if such Material Permitted Acquisition is a Limited Condition Acquisition, for purposes of determining compliance on a Pro Forma Basis with this Section 7.11(b) on the LCA Test Date pursuant to Section 1.09, the maximum Consolidated Senior Secured Net Leverage Ratio of 3.00 to 1.00 shall apply.

7.12 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.

(a) Amend any of its Organization Documents in a manner materially adverse to the Administrative Agent and the Lenders;

(b) change its fiscal year;

(c) without providing ten (10) days prior written notice to the Administrative Agent (or such extended period of time as agreed to by the Administrative Agent), change its name, state of formation, form of organization or principal place of business;

(d) make any material change in accounting policies or reporting practices, except as required by GAAP; or

(e) amend any Closing Date Merger Documents in a manner materially adverse to the Administrative Agent and the Lenders.

7.13 Sale and Leaseback Transactions.

Enter into any Sale and Leaseback Transaction.

7.14 Prepayments, Etc. of Indebtedness.

Prepay, redeem, purchase, defease or otherwise satisfy or obligate itself to do so prior to the scheduled maturity thereof in any manner (including by the exercise of any right of setoff) with respect to any Indebtedness for borrowed money, or make any payment in violation of any subordination, standstill or collateral sharing terms of or governing any Subordinated Indebtedness (collectively, "*Restricted Debt Payments*"), except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement, (b) (i) any prepayment or payment on (and as required by) any Permitted Convertible Indebtedness as a result of (x) the satisfaction of a customary conversion contingency, (y) the exercise by a holder of such Permitted Convertible Indebtedness of a conversion right resulting from the satisfaction of a customary conversion contingency or (z) a required repurchase under such Permitted Convertible Indebtedness upon a customary “fundamental change”; or (ii) in connection with Permitted Convertible Note Refinancings, (c) required repayments or redemptions of Indebtedness set forth in Schedule 7.02 so long as the conditions set forth in the proviso of Section 7.02(b) are satisfied with respect to such repayment or redemption and (d) from and after the Existing Closing Date, additional Restricted Debt Payments in an aggregate amount not to exceed $28,000,000 for all such Restricted Debt Payments so long as (i) at the time of making such Restricted Debt Payment, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (ii) on a Pro Forma Basis, immediately after giving effect to the making of such Restricted Debt Payment (together with any related issuance or incurrence of Indebtedness (without netting of any cash proceeds thereof) and the consummation of any other related transaction), the Consolidated Senior Secured Net Leverage Ratio shall be no greater than 1.50:1.00 as of the end of the most recently ended Measurement Period, and (iii) after giving effect to the making of such Restricted Debt Payments (together with any related issuance or incurrence of Indebtedness (without netting of any cash proceeds thereof) and the consummation of any other related transaction), the Loan Parties are in Pro Forma Compliance with the financial covenants in Section 7.11 determined on a Pro Forma Basis as of the end of the most recently ended Measurement Period.

7.15 Amendment, Etc. of Indebtedness.

Amend, modify or change in any manner any term or condition of any (i) Subordinated Indebtedness in violation of the subordination provisions of the agreement or instrument governing such Subordinated Indebtedness, or (ii) Convertible Indebtedness Documents or documents evidencing Permitted Convertible Notes Refinancing if the effect of such change or amendment is to: (A) shorten the maturity date to a date prior to 91 days after the Revolving Credit Termination Date or require any payment of principal in respect thereof in any manner materially different from the repayment requirements set forth in the Convertible Notes or documents evidencing Permitted Convertible Notes Refinancing, (B) require or permit any cash payment of interest in respect thereof at a rate in excess of the then prevailing market rate payable by a similarly situated corporate issuer issuing similar convertible indebtedness, (C) add or change guaranties that are more favorable than the guaranties supporting the Obligations, (D) add or modify representations, warranties, covenants or events of default that are more restrictive, taken as a whole, than those set forth herein, (E) add a cross-default to any Loan Document (other than the occurrence of an Event of Default under Sections 8.01(a), to the extent such Event of Default is not discharged, cured, rescinded or annulled within a period of thirty (30) days after notice of its occurrence), and (F) require a security interest.

7.16 Sanctions.

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, that, at the time of such funding, is (i) the target or subject of any Sanctions, (ii) included on OFAC’s List of Specially Designated Nationals or HMT’s Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swingline Lender, or otherwise) of Sanctions.

7.17 Anti-Corruption Laws.

Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other anti-corruption legislation in other jurisdictions.

7.18 Outbound Investment Rules.

Be or become a "covered foreign person", as that term is defined in the Outbound Investment Rules, or engage, directly or indirectly, in (i) a "covered transaction", as such term is defined in the Outbound Investment Rules, (ii) any activity or transaction that would constitute a "covered transaction", as such term is defined in the Outbound Investment Rules, if such Person were a United States Person or (iii) any other activity that would cause the Administrative Agent or the Lenders to be in violation of the Outbound Investment Rules or cause the Administrative Agent or the Lenders to be legally prohibited by the Outbound Investment Rules from performing under this Agreement.

Article VIII

EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default.

Any of the following shall constitute an event of default (each, an "*Event of Default*"):

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) within three (3) Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, 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 Section 6.01, 6.02, 6.03, 6.05, 6.10(a), 6.11, 6.13, 6.18, 6.19, Article VII or Article X; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earliest to occur of (i) the date upon which a Responsible Officer of any Loan Party becomes aware of such default and (ii) the date upon which written notice thereof is given to the Borrower by the Administrative Agent or the Required Lenders; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall (x) with respect to representations and warranties that contain a materiality qualification, be incorrect or misleading in any respect when made or deemed made and (y) with respect to representations and warranties that do not contain a materiality qualification, be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount after the expiration of any applicable cure periods, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee 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 Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to 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 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) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; provided that clause (B) above shall not apply to any Permitted Convertible Indebtedness to the extent such default, event or condition consists of or occurs as a result of (x) the satisfaction of a customary conversion contingency, (y) the exercise by a holder of Permitted Convertible Indebtedness of a conversion right resulting from the satisfaction of a customary conversion contingency or (z) a required repurchase under such Permitted Convertible Indebtedness upon a customary "fundamental change"; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary thereof 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 any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; 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 sixty (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, 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 and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (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 final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of sixty (60) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect (or except to the extent that the terms of such judgment specifically provide for a longer payment term and such Loan Party or such Subsidiary, as applicable, timely discharges or satisfies such obligations during such specified longer term); 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 to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower 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 the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, 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 it is or becomes unlawful for a Loan Party to perform any of its material obligations under the Loan Documents; or

(k) Collateral Documents. Any Collateral Document after delivery thereof pursuant to the terms of the Loan Documents shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on a material portion of the Collateral purported to be covered thereby, or any Loan Party shall assert in writing the invalidity of such Liens; or

(l) Change of Control. There occurs any Change of Control; or

(m) Subordination Terms. (i) Any of the Secured Obligations for any reason shall cease to be "senior debt," "senior indebtedness," "designated senior debt" or "senior secured financing" (or any comparable term) under, and as defined in, the documentation governing any Subordinated Indebtedness that is subordinated (in terms of payment or lien priority) to the Secured Obligations, (ii) the subordination provisions set forth in the documentation for any Subordinated Indebtedness that is subordinated (in terms of payment or lien priority) to the Secured Obligations shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of any Subordinated Indebtedness, if applicable, or (iii) any Loan or any Subsidiary of any Loan Party, shall assert any of the foregoing in writing.

Without limiting the provisions of Article IX, if a Default shall have occurred under the Loan Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by Administrative Agent (with the approval of requisite Appropriate Lenders (in their sole discretion)) as determined in accordance with Section 11.01; and once an Event of Default occurs under the Loan Documents, then such Event of Default will continue to exist until it is expressly waived by the requisite Appropriate Lenders or by the Administrative Agent with the approval of the requisite Appropriate Lenders, as required hereunder in Section 11.01.

8.02 Remedies upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document 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 Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents or Applicable Law or equity;

provided that upon the occurrence of an event described in Section 8.01(f) or (g) with respect to the Borrower, the Commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds.

(a) After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Secured Obligations then due hereunder, any amounts received on account of the Secured Obligations shall, subject to the provisions of Sections 2.14 and 2.15, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including reasonable and documented fees, charges and disbursements of outside counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including reasonable and documented fees, charges and disbursements of outside counsel to the respective Lenders and the L/C Issuer) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this *Second* clause payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Secured Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this *Third* clause payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, L/C Borrowings and Secured Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements and to the to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.14, in each case ratably among the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this *Fourth* clause held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

(b) Subject to Sections 2.03(c) and 2.14, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to the *Fourth* clause above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Secured Obligations otherwise set forth above in this Section 8.03.

(c) Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice (with a copy of such written notice sent by email to secured.designationnotice@citi.com), together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a "Lender" party hereto.

Article IX

ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

(a) Appointment. Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Citibank to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Collateral Agent. The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

9.03 Exculpatory Provisions.

(a) Neither the Administrative Agent nor the Arranger, as applicable, shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, neither the Administrative Agent or the Arranger, as applicable, or their Related Parties:

(i) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

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

(iii) shall have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or the L/C Issuer any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, the Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

(c) Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (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 Administrative Agent.

(d) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (i) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lenders or (ii) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lenders.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in 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 Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Revolving Facility as well as activities as Administrative Agent. The

Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) Notice. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the 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 thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "*Resignation Effective Date*"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any successor Administrative Agent be a Defaulting Lender or a Disqualified Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) Effect of Resignation or Removal. With effect from the Resignation Effective Date (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring Administrative Agent as of the Resignation Effective Date), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article XI and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (A) while the retiring Administrative Agent was acting as Administrative Agent and (B) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (1) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (2) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(c) L/C Issuer and Swingline Lender. Any resignation or removal by Citibank as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Swingline Lender. If Citibank resigns as the L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as the L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Citibank resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swingline Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as applicable, (ii) the retiring L/C Issuer and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue Letters of Credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Citibank to effectively assume the obligations of Citibank with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent, the Arranger and the Other Lenders.

Each Lender and the L/C Issuer expressly acknowledges that neither the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger to any Lender or the L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and the L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and the L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and the L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and the L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 **No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Arranger, a Lender or the L/C Issuer hereunder.

9.09 **Administrative Agent May File Proofs of Claim; Credit Bidding.**

(a) In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured 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 L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09, 2.10(b) and 11.04) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 2.10(b) and 11.04.

(b) Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

(c) The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Secured Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 11.01), and (C) to the extent that Secured Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Secured Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Secured Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Secured Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.10 Collateral and Guaranty Matters.

(a) Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.01;

(ii) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and

(iii) to release any Guarantor from its obligations under the Guaranty if such Person becomes an Excluded Subsidiary or ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

(b) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower’s reasonable expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

(c) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements.

Except as otherwise expressly set forth herein or in the Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 8.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations (with a copy of such written notice sent by email to secured.designationnotice@citi.com), together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of a Facility Termination Date.

9.12 Certain ERISA Matters.

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

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

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84–14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95–60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90–1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91–38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96–23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84–14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of

Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84–14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84–14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

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

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

9.13 Recovery of Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender, L/C Issuer or Secured Party, or any Person who has received funds on behalf of a Lender, L/C Issuer or Secured Party (any such Lender, L/C Issuer, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, L/C Issuer, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.13 and held in trust for the benefit of the Administrative Agent, and such Lender, L/C Issuer or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, L/C Issuer, Secured Party or any Person who has received funds on behalf of a Lender, L/C Issuer or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, L/C Issuer or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, L/C Issuer or Secured Party shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.13(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.13(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.13(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender, L/C Issuer or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, L/C Issuer or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, L/C Issuer or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such

Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 11.06 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, L/C Issuer or Secured Party, to the rights and interests of such Lender, L/C Issuer or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Secured Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Secured Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrower or any other Loan Party; provided that this Section 9.13 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.13 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or L/C Issuer, the termination of the

Commitments and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof) under any Loan Document.

9.14 Parallel Debt (Covenant to Pay to the Administrative Agent).

(a) Each Loan Party hereby irrevocably and unconditionally undertakes by way of an abstract acknowledgment of debt (*abstraktes Schuldanerkenntnis*) to pay to the Administrative Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of all the Obligations due, owed, or incurred by a Loan Party to the relevant Secured Parties and all other present and future obligations at any time due, owing or incurred by a Loan Party to any such Secured Party in each case under any of the Collateral Documents and this Agreement, in each case, active and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity under the Collateral Documents or this Agreement (the *"*Parallel Debt*"*). The Administrative Agent is the creditor of the Parallel Debt and shall act in its own name, referencing its capacity as Administrative Agent. For the avoidance of any doubt, the Administrative Agent's role is purely administrative and subject to the provisions of this Agreement and any of the Collateral Documents to which it is a party.

(b) The obligations of each Loan Party under Section 10.01(a) hereof are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Loan Party to any Secured Party under any of the Collateral Documents and this Agreement (its "Corresponding Debt") nor shall the amounts for which each Loan Party is liable under its Parallel Debt be limited or affected in any way by its corresponding Debt provided that: (i) the Parallel Debt of each Loan Party shall be decreased to the extent that its Corresponding Debt has been irrevocably paid (or in the case of guarantee obligations) discharged; (ii) the Corresponding Debt of each Loan Party shall be decreased to the extent that its Parallel Debt has been irrevocably paid (or in the case of guarantee obligations, discharged); and (iii) the amount of the Parallel Debt of a Debtor shall at all times be equal to the amount of its Corresponding Debt.

(c) For the purposes of this Section 9.14, the Administrative Agent shall act in its own name, as Administrative Agent hereunder, and not as trustee, and its claims in respect of the Parallel Debt shall not be held by it in its capacity as a trustee.

(d) This Section 9.14 (i) is included in this Agreement solely for the purpose of ensuring the validity and effect of certain security rights governed by Austrian or German laws, granted pursuant to this Agreement and the Collateral Documents, and (ii) for the avoidance of doubt, shall not limit the rights and remedies provided to the Secured Parties by the other provisions hereof and of the Collateral Documents. Moreover, notwithstanding any provision of any of the Collateral Documents and this Agreement, or any present or future Austrian or German law to the contrary, the Administrative Agent does not have any rights and responsibilities under such agreements other than in its capacity as Administrative Agent as expressly provided in this Agreement or the Collateral Documents.

(e) Any payment made to, or amount recovered, by the Administrative Agent pursuant to this Section 9.14 in respect of the Parallel Debt and all amounts received or recovered by the Administrative Agent from or by the enforcement of any of this Agreement or the Secured Debt Documents granted to secure the Parallel/Corresponding Debt, shall be applied in accordance with this Agreement.

Article X

CONTINUING GUARANTY

10.01 Guaranty.

Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees in favor of the Administrative Agent and the other Secured Parties, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Secured Obligations (for each Guarantor, subject to the proviso in this sentence, its "*Guaranteed Obligations*"); provided that (a) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor and (b) the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive absent manifest error for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any Loan Document, instrument or agreement evidencing any Secured Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

10.02 Rights of Lenders.

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

10.03 Certain Waivers.

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the

Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower or any other Loan Party, proceed against or exhaust any security for the Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by Applicable Law limiting the liability of or exonerating guarantors or sureties other than the defense of payment. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations.

10.04 Obligations Independent.

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

10.05 Subrogation.

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Secured Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Revolving Facility is terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

10.06 Termination; Reinstatement.

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Secured Obligations 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 any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this Section 10.06 shall survive termination of this Guaranty.

10.07 Stay of Acceleration.

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

10.08 Condition of Borrower.

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

10.09 Appointment of Borrower.

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties. Each Austrian Guarantor unconditionally releases the Borrower from any restriction of self-contracting (*In-Sich-Geschäft*) and/or double representation (*Doppelvertretung*) under Austrian law, both of which is herewith explicitly approved by the respective Austrian Guarantor.

10.10 Right of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under Applicable Law.

10.11 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien 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 this Article X 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 10.11 shall remain in full force and effect until the Secured Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 10.11 to constitute, and this Section 10.11 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.

10.12 Austrian Capital Maintenance

(a) The obligations (*Verpflichtungen*) and liabilities (*Haftungen*) of a Guarantor which incorporated under Austrian law or otherwise subject to mandatory provisions of Austrian corporate law, in particular Austrian Capital Maintenance Rules (as defined below) (*"Austrian Guarantor"*) under this Agreement or any other Loan Document shall at all times be limited so that at no time shall the assumption of an obligation (*Verpflichtung*) and/or liability (*Haftung*) under or pursuant to this Agreement or any other Loan Document would violate or contradict Austrian capital maintenance rules (*Kapitalerhaltungsvorschriften*) pursuant to Austrian company law, in particular, without limitation, sections 52 and 65 et seq. of the Austrian Act on Joint Stock Companies (*Aktiengesetz – AktG*) (and for the avoidance of doubt including section 66a AktG) and section 82 et seq. of the Austrian Act on Limited Liabilities Companies (*Gesetz über Gesellschaft mit beschränkter Haftung*) or any analogous application thereof (the *"Austrian Capital Maintenance Rules"*).

(b) If and to the extent any obligation (*Verpflichtung*) or liability (*Haftung*) of an Austrian Guarantor under this Agreement or any other Loan Document would not be permitted under Austrian Capital Maintenance Rules or the entry into, performance of or assumption of any liability (*Haftung*) or obligation (*Verpflichtung*) under this Agreement or any other Loan Document by that Austrian Guarantor would violate or contradict Austrian Capital Maintenance Rules, conflict with the mandatory fiduciary duties due to a breach of Austrian Capital Maintenance Rules and/or would result in any personal liability or criminal responsibility of a managing director or member of the supervisory board of that Austrian Guarantor due to a breach of the Austrian Capital Maintenance Rules (the *"Director's Liability"*), then such obligations (*Verpflichtungen*) and/or liabilities (*Haftungen*) shall be limited in accordance with Austrian Capital Maintenance Rules and/or so that they would not result in a Director's Liability. In the event that any such obligation or liability of an Austrian Guarantor would infringe or contradict Austrian Capital Maintenance Rules or result in a Director's Liability, such obligation or liability shall be deemed to be replaced by an obligation of a similar nature which is in compliance with Austrian Capital Maintenance Rules and does not result in a Director's Liability and the payment obligations shall be limited to the maximum amount permitted to be paid in accordance with Austrian Capital Maintenance Rules and which does not result in a Director's Liability.

(c) The Parties acknowledge that the limitations set out in this Section 10.12 (*Austrian Capital Maintenance*) may reduce any payment permissible at a given time by an Austrian Guarantor under this Agreement or any other Loan Document to a small amount or even to zero.

(d) No reduction of the amount enforceable under this Agreement or any other Loan Document in accordance with the limitations set out in this Section 10.12 (*Austrian Capital Maintenance*) will prejudice the rights of the Secured Parties to continue enforcing their rights and entitlements pursuant to this Agreement or any other Loan Document (subject always to the operation of the limitations set out in this Section 10.12 (*Austrian Capital Maintenance*) at the time of such enforcement) until full satisfaction of the Guaranteed Obligations.

10.13 Place of Performance

The place of performance for all rights and obligations under this Article X shall be outside of Austria, which particularly means that a party shall not be entitled to performance of the obligations of another party under this Article X in Austria, that payments in connection with this Article X shall not be effected from and to Austrian bank accounts, and that performance of the obligations of a party under this Article X in Austria does not result in discharge of such obligations (*keine schuldbefreiende Wirkung*).

Article XI

MISCELLANEOUS

11.01 Amendments, Etc.

(a) Subject to Section 3.03 and the last paragraph of this Section 11.01, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(i) waive any condition set forth in Section 4.01, or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Lender;

(ii) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(iii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(iv) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (D) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender entitled to such amount; provided that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(v) change (i) Section 8.03 or Section 2.13 in a manner that would have the effect of altering the ratable reduction of Commitments, pro rata payments or pro rata sharing of payments required hereunder without the written consent of each Lender, or (ii) Section 2.12(f) in a manner that would alter the pro rata application required thereby without the written consent of each Lender directly and adversely affected thereby;

(vi) change any provision of this Section 11.01 or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly and adversely affected thereby;

(vii) (i) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender, (ii) subordinate, or have the effect of subordinating, the Secured Obligations hereunder to any other Indebtedness or other obligation, in each case, without the written consent of each Lender or (iii) subordinate, or have the effect of subordinating, the Liens securing the Secured Obligations to Liens securing any other Indebtedness or other obligations;

(viii) release, or have the effect of releasing, all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(ix) release the Borrower or permit the Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the consent of each Lender;

and provided further that (A) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (B) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (C) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (D) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) Notwithstanding anything to the contrary herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (A) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iii) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

(c) Notwithstanding anything to the contrary herein, this Agreement may be amended, or amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment, or amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended, or amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

(d) Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

11.02 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 clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission 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 Borrower or any other Loan Party, the Administrative Agent, the L/C Issuer or the Swingline Lender, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 1.01(a); and

(ii) if to any other Lender, to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission 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 and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b). No communication under or in connection with this Agreement or any other Loan Document may be sent to or from an address located in Austria (neither by email nor by fax transmission nor by personal delivery nor by courier nor by registered mail).

(b) Electronic Communications.

(i) Notices and other communications to the Administrative Agent, the Lenders, the Swingline Lender and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging, and Internet or intranet websites) pursuant to an electronic communications agreement (or such other procedures approved by the Administrative Agent in its sole discretion); provided that the foregoing shall not apply to notices to any Lender, the Swingline Lender or the L/C Issuer pursuant to Article II if such Lender, the Swingline Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the Swingline Lender, the L/C Issuer or the Borrower may each, 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.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (B) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient 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 address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided that for both clauses (A) and (B), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(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 Administrative Agent or any of its Related Parties (collectively, the "*Agent Parties*") have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by written notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swingline Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and Applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices, Letter of Credit Applications, Notice of Loan Prepayment and Swingline Loan Notices) purportedly given by or on behalf of any Loan Party 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 Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party, other than such losses, costs, expenses and liabilities resulting from reliance that constitutes gross negligence or willful misconduct of the Administrative Agent, the L/C Issuer, any Lender and any Related Parties, in each case, as determined by a court of competent jurisdiction by a final and non-appealable judgment. All telephonic notices to and other telephonic communications with the

Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement.

(a) No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any 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 herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided further that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including, but not limited to, (A) the reasonable and documented fees, charges and disbursements of outside counsel for the Administrative Agent and its Affiliates (limited to one primary counsel to the Administrative Agent and its Affiliates (taken as a whole), and, if reasonably necessary one additional local counsel in any relevant jurisdiction) and (B) due diligence expenses), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender, the L/C Issuer or their Affiliates (including the documented fees, charges and disbursements of any outside counsel for the Administrative Agent, any Lender, the L/C Issuer or their Affiliates) (limited to one primary counsel to the Administrative Agent, the Lenders, the L/C Issuer and such Affiliates (taken as a whole), and, if reasonably necessary, one additional local counsel in any relevant jurisdiction, and in the case of an actual or perceived conflict of interest of any such counsel, one additional such primary or local counsel to each group of affected persons similarly situated and taken as a whole), in connection with the enforcement or protection of its rights (A) in connection with this

Agreement and the other Loan Documents, including its rights under this Section 11.04, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring, insolvency or bankruptcy proceeding or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "*Indemnitee*") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of any outside counsel for any Indemnitee (limited to one primary counsel to the Indemnitees (taken as a whole), and, if reasonably necessary, one additional local counsel in any relevant jurisdiction, and in the case of an actual or perceived conflict of interest of any such counsel, one additional such primary or local counsel to each group of affected persons similarly situated and taken as a whole)), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the 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 (including, without limitation, the Indemnitee's reliance on any Communication executed using an Electronic Signature, or in the form of an Electronic Record, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned, leased or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, or (v) any action taken by the Administrative Agent or any Lender to comply with Applicable Law, including Sanctions; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from (x) the gross negligence or willful misconduct of such Indemnitee or (y) a claim not involving an act or omission of the Borrower or any of its Affiliates and that is brought by an Indemnitee against another Indemnitee (other than against the Arranger, the Administrative Agent, the L/C Issuer or the Swingline Lender in their capacities as such). Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under clauses (a) or (b) of this Section 11.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swingline Lender or any Related Party of any of the foregoing, without affecting the Loan Parties' obligations under clauses (a) or (b) of this Section 11.04, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Revolving Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the

Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, neither the Administrative Agent or the Lenders on the one hand nor any Loan Party on the other hand shall assert against any other party hereto, and each such party hereto waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing contained in this sentence shall limit the Loan Parties' indemnification obligations to the extent set forth in Section 11.04(b) to the extent such special, indirect, consequential or punitive damages (including any loss of profits) are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed 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, except for direct or actual damages determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swingline Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender 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 and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.06(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans (including for purposes of this clause (b), participations in L/C Obligations and in Swingline Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (b)(i)(B) of this Section 11.06 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section 11.06, 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 Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Commitment assigned, except that this clause (b)(ii) shall not apply to the Swingline Lender's rights and obligations in respect of Swingline Loans.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section 11.06 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and provided further that the Borrower's consent shall not be required during the primary syndication;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer and the Swingline Lender shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural Persons) or (D) to any Disqualified Lender.

(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 Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its 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 clause (b)(vi), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 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 Borrower (at its 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 clause (b) 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 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register, maintained in a manner to comply with Section 5f.103-1(c) of the United States Treasury Regulations, for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and interest amounts) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (with respect to such Lender's interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons, a Defaulting Lender, a Disqualified Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "*Participant*") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swingline Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations.

(ii) 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 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(e) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 11.06; provided that such Participant (A) shall be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under clause (b) of this Section 11.06 and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that 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 Borrower, maintain a register, maintained in a manner to comply with Section 5f.103-1(c) of the United States Treasury Regulations on which it enters the name and address of each Participant and the principal amounts (and interest amounts) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "*Participant Register*"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103–1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, 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.

(f) Resignation as L/C Issuer or Swingline Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Citibank assigns all of its Revolving Commitment and Revolving Loans pursuant to clause (b) above, Citibank may, (i) upon thirty (30) days' notice to the Administrative Agent, the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as L/C Issuer or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swingline Lender hereunder; provided that no failure by the Borrower to appoint any such successor shall affect the resignation of Citibank as L/C Issuer or Swingline Lender, as the case may be. If Citibank resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Citibank resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swingline Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swingline Lender, (A) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swingline Lender, as the case may be, and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Citibank to effectively assume the obligations of Citibank with respect to such Letters of Credit.

(g) Disqualified Lenders.

(i) No assignment or participation shall be made to any Person that was a Disqualified Lender as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment or participation in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Lender for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Lender after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Lender"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Lender. Any assignment in violation of this clause (g)(i) shall not be void, but the other provisions of this clause (g) shall apply.

(ii) If any assignment or participation is made to any Disqualified Lender without the Borrower's prior written consent in violation of clause (i) above, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Lender and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Lender and repay all obligations of the Borrower owing to such Disqualified Lender in connection with such Revolving Commitment and/or (B) require such Disqualified Lender to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 11.06), all of its interest, rights and obligations under this Agreement and the other Loan Documents to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and the other Loan Documents; provided that (i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b) and (ii) such assignment does not conflict with Applicable Law.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Lenders (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Lender will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Lenders consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws ("Plan of Reorganization"), each Disqualified Lender party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Lender does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Lenders provided by the Borrower and any updates thereto from time to time (collectively, the "DQ List") on the Platform, including that portion of the Platform that is designated for "public side" Lenders and/or (B) provide the DQ List to each Lender requesting the same.

11.07 Treatment of Certain Information; Confidentiality.

(a) Treatment of Certain Information. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) 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, (vi) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent, the L/C Issuer and/or the Swingline Lender to deliver Borrower Materials or notices to the Lenders or (viii) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (ix) with the consent of the Borrower or to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 11.07, (xi) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or (xii) is independently discovered or developed by a party hereto without utilizing any Information received from the Borrower or violating the terms of this Section 11.07. For purposes of this Section 11.07, "*Information*" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 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. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments. Notwithstanding anything contained herein, nothing in this Agreement shall prohibit or in any way restrict any party hereto from reporting possible violations of Applicable Law or regulation to, otherwise communicating directly with, cooperating with or providing information to any governmental or regulatory body or any self-regulatory organization including but not limited to, bank examiners, the Securities and Exchange Commission, Department of Justice, Financial Industry Regulatory Authority, National Futures Association, or the U.S. Commodity Futures Trading Commission, or making other disclosures pursuant to applicable "whistleblower" laws or regulations.

(b) Non-Public Information. Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (i) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with Applicable Law, including United States federal and state securities Laws.

(c) Press Releases. The Loan Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure (other than filings required to be made with the SEC) using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) Customary Advertising Material. Subject to the Borrower's express prior written consent, the Administrative Agent and any Lender may publish customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties; provided that such consent shall not be required with respect to tombstones or other similar advertising material relating to the syndication and arrangement of the Revolving Facility providing the same information as typically included on tombstones. The Administrative Agent and the Lenders may provide, without the Borrower's consent, to market data collectors, such as league table, or other service providers to the lending industry, information regarding the Revolving Facility including the Closing Date, size, type and purpose of, and the parties to, the Revolving Facility.

11.08 Right of Setoff.

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, the L/C Issuer or such Affiliates, irrespective of whether or not such Lender, the L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have under Applicable Law. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative 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.

11.09 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 Applicable Law (the "*Maximum Rate*"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Integration; Effectiveness.

This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successor and assigns.

11.11 Survival of Representations and Warranties.

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 Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 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 11.12, 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 Administrative Agent, the L/C Issuer or the Swingline Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders.

(a) If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(ii) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, 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 Borrower (in the case of all other amounts);

(iii) 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;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

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

(c) Each party hereto agrees that (i) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to an be bound by the terms thereof; provided that following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided further that any such documents shall be without recourse to or warranty by the parties thereto.

(d) Notwithstanding anything in this Section 11.13 to the contrary, (A) the Lender that acts as the L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to the L/C Issuer or the depositing of Cash Collateral into a Cash Collateral account in amounts and pursuant to arrangements reasonably satisfactory to the L/C Issuer) have been made with respect to such outstanding Letter of Credit and (B) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) 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. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (b) OF THIS SECTION 11.14. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) APPOINTMENT OF PROXY. WITHOUT PREJUDICE TO ANY OTHER MODE OF SERVICE ALLOWED UNDER APPLICABLE LAW, EACH LOAN PARTY THAT IS NOT ORGANIZED UNDER THE LAWS OF THE UNITED STATES, ANY STATE

THEREOF OR THE DISTRICT OF COLUMBIA: (I) IRREVOCABLY APPOINTS THE BORROWER AS ITS AGENT FOR SERVICE OF PROCESS IN RELATION TO ANY PROCEEDINGS BEFORE THE COURTS OF THE STATE OF NEW YORK IN CONNECTION WITH ANY LOAN DOCUMENT AND (II) AGREES THAT FAILURE BY A PROCESS AGENT TO NOTIFY THE SUCH LOAN PARTIES OF THE PROCESS WILL NOT INVALIDATE THE PROCEEDINGS CONCERNED. EACH SUCH LOAN PARTY EXPRESSLY AGREES AND CONSENTS TO THE PROVISIONS OF THIS SECTION 11.14(E).

11.15 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

11.16 Subordination.

Each Loan Party (a "*Subordinating Loan Party*") hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party's performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Secured Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to Intercompany Debt; provided that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section 11.16, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

11.17 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger and the Lenders and their respective Affiliates are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders and their respective Affiliates, on the other hand,

(ii) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent, the Arranger and each Lender and each of their respective Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, the Arranger, nor any Lender nor any of their respective Affiliates has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arranger, nor any Lender nor any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Arranger, the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

11.18 Electronic Execution; Electronic Records; Counterparts.

This Agreement, any Loan Document and any other document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement or any other Loan Document (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 and each of the Administrative Agent, the L/C Issuer, the Swingline Lender, and each Lender (collectively, each a "Credit Party") agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person 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 of such Person enforceable against such Person 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 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 Administrative 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, neither the Administrative Agent, L/C Issuer nor Swingline Lender is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided that, without limiting the foregoing, (a) to the extent the Administrative Agent, L/C Issuer and/or Swingline Lender has agreed to accept such Electronic Signature, the Administrative 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 and/or any Credit Party without further verification and (b) upon the request of the Administrative Agent or any Credit Party, 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.

Neither the Administrative Agent, L/C Issuer nor Swingline Lender shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's, L/C Issuer's or Swingline Lender's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent, L/C Issuer and Swingline Lender shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Credit Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement and/or any other Loan Document based solely on the lack of paper original copies of this Agreement and/or such other Loan Document, and (ii) waives any claim against the Administrative Agent, each Credit Party and each Related Party for any liabilities arising solely from the Administrative Agent's and/or any Credit Party's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

11.19 USA Patriot Act Notice.

Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and the other 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 "*Patriot Act*"), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act. The Borrower and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative 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 Patriot Act.

11.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and 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 or L/C Issuer 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 an Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer 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 the applicable Resolution Authority.

11.21 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract 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.

11.22 Judgment Currency.

(a) If, for purposes of obtaining or enforcing a judgment in any court, it is necessary to convert into a particular currency (the *"Judgment Currency"*) an amount due under this Agreement in any other currency (the *"Original Currency"*), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which final judgment is given (the *"Conversion Date"*). For purposes of this Section 11.22, "rate of exchange" means the rate at which the party to whom the judgment is granted (the *"Judgment Creditor"*) is able, on the Conversion Date, to purchase the Original Currency with the Judgment Currency in accordance with the normal banking procedures of the Judgment Creditor.

(b) The obligations of the judgment debtor (the *"Judgment Debtor"*) in respect of any amount due in the Original Currency from it to the Judgment Creditor under the Agreement will, notwithstanding any judgment in the Judgment Currency, be discharged only to the extent that on the Business Day following receipt by the Judgment Creditor of any sum adjudged to be so due in the Judgment Currency, the Judgment Creditor may, in accordance with normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the amount originally due to the Judgment Creditor in the Original Currency, the Judgment Debtor agrees, as a separate obligation and notwithstanding the judgment, to indemnify the Judgment Creditor against any loss arising as a result of such deficiency. The indemnity in favor of the Judgment Creditor constitutes an obligation separate and independent from the other obligations contained in this Agreement, gives rise to a separate and independent cause of action, applies irrespective of any indulgence granted by the Judgment Creditor from time to time and continues in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or under any judgment or order.

11.23 Amendment and Restatement; Allocations.

(a) The Borrower and each other Loan Party, the Administrative Agent and the Lenders hereby agree that upon the effectiveness of this Agreement, the terms and provisions of the Existing Credit Agreement which in any manner govern or evidence the Obligations, the obligations of the Borrower and each other Loan Party, the rights and interests of the Administrative Agent and the Lenders and any terms, conditions or matters related to any thereof, shall be and hereby are amended and restated in their entirety by the terms, conditions and provisions of this Agreement, and the terms and provisions of the Existing Credit Agreement, except as otherwise expressly provided herein, shall be superseded by this Agreement.

(b) Notwithstanding the amendment and restatement of the Existing Credit Agreement, including anything in this Section 11.23, and of any related "Loan Documents" (as such term is defined in the Existing Credit Agreement and referred to herein, individually or collectively, as the *"Existing Credit Documents"*), (i) all of the indebtedness, liabilities and obligations owing by the Borrower or any other Loan Party under the Existing Credit Agreement and other Existing Credit Documents shall continue as Obligations hereunder, and (ii) each of this Agreement and any other Loan Documents (as defined herein) that is an amendment and restatement of any Existing Credit Document is given as a substitution of and modification of, and not as a payment of or novation of, the indebtedness, liabilities and obligations of the Loan Parties under the Existing Credit Agreement or any Existing Credit Document, and neither the execution and delivery of such documents nor the consummation of any other transaction contemplated hereunder is intended to constitute a novation of the Existing Credit Agreement or of any of the other Existing Credit Documents, any obligations or indebtedness thereunder or any security interest or lien granted thereunder . Upon the effectiveness of this Agreement, (x) all "Swingline Loans" (as defined in the Existing Credit Agreement) owing by the Borrower and outstanding under the Existing Credit Agreement (collectively, the *"Existing Swingline Loan"*) shall continue as Swingline Loans hereunder and shall constitute advances hereunder, (y) all "Revolving Loans" owing by the Borrower and outstanding under the Existing Credit Agreement (collectively, the *"Existing Revolving Loans"*; and collectively with the Existing Swingline Loans, the *"Existing Loans"*) shall continue and remain outstanding as Revolving Loans hereunder and shall constitute advances hereunder and (z) all "Letters of Credit" (as defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement (collectively, the *"Existing Letters of Credit"*) shall continue as Letters of Credit hereunder.

11.24 Reaffirmation of Existing Austrian Loan Documents.

(a) APEIRON confirms and reaffirms on its own behalf that the Guarantee contained in the Existing Austrian Guarantee Agreement shall, after giving effect to this Agreement:

(i) continue in full force and effect and extend to the liabilities and obligations of each of the Guarantors under this Agreement and the other Loan Documents (as amended and restated from time to time) subject only to the guarantee limitations set out in this Agreement or relevant other Loan Document (including the Existing Austrian Guarantee Agreement); and

(ii) continue to constitute legal, valid and binding obligations of APEIRON enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity.

(b) Each of APEIRON and the Borrower confirms and reaffirms on its own behalf that after giving effect to this Agreement, each of the security interests granted by it under the Existing Austrian Collateral Documents to which it is a party:

(i) continues in full force and effect as security for the Secured Obligations under the Loan Documents, subject to the limitations set out in the relevant Existing Austrian Collateral Documents; and

(ii) continue to constitute legal, valid and binding obligations of such Loan Party enforceable in accordance with their terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LIGAND PHARMACEUTICALS INCORPORATED,
as the Borrower

By: /s Octavio Espinoza
Name: Octavio Espinoza
Title: Chief Financial Officer

CYDEX PHARMACEUTICALS, INC.,
as a Guarantor

By: /s Octavio Espinoza
Name: Octavio Espinoza
Title: Chief Financial Officer

METABASIS THERAPEUTICS, INC.,
as a Guarantor

By: /s Octavio Espinoza
Name: Octavio Espinoza
Title: Chief Financial Officer

PFENEX INC.,
as a Guarantor

By: /s Octavio Espinoza
Name: Octavio Espinoza
Title: Chief Financial Officer

APEIRON Biologics GmbH, an Austrian limited liability company (*Gesellschaft mit beschränkter Haftung*) registered with the Austrian companies register under the number FN 242223 k and with the registered address Campus-Vienna-Biocenter 5, 1030 Vienna, Austria, as a Guarantor

By: /s Andrew Reardon
Name: Andrew Reardon
Title: Managing Director
Place: Outside of Austria

CITIBANK, N.A.,
as the Administrative Agent

By: /s Joel Hart
Name: Joel Hart
Title: Authorized Signatory

[SIGNATURE PAGE TO AMENDED AND RESTATED CREDIT AGREEMENT –
LIGAND PHARMACEUTICALS INCORPORATED]

CITIBANK, N.A.,
as a Lender, L/C Issuer and Swingline Lender

By: /s Joel Hart
Name: Joel Hart
Title: Authorized Signatory

BANK OF AMERICA, N.A.,
as a Lender

By: /s Kenneth Wong
Name: Kenneth Wong
Title: Senior Vice President

BORROWER PREPARED SCHEDULES

[Intentionally omitted]

ADMINISTRATIVE AGENT PREPARED SCHEDULES

[Intentionally omitted]

EXHIBITS

[Intentionally omitted]

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Todd C. Davis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ligand Pharmaceuticals Incorporated;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2026

/s/ Todd C. Davis

Todd C. Davis
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Octavio Espinoza, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ligand Pharmaceuticals Incorporated;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2026

/s/ Octavio Espinoza

Octavio Espinoza
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

In connection with the Quarterly Report of Ligand Pharmaceuticals Incorporated (the "Company") on Form 10-Q for the quarter ended June 30, 2026, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Todd C. Davis, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date:	August 7, 2026	/s/ Todd C. Davis
		Todd C. Davis **Chief Executive Officer** **(Principal Executive Officer)**

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

In connection with the Quarterly Report of Ligand Pharmaceuticals Incorporated (the "Company") on Form 10-Q for the quarter ended June 30, 2026, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Octavio Espinoza, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date:	August 7, 2026	/s/ Octavio Espinoza
		Octavio Espinoza **Chief Financial Officer** **(Principal Financial Officer)**

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.