

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

MIDCAP FUNDING IV TRUST

Applicant

- and -

AVAD CANADA LTD.

Respondent

APPLICATION UNDER SECTION 243 (1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended
and s. 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43

**APPLICATION RECORD
(returnable March 17, 2021)**

March 16, 2021

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Evan Cobb LSO#: 55787N

Tel: 416.216.1929

Email: evan.cobb@nortonrosefulbright.com

Lawyers for the Applicant

TO: THE SERVICE LIST

**ONTARIO
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INDEX

| TAB NO. | DESCRIPTION | PAGE NO. |
|---------|--|----------|
| 1. | Notice of Application | 1 |
| 2. | Affidavit of Patrick Reid, sworn March 16, 2021 | 8 |
| | Exhibit "A": | |
| | i. Credit and Security Agreement dated October 2, 2018 | 16 |
| | ii. Amendment No. 1 to Credit and Security Agreement dated March 28, 2019 | 221 |
| | iii. Consent and Amendment No. 2 to Credit and Security Agreement dated July 26, 2019 | 246 |
| | iv. Consent and Amendment No. 3 to Credit and Security Agreement dated April 29, 2020 | 269 |
| | v. Second Forbearance Agreement and Amendment No. 4 to Credit and Security Agreement dated January 8, 2021 | 276 |

| TAB NO. | DESCRIPTION | PAGE NO. |
|----------------|---|-----------------|
| | Exhibit "B" – Canadian General Security Agreement dated October 2, 2018 | 300 |
| | Exhibit "C" – Canadian Trademark Security Agreement dated as of October 2, 2018 | 310 |
| | Exhibit "D" – Pledge Agreement made as of October 2, 2018 | 316 |
| | Exhibit "E" – Personal Property Security Registry searches for Ontario, Alberta and British Columbia | 345 |
| | Exhibit "F" – Blocked Account Agreement dated April 15, 2019 and Blocked Account Control Agreement dated December 1, 2020 | 361 |
| | Exhibit "G" – Demand Letter dated March 15, 2021 | 381 |
| | Exhibit "H" – Notice of Intention to Enforce Security dated March 15, 2021 | 384 |
| | Exhibit "I" – Consent of AVAD Canada Ltd. dated March 15, 2021 | 388 |
| 3. | Consent to Act of MNP Ltd. | 391 |
| 4. | Draft Receivership Order | 393 |
| 5. | Blackline of draft Receivership Order to Model Order | 409 |

TAB 1

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NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
 By telephone conference
 By video conference

at the following location:

<https://nortonrosefulbright.zoom.us/j/97161574456?pwd=Y0Z1bFNobERQc3dSSWlrSl4eUFkQT09>

Meeting ID: 971 6157 4456
Password: 538058

on Wednesday, March 17, 2021, at 9:30 a.m., before a judge presiding over the Commercial List (*or on a day to be set by the registrar*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: THE SERVICE LIST

APPLICATION

1. The Applicant makes application for:
 - (a) An order abridging, if necessary, the time for service of this Application and validating service of notice hereof;
 - (b) An order appointing MNP Ltd. ("**MNP**") as receiver (in such capacity, the "**Receiver**"), without security, of all the assets, undertaking and property of AVAD Canada Ltd. (the "**Debtor**"), substantially in the form attached as Schedule "A" hereto; and
 - (c) Such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:
 - (a) The Debtor was the Canadian operating affiliate of the North American business of AVAD, a wholesale distributor of a variety of electronic equipment and accessories;
 - (b) The assets and business of the Debtor's United States affiliates are to be sold (the "**US Sale Transaction**");
 - (c) The assets of the Debtor are not included in that US Sale Transaction;
 - (d) The management of the Debtor have determined that the Debtor's business will no longer be commercially viable following the US Sale Transaction and is being wound down;
 - (e) Following completion of the US Sale Transaction the remaining officers of the Debtor are expected to resign;

- (f) The Debtor's primary office is located in Mississauga, Ontario;
- (g) The Debtor's material tangible assets in Canada consist of an inventory of electronic products and accessories located at leased warehouse facilities in Mississauga, Ontario and Calgary, Alberta;
- (h) The Applicant is the agent for the secured lenders to the Debtor pursuant to a Credit and Security Agreement dated October 2, 2018 between, among others, the Applicant, as agent¹, the lenders party thereto from time to time, the Debtor and a number of the Debtor's affiliates located in the United States (as amended from time to time, the "**Credit Agreement**");
- (i) As of March 15, 2021, approximately US \$498,024.91 remains owing by the Debtor under the Credit Agreement;
- (j) The Applicant, as agent, holds security over all of the Debtor's assets, subject to limited exceptions, to secure the obligations under the Credit Agreement;
- (k) Certain events of default have occurred under the Credit Agreement (the "**Defaults**");
- (l) As a result of the Defaults, the security granted by the Debtor to secure the obligations under the Credit Agreement has become immediately enforceable and the obligations owing under the Credit Agreement by the Debtor are due and payable;

¹ as successor by assignment from MidCap Funding X Trust, which was itself a successor by assignment from MidCap Financial Trust.

- (m) On March 15, 2021, the Applicant, as agent, delivered a demand letter and a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) in connection with the Defaults to the Debtor;
- (n) The Debtor has not repaid in full the amounts owing under the Credit Agreement;
- (o) The Debtor has agreed to abridge the ten day notice period established by Section 244 of the *Bankruptcy and Insolvency Act* (Canada);
- (p) The Debtor is an insolvent person under the *Bankruptcy and Insolvency Act* (Canada);
- (q) In the circumstances, the best option to preserve the value of the Debtor's assets for the benefit of all creditors is an expedited and orderly realization through the appointment of a receiver and the appointment of a receiver is just and convenient;
- (r) MNP has consented to its appointment as court-appointed receiver;
- (s) The Applicant also requests an order permitting the continued pay down of the outstanding obligations under the Credit Agreement in the ordinary course from the proceeds of any collateral collected by the receiver or the Debtor, which will provide administrative efficiency and reduce ongoing interest accruals for the benefit of all parties;
- (t) Section 243(1) of the *Bankruptcy and Insolvency Act* (Canada), section 101 of the *Courts of Justice Act* (Ontario) and Rules 3.02 and 14.05(2) and (3) of the *Rules of Civil Procedure* (Ontario); and
- (u) Such further and other grounds as counsel may advise.

3. The following documentary evidence will be used at the hearing of the application:
- (a) The affidavit of Patrick Reid, sworn March 16, 2021, and the exhibits thereto;
 - (b) The consent of MNP Ltd. to act as Receiver; and
 - (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

March 16, 2021

NORTON ROSE FULBRIGHT CANADA LLP
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Email: evan.cobb@nortonrosefulbright.com

Lawyers for the Applicant

MIDCAP FUNDING IV TRUST
Applicant

-and- AVAD CANADA LTD.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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Lawyers for the Applicant

TAB 2

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MIDCAP FUNDING IV TRUST

Applicant

- and -

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Respondent

**APPLICATION UNDER SECTION 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended
and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**AFFIDAVIT OF PATRICK REID
(sworn March 16, 2021)**

I, Patrick Reid, of the City of Carlstadt, in the State of New Jersey, **MAKE OATH AND SAY
AS FOLLOWS:**

1. I am a Director of MidCap Financial Services, LLC, acting in its capacity as Servicer for MidCap Funding IV Trust, as administrative agent for lenders described below, and have held this position since 2015. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.
2. This affidavit is sworn in support of the application by MidCap Funding IV Trust ("**MidCap**") for an order appointing MNP Ltd. ("**MNP**") as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, properties and undertakings of AVAD Canada Ltd. (the "**Debtor**") acquired for or used in relation to the business carried on by

the Debtor, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, (the “**CJA**”).

3. As described further below:
- (a) MidCap is the agent for the secured lenders to the Debtor pursuant to a Credit and Security Agreement dated October 2, 2018 between, among others, MidCap, as agent¹, the lenders party thereto from time to time, the Debtor and a number of the Debtor’s affiliates located in the United States (as amended from time to time, the “**Credit Agreement**”);
 - (b) MidCap, as agent, holds a general security interest over all of the personal property of the Debtor, subject to limited exclusions, pursuant to a General Security Agreement, dated as of October 2, 2018 (the “**Canadian GSA**”) and pursuant to the Credit Agreement;
 - (c) certain events of default have been committed under the Credit Agreement and the amounts owing under the Credit Agreement by the Debtor are due and payable but have not been repaid in full;
 - (d) MidCap is entitled to enforce upon the security granted by the Debtor at this time;
 - (e) the management of the Debtor has determined that the Debtor’s business should be wound down and the remaining board members and officers of the Debtor either have resigned or will resign shortly;
 - (f) the Debtor does not oppose the appointment of the Receiver; and
 - (g) I believe that the appointment of the Receiver is just and convenient in the circumstances.

Background

4. The Debtor was the Canadian operating affiliate of the North American business of AVAD, a wholesale distributor of a variety of electronic equipment and accessories.

¹ as successor by assignment from MidCap Funding X Trust, which was itself a successor by assignment from MidCap Financial Trust.

5. On or about March 16, 2021, substantially all of the business and assets of the United States affiliates of the Debtor are expected to be sold (the “**US Sale Transaction**”). The business and assets of the Debtor are not included in that transaction.
6. I am informed by Morrie Aaron of MCA Financial Group, as financial advisor to MidCap engaged in connection with matters related to the Debtor, that the Debtor’s business was highly dependent upon its US affiliates for management, operational, administrative and financial support. As a result of the US Sale Transaction, that support will no longer be available. I am informed by Mr. Aaron, that the management of the Debtor have determined that upon completion of the US Sale Transaction, the Debtor’s business will no longer be commercially viable and is being wound down.
7. I am informed by Mr. Aaron that following completion of the US Sale Transaction any remaining officers of the Debtor are expected to resign.

The Debtor

8. The Debtor was continued under the laws of British Columbia.
9. While the head office of the AVAD corporate group is located in Houston, Texas, I am informed by Mr. Aaron that the Debtor’s primary office is located in Mississauga, Ontario.
10. The Debtor’s material tangible assets in Canada consist of an inventory of electronic products and accessories located at leased warehouse facilities in Mississauga, Ontario and Calgary, Alberta. Based upon records received from the Debtor, I believe approximately half of the Debtor’s inventory, at book value, is located in each warehouse.
11. The only material assets owned by the Debtor other than the above described inventory are: (i) accounts receivable; and (ii) cash located in bank accounts, which accounts are subject to blocked account arrangements in favour of MidCap. In addition, the Debtor owns immaterial equipment, desks, computers and software assets.
12. I am informed by Mr. Aaron that the Debtor currently has 10 employees. To my knowledge, the Debtor has no unionized employees. To my knowledge, the Debtor does not administer any pension plans.

13. I have been informed by Mr. Aaron that the Debtor is current on all payments to, or in respect of, the Debtor's employees, save for certain limited amounts of (i) vacation pay, and (ii) other wages that have accrued since the last scheduled payment dates.

MidCap Financing

14. The Debtor is indebted to the lenders under the Credit Agreement. A copy of the Credit Agreement, together with the amendments thereto, are attached hereto as **Exhibit "A"**. In total, there are four amendments to the Credit Agreement, including a Second Forbearance Agreement and Amendment No. 4 to Credit and Security Agreement dated January 8, 2021 (the "**Forbearance Agreement**").
15. Under the Credit Agreement, the Debtor is the "Canadian Borrower" and was provided a revolving facility with availability up to US \$4,000,000.
16. As of March 15, 2021, approximately US \$498,024.91 remains owing by the Debtor under the Credit Agreement.
17. Security for any indebtedness, obligations or liabilities owing by the Debtor to the lenders under the Credit Agreement, is provided pursuant to, *inter alia*:
- (a) the Canadian GSA, a copy of which is attached hereto as **Exhibit "B"**;
 - (b) a Canadian Trademark Security Agreement dated as of October 2, 2018, a copy of which is attached hereto as **Exhibit "C"**; and
 - (c) a Pledge Agreement made as of October 2, 2018, a copy of which is attached hereto as **Exhibit "D"**.
18. The Canadian GSA and the Credit Agreement provide MidCap, as agent, with security over all of the Debtor's assets, whether owned or thereafter acquired, subject to limited exclusions as set forth in the Canadian GSA and the Credit Agreement.
19. MidCap, as agent, has registered its security interest in the assets of the Debtor in the Personal Property Security Registry for the Provinces of Ontario, Alberta and British Columbia.
20. I am informed by Evan Cobb of Norton Rose Fulbright Canada LLP, Canadian counsel to MidCap, that searches against the Debtor's name have been completed in the Personal

Property Security Registries in each of Ontario, Alberta and British Columbia dated March 9, 2021. Those searches identify MidCap, and its predecessor affiliates, as the only party holding registrations against the Debtor in those jurisdictions. Copies of those Personal Property Security Registry searches are attached hereto as **Exhibit “E”**.

21. The Debtor has entered into certain blocked account and blocked account control agreements with MidCap and the financial institutions at which the Debtor holds bank accounts. Redacted copies of those agreements are attached hereto as **Exhibit “F”**.

Defaults

22. Certain events of default have occurred under the Credit Agreement (the “**Defaults**”). The Forbearance Agreement identifies a number of Defaults at Exhibit “A” thereto related to, among other things, failures to deliver audited financial statements, an excess cash flow certificate, monthly financial statements and compliance certificates and failure to comply with certain financial ratios. Additional Defaults may also exist.
23. The forbearance period under the Forbearance Agreement has now expired and the Debtor itself did not have the benefit of the forbearance provided therein in any case, which was limited in its application only to United States affiliates of the Debtor.
24. As a result of the Defaults, the security granted by the Debtor under Credit Agreement, the Canadian GSA and the other ancillary security documents has become immediately enforceable and the obligations owing under the Credit Agreement by the Debtor are due and payable.
25. On March 15, 2021, MidCap, as agent, delivered a demand letter and a notice of intention to enforce security pursuant to section 244 of the BIA in connection with the Defaults to the Debtor. Attached hereto as **Exhibit “G”** and **Exhibit “H”**, respectively, are the demand letter and notice of intention to enforce security.
26. The Debtor has agreed that MidCap may abridge the ten day notice period established by Section 244 of the BIA. A copy of the Debtor’s consent to abridge this notice period is attached hereto as **Exhibit “I”**.
27. The Debtor has not repaid in full the amounts owing under the Credit Agreement.

Other Creditors

28. To my knowledge, there are no other secured creditors of the Debtor.
29. A balance sheet dated March 8, 2021 that has been provided to me by the Debtor identifies the following liabilities of the Debtor, in addition to the obligations under the Credit Agreement: trade payables; taxes payable to a vendor; payroll liabilities; intercompany payables owing to affiliates; and miscellaneous payables and accruals. Additional liabilities may crystalize as a result of the wind down of the Debtor's business.

The Debtor's Business

30. As noted above, I am advised by Mr. Aaron that management of the Debtor determined that it would be in the best interests of the Debtor to proceed with a wind down of the business following the US Sale Transaction. As a result, the Debtor is ceasing operations.
31. I am not aware of any material ongoing operations of the Debtor that will continue after the US Sale Transaction.
32. I am not aware of any directors or officers that will remain engaged with the Debtor following the US Sale Transaction.
33. The remaining material activities for the Debtor are: (i) realizing upon inventory and accounts receivable; (ii) distributions of realizations to creditors in accordance with their respective priorities; and (iii) a termination of all remaining operations of the Debtor.
34. MidCap believes the Debtor's available liquidity is insufficient to satisfy the Debtor's liabilities to creditors.

Need For A Receiver

35. In the circumstances, it appears that the best option to preserve the value of the Debtor's assets for the benefit of all creditors is an expedited and orderly realization.
36. MidCap believes that a court-appointed receiver is best positioned to complete this realization. An out-of-court enforcement and realization process is not feasible in the current circumstances for a number of reasons:
 - (a) It would be infeasible for a private party, without the protections of a court order,

to efficiently deal with the assets of the Debtor in the current circumstances, particularly if no directors or officers having authority to deal with such assets will remain with the Debtor;

- (b) A stay of proceedings is necessary to ensure that no party takes steps that may prejudice the rights of MidCap and other creditors to realize value from the Debtor's assets;
 - (c) There may be a shortfall to unsecured creditors. A court-appointed officer would be beneficial to ensure legal priorities are respected and all creditors are treated in accordance with their legal entitlements; and
 - (d) I am informed by Evan Cobb that the appointment of a receiver will allow terminated employees the opportunity to access Canada's Wage Earner Protection Program to the extent such terminated employees are eligible for that program.
37. Under the Canadian GSA, MidCap is expressly granted the right to seek appointment of a receiver.
38. The appointment of a receiver appears to be the most efficient and transparent manner of facilitating a sale of the assets of the Debtor.
39. MidCap is unaware of any party that would be prejudiced by the appointment of a receiver.
40. It is anticipated that the proposed receivership will be in place for a very short period of time.
41. I am informed by Sheldon Title of MNP that MNP will consent to act as receiver of the Debtor, should the Court grant that appointment.
42. Following the completion of any sale of the assets of the Debtor, it may be beneficial to assign the Debtor into bankruptcy under the BIA. MidCap will request that the Court provide the Receiver with the power to assign the Debtor into bankruptcy under the BIA. In absence of the Court's direction that would allow for the assignment of the Debtor into bankruptcy, the Receiver would have to return to Court to seek this power.

- 43. As part of the requested order appointing the Receiver, MidCap requests an order permitting the continued pay down of the outstanding obligations under the Credit Agreement in the ordinary course from the proceeds of any collateral collected by the Receiver or the Debtor. This will provide administrative efficiency and reduce ongoing interest accruals for the benefit of all parties. The requested order also provides for the Receiver to hold back such amounts as it deems advisable to satisfy potential priority amounts, the operating costs of the Debtor, and the costs of the receivership process.

SWORN BEFORE ME remotely at the City of Toronto, in the Province of Ontario, on March 16, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Patrick Reid



Commissioner for Taking Affidavits
Evan Cobb LSO#55787N

THIS IS **EXHIBIT "A"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

CREDIT AND SECURITY AGREEMENT

dated as of October 2, 2018

by and among

**AVAD LLC,
AVAD CANADA LTD.,
WAVE ELECTRONICS, INC.,
WAVE ELECTRONICS ARIZONA, LLC,
WAVE ELECTRONICS CALIFORNIA, LLC,
WAVE ELECTRONICS FLORIDA, LLC,
WAVE ELECTRONICS LOUISIANA, LLC,
WAVE ELECTRONICS NEW JERSEY, LLC,
MSTR BRAND, INC.**

and

ELECTRONICS OUTLET, LLC

each as Borrower, and collectively as Borrowers,

KINGSWOOD AVAD LLC,

as a Guarantor

and

MIDCAP FINANCIAL TRUST,

as Administrative Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO



TABLE OF CONTENTS

| | Page |
|---|-------------|
| ARTICLE 1 - DEFINITIONS | 1 |
| Section 1.1 Certain Defined Terms..... | 1 |
| Section 1.2 Accounting Terms and Determinations | 49 |
| Section 1.3 Other Definitional and Interpretive Provisions..... | 49 |
| Section 1.4 [Reserved]..... | 50 |
| Section 1.5 Currency Matters | 50 |
| Section 1.6 Reallocation of Revolving Loan Commitments | 51 |
| ARTICLE 2 - LOANS AND LETTERS OF CREDIT..... | 52 |
| Section 2.1 Loans..... | 52 |
| Section 2.2 Interest, Interest Calculations and Certain Fees..... | 60 |
| Section 2.3 Notes | 63 |
| Section 2.4 Availability Modifications..... | 63 |
| Section 2.5 Letters of Credit and Letter of Credit Fees..... | 64 |
| Section 2.6 General Provisions Regarding Payment; Loan Account..... | 67 |
| Section 2.7 Maximum Interest..... | 68 |
| Section 2.8 Taxes; Capital Adequacy..... | 69 |
| Section 2.9 Appointment of Borrower Representative..... | 72 |
| Section 2.10 Joint and Several Liability of US Borrowers; Rights of Contribution; Subordination and Subrogation..... | 73 |
| Section 2.11 Collections and Lockbox Accounts..... | 76 |
| Section 2.12 Termination; Restriction on Termination..... | 78 |
| ARTICLE 3 - REPRESENTATIONS AND WARRANTIES | 79 |
| Section 3.1 Existence and Power..... | 79 |
| Section 3.2 Organization and Governmental Authorization; No Contravention..... | 79 |
| Section 3.3 Binding Effect..... | 80 |
| Section 3.4 Capitalization | 80 |
| Section 3.5 Financial Information..... | 80 |
| Section 3.6 Litigation..... | 80 |
| Section 3.7 Ownership of Property | 80 |
| Section 3.8 No Default..... | 80 |
| Section 3.9 Labor Matters..... | 80 |
| Section 3.10 Regulated Entities | 81 |
| Section 3.11 Margin Regulations..... | 81 |
| Section 3.12 Compliance With Laws; Anti-Terrorism Laws..... | 81 |
| Section 3.13 Taxes | 81 |
| Section 3.14 Compliance with ERISA..... | 82 |
| Section 3.15 Consummation of Transaction Documents; Brokers..... | 82 |
| Section 3.16 Related Transactions..... | 83 |
| Section 3.17 Material Contracts..... | 83 |
| Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials.. | 83 |
| Section 3.19 Intellectual Property..... | 84 |

| | | |
|--|---|----|
| Section 3.20 | Solvency..... | 85 |
| Section 3.21 | Full Disclosure..... | 85 |
| Section 3.22 | Interest Rate..... | 85 |
| Section 3.23 | Subsidiaries..... | 85 |
| Section 3.24 | Eligible Accounts; Eligible Credit Card Receivables..... | 85 |
| Section 3.25 | Eligible Inventory; Eligible In-Transit Inventory..... | 85 |
| Section 3.26 | Canadian Pension Plans..... | 86 |
| ARTICLE 4 - AFFIRMATIVE COVENANTS..... | | 86 |
| Section 4.1 | Financial Statements and Other Reports..... | 86 |
| Section 4.2 | Payment and Performance of Obligations..... | 87 |
| Section 4.3 | Maintenance of Existence..... | 88 |
| Section 4.4 | Maintenance of Property; Insurance..... | 88 |
| Section 4.5 | Compliance with Laws and Material Contracts..... | 89 |
| Section 4.6 | Inspection of Property, Books and Records..... | 89 |
| Section 4.7 | Use of Proceeds..... | 90 |
| Section 4.8 | Estoppel Certificates..... | 90 |
| Section 4.9 | Notices of Litigation and Defaults..... | 90 |
| Section 4.10 | Hazardous Materials; Remediation..... | 91 |
| Section 4.11 | Further Assurances..... | 91 |
| Section 4.12 | Credit Card Notifications..... | 93 |
| Section 4.13 | Power of Attorney..... | 93 |
| Section 4.14 | Borrowing Base Collateral Administration..... | 94 |
| Section 4.15 | Canadian Pension Plans..... | 94 |
| ARTICLE 5 - NEGATIVE COVENANTS..... | | 94 |
| Section 5.1 | Debt; Contingent Obligations..... | 95 |
| Section 5.2 | Liens..... | 95 |
| Section 5.3 | Restricted Distributions..... | 95 |
| Section 5.4 | Restrictive Agreements..... | 95 |
| Section 5.5 | Payments and Modifications of Certain Debt..... | 95 |
| Section 5.6 | Consolidations, Mergers and Sales of Assets; Change in Control..... | 96 |
| Section 5.7 | Purchase of Assets, Investments..... | 96 |
| Section 5.8 | Transactions with Affiliates..... | 96 |
| Section 5.9 | Modification of Organizational Documents..... | 96 |
| Section 5.10 | Modification of Certain Agreements..... | 96 |
| Section 5.11 | Conduct of Business..... | 97 |
| Section 5.12 | Lease Payments..... | 97 |
| Section 5.13 | Limitation on Sale and Leaseback Transactions..... | 97 |
| Section 5.14 | Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts..... | 97 |
| Section 5.15 | Compliance with Anti-Terrorism Laws..... | 97 |
| Section 5.16 | Agreements Regarding Receivables..... | 98 |
| Section 5.17 | Canadian Pension Plans..... | 98 |
| ARTICLE 6 - FINANCIAL COVENANTS..... | | 99 |
| Section 6.1 | Senior Leverage Ratio..... | 99 |

| | | |
|--------------------------------------|--|-----|
| Section 6.2 | Fixed Charge Coverage Ratio | 99 |
| Section 6.3 | Evidence of Compliance | 99 |
| ARTICLE 7 - CONDITIONS | | 99 |
| Section 7.1 | Conditions to Closing | 99 |
| Section 7.2 | Conditions to Each Loan, Support Agreement and Lender Letter of Credit..... | 100 |
| Section 7.3 | Searches | 101 |
| Section 7.4 | Post-Closing Requirements..... | 102 |
| ARTICLE 8 - [RESERVED] | | 102 |
| ARTICLE 9 - SECURITY AGREEMENT | | 102 |
| Section 9.1 | Generally | 102 |
| Section 9.2 | Representations and Warranties and Covenants Relating to Collateral..... | 102 |
| ARTICLE 10 - EVENTS OF DEFAULT | | 106 |
| Section 10.1 | Events of Default | 106 |
| Section 10.2 | Acceleration and Suspension or Termination of Revolving Loan Commitments | 108 |
| Section 10.3 | Remedies..... | 109 |
| Section 10.4 | Cash Collateral..... | 111 |
| Section 10.5 | Default Rate of Interest..... | 111 |
| Section 10.6 | Setoff Rights | 111 |
| Section 10.7 | Application of Proceeds..... | 112 |
| Section 10.8 | Waivers. | 113 |
| Section 10.9 | Injunctive Relief..... | 115 |
| Section 10.10 | Marshalling; Payments Set Aside | 115 |
| Section 10.11 | Right to Cure..... | 115 |
| ARTICLE 11 - AGENT | | 116 |
| Section 11.1 | Appointment and Authorization | 116 |
| Section 11.2 | Agent and Affiliates..... | 117 |
| Section 11.3 | Action by Agent..... | 117 |
| Section 11.4 | Consultation with Experts..... | 117 |
| Section 11.5 | Liability of Agent..... | 117 |
| Section 11.6 | Indemnification | 117 |
| Section 11.7 | Right to Request and Act on Instructions | 118 |
| Section 11.8 | Credit Decision | 118 |
| Section 11.9 | Collateral Matters..... | 118 |
| Section 11.10 | Agency for Perfection | 119 |
| Section 11.11 | Notice of Default..... | 119 |
| Section 11.12 | Assignment by Agent; Resignation of Agent; Successor Agent. | 119 |
| Section 11.13 | Payment and Sharing of Payment..... | 120 |
| Section 11.14 | Right to Perform, Preserve and Protect..... | 123 |
| Section 11.15 | Additional Titled Agents..... | 123 |
| Section 11.16 | Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist | 123 |

| | |
|--|-----|
| Section 11.17 Buy-Out Upon Refinancing | 125 |
| ARTICLE 12 - MISCELLANEOUS | 125 |
| Section 12.1 Amendments and Waivers. | 125 |
| Section 12.2 Assignments and Participations. | 126 |
| Section 12.3 Notices. | 129 |
| Section 12.4 Severability | 130 |
| Section 12.5 Headings | 130 |
| Section 12.6 Confidentiality. | 131 |
| Section 12.7 Waiver of Consequential and Other Damages..... | 131 |
| Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION..... | 132 |
| Section 12.9 WAIVER OF JURY TRIAL..... | 132 |
| Section 12.10 Publication; Advertisement..... | 133 |
| Section 12.11 Counterparts; Integration | 133 |
| Section 12.12 No Strict Construction | 133 |
| Section 12.13 Lender Approvals..... | 133 |
| Section 12.14 Expenses; Indemnity..... | 134 |
| Section 12.15 Survival..... | 135 |
| Section 12.16 Reinstatement..... | 135 |
| Section 12.17 Successors and Assigns..... | 136 |
| Section 12.18 No Waivers | 136 |
| Section 12.19 USA PATRIOT Act Notification..... | 136 |
| Section 12.20 Judgment Currency | 136 |
| Section 12.21 Canadian Anti-Money Laundering Legislation | 137 |

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A - Commitment Annex

EXHIBITS

Exhibit A - [Reserved]
 Exhibit B - Form of Compliance Certificate
 Exhibit C - Forms of Borrowing Base Certificate
 Exhibit D - Form of Notice of Borrowing
 Exhibit E - Form of Payment Notification
 Exhibit F - Form of Excess Cash Flow Certificate

SCHEDULES

Schedule 1.1(b) - Credit Card Issuers
 Schedule 1.1(c) - Credit Card Processors
 Schedule 1.1(d) - Competitors
 Schedule 1.1(e) - Extended Terms Account Debtors
 Schedule 2.1 - Scheduled Principal Payments
 Schedule 3.1 - Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
 Schedule 3.4 - Capitalization
 Schedule 3.6 - Litigation
 Schedule 3.17(a) - Material Contracts
 Schedule 3.17(b) - Real Estate Leases
 Schedule 3.18 - Environmental Compliance
 Schedule 3.19 - Intellectual Property
 Schedule 4.9 - Litigation, Governmental Proceedings and Other Notice Events
 Schedule 5.1 - Debt; Contingent Obligations
 Schedule 5.2 - Liens
 Schedule 5.7 - Permitted Investments
 Schedule 5.8 - Affiliate Transactions
 Schedule 5.11 - Business Description
 Schedule 5.14 - Deposit Accounts and Securities Accounts
 Schedule 7.4 - Post-Closing Obligations
 Schedule 9.1 - Collateral
 Schedule 9.2 - Location of Collateral
 Schedule R-1 - Real Property Collateral

CREDIT AND SECURITY AGREEMENT

THIS CREDIT AND SECURITY AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of October 2, 2018 by and among Kingswood AVAD LLC, a Delaware limited liability company ("**Parent**"), each of Parent's US Subsidiaries (as defined below) identified on the signature pages hereof as US Borrowers, and any additional borrower that is a US Subsidiary that may hereafter be added to this Agreement (each individually, a "**US Borrower**", and collectively, "**US Borrowers**"), each of Parent's Canadian Subsidiaries (as defined below) identified on the signature pages hereof as Canadian Borrowers, and any additional borrower that is a Canadian Subsidiary that may hereafter be added to this Agreement (each individually, a "**Canadian Borrower**", and collectively, "**Canadian Borrowers**" and, together with US Borrowers, each individually as a "**Borrower**", and collectively, "**Borrowers**"), the other Credit Parties (as defined below) from time to time party hereto, **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

Borrowers have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the US Revolving Loan Commitment and/or the Canadian Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Acceptable Appraisal**" means an appraisal of Inventory received by Agent (a) that is the most recent appraisal conducted with respect to such Inventory, and (b) satisfactory to Agent including as to (i) the Persons who performed such appraisal, (ii) the scope and methodology employed (including, to the extent relevant, any sampling procedure employed by such party conducting the appraisal) and (iii) the results, in each case in Agent's Permitted Discretion.

"Acceptable Document of Title" means, with respect to any Inventory, a non-negotiable bill of lading, non-negotiable waybill or other non-negotiable Document (as defined in the UCC or other applicable law, as the context may require, and defined as "document of title" in the PPSA) (including a non-negotiable cargo receipt) governed by the laws of a state within the United States that (a) is issued by (i) a common carrier, in the case of any bill of lading, waybill or similar Document, or (ii) a freight forwarder, in the case of any cargo receipt, which carrier or freight forwarder (x) is not an Affiliate of the applicable vendor or any Credit Party and (y) is in actual possession of such Inventory, (b) is consigned to Agent or its agent (either directly or by way of endorsement), (c) is subject to a first priority perfected Agent's Lien and is not subject to any other Lien (other than non-consensual Permitted Liens, (d) to the extent that such document of title is physical and not electronic, is in the possession of Agent or one of its agents and (e) is on terms otherwise acceptable to Agent in its Permitted Discretion.

"Acceptable Field Exam" means a field examination performed by (or on behalf of) Agent (a) that is the most recent such field examination conducted by (or on behalf of) Agent, and (b) satisfactory to Agent including as to (i) the Persons who performed such field examination, (ii) the scope and methodology employed (including, to the extent relevant, any sampling procedure employed by such party conducting the field examination) and (iii) the results, in each case in Agent's Permitted Discretion.

"Account Control Agreement" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, the applicable Credit Party and any financial institution or securities intermediary in which such Credit Party maintains a Deposit Account or Securities Account, which agreement provides Agent with "control" (as such term is used in Article 8 and/or Article 9 of the UCC or the STA, as applicable) over the Deposit Account or Securities Account described therein.

"Account Debtor" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"Accounts" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC and in the PPSA, as applicable), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), "intangibles" (as defined in the PPSA), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"Additional Tranche" means an additional amount of US Revolving Loan Commitment and/or Canadian Revolving Loan Commitment equal to \$20,000,000 in the aggregate (it being

acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of \$4,000,000 each for a total of up to \$20,000,000). Each Additional Tranche shall be allocated to the US Revolving Loan Commitment and the Canadian Revolving Loan Commitment as determined by Borrower Representative.

"Affiliate" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, and (b) any Person which is controlled by or is under common control with such controlling Person. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote ten percent (10%) or more of the voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise; *provided*, that, for purposes of the definition of Eligible Accounts and Section 5.8 of this Agreement: (a) any Person which owns directly or indirectly fifteen percent (15%) or more of the equity interests having ordinary voting power for the election of directors or other members of the governing body of a Person or fifteen percent (15%) or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall, in each case, be deemed an Affiliate of such Person.

"Agent" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"Aggregate Borrowing Base" means the sum of (i) the US Borrowing Base and (ii) the Canadian Borrowing Base.

"Aggregate Revolving Loan Commitment" means the sum of (a) the Canadian Revolving Loan Commitment and (ii) the US Revolving Loan Commitment. For the avoidance of doubt, the Aggregate Revolving Loan Commitment on the Closing Date shall be \$50,000,000.

"Agreement" has the meaning set forth in the first paragraph hereof.

"Anti-Terrorism Laws" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, the Laws administered by OFAC, and the Canadian Anti-Money Laundering & Anti-Terrorism Legislation.

"Applicable Margin" means (a) with respect to Revolving Loans and all other Obligations (other than the Term Loan) four percent (4.00%) and (b) with respect to the Term Loan, seven and three-quarters of one percent (7.75%).

"Approved Fund" means any (a) investment company, fund, trust, securitization vehicle or conduit 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 Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses

(a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment, statutory division or other consensual disposition by any Credit Party of any asset.

"**AVAD**" means AVAD LLC, a Delaware limited liability company.

"**AVAD Canada**" means AVAD Canada Ltd., a British Columbia corporation.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such publically-available electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of \$1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (Eastern time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error.

"**Base Rate**" means the per annum rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however*, that Agent may, upon prior written notice to Borrower, choose a reasonably comparable publically-available index or source to use as the basis for the Base Rate.

"**BIA**" means the *Bankruptcy and Insolvency Act* (Canada) as amended from time to time.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" mean the entity(ies) described as such in the first paragraph of this Agreement and each of their successors and permitted assigns.

"**Borrower Representative**" means AVAD, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent in its reasonable discretion.

"**Borrowing Base**" means the US Borrowing Base and/or the Canadian Borrowing Base, as the context requires.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto, with respect to the Accounts and Inventory of US Borrowers or Canadian Borrowers, as applicable.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC, New York City or, with respect to any action to be taken by, or with respect to, any Canadian Borrower, Toronto, Ontario are authorized by law to close.

"**Canadian Anti-Money Laundering & Anti-Terrorism Legislation**" means the *Criminal Code* (Canada), the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *United Nations Act* (Canada) or any similar Canadian legislation, together with all rules, regulations and interpretations thereunder or related thereto including, without limitation, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism and the United Nations Al-Qaida and Taliban Regulations promulgated under the *United Nations Act* (Canada).

"**Canadian Borrower**" and "**Canadian Borrowers**" mean the entity(ies) described as such in the first paragraph of this Agreement and each of their successors and permitted assigns.

"**Canadian Borrowing Base**" means:

- (a) the product of (i) ninety-five percent (95%) *multiplied by* (ii) the aggregate amount at such time of the Eligible Credit Card Receivables of Canadian Borrowers; *plus*
- (b) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate amount at such time of the Eligible Accounts of Canadian Borrowers; *plus*
- (c) the lesser of (i) eighty-five percent (85%) *multiplied by* the Net Orderly Liquidation Value of the Eligible Inventory of Canadian Borrowers, or (ii) sixty-five percent (65%) *multiplied by* the value of the Eligible Inventory of Canadian Borrowers, valued at the lower of first-in first-out cost or market cost; *plus*
- (d) sixty-five percent (65%) *multiplied by* the Net Orderly Liquidation Value of the Eligible In-Transit Inventory of Canadian Borrowers; *minus*

(e) the amount of the Canadian Dilution Reserve, if any, the Canadian Priority Payable Reserve and the amount of any other reserves determined by Agent from time to time in its Permitted Discretion in accordance with Section 2.4.

Unless otherwise noted, any reference to the Canadian Borrowing Base set forth herein shall refer to the Canadian Borrowing Base reflected in the most recent Borrowing Base Certificate delivered hereunder. No more than (i) \$1,000,000 of the US Borrowing Base and the Canadian Borrowing Base, in the aggregate, may be attributable to Eligible In-Transit Inventory (after giving effect to the applicable advance rate and the Net Orderly Liquidation Value calculation attributable to such Inventory) at any time and (ii) prior to the delivery of the first report described in Section 4.1(k), \$300,000 of the US Borrowing Base and the Canadian Borrowing Base, in the aggregate, may be attributable to Eligible Inventory of the WAVE Entities in transit in the continental United States or Canada between owned or leased locations of the Borrowers or a location described in clause (k)(ii) of the definition of Eligible Inventory (after giving effect to the applicable advance rate and the Net Orderly Liquidation Value calculation attributable to such Inventory) at any time.

"Canadian Credit Party" means each Canadian Borrower and each Guarantor which is a Canadian Subsidiary.

"Canadian Defined Benefit Pension Plan" means Canadian Pension Plan which contains a "defined benefit provision," as defined in subsection 147.1(1) of the ITA.

"Canadian Dilution" means, as of any date of determination, a percentage, based upon the experience during the trailing three-month period most recently ended that is the result of dividing the Dollar amount of (a) in each case to the extent relevant and not otherwise netted from, or otherwise reducing, Eligible Accounts in accordance with the definition thereof, bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Canadian Borrowers' Accounts during such period, by (b) Canadian Borrowers' billings with respect to Accounts during such period.

"Canadian Dilution Reserve" means, as of any date of determination (without duplication of amounts netted from, or otherwise reducing, Eligible Accounts in accordance with the definition thereof), an amount sufficient to reduce the advance rate against Eligible Accounts of Canadian Borrowers by one (1) percentage point for each percentage point by which Canadian Dilution is in excess of five (5%) percent.

"Canadian Economic Sanctions and Export Control Laws" means any Canadian Laws, regulations or orders governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures, including the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), the *Corruption of Foreign Public Officials Act* (Canada), Part II.1 of the *Criminal Code* (Canada), and the *Export and Import Permits Act* (Canada), and any related regulations.

"Canadian Loan Cap" means, on any date of determination, the lesser of (x) the Canadian Revolving Loan Commitment and (y) the Canadian Borrowing Base, in each case as of such date.

"Canadian Guarantee" means any Guarantee of the Canadian Obligations executed by a Canadian Credit Party after the Closing Date.

"Canadian Obligations" means Obligations of the Canadian Credit Parties.

"Canadian Pension Plans" means each plan that is required to be registered under any applicable Canadian federal or provincial legislation, which is maintained or contributed by a Canadian Credit Party in respect of any Person's employment in Canada other than any Canadian plan established by statute, which shall include the Canada Pension Plan maintained by the government of Canada and the Quebec Pension Plan maintained by the Province of Quebec.

"Canadian Priority Payables" means, at any time, with respect to the Canadian Borrowing Base, the amount due and owing by any Canadian Credit Party, or the accrued amount for which such Canadian Credit Party has an obligation to remit, on or prior to the date as of which the Canadian Borrowing Base is to be determined and remaining unpaid at the time of determination of the Canadian Borrowing Base, to a Governmental Authority or other Person pursuant to any applicable Law, rule or regulation, in respect of (i) employment insurance, (ii) goods and services taxes, sales taxes, employee income taxes, excise tax and other taxes payable or to be remitted or withheld, (iii) workers' compensation, (iv) wages, salaries, commission or compensation, including vacation pay (including, as provided for, under the *Wage Earner Protection Program Act* (Canada)), and (v) pension fund obligations, including in respect of unpaid or unremitted pension plan contributions, amounts representing any unfunded liability, solvency deficiency or wind-up deficiency whether or not due with respect to a Canadian Pension Plan (including "normal cost", "special payments" and any other payments in respect of any funding deficiency or shortfall); in each case to the extent any Governmental Authority or other Person may claim a security interest, hypothecation, prior claim, trust, deemed trust or other claim or Lien ranking or, in the Permitted Discretion of Agent, would reasonably be expected to rank in priority to or *pari passu* with one or more of the Liens granted pursuant to this Agreement and the Security Documents; and

"Canadian Priority Payable Reserve" means on any date of determination for the Canadian Borrowing Base, a reserve established from time to time by Agent in its Permitted Discretion in such amount as Agent may reasonably determine in respect of Canadian Priority Payables of the Canadian Credit Parties; provided, that without otherwise limiting Agent's Permitted Discretion, the Canadian Priority Payables Reserve shall include a reserve for Canadian Priority Payables in an amount up to the amount of Canadian Priority Payables set forth on the most recent applicable Borrowing Base Certificate (as the same may be reduced or increased by the next succeeding applicable Borrowing Base Certificate) delivered to Agent pursuant to Section 7.2(a).

"Canadian Revolving Facility" means the credit facility represented by the Canadian Revolving Loan Commitments.

"Canadian Revolving Loan Commitment" means, as of any date of determination, the aggregate Canadian Revolving Loan Commitment Amounts of all Lenders as of such date.

"Canadian Revolving Loan Commitment Amount" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Canadian Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Canadian Revolving Loan Commitment Amount for such Lender shall be deemed to be \$0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Canadian Revolving Loans outstanding and its commitment to make Canadian Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, the aggregate Canadian Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be \$3,000,000 (which amount is subject to reallocation from time to time in accordance with Section 2.4(b)).

"Canadian Revolving Loan Commitment Percentage" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Canadian Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Canadian Revolving Loan Commitment Amount of such Lender on such date divided by the Canadian Revolving Loan Commitment on such date.

"Canadian Revolving Loan Exposure" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Canadian Revolving Loan Outstandings on such date divided by the aggregate Canadian Revolving Loan Outstandings of all Lenders on such date.

"Canadian Revolving Loan Limit" means, at any time, the lesser of (a) the Canadian Revolving Loan Commitment and (b) the Canadian Borrowing Base.

"Canadian Revolving Loan Outstandings" means, at any time of calculation, (a) the sum of the then existing aggregate outstanding principal amount of Canadian Revolving Loans, and (b) when used with reference to any single Lender, the sum of the then existing outstanding principal amount of Canadian Revolving Loans advanced by such Lender.

"Canadian Revolving Loans" has the meaning set forth in Section 2.1(b).

"Canadian Security Agreement" means the Canadian Security Agreement dated as of the Closing Date by and among Agent and each Canadian Borrower.

"Canadian Security Documents" means each Canadian Security Agreement, each Canadian Guarantee, each Mortgage executed and delivered by any Canadian Credit Party with respect to any real property of such Canadian Credit Party and each other security agreement, deed of hypothec, or other document executed and delivered by any Canadian Credit Party pursuant to which a Lien is granted (or purported to be granted) in favor of Agent to secure the Obligations.

"**Canadian Subsidiary**" means each Subsidiary of Parent organized under the Laws of Canada, or any province or territory thereof.

"**Capital Expenditures**" means any expenditure that would be classified as a capital expenditure on a statement of cash flow of Credit Parties prepared in accordance with GAAP; *provided, however*, that (a) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in or sale of similar equipment or with insurance proceeds therefrom shall be included as Capital Expenditures only to the extent of the net amount by which such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time or the net proceeds received from of such sale or the net amount of such insurance proceeds, as the case may be, and (b) Capital Expenditures shall not include (i) any such expenditure made or paid with the net cash proceeds in respect of the issuance of any equity interest (other than Disqualified Equity Interests) of Parent or any direct or indirect parent thereof, (ii) any such expenditure to the extent Parent or its Subsidiaries are reimbursable from a third party (other than a Credit Party or any Subsidiary of a Credit Party) within one hundred-eighty (180) days following the date that such expenditure was made (and such amounts are, in fact, received during such time period), and (iii) any such expenditure made in connection with the reinvestment of the net cash proceeds as permitted hereunder.

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada) as amended from time to time.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 et seq., as the same may be amended from time to time.

"**CFC**" means (i) any "controlled foreign corporation" within the meaning of Section 957 of the IRC in which any Credit Party is a "United States shareholder" within the meaning of Section 951(b) of the Code, (ii) any Subsidiary all of the assets of which (other than a de minimis amount) are equity or equity and indebtedness of an entity described in clause (i) of this definition, and (iii) any Subsidiary of an entity described in clause (i) of this definition.

"**Change in Control**" means any of the following events: (a) Sponsor and its Investment Affiliates shall cease among them to own, directly or indirectly, at least 51% of the equity interests of Parent; (b) Sponsor and its Investment Affiliates shall cease among them to possess the right to elect (through contract, ownership of voting securities or otherwise) at all times a majority of the board of directors (or similar governing body) of Parent and to direct the management policies and decisions of Parent; (c) Parent ceases to own, directly or indirectly, 100% of the equity interests of any other Credit Party; or (d) the occurrence of any "Change of Control", "Change in Control", or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person.

"**Closing Date**" means the date of this Agreement.

"**Closing Date Acquisition**" means the acquisition by AVAD of one hundred percent (100%) of the issued and outstanding equity interests of WAVE pursuant to the Closing Date Acquisition Agreement.

"Closing Date Acquisition Agreement" means that certain Agreement for Purchase and Sale of Stock, dated as of the date hereof, among AVAD, WAVE, the shareholders of WAVE, and Gary Wermuth, as the stockholder representative.

"Closing Date Acquisition Documents" means the Closing Date Acquisition Agreement and all other documents related thereto and executed in connection therewith.

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

"Collateral" means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto. Notwithstanding anything contained in this Agreement to the contrary, the term "Collateral" shall not include any Excluded Collateral.

"Collateral Access Agreement" means an agreement reasonably satisfactory in form and substance to Agent in favor of Agent and executed by Agent, the applicable Credit Party and, as applicable, (a) a bailee, a carrier, a freight forwarder, a customs broker, a warehouseman (including any warehouse logistics provider) or other Person in possession of, having a Lien upon, or having any rights or interests in, Collateral, and (b) any landlord of real estate leased by any Credit Party.

"Commitment Annex" means Annex A to this Agreement.

"Commitment Expiry Date" means the date that is five (5) years following the Closing Date.

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

"Competitor" means (a) any operating company engaged in the same or substantially the same line of business as the Credit Parties and designated by Borrowers in a written notice delivered to Agent prior to the Closing Date or from time to time thereafter (any such Person, a **"Direct Competitor"**) (provided, that, the designation of any Person as a "Direct Competitor" under this clause (a) shall be accompanied by a reasonably detailed description of such Person's business and the lines of business of such Person that overlap with the business of the Credit Parties), and (b) any Affiliate of a Direct Competitor who (x) is identified to Agent in writing from time to time or (y) is readily identifiable as an Affiliate of a Direct Competitor solely on the basis of such Person's name. For the avoidance of doubt, (i) no Investing Company shall be deemed to be a Competitor under this Agreement or any other Financing Document and (ii) the designation of any Person as a "Competitor" after the Closing Date shall not apply retroactively to invalidate an assignment that was consummated prior to the date of such designation. All "Competitors" as of the Closing Date are set forth on Schedule 1.1(d) attached hereto.

"Compliance Certificate" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"Consolidated Subsidiary" means, at any date, any Subsidiary the accounts of which would be consolidated with those of Parent (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"Contingent Obligation" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a **"Third Party Obligation"**) if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"Controlled Group" means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

"Credit Card Agreements" means all agreements now or hereafter entered into by any Borrower for the benefit of a Borrower, in each case with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Credit Card Issuer" means any of the credit card issuers listed on Schedule 1.1(b), and any other credit card issuer consented to by Agent in its Permitted Discretion.

"Credit Card Notification" means, collectively, the notices to Credit Card Issuers or Credit Card Processors who are parties to Credit Card Agreements, which Credit Card Notifications shall require the ACH or wire transfer no less frequently than each Business Day (and whether or not there are then any outstanding Obligations) of all payments due from Credit Card Processors to (i) a Lockbox or (ii) any other Deposit Account in the United States with respect to which an Account Control Agreement is in place (or, in the case of any Deposit Account of WAVE and its Subsidiaries until the WAVE Account Conversion Date that is not yet subject to an Account Control Agreement, with respect to which a standing wire order or instruction to transfer all such payments to the applicable Payment Account is in place).

"Credit Card Processor" means any of the credit card processors or clearinghouses listed on Schedule 1.1(c), and any other credit card processor or clearinghouse consented to by Agent in its Permitted Discretion.

"Credit Card Receivables" means collectively, (a) all present and future rights of the Borrowers to payment from any Credit Card Issuer, Credit Card Processor or other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (b) all present and future rights of the Borrowers to payment from any Credit Card Issuer, Credit Card Processor or other third party in connection with the sale or transfer of Accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under the Credit Card Agreements or otherwise, in each case above calculated net of prevailing interchange charges and net of billing for interest, fees or late charges.

"Credit Exposure" means, at any time, any portion of the US Revolving Loan Commitment, the Canadian Revolving Loan Commitment, and of any other Obligations that remains outstanding, or any Reimbursement Obligation that remains unpaid or any Letter of Credit or Support Agreement not supported with cash collateral required by this Agreement that remains outstanding; *provided, however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim with respect thereto.

"Credit Party" means any Borrower, any Guarantor, and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, pledgor or other obligor under any Financing Document; and **"Credit Parties"** means all such Persons, collectively.

"Curative Equity" means the net amount of proceeds from a sale or issuance of Qualified Equity Interests of Parent or common equity contributions to Parent in immediately available funds and which is designated "Curative Equity" by Borrowers under Section 10.11 of this Agreement at the time such proceeds are received by or contributed to Parent. For the avoidance of doubt, the forgiveness of antecedent debt (whether Debt, trade payables, or otherwise) shall not constitute Curative Equity.

"Cure Right" has the meaning set forth in Section 10.11.

"Cure Right Deadline" has the meaning set forth in Section 10.11.

"Debt" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under capital leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables

incurred in the ordinary course of business and repayable in accordance with customary trade practices and, for the avoidance of doubt, other than royalty payments payable in the ordinary course of business in respect of licenses and "true-up" or other similar payment obligations with respect to post-closing working capital adjustments under and in accordance with Section 1.4 of the Closing Date Acquisition Agreement as in effect on the date hereof), (f) all monetary obligations of such Person owing under Swap Contracts (which amount shall be calculated based on the amount that would be payable by such Person if the Swap Contracts were terminated on the date of determination), (g) any Disqualified Equity Interests of such Person if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Debt under any of clauses (a) through (g) above (it being agreed, for the avoidance of doubt, that a guarantee of any obligation that does not constitute Debt under clauses (a) through (g) of this definition shall not, itself, constitute Debt hereunder). For purposes of this definition, (i) the amount of any Debt represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Debt, and (ii) the amount of any Debt which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation. Without duplication of any of the foregoing, Debt of US Credit Parties shall include any and all Loans and Letter of Credit Liabilities, and Debt of Canadian Credit Parties shall include all Canadian Revolving Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**Defined Period**" means, for purposes of calculating the Senior Leverage Ratio and the Fixed Charge Coverage Ratio for any Required Testing Date, the twelve (12) month period ending on such Required Testing Date; *provided*, that for purposes of calculating the Fixed Charge Coverage Ratio for any period ending on a Required Testing Date occurring prior to September 30, 2019, "**Defined Period**" shall mean the period from September 1, 2018 through and including such Required Testing Date.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Credit Party.

"**Disqualified Equity Interests**" means any equity interest that, by its terms (or by the terms of any security or other equity interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily

redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale, so long as any rights of the holders thereof shall be, upon the occurrence of a change of control or asset sale event, subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of both Revolving Loan Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Debt or any other equity interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is one hundred eighty (180) days after the Commitment Expiry Date.

"**Dollars**" or "\$" means the lawful currency of the United States of America.

"**Dollar Equivalent**" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in another currency, the equivalent amount thereof in Dollars as determined by Agent, at such time on the basis of the Spot Rate at such time for the purchase of Dollars with such currency.

"**EBITDA**" has the meaning provided in the Compliance Certificate.

"**Eligible Account**" means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion in accordance with Section 2.4(a). The net amount of any Eligible Account at any time shall be the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits or allowances of any nature at any time issued, owing, claimed by the Account Debtor thereunder, granted, outstanding or payable in connection with Accounts or the Account Debtor thereunder at such time. No Account shall be an Eligible Account if:

(a) the Account remains unpaid (i)(x) with respect to any Accounts owed by an account debtor which is not an Extended Terms Account Debtor, more than ninety (90) days past the invoice date, and (y) with respect to any Accounts owed by an Extended Terms Account Debtor, more than 120 days past the invoice date or (ii) more than sixty (60) days after the due date therefor;

(b) without duplication of the introduction to this definition, the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Law or the Account represents a progress billing for which services have not been fully and completely rendered;

(f) the Account is subject to a Lien other than Permitted Liens, or Agent does not have a first priority, perfected Lien on such Account (subject only to those Permitted Liens referred to in clause (d) of the definition thereof);

(g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or the Account Debtor holds any Debt of a Credit Party;

(i) such Account is a Credit Card Receivable;

(j) fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(k) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible);

(l) any representation or warranty contained in the Financing Documents with respect to such Account has been breached in any respect;

(m) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;

(n) the Account is an obligation of an Account Debtor that is a federal, provincial, territorial, state, municipal or local government or any political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement, and, if such Account is owing by the federal

government of the United States, any government of any state thereof, of the federal government of Canada, or the government of any province, territory or subdivision thereof, the applicable Borrowers shall have complied to the reasonable satisfaction of Agent with all applicable requirements of (x) the Assignment of Claims Act, 31 USC §3727, in the case of Accounts owing from any agency, department or instrumentality of the federal government of the United States, (y) the *Financial Administration Act* (Canada) in the case of Accounts owing from an agency, department or instrumentality of the federal government of Canada or (z) if applicable, any similar state, provincial, territorial, or subdivision Law or any similar foreign Law, in the case of Accounts owing from any other applicable government agency, department or instrumentality;

(o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any Insolvency Law, or the Account is an Account as to which any facts, events or occurrences exist which would reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(p) the Account Debtor has its principal place of business or executive office outside the United States or Canada;

(q) the Account is payable in a currency other than Dollars or, in the case of Accounts of the Canadian Borrowers, Dollars or Canadian dollars;

(r) the Account Debtor is an individual (it being agreed and understood that solely for purposes of this clause (q) a sole proprietorship shall not be considered an individual);

(s) [reserved];

(t) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible);

(u) [reserved]; or

(v) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its Permitted Discretion in accordance with Section 2.4(a).

All Accounts that are at any time excluded from Eligible Accounts by virtue of any one or more of the exclusionary criteria set forth above shall nevertheless constitute Collateral.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, (x) "Eligible Assignee" shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume all

or any portion of either Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"Eligible Credit Card Receivables" means, subject to the criteria below, all Credit Card Receivables of the Borrowers which (i) were generated in the Ordinary Course of Business, (ii) were generated originally in the name of a Borrower and not acquired via assignment or otherwise and (iii) satisfy the criteria set forth below (provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion in accordance with Section 2.4(a)). The net amount of any Eligible Credit Card Receivable at any time shall be the face amount of such Eligible Credit Card Receivable as originally billed *minus* all cash collections and other proceeds of such Credit Card Receivable received from or on behalf of the customer thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits or allowances of any nature at any time issued, owing, claimed by the customer thereunder, granted, outstanding or payable in connection with Credit Card Receivable or the customer thereunder at such time. A Credit Card Receivable shall be an Eligible Credit Card Receivable if:

(a) such Credit Card Receivables arise from the actual and bona fide sale and delivery of goods or rendition of services by such Borrower in the Ordinary Course of Business of such Borrower;

(b) such Credit Card Receivables are not past due (beyond any stated applicable grace period, if any, therefor) pursuant to the terms set forth in the Credit Card Agreements with the Credit Card Issuer or Credit Card Processor of the credit card or debit card used in the purchase which give rise to such Credit Card Receivables;

(c) such Credit Card Receivables are not unpaid more than five (5) Business Days after the date of the sale of Inventory giving rise to such Credit Card Receivables;

(d) the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivable has not failed to remit any monthly payment in respect of such Credit Card Receivable;

(e) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables has not asserted a counterclaim, defense or dispute against such Credit Card Receivables (other than customary set-offs to fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with such Person from time to time), but the portion of the Credit Card Receivables owing by such Credit Card Issuer or Credit Card Processor in excess of the amount owing by such Person to such Credit Card Issuer or Credit Card Processor pursuant to such fees and chargebacks shall be deemed Eligible Credit Card Receivables;

(f) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables has not set off against amounts otherwise payable by such Credit Card Issuer or Credit Card Processor to such Person for the purpose of establishing a reserve or collateral for obligations of such Person to such Credit Card Issuer or Credit Card

Processor (other than customary set-offs and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor from time to time) but the portion of the Credit Card Receivables owing by such Credit Card Issuer or Credit Card Processor in excess of the set-off amounts shall be deemed Eligible Credit Card Receivables;

(g) such Credit Card Receivables (x) are owned by a Borrower and such Borrower has a good title to such Credit Card Receivables and (y) are subject to a valid and perfected first priority Lien in favor of the Agent and are not subject to any other Lien (other than those Permitted Liens referred to in clause (d) of the definition thereof);

(h) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables (i) is not subject to an event of the type described in Sections 10.1(e) or 10.1(f) and (ii) has not suspended business, made a general assignment for the benefit of creditors, or become unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any Insolvency Law, or the Credit Card Receivable is a Credit Card Receivable as to which any facts, events or occurrences exist which would reasonably be expected to impair the validity, enforceability or collectability of such Credit Card Receivable or reduce the amount payable or delay payment thereunder;

(i) no event of default has occurred under the Credit Card Agreement of such Borrower with the Credit Card Issuer or Credit Card Processor who has issued the credit card or debit card or handles payments under the credit card or debit card used in the sale which gave rise to such Credit Card Receivables which event of default gives such Credit Card Issuer or Credit Card Processor the right to cease or suspend payments to such Borrower;

(j) the customer using the credit card or debit card giving rise to such Credit Card Receivable shall not have returned the merchandise purchased giving rise to such Credit Card Receivable;

(k) to the extent required by Subsection 4.12, the Credit Card Receivables are subject to Credit Card Notifications;

(l) the Credit Card Processor is organized and has its principal offices or assets within the United States or Canada or another jurisdiction acceptable to the Agent in its Permitted Discretion;

(m) such Credit Card Receivables are not due from a Credit Card Processor who is an Affiliate of any Credit Party or an employee or agent of any Credit Party or any Affiliate of any Credit Party;

(n) such Credit Card Receivables are payable in Dollars (or, with respect to Credit Card Receivables of Canadian Borrower, Canadian Dollars);

(o) such Credit Card Receivables are not evidenced by chattel paper or an instrument of any kind, and have not been reduced to judgment;

(p) such Credit Card Receivables would not constitute Eligible Accounts (assuming for purposes of such determination that such Credit Card Receivables constitute Accounts (other than as a result of clause (i) of the definition of "Eligible Accounts")); and

(q) in the case of a Credit Card Receivable due from a Credit Card Processor, the Agent has not notified the Borrower Representative that the Agent has determined in its Permitted Discretion that such Credit Card Receivable is unlikely to be collected.

All Credit Card Receivables that are at any time excluded from Eligible Credit Card Receivables by virtue of any one or more of the exclusionary criteria set forth above shall nevertheless constitute Collateral.

"Eligible In-Transit Inventory" means those items of Inventory that do not qualify as Eligible Inventory solely because they are in a location that is not located in the continental United States or Canada and a Borrower does not have actual and exclusive possession thereof, but as to which,

(a) such Inventory currently is in transit (whether by vessel, air, or land) from a location outside of the continental United States to a location that is owned or leased by a Borrower located in the continental United States (or a location owned and operated by a third person warehouseman in the Ordinary Course of Business in accordance with a Collateral Access Agreement with the applicable Borrower);

(b) title to such Inventory has passed to a Borrower and Agent shall have received such evidence thereof as it may from time to time require;

(c) such Inventory is insured against types of loss, damage, hazards, and risks, and in amounts, satisfactory to Agent in its Permitted Discretion, and Agent shall have received a copy of the certificate of marine cargo insurance in connection therewith in which it has been named as an additional insured and loss payee in a manner acceptable to Agent;

(d) such Inventory is the subject of an Acceptable Document of Title and a Collateral Access Agreement;

(e) such Inventory is subject to a Letter of Credit;

(f) Agent determines that such Inventory is not subject to (i) any Person's right of reclamation, repudiation, stoppage in transit or diversion or (ii) any other right or claim of any other Person which is (or is capable of being) senior to, or pari passu with, the Lien of Agent or Agent determines that any Person's right or claim impairs, or interferes with, directly or indirectly, the ability of Agent to realize on, or reduces the amount that Agent may realize from the sale or other disposition of such Inventory;

(g) Borrower Representative has provided (i) a certificate to Agent that certifies that, to the best knowledge of such Borrower, such Inventory meets all of Borrowers' representations and warranties contained in the Financing Documents

concerning Eligible In-Transit Inventory, that it knows of no reason why such Inventory would not be accepted by such Borrower when it arrives in the continental United States and that the shipment as evidenced by the documents conforms to the related order documents, and (ii) upon Agent's request, a copy of the invoice, packing slip and manifest with respect thereto; and

(h) such Inventory shall not have been in transit for more than thirty (30) days.

All Inventory that is at any time excluded from Eligible In-Transit Inventory by virtue of any one or more of the exclusionary criteria set forth above shall nonetheless constitute Collateral.

"Eligible Inventory" means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion in accordance with Section 2.4(a). Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory);

(b) such Inventory is placed on consignment;

(c) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favor of Agent (subject only to those Permitted Liens referred to in clause (d) of the definition thereof);

(d) such Inventory is obsolete, unsalable, defective, unfit for sale, unfit for further processing, or is not of good and merchantable quality free from material defects;

(e) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(f) such Inventory is not subject to a first priority Lien in favor of Agent (subject only to those Permitted Liens referred to in clause (d) of the definition thereof);

(g) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available or of any Hazardous Materials in concentrations or amounts that violate applicable Environmental Law;

(h) such Inventory is not covered by casualty insurance acceptable to Agent;

(i) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect;

(j) such Inventory is located in a premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than \$100,000;

(k) that is not located in the continental United States or Canada at a location that is owned or leased by a Borrower, except (i) Inventory in transit in the continental United States or Canada between such owned or leased locations or a location described in clause (ii) below so long as, at any time after the sixtieth (60th) day immediately following the Closing Date, Agent has received the Inventory report required by Section 4.1(k) for the most recently ended month or (ii) Inventory located in the continental United States or Canada at locations owned and operated by a third person warehouseman in the Ordinary Course of Business in accordance with a Collateral Access Agreement with the applicable Borrower;

(l) such Inventory consists of used items held for resale;

(m) such Inventory does not consist of finished goods;

(n) such Inventory does not meet all standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);

(o) such Inventory (by SKU) is the subject of no recorded sales during the twelve (12) month period most recently ended;

(p) such Inventory is held for rental or lease by or on behalf of Borrowers;

(q) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement prohibits the ability of Agent or any Lender to sell or otherwise dispose of such Inventory; or

(r) such Inventory fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment in accordance with Section 2.4(a). Agent and Borrowers agree that Inventory shall be subject to periodic Acceptable Appraisals by Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such Acceptable Appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

All Inventory that is at any time excluded from Eligible Inventory by virtue of any one or more of the exclusionary criteria set forth above shall nonetheless constitute Collateral.

"Eligible Swap Counterparty" means Agent, any Affiliate or branch of Agent, any Lender and/or any Affiliate or branch of any Lender, that (a) at any time it occupies such role or capacity (whether or not it remains in such capacity) enters into a Swap Contract permitted hereunder with any Borrower, and (b) in the case of a Lender or an Affiliate or branch of a

Lender other than Agent, maintains a reporting system acceptable to Agent with respect to Swap Contract exposure and agrees with Agent to provide regular reporting to Agent, in form and substance reasonably satisfactory to Agent, with respect to such exposure. In addition thereto, any Affiliate or branch of a Lender shall, upon Agent's request, execute and deliver to Agent a letter agreement pursuant to which such Affiliate or branch designates Agent as its agent and agrees to share, pro rata, all expenses relating to liquidation of the Collateral for the benefit of such Affiliate.

"Environmental Laws" means any present and future federal, state, provincial, territorial, municipal and local Laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common Law, pertaining to the environment, natural resources, pollution, health (including any environmental cleanup statutes and all regulations adopted by any local, municipal, state, provincial, territorial, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, Law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Credit Party and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 et seq.), any analogous state or local Laws, any amendments thereto, and the regulations promulgated pursuant to said Laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"Equity Cure" has the meaning set forth in Section 10.11.

"Equity Documents" means those certain class B units award agreements, contribution and exchange agreements, subscription agreements and the other documents and agreements executed and delivered in connection therewith, in each cash, executed on the Closing Date in connection with the transaction described in Section 7.1(j).

"Equivalent Amount" means, on any date of determination, with respect to obligations or valuations denominated in one currency (the "first currency"), the amount of another currency (the "second currency") which would result from Agent converting the first currency into the second currency at the Spot Rate.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"ERISA Plan" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Credit Party maintains, sponsors or contributes to or has an obligation to contribute to, or, in the case of an employee benefit plan

which is subject to Section 412 of the Code or Title IV of ERISA, to which any Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Event of Default" has the meaning set forth in Section 10.1.

"Excess Cash Flow" has the meaning provided in the Excess Cash Flow Certificate.

"Excess Cash Flow Certificate" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit F hereto.

"Excluded Collateral" means:

(a) any rights or interest in any contract, lease, permit, license, or license agreement, or other General Intangible or instrument, covering real or personal property of any Credit Party, or any assets owned by such Credit Party that are subject to a purchase money Lien, a Lien securing a capital lease or any similar arrangement if under the terms of such contract, lease, permit, license, or license agreement or other arrangement, or applicable Law with respect thereto, the grant of a Lien therein is prohibited or voided (or would avoid such Credit Party's rights or interests therein) as a matter of Law, statute or regulation or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (*provided*, that, (i) the foregoing exclusions shall in no way be construed (A) to apply to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or 9-409 of the UCC, the PPSA or other applicable Law, or (B) to apply to the extent that any consent or waiver has been obtained that would permit Agent's security interest or Lien to attach notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (ii) the foregoing exclusions shall in no way be construed to limit, impair, or otherwise affect any of Agent's or any Lender's continuing Liens upon any rights or interests of any Credit Party in or to (A) monies due or to become due under or in connection with any described contract, lease, permit, license, license agreement, or (B) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, or license agreement;

(b) (x) voting stock or other voting equity interests of any CFC, solely to the extent that such voting equity interests represent more than sixty-five percent (65%) of the outstanding voting equity interests of such CFC, and (y) any equity interests of any Subsidiary of a CFC, in each case solely to the extent that such equity interests secure the US Obligations;

(c) deposit and securities accounts the balance of which consists exclusively of (x) withheld income Taxes and federal, state or local employment Taxes in such

amounts as are required to be paid to the United States Internal Revenue Service or state or local government agencies within the following two months with respect to employees of any Credit Party, and (y) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of any Credit Party, (2) all segregated deposit accounts constituting (and the balance of which consists solely of funds set aside in connection with) Tax accounts and trust accounts, (3) deposit accounts or securities accounts solely and exclusively used in the ordinary course of business for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Credit Party's salaried employees, which accounts are funded only in the ordinary course of business and not in excess of any amounts necessary to fulfill payroll obligations that are then currently owing, and (4) pension fund accounts and 401(k) accounts;

(d) any United States intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the creation by a Credit Party of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal Law, rule or regulation;

(e) any Excluded Deposit Account; and

(f) any property that requires action under the Law of any jurisdiction other than the United States, any state thereof, Canada or any province or territory thereof to create or perfect a security interest in such property.

"Excluded Deposit Account" means (a) any Deposit Account that at any time contains not more than \$50,000 individually and not more than \$100,000 in the aggregate for all such Deposit Accounts, and (b) any Deposit Account maintained outside the United States or Canada; provided, that (i) until the one hundred twentieth day after the Closing Date, account number XXXXX6796 at Regions Bank and account number XXXXX6881 at Wells Fargo Bank, National Association shall be deemed to be "Excluded Deposit Accounts", and (ii) accounts number XXXXXXXX5814 and XXXXXXXX5110 at Scotia Bank and accounts number XXXXXXX3649, XXXXXXX1150, XXXXXXX7009 and XXXXXXX2681 at Bank of America, National Association shall be deemed Excluded Deposit Accounts only if any such Deposit Account described in this clause (ii) contains not more than \$150,000 individually and not more than \$300,000 in the aggregate for all such Deposit Accounts described in this clause (ii).

"Excluded Swap Obligations" means, with respect to any Credit Party, (x) as it relates to all or a portion of the Guarantee of such Credit Party, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Credit Party becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Credit Party of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes

illegal under the Commodity the application or official interpretation of any thereof) by virtue of such Credit Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Credit Party becomes Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or commitment pursuant to the applicable 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 any Credit Party) or (ii) such Lender changes its lending office (other than a change made at the request of any Credit Party), except in each case to the extent that, pursuant to Section 2.8(a) or (b), 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) United States federal withholding Taxes attributable to such Recipient's failure to comply with Section 2.8(c), (d) any withholding tax that would not have been imposed but for the Recipient (i) not dealing at arm's length (within the meaning of the *Income Tax Act* (Canada)) with a Credit Party or (ii) being a "specified shareholder" (as defined in subsection 18(5) of the *Income Tax Act* (Canada)) of a Credit Party or not dealing at arm's length with such a specified shareholder for purposes of the *Income Tax Act* (Canada), except where the non-arm's length relationship arises, or where the Recipient is (or is deemed to be) a "specified non-resident shareholder" or does not deal at arm's length with such a "specified shareholder", in each case, on account of the Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or enforced this Agreement or any other Financing Document, and (e) any withholding Taxes imposed under FATCA.

"Existing Credit Agreements" means, collectively, (1) that certain Credit Agreement, dated as of March 15, 2017, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, by and among JPMorgan Chase Bank, N.A., AVAD, AVAD Canada and Parent, and (ii) that certain Business Loan Agreement, dated as of September 15, 2017, as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, by and among East West Bank, WAVE and certain of WAVE's Subsidiaries.

"Existing Letter of Credit" means that certain \$600,000 standby letter of credit No. NUSCGS017940 issued by JPMorgan Chase Bank, National Association, for the benefit of Samsung Electronics of America.

"Extended Terms Account Debtor" means those Account Debtors identified on Schedule 1.1(e) hereto and other Persons added to such Schedule from time to time with the approval of Agent (such approval not to be unreasonably withheld).

"Facilities" means the US Revolving Facility and Canadian Revolving Facility.

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

"Federal Funds Rate" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"Fee Letter" means that certain letter agreement, dated as of the Closing Date, among Agent and Borrowers, relating to fees payable to Agent, for its own account (and/or to Lenders, in accordance with the agreements between Agent and Lenders).

"Financing Documents" means this Agreement, any Notes, the Security Documents, the Shareholder Subordination Agreement, any other subordination agreement or any intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and/or to the Liens granted by Credit Parties to Agent in the Collateral (or any portion thereof) and all other documents, instruments and agreements (other than any Swap Contract) related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"Fixed Assets" means, collectively, all of Credit Parties' now owned and hereafter acquired rolling stock and other Equipment.

"Fixed Charge Coverage Ratio" means the ratio of Operating Cash Flow to Fixed Charges for each Defined Period.

"Fixed Charges" means, with respect to Parent and its Consolidated Subsidiaries for the applicable Defined Period, the sum of (a) interest expense, net of cash interest income, payable in cash during the Defined Period, (b) any provision for (or minus any benefit from) income or franchise Taxes included in the determination of net income for such Defined Period to the extent payable in cash during such Defined Period (except to the extent paid from the Seller

escrow under the Closing Date Acquisition Agreement), (c) payments of principal payable in cash such Defined Period with respect to all Debt (including the portion of scheduled payments under capital leases allocable to principal (but excluding mandatory prepayments required by Section 2.1 and excluding scheduled repayments of Revolving Loans and other Debt subject to reborrowing to the extent not accompanied by a concurrent and permanent reduction of the US Revolving Loan Commitment or the Canadian Revolving Loan Commitment, (d) Permitted Distributions (other than as defined in clause (g)(i) thereof), including Tax distribution, payable in cash during such Defined Period, and (e) Integration Costs added back to EBITDA for the Defined Period.

"**GAAP**" means generally accepted accounting principles 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 United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, any "intangible" as defined in the PPSA, if applicable, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Governmental Authority**" means any nation or government, any state, provincial, territorial, municipal, local or other political subdivision thereof, and any agency, authority, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means Parent and each other Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

"Hazardous Materials" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (g) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (h) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, flammable explosives, infectious substances, or raw materials which include hazardous constituents); and (i) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"Hazardous Materials Contamination" means contamination in excess of amounts permitted under applicable Law (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

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

"Insolvency Laws" means any of the Bankruptcy Code, the BIA, the CCAA, the *Winding-Up and Restructuring Act* (Canada) or the *Canada Business Corporations Act* (Canada) where such statute is used by a Person to propose an arrangement in connection with a compromise of such Person's debt obligations each as now and hereafter in effect, any successors to such statutes, and any similar Laws in any jurisdiction including, without limitation, any Laws relating to assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions with creditors generally, or proceedings seeking reorganization, arrangement or other similar relief, any Law permitting the appointment of a trustee, monitor liquidator, receiver, receiver manager or other Person having similar powers and any Law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors.

"Instrument" means "instrument", as defined in Article 9 of the UCC or the PPSA, as applicable.

"Integration Costs" has the meaning set forth in the Compliance Certificate.

"Intellectual Property" means, with respect to any Person, all patents, patent applications and like protections, including improvements, divisions, continuation, renewals, reissues, extensions and continuations in part of the same, industrial designs, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable Law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"Interest Period" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"Inventory" means "inventory" as defined in Article 9 of the UCC or the PPSA, as applicable.

"Investing Company" shall mean any Person that is a commercial bank, finance company, insurance company, financial institution, or other similar entity that is or will be primarily engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business

"Investment" means any investment in any Person, whether by means of acquiring (whether for cash, property, services, securities or otherwise), making or holding Debt, securities, capital contributions, loans, time deposits, advances, Guarantees or otherwise (including by statutory division). The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"Investment Affiliate" means any fund or investment vehicle that (a) is organized by Sponsor for the purpose of making equity or debt investments in one or more companies and (b) is controlled by, or under common control with, Sponsor. For purposes of this definition "control" means the power to direct or cause the direction of management and policies of a Person, whether by contract or otherwise.

"ITA" means the *Income Tax Act* (Canada), as amended, and any regulations promulgated thereunder.

"Known Litigation" means the existing litigation filed by Security Data Supply, LLC, and the other plaintiffs named therein against the Company, in Civil Action No 3:18-cv-01399-S, in the United States District Court for the Northern District of Texas.

"Laws" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes,

injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "Laws" includes, without limitation, Environmental Laws.

"**LC Issuer**" means one or more banks, trust companies or other Persons in each case expressly identified by Agent from time to time, in its sole discretion, as an LC Issuer for purposes of issuing one or more Letters of Credit hereunder. Without limitation of Agent's discretion to identify any Person as an LC Issuer, no Person shall be designated as an LC Issuer unless such Person maintains reporting systems acceptable to Agent with respect to letter of credit exposure and agrees to provide regular reporting to Agent satisfactory to it with respect to such exposure.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 12.2, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing. In addition to the foregoing, solely for the purpose of identifying the Persons entitled to share in payments and collections from the Collateral as more fully set forth in this Agreement and the Security Documents, the term "**Lender**" shall include Eligible Swap Counterparties. In connection with any such distribution of payments and collections, Agent shall be entitled to assume that no amounts are due to any Eligible Swap Counterparty unless such Eligible Swap Counterparty has notified Agent of the amount of any such liability owed to it prior to such distribution.

"**Lender Letter of Credit**" means a Letter of Credit issued by an LC Issuer that is also, at the time of issuance of such Letter of Credit, a Lender.

"**Letter of Credit**" means a standby letter of credit issued for the account of any US Borrower by an LC Issuer which expires by its terms within one year after the date of issuance and in any event at least thirty (30) days prior to the Commitment Expiry Date. Notwithstanding the foregoing, a Letter of Credit may provide for automatic extensions of its expiry date for one or more successive one (1) year periods, *provided, however*, that the LC Issuer that issued such Letter of Credit has the right to terminate such Letter of Credit on each such annual expiration date and no renewal term may extend the term of the Letter of Credit to a date that is later than the thirtieth (30th) day prior to the Commitment Expiry Date. Each Letter of Credit shall be either a Lender Letter of Credit or a Supported Letter of Credit.

"**Letter of Credit Liabilities**" means, at any time of calculation, the sum of (a) without duplication, the amount then available for drawing under all outstanding Lender Letters of Credit and all Supported Letters of Credit, in each case without regard to whether any conditions to drawing thereunder can then be met, *plus* (b) without duplication, the aggregate unpaid amount of all reimbursement obligations in respect of previous drawings made under all such Lender Letters of Credit and Supported Letters of Credit.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one percent (1%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one minus the daily average during such Interest Period of the aggregate maximum reserve

requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, hypothecation, security interest, preference, trust (statutory, deemed, constructive or otherwise), priority or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any other Credit Party shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Litigation" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"Loan Account" has the meaning set forth in Section 2.6(b).

"Loan(s)" means the Term Loan and the Revolving Loans or any combination of the foregoing, as the context may require.

"Lockbox" has the meaning set forth in the definition of "Lockbox Agreement".

"Lockbox Account" means an account or accounts maintained at a Lockbox Bank into which collections of Accounts are paid or deposited.

"Lockbox Agreement" means any Lockbox services and control agreement entered into and executed among any Borrower or Borrowers, the Lockbox Bank and Agent, pursuant to which the Lockbox Bank shall (among other things) (a) maintain a post office lockbox (the **"Lockbox"**), which shall be under the Lockbox Bank's exclusive dominion and control, for receipt and physical removal by the Lockbox Bank of original customer checks and other remittances that are delivered to the Lockbox in payment of Accounts (**"Remittances"**), (b) deposit the Remittances into the Lockbox Account, (c) provide other customary and related services with respect to the Lockbox and the Remittances, (d) acknowledge Agent's first priority Lien in and, in the case of Lockbox Accounts located in the United States, "control" (as such term is defined in the UCC) of the Remittances and funds on deposit in the Lockbox Account and agree to follow Agent's written instructions with respect thereto (which written instructions shall not be delivered by Agent unless an Event of Default has occurred and is continuing), and (e) be in form and substance satisfactory to Agent in its Permitted Discretion.

"Lockbox Bank" has the meaning set forth in Section 2.11.

"Management Agreement" means the Second Amended and Restated Consulting Services Agreement, dated as of the date hereof, by and among Sponsor, Parent and AVAD.

"Management Expenses" means the reasonable and documented out-of-pocket expenses that are incurred by Sponsor in rendering services under, and that are reimbursable to Sponsor under and pursuant to, the Management Agreement (including, but not limited to, the "Out-of-Pocket Expenses" defined and referred to in Section 4 of the Management Agreement).

"**Management Fee**" means the management fees payable to Sponsor pursuant to the Management Agreement.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature, a material adverse change in, or a material adverse effect upon, any of (i) the financial condition, operations, business or properties of the Credit Parties, taken as a whole, (ii) the ability of Agent or Lenders to enforce the Obligations or realize upon a portion of the Collateral in which Agent has previously perfected a Lien having an aggregate value (which, in the case of Inventory, will be calculated at the Net Orderly Liquidation Value thereof) in excess of \$3,000,000 (other than as a result of an action taken or not taken that is solely in the control of Agent), or the ability of any Credit Party to perform any of its material obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any material provision of any Financing Document, or (iv) the existence, perfection or priority of any security interest granted in any Financing Document and covering Collateral in which Agent has previously perfected a Lien with an aggregate value (which, in the case of Inventory, will be calculated at the Net Orderly Liquidation Value thereof) in excess of \$3,000,000 (except as a result of a withdrawal of Cash from a Deposit Account subject to a Deposit Account Control Agreement in connection with a transaction otherwise permitted hereunder); provided, that any event fully covered by an indemnification escrow (and not subject to dispute by the any seller thereunder) under the Closing Date Acquisition Agreement shall not constitute a Material Adverse Effect hereunder.

"**Material Contracts**" has the meaning set forth in Section 3.17.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Minimum Balance**" means, at any time, an amount that equals the product of: (i) the average Aggregate Borrowing Base (or, if less on any given day, the sum of the US Revolving Loan Commitment and the Canadian Revolving Loan Commitment) during the immediately preceding month *multiplied by* (ii) the Minimum Balance Percentage for such month.

"**Minimum Balance Fee**" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of the aggregate amount of the Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced above or in Section 2.2(a) from (ii) the Minimum Balance *multiplied by* (b) the average interest rate applicable to the Revolving Loans during such month (or, during the existence of an Event of Default, the default rate of interest set forth in Section 10.5(a)).

"**Minimum Balance Percentage**" means thirty five percent (35%).

"**Mortgages**" means, individually and collectively, one or more mortgages, debentures, deeds of trust, deeds of immovable hypothec, deeds to secure debt, or similar security instruments, each executed and delivered by Credit Parties in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Multiemployer Plan" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or has an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"Net Orderly Liquidation Value" means the net amount (after all costs of sale), expressed in terms of money, which Agent, in its Permitted Discretion, estimates can be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis, as reflected in the most recent Acceptable Appraisal delivered hereunder.

"Non-Compliance Defined Period" has the meaning set forth in Section 10.11.

"Non-Funding Lender" has the meaning set forth in Section 11.18.

"Notes" has the meaning set forth in Section 2.3.

"Notice of Borrowing" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"Notice of LC Credit Event" means a notice from a Responsible Officer of Borrower Representative to Agent with respect to any issuance, increase or extension of a Letter of Credit specifying: (a) the date of issuance or increase of a Letter of Credit; (b) the identity of the LC Issuer with respect to such Letter of Credit, (c) the expiry date of such Letter of Credit; (d) the proposed terms of such Letter of Credit, including the face amount; and (e) the transactions that are to be supported or financed with such Letter of Credit or increase thereof.

"Obligations" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under any Insolvency Law or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. In addition to, but without duplication of, the foregoing, the Obligations shall include, without limitation, all obligations, liabilities and indebtedness arising from or in connection with (a) all Support Agreements, (b) all Lender Letters of Credit, and (c) all Swap Contracts entered into with any Eligible Swap Counterparty; *provided, however*, that the "Obligations" of a Credit Party shall exclude any Excluded Swap Obligations with respect to such Credit Party.

"OFAC" means the U.S. Department of Treasury Office of Foreign Assets Control.

"OFAC Lists" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable executive orders.

"Operating Cash Flow" means, for the applicable Defined Period, EBITDA for such Defined Period, minus the sum of (a) unfinanced Capital Expenditures for such Defined Period and (b) to the extent not already reflected in the calculation of EBITDA, other capitalized costs, defined as the gross amount paid in cash and capitalized during such Defined Period, as long term assets, other than amounts capitalized during such Defined Period as capital expenditures for property, plan and equipment or similar fixed asset accounts.

"Ordinary Course of Business" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices.

"Organizational Documents" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"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 Financing Document, or sold or assigned an interest in any Loan or Financing Document).

"Other Taxes" means all present or future stamp, court or documentary, excise, 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 Financing Document.

"Overadvance" means (a) with respect to the Canadian Revolving Facility, a Canadian Revolving Loan advanced to Canadian Borrower to the extent that, immediately after its having been made, the result of (x) the Canadian Loan Cap then in effect, minus (y) the aggregate Credit Exposure then outstanding under the Canadian Revolving Facility is less than zero, and (b) with respect to the US Revolving Facility, a US Revolving Loan advanced to, or Letter of Credit issued for the account of, a US Borrower to the extent that, immediately after its having been made, the result of (x) the US Loan Cap then in effect, minus (y) the aggregate Credit Exposure then outstanding under the US Revolving Facility is less than zero.

"Parent" means the entity described as such in the first paragraph of this Agreement and each of its successors and permitted assigns.

"Payment Account" means the account or accounts specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing

Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"Payment Notification" means a written notification substantially in the form of Exhibit E hereto.

"PBGC" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"Pension Plan" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"Permits" means all governmental licenses, authorizations, provider numbers, supplier numbers, registrations, permits, drug or device authorizations and approvals, certificates, franchises, qualifications, accreditations, consents and approvals of a Credit Party required under all applicable Laws and required for such Credit Party in order to carry on its business as now conducted.

"Permitted Asset Dispositions" means the following Asset Dispositions: (a) dispositions of Inventory in the Ordinary Course of Business, and not pursuant to any bulk sale, (b) dispositions of Fixed Assets in the Ordinary Course of Business that the applicable Credit Party or Subsidiary determines in good faith are no longer used or useful in the business of such Borrower and its Subsidiaries in the reasonable business judgment of Borrowers, not to exceed \$500,000 in the aggregate in any fiscal year, so long as no Default of Event of Default then exists or would result from such Asset Disposition, (c) (i) non-exclusive licenses or sublicenses of Intellectual Property in the Ordinary Course of Business and (ii) the abandonment or other disposition of Intellectual Property that is, in each case, in the reasonable business judgment of Borrowers, no longer economically practicable to maintain or useful in the conduct of the business of Credit Parties, (d) sales or dispositions of Inventory by Credit Parties and their Subsidiaries in connection with a Specified Store Liquidation; provided that (i) such sales or dispositions shall only be permitted under this clause (d) if no Overadvance shall occur as a result of the removal of the Eligible Inventory subject to such Specified Store Liquidation from the applicable Borrowing Base, and (ii) if during the period of time since the later of (A) the most recent Borrowing Base Certificate delivered to Agent or (B) the most recent notice delivered in compliance with this proviso, the sale or disposition of Inventory in reliance on this clause (d), either individually or in the aggregate (taken together with all Inventory disposed of in such manner during such period), contributed a Dollar Equivalent amount equal to \$1,000,000 or more to the combined amount of the Borrowing Bases, then Borrowers shall, within two (2) Business Days thereafter deliver to Agent an updated Borrowing Base Certificate that reflects the removal of the applicable Inventory from the applicable Borrowing Base, (e) leases, subleases, non-exclusive licenses or sublicenses of Real Estate or personal property (other than Intellectual Property) in the Ordinary Course of Business, (f) dispositions or discounts by Borrowers or any of their respective Subsidiaries of Accounts or note receivables arising in the Ordinary Course of Business but only in connection with the compromise or collection thereof, (g) dispositions of cash and Cash Equivalents (or Investments that were Cash Equivalents when made) in the Ordinary Course of Business, (h) dispositions of any business, asset or property between or among Borrowers, Guarantors and their respective Subsidiaries in the Ordinary Course of

Business (other than dispositions by a US Credit Party or any US Subsidiary to a Canadian Credit Party or any Canadian Subsidiary), or (i) other dispositions approved by Agent in writing in its reasonable discretion.

"Permitted Contest" means, with respect to any Tax obligation or other obligation allegedly or potentially owing from any Borrower or other Credit Party to any governmental Tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers' or other Credit Parties' title to, and their right to use, the Collateral is not adversely affected thereby and Agent shall be satisfied, in its Permitted Discretion, that while any such contest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens; (c) Borrowers have given Agent notice of the commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Borrowers or other Credit Party and/or confirmation of the continuing satisfaction of this definition; and (d) a reserve with respect to such Tax obligation or other obligation is established on such Borrower's or other Credit Party's books and records in such amount as is required under GAAP.

"Permitted Contingent Obligations" means (a) Contingent Obligations arising in respect of the Debt under the Financing Documents; (b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business; (c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms); (d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed \$75,000 in the aggregate at any time outstanding; (e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies; (f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6; (g) Contingent Obligations with respect to any undrawn portion of any Existing Letter of Credit; (h) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; (i) guarantees of the Debt or other obligations of any other Credit Party that is otherwise permitted hereunder, so long as such guarantee is subordinated to the Obligations to the same extent as the Debt to which it relates is subordinated to the Obligations, and (j) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed \$75,000 in the aggregate at any time outstanding.

"Permitted Debt" means: (a) the Credit Parties' Debt to Agent and each Lender under this Agreement and the other Financing Documents; (b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business; (c) purchase money Debt not to exceed \$1,000,000 (when aggregated with Debt permitted under clause (k) of this definition) at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment; (d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms); (e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by a Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; (f) Debt in the form of insurance premiums financed through the applicable insurance company; (g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business; (h) Debt incurred under corporate p-card or credit card programs in the Ordinary Course of Business so long as such Debt is repaid during the first billing cycle after the incurrence thereof; (i) Subordinated Debt; (j) [*reserved*]; and (k) other Debt not to exceed \$1,000,000 outstanding in the aggregate at any time (when aggregated with Debt permitted under clause (c) of this definition).

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Distributions" means the following Restricted Distributions: (a) dividends and other distributions by any Subsidiary of any Credit Party to such Credit Party (other than Parent) or to the parent or Subsidiary of such Credit Party (other than Parent); (b) dividends payable solely in common equity interests; (c) repurchases of equity interests of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however*, that such repurchase does not exceed \$250,000 (the "**Base Redemption Amount**") in the aggregate per fiscal year with unused amounts in such fiscal year being carried forward (without giving effect to prior adjustments) to the immediately succeeding fiscal year (the "**Carryforward Redemption Amount**") with amounts expended first from the Base Redemption Amount and, after such amount is fully depleted, next from the Carryforward Redemption Amount; (d) with respect to any taxable year a Credit Party is a disregarded entity or partnership for U.S. federal income Tax purposes, so long as no Event of Default has occurred and is continuing, distributions by such Credit Party to its partners or members in order for such partners or members (or their direct or indirect owners) to pay their federal, state and local income Taxes imposed under applicable Law on them on the taxable income of such Credit Party for such taxable period, *provided however*, that the aggregate amount of such Tax distributions for such taxable year shall not exceed the product of the federal taxable income of such Credit Party for such taxable period net of taxable losses from prior taxable periods to the extent not previously used in determined distributions hereunder and the highest combined regular federal, state and local marginal income Tax rate applicable to any direct or indirect partner or member of such Credit Party, taking into account for this purpose the deductibility of state income Taxes

in determining federal taxable income to the extent permitted by applicable Law and the character of any income; (e) with respect to any taxable year a Credit Party or a Subsidiary of any Credit Party is a CFC (as defined in clause (i) of the definition thereof), distributions by such Credit Party or Subsidiary to its owners in amounts necessary for such Credit Party or its owners (or their direct or indirect partners or members) to pay federal, state and local income Taxes attributable to income included by such Credit Party (or its direct or indirect owners, partners or members) as a result of Sections 951 or 951A of the Code; (f) to the extent any Subsidiary of Parent is a corporation for U.S. federal income tax purposes (a "**Corporate Subsidiary**"), distributions by Subsidiaries of such Corporate Subsidiary to allow such Corporate Subsidiary to pay any income Taxes attributable to the net income of such Subsidiary included on the tax return of the Corporate Subsidiary, including where such Subsidiary is (A) a member of an affiliated or consolidated group of such Corporate Subsidiary, (B) an entity disregarded as separate from such Corporate Subsidiary (or such Subsidiary is disregarded as separate from a member or an affiliated or consolidated group of which such Corporate Subsidiary is the parent or (C) a CFC; (f) payment of the Management Fees to the extent permitted under Section 5.8; (g) distributions to Parent (which may be further made to any parent entity) to make (i) "true-up" or other similar payment obligations with respect to post-closing working capital adjustments under and in accordance with Section 1.4 of the Closing Date Acquisition Agreement as in effect on the date hereof, and (ii) the following administrative expenses incurred by Parent in the Ordinary Course of Business attributable to the ownership of the Credit Parties, (A) customary accounting and related expenses on behalf of Parent and the other Credit Parties, (B) salaries, commissions, bonus and other benefits payable to officers, employees, directors and members of management of Parent or any of its parent entity companies, any payroll, social security or similar taxes thereof and other benefits and documented reimbursable expenses payable to independent outside directors and board observers, (C) indemnities payable to independent outside directors, (D) other operating costs and expenses and (E) franchise Taxes not in the nature of an income Tax that are necessary to maintain the corporate existence of Parent (or such parent entity), in each case the aggregate amount of distributions made in reliance on this clause (g)(ii) (other than expenses relating to any annual audit of the Credit Parties' financial statements and items described in subclause (E) of this clause (g)(ii)) shall not exceed \$100,000 in any fiscal year.

"Permitted Investments" means: (a) Investments shown on Schedule 5.7 and existing on the Closing Date; (b) cash and cash equivalents; (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business; (d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Credit Parties or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed \$50,000 at any time; (e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business; (f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Credit Parties in any Subsidiary; (g) Investments consisting of Deposit Accounts

otherwise permitted hereunder; (h) Investments by any US Credit Party in any other US Credit Party (other than Parent); (i) Investments by Canadian Credit Party in any other Canadian Credit Party; (j) non-cash loans by Parent or any of its Subsidiaries, in each case, in compliance with applicable Laws to officers, directors, and employees of Parent or any of its Subsidiaries, the proceeds of which shall be used to purchase from Parent (or any parent entity thereof) equity interests of Parent (or such parent entity) in an aggregate amount for all such cash loans in the aggregate at any time outstanding not to exceed \$250,000 in any fiscal year; and (k) other Investments in an amount not exceeding \$100,000 in the aggregate.

"Permitted Liens" means: (a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar Laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code, or in respect of any Canadian Pension Plans) pertaining to a Credit Party's or its Subsidiary's employees, if any; (b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business; (c) carrier's, warehousemen's, repairer's mechanic's, workmen's, materialmen's or other like Liens on Collateral, other than any Collateral which is part of a Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest; (d) Liens on Collateral for Taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest; (e) attachments, appeal bonds, judgments and other similar Liens on Collateral other than Accounts or Inventory, for sums not exceeding \$100,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest; (f) [*reserved*]; (g) Liens and encumbrances in favor of Agent under the Financing Documents; (h) Liens on Collateral, other than Collateral which is part of a Borrowing Base, existing on the date hereof and set forth on Schedule 5.2; (i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided, however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof; (j) subject to the Shareholder Subordination Agreement, Liens solely on the assets of AVAD securing the Shareholder Subordinated Debt; and (k) other Liens securing obligations in an aggregate amount not to exceed \$350,000.

"Permitted Modifications" means (a) such amendments or other modifications to a Credit Party's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Credit Party's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Credit Party or Subsidiary or involving a reorganization of a Credit Party or Subsidiary under the Laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"Person" means any natural person, corporation, limited liability company, unlimited liability company, professional association, limited partnership, general partnership, joint stock

company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**PPSA**" means the *Personal Property Security Act* (Ontario), including the regulations thereto and related Minister's Orders, provided that if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Financing Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security in effect in any applicable jurisdiction in Canada, "PPSA" means the *Personal Property Security Act* or such other applicable legislation (including, the Civil Code of Quebec) in effect from time to time in such other jurisdiction in Canada for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make advances in respect of a Term Loan and such Lender's right to receive payments of principal and interest with respect to the Term Loans, the Term Loan Commitment Percentage of such Lender, (b) with respect to a Lender's obligation to make US Revolving Loans, such Lender's right to receive the unused line fee described in Section 2.2(b)(i), such Lender's obligation to purchase interests and participations in Letters of Credit and related Support Agreement liabilities and obligations, and such Lender's obligation to share in Letter of Credit Liabilities and to receive the related Letter of Credit fee described in Section 2.5(b), the US Revolving Loan Commitment Percentage of such Lender, (c) with respect to a Lender's right to receive payments of principal and interest with respect to US Revolving Loans, such Lender's US Revolving Loan Exposure with respect thereto, (d) with respect to a Lender's obligation to make Canadian Revolving Loans, and such Lender's right to receive the unused line fee described in Section 2.2(b)(ii), the Canadian Revolving Loan Commitment Percentage of such Lender, (e) with respect to a Lender's right to receive payments of principal and interest with respect to Canadian Revolving Loans, such Lender's Canadian Revolving Loan Exposure with respect thereto, and (f) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by dividing (i) the sum of the US Revolving Loan Commitment Amount, Canadian Revolving Loan Commitment Amount and Term Loan Commitment Amount of such Lender (or, in the event the US Revolving Loan Commitment, Canadian Revolving Loan Commitment or Term Loan Commitment shall have been terminated, such Lender's then existing US Revolving Loan Outstandings, then existing Canadian Revolving Loan Outstandings or then outstanding principal advances of such Lender under the Term Loan, as applicable), by (ii) the sum of the US Revolving Loan Commitment, Canadian Revolving Loan Commitment and Term Loan Commitment (or, in the event the US Revolving Loan Commitment, Canadian Revolving Loan Commitment or Term Loan Commitment shall have been terminated, the then existing US Revolving Loan Outstandings, then existing Canadian Revolving Loan Outstandings or then outstanding principal advances under the Term Loan, as applicable) of all Lenders.

"**Qualified ECP Credit Party**" means, in respect of any Swap Obligation, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act and

can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Qualified Equity Interest" means and refers to any equity interest that is not a Disqualified Equity Interest.

"Real Property Collateral" means (a) the real property that is identified on Schedule R-1 to the Agreement and (b) any real property hereafter acquired by any Credit Party with a fair market value in excess of \$500,000.

"Recipient" means (a) Agent, (b) any Lender, (c) any LC Issuer, and (d) any other recipient of any payment from any Credit Party under any Financing Document, as applicable.

"Reimbursement Obligations" means, at any date, the obligations of each US Borrower then outstanding to reimburse (a) Agent for payments made by Agent under a Support Agreement, and/or (b) any LC Issuer, for payments made by such LC Issuer under a Lender Letter of Credit.

"Rent and Charges Reserve" means, as to each non-owned location at which a Borrower maintains Eligible Inventory included in the Borrowing Base or books and records related to Eligible Accounts or Eligible Credit Card Receivables included in the Borrowing Base, a reserve based on rent, storage charges, fees or other amounts payable under the lease or other agreement governing such Borrower's use or access to such leased location and/or services provide therein and payable by the Borrowers ("**Rent and Charges**") over a period of three (3) months (as reduced by the access period provided in any Collateral Access Agreement delivered in connection with such location) (which, in the case of service fees, shall be calculated based on the average fees payable by the Borrowers over a three month period); provided, that, for the period from the Closing Date until ninety (90) days following the Closing Date (or such later date agreed to by Agent in its Permitted Discretion), no Rent and Charges Reserve will be imposed in excess of one (1) month's Rent and Charges.

"Required Lenders" means at any time Lenders holding more than fifty percent (50%) or more of the sum of the US Revolving Loan Commitment (or if the US Revolving Loan Commitment has been terminated, the outstanding US Revolving Loan Exposure) and the Canadian Revolving Loan Commitment (or if the Canadian Revolving Loan Commitment has been terminated, the outstanding Canadian Revolving Loan Exposure).

"Required Testing Date" means, (x) for the period from the Closing Date through the date that is the later of (i) twenty-four (24) months following the Closing Date and (ii) the date that the Senior Leverage Ratio is equal to or less than 3.50 to 1.00 as demonstrated on the Compliance Certificate most recently delivered to Agent, the last day of each calendar month, and (y) at all times thereafter, the last day of each fiscal quarter of the Credit Parties.

"Responsible Officer" means any of the chief executive officer, chief financial officer or any other officer of the applicable Credit Party acceptable to Agent.

"Restricted Distribution" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those

payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in a Credit Party or a Subsidiary of a Credit Party (other than (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Credit Party or an Affiliate of any Subsidiary of a Credit Party, (d) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Credit Party or a Subsidiary of a Credit Party, an Affiliate of a Credit Party or an Affiliate of any Subsidiary of a Credit Party unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness or (f) any transfer or other distribution of property to any Person other than a Credit Party pursuant to a statutory division.

"Revolving Lender" means each Lender having a Revolving Loan Commitment Amount in excess of \$0 (or, in the event (a) the US Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having US Revolving Loan Outstandings in excess of \$0, or (b) the Canadian Revolving Loan Commitment has been terminated at any time, each Lender at such time having Canadian Revolving Loan Outstandings in excess of \$0).

"Revolving Loan Availability" means, at any time, the Revolving Loan Limit minus the Revolving Loan Outstandings.

"Revolving Loan Borrowing" means a borrowing of a Revolving Loan.

"Revolving Loan Commitment" means the US Revolving Loan Commitment or the Canadian Revolving Loan Commitment, as the context requires.

"Revolving Loan Commitment Amount" means the US Revolving Loan Commitment Amount or the Canadian Revolving Loan Commitment Amount, as the context requires.

"Revolving Loan Exposure" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstandings on such date divided by the aggregate Revolving Loan Outstandings of all Lenders on such date.

"Revolving Loan Limit" means, at any time, the lesser of (a) the sum of the US Revolving Loan Commitment and the Canadian Revolving Loan Commitment and (b) the Aggregate Borrowing Base.

"Revolving Loan Outstandings" means, at any time of calculation, (a) the sum of the then existing aggregate outstanding principal amount of Revolving Loans *plus* the then existing Letter of Credit Liabilities, and (b) when used with reference to any single Lender, the sum of the then existing outstanding principal amount of Revolving Loans advanced by such Lender plus the then existing Letter of Credit Liabilities for the account of such Lender.

"Revolving Loans" means US Revolving Loans and Canadian Revolving Loans.

"SEC" means the United States Securities and Exchange Commission.

"Securities Account" means a "securities account" (as defined in Article 9 of the UCC or the PPSA, as applicable), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"Security Document" means this Agreement, the Canadian Security Documents, the Mortgages, and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"Sellers" means the shareholders of WAVE, listed on Schedule 1 to the Closing Date Acquisition Agreements as sellers.

"Senior Debt" means an amount equal to the total aggregate Debt for borrowed money of Parent and its Subsidiaries, including, without limitation, the Obligations hereunder and Debt under capitalized leases, but excluding the outstanding balance of any Subordinated Debt and excluding, for avoidance of doubt, Letters of Credit (except to the extent such Letters of Credit have been drawn and not reimbursed).

"Senior Leverage Ratio" means the ratio of (a) Senior Debt to (b) EBITDA.

"Shareholder Subordinated Debt" means obligations of AVAD to Tom Jacoby incurred pursuant to the Shareholder Subordinated Debt Documents, in an aggregate principal amount (excluding any interest or fees accrued or paid-in-kind) not to exceed \$450,000.

"Shareholder Subordinated Debt Documents" means that certain Subordinated Secured Promissory Note, dated as of the Closing Date, made by AVAD in favor of Tom Jacoby and all other documents, agreements and instruments executed in connection therewith, including all amendments thereto to the extent under this Agreement.

"Shareholder Subordination Agreement" means that certain Subordination Agreement dated as of even date herewith, by and among Tom Jacoby, Agent and AVAD.

"Solvent" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due; and (d) as regards a Canadian Credit Party, such Person is not an "insolvent person" within the meaning of the BIA.

"Specified Event of Default" means an Event of Default arising under Section 10.1(a)(i), 10(a)(iii) (solely with respect to a violation of Article VI), (e) or (f).

"Specified Store Liquidation" means the sale or disposition of Inventory outside of the Ordinary Course of Business at any time prior to the date that is 20 months after the Closing Date having a cost not in excess of \$2,000,000 per store location by the Credit Parties in connection with the closure, wind-down or liquidation of any branch location of the Credit Parties identified in the model delivered to Agent prior to the Closing Date or otherwise disclosed to Agent within ninety (90) days following the Closing Date; provided that (a) the aggregate value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of all such Inventory sold or disposed of in a Specified Store Liquidation shall not exceed \$8,000,000, (b) the aggregate net cash proceeds received in connection with the Specified Store Liquidations shall be at least 25% of the aggregate cost of the Inventory sold or disposed of in connection therewith, (c) the aggregate write-off with respect to Inventory sold or disposed of in all Specified Store Liquidations shall not exceed \$6,000,000, (d) such Inventory shall be sold or disposed of in a cash sale or on selling terms of thirty days or less, unless such sale is subject to credit terms acceptable to Agent in its Permitted Discretion, and (e) no Overadvance shall result from such sale.

"Sponsor" means, collectively, Kingswood Capital Management, LLC, a Delaware limited liability company, and its Investment Affiliates.

"Spot Rate" means, for a currency, the rate determined by Agent to be the rate quoted by Wells Fargo acting in such capacity as the spot rate for the purchase by Wells Fargo of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. (New York time) on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided, that Agent may obtain such spot rate from another financial institution designated by Agent if Wells Fargo acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

"STA" means the *Securities Transfer Act*, 2006 (Ontario), or to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time.

"Subject Financial Covenant" has the meaning set forth in Section 10.11.

"Subordinated Debt" means the Shareholder Subordinated Debt and any other Debt of Credit Parties incurred pursuant to the terms of the Subordinated Debt Documents with the prior written consent of Agent, and which Debt is subordinated in right of payment to the Obligations on and subject to the terms and conditions set forth in a Subordination Agreement. As of the Closing Date, there is no Subordinated Debt other than the Shareholder Subordinated Debt.

"Subordinated Debt Documents" means the Shareholder Subordinated Debt Documents and any other documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there are no Subordinated Debt Documents other than the Shareholder Subordinated Debt Documents.

"Subordination Agreement" means the Shareholder Subordination Agreement and any other intercreditor and/or subordination agreement between Agent and another creditor of Credit Parties, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Credit Parties and/or the Liens securing such Debt granted by any Credit Parties to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion

"Subsidiary" means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of Law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of Parent.

"Support Agreement" has the meaning set forth in Section 2.5(a).

"Supported Letter of Credit" means a Letter of Credit issued by an LC Issuer in reliance on one or more Support Agreements.

"Swap Contract" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by any Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

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

"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 Loan" has the meaning set forth in Section 2.1(a).

"Term Loan Commitment" means the sum of each Lender's Term Loan Commitment Amount, which is equal to \$25,000,000.

"Term Loan Commitment Amount" means, (a) as to any Lender that is a Lender on the Closing Date, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Amount", as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of the Term Loan outstanding and its commitment to make advances in respect of the Term Loan) pursuant to the terms of any and all effective Assignment Agreements to which such Lender is a party, and (b) as to any Lender that becomes a Lender after the Closing Date, the amount of the "Term Loan Commitment Amount(s)" of other Lender(s) assigned to such new Lender pursuant to the terms of the effective Assignment Agreement(s) pursuant to which such new Lender shall become a Lender, as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of the Term Loan outstanding and its commitment to make advances in respect of the Term Loan) pursuant to the terms of any and all effective Assignment Agreements to which such Lender is a party.

"Term Loan Commitment Percentage" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Term Loan Commitment Amount of such Lender on such date *divided by* the Term Loan Commitment on such date.

"Termination Date" means the earlier to occur of (a) the Commitment Expiry Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"Transaction Documents" means the Financing Documents, the Closing Date Acquisition Documents, the Equity Documents, the Subordinated Debt Documents, and the agreements, instruments and documents evidencing or relating to any other transaction that is closing contemporaneously with the closing of the financing under this Agreement.

"UCC" means the Uniform Commercial Code of the State of Maryland or of any other state the Laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"United States" means the United States of America.

"Unrealized Synergies Costs" has the meaning set forth in the Compliance Certificate.

"US Borrower" and **"US Borrowers"** mean the entity(ies) described as such in the first paragraph of this Agreement and each of their successors and permitted assigns and, in each case, which is not a CFC.

"US Borrowing Base" means:

(a) the product of (i) ninety-five percent (95%) *multiplied by* (ii) the aggregate amount at such time of the Eligible Credit Card Receivables of US Borrowers; *plus*

(b) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate amount at such time of the Eligible Accounts of US Borrowers; *plus*

(c) the lesser of (i) eighty-five percent (85%) *multiplied by* the Net Orderly Liquidation Value of the Eligible Inventory of US Borrowers, or (ii) sixty-five percent (65%) *multiplied by* the value of the Eligible Inventory of US Borrowers, valued at the lower of first-in first-out cost or market cost; *plus*

(d) sixty-five percent (65%) *multiplied by* the Net Orderly Liquidation Value of the Eligible In-Transit Inventory of US Borrowers; *minus*

(e) the amount of the Dilution Reserve (if any) and the amount of any other reserves determined by Agent from time to time in its Permitted Discretion in accordance with Section 2.4(a).

Unless otherwise noted, any reference to the US Borrowing Base set forth herein shall refer to the US Borrowing Base reflected in the most recent Borrowing Base Certificate delivered hereunder. No more than (i) \$1,000,000 of the US Borrowing Base and the Canadian Borrowing Base, in the aggregate, may be attributable to Eligible In-Transit Inventory (after giving effect to the applicable advance rate and the Net Orderly Liquidation Value calculation attributable to such Inventory) at any time and (ii) prior to the delivery of the first report described in Section 4.1(k), \$300,000 of the US Borrowing Base and the Canadian Borrowing Base, in the aggregate, may be attributable to Eligible Inventory of the WAVE Entities in transit in the continental United States or Canada between owned or leased locations of the Borrowers or a location described in clause (k)(ii) of the definition of Eligible Inventory (after giving effect to the applicable advance rate and the Net Orderly Liquidation Value calculation attributable to such Inventory) at any time.

"US Credit Party" means each US Borrower and each Guarantor which is a US Subsidiary. Notwithstanding the foregoing, no CFC shall be a US Credit Party.

"US Dilution" means, as of any date of determination, a percentage, based upon the experience during the trailing three-month period most recently ended, that is the result of dividing the Dollar amount of (a) in each case to the extent relevant and not otherwise netted from, or otherwise reducing, Eligible Accounts in accordance with the definition thereof, bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to US Borrowers' Accounts during such period, by (b) US Borrowers' billings with respect to Accounts during such period.

"US Dilution Reserve" means, as of any date of determination (without duplication of amounts netted from, or otherwise reducing, Eligible Accounts in accordance with the definition thereof), an amount sufficient to reduce the advance rate against Eligible Accounts of US Borrowers by one (1) percentage point for each percentage point by which US Dilution is in excess of five (5%) percent.

"US Loan Cap" means, on any date of determination, the lesser of (x) the US Revolving Loan Commitment and (y) the US Borrowing Base, in each case as of such date.

"US Obligations" means Obligations of the US Credit Parties, provided, that, for the avoidance of doubt, any Loans that are made to a US Borrower shall be treated as US Obligations hereunder.

"US Revolving Facility" means the credit facility represented by the US Revolving Loan Commitments.

"US Revolving Loan Commitment" means, as of any date of determination, the aggregate US Revolving Loan Commitment Amounts of all Lenders as of such date.

"US Revolving Loan Commitment Amount" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "US Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the US Revolving Loan Commitment Amount for such Lender shall be deemed to be \$0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of US Revolving Loans outstanding and its commitment to make US Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by US Borrowers. For the avoidance of doubt, the aggregate US Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be \$47,000,000 (which amount is subject to reallocation from time to time in accordance with Section 2.4(b)).

"US Revolving Loan Commitment Percentage" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "US Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the US Revolving Loan Commitment Amount of such Lender on such date divided by the US Revolving Loan Commitment on such date.

"US Revolving Loan Exposure" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's US Revolving Loan Outstandings on such date divided by the aggregate US Revolving Loan Outstandings of all Lenders on such date.

"US Revolving Loan Limit" means, at any time, the lesser of (a) the US Revolving Loan Commitment and (b) the US Borrowing Base.

"US Revolving Loan Outstandings" means, at any time of calculation, (a) the sum of the then existing aggregate outstanding principal amount of US Revolving Loans *plus* the then existing Letter of Credit Liabilities, and (b) when used with reference to any single Lender, the sum of the then existing outstanding principal amount of US Revolving Loans advanced by such Lender plus the then existing Letter of Credit Liabilities for the account of such Lender.

"US Revolving Loans" has the meaning set forth in Section 2.1(b).

"US Subsidiary" means Subsidiary of Parent organized under the Laws of a state of the United States or the District of Columbia.

"**WAVE**" means WAVE Electronics, Inc., a Texas corporation.

"**WAVE Entities**" means WAVE, WAVE Electronics Arizona, LLC, WAVE Electronics California, LLC, WAVE Electronics Florida, LLC, WAVE Electronics Louisiana, LLC, WAVE Electronics New Jersey, LLC, MSTR Brand, Inc.

"**Wells Fargo**" means Wells Fargo Bank, National Association, a national banking association.

"**Withholding Agent**" means each Borrower and Agent.

"**Work-In-Process**" means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower's normal business practices for release and delivery to customers.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each Lender on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, Lenders and Borrowers 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, however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, 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 Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be

made in lawful money of the United States and in immediately available funds. Except as otherwise expressly provided herein, references to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term "material" or the phrase "in all material respects" is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined (a) in the UCC, shall have the meanings given them in the UCC, and (b) the PPSA shall have the meanings given them in the PPSA; provided, that to the extent that such term is defined differently in the PPSA and in the UCC, the definition of such term in the PPSA or the UCC shall govern, as the context requires, or otherwise the definition of such term contained in the UCC shall govern. Notwithstanding the foregoing, and unless the context requires otherwise, (i) any term defined in this Agreement by reference to the UCC shall also have any extended, alternative or analogous meaning given to such term in the PPSA, other applicable Canadian personal property security and other Laws (including the PPSA of each applicable province of Canada, the *Bills of Exchange Act* (Canada) and the *Depository Bills and Notes Act* (Canada)) in all cases for the extension, preservation or betterment of the security and rights of the Collateral. All references herein to times of day shall be references to daylight or standard time, as applicable. Any reference herein to "province" shall include the territories of Canada and any reference to "provincial" shall have a corresponding meaning.

Section 1.4 [Reserved].

Section 1.5 Currency Matters. Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Financing Documents to Agent and the Lenders shall be payable in Dollars. Any amounts received by any Credit Party in any currency other than Dollars shall be converted by such Credit Party to Dollars before such amounts are applied to the Obligations. All calculations, comparisons, measurements or determinations under this Agreement and the other Financing Documents shall be made in Dollars. For the purpose of such calculations, comparisons, measurements or determinations (including for purposes of financial statements and all calculations in connection with the covenants, including the financial covenants), amounts or proceeds denominated in other currencies shall be converted to the Equivalent Amount of Dollars on the date of calculation, comparison, measurement or determination. Notwithstanding anything to the contrary contained herein, for purposes of any determination under Article 4 and Article 5 and the calculation of compliance with any financial ratio for purposes of taking any action hereunder or other transaction, event or circumstance, or any other determination under any other provision of this Agreement not covered elsewhere in this Section 1.5, (any of the foregoing, a "**Specified Transaction**"), in a currency other than Dollars, (i) the Dollar Equivalent of a specified transaction in any such currency shall be calculated as of the date of such specified transaction (which, in the case of any distribution, shall be deemed to be the date of the declaration thereof and, in the case of the incurrence of Debt, shall be deemed to be on the date first committed); *provided*, that if any Debt is incurred (and, if applicable, associated Lien granted) to refinance or replace other Debt denominated in a currency other than Dollars, and the relevant refinancing or replacement would cause the applicable Dollar-denominated restriction to be exceeded if

calculated at the relevant currency exchange rate in effect on the date of such refinancing or replacement, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing or replacement Debt (and, if applicable, associated Lien granted) does not exceed an amount sufficient to repay the principal amount of such Debt being refinanced or replaced, except by an amount equal to (x) unpaid accrued interest and premiums (including tender premiums) thereon plus other reasonable and customary fees and expenses (including upfront fees and original issue discount) incurred in connection with such refinancing or replacement, (y) any existing commitments unutilized thereunder and (z) additional amounts permitted to be incurred under another clause of the definition of Permitted Debt pursuant to Section 5.1 (provided such incurrence shall be deemed a usage of such additional clause of the definition of Permitted Debt for all purposes) and (ii) for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred solely as a result of a change in the rate of currency exchange occurring after the time of any Specified Transaction so long as such Specified Transaction was permitted at the time incurred, made, acquired, committed, entered or declared.

If at any time following one or more fluctuations in the exchange rate of the Canadian Dollar against the Dollar, an Overadvance exists, Borrowers shall (i) (x) if there is sufficient availability under the US Borrowing Base to cover such shortfall, within 2 Business Days of notice from Agent, or (y) if an Event of Default has occurred and is continuing, immediately make the necessary payments or repayments to reduce the Obligations to an amount necessary to eliminate such excess in accordance with Section 2.1(b)(ii)(B) or (ii) maintain or cause to be maintained with Agent cash deposits as continuing collateral security for the Obligations in an amount equal to or greater than the amount of such excess, such deposits to be maintained in such form and upon such terms as are acceptable to Agent. Without in any way limiting the foregoing provisions, Agent shall, weekly or more frequently in the sole discretion of Agent, make the necessary exchange rate calculations to determine whether any such excess exists on such date and advise Borrowers if such excess exists.

Section 1.6 Reallocation of Revolving Loan Commitments. Upon ten (10) Business Days prior written notice to Agent and Lenders, the Borrower Representative in its sole discretion may reallocate the Facilities between the Canadian Revolving Commitment and US Revolving Loan Commitment (a "**Reallocation**"); provided, that (a) no Event of Default shall have occurred and be continuing or would result therefrom (including due to an Overadvance) on the date of such Reallocation or after giving effect to such Reallocation, (b) no more than one (1) Reallocation may occur in any month and no more than four (4) Reallocations may occur in any calendar year, (c) at no time shall the sum of the Canadian Revolving Loan Commitment and the US Revolving Loan Commitment exceed the Aggregate Revolving Loan Commitment and (d) no Reallocation (or multiple Reallocations) during the term of this Agreement shall result in the Canadian Revolving Commitment exceeding \$7,000,000 at any time. The Borrowers hereby consent to any assignment between a Lender and an office, branch, Subsidiary or Affiliate thereof that is necessary to effect a Reallocation described in this Section 1.6.

ARTICLE 2 - LOANS AND LETTERS OF CREDIT

Section 2.1 Loans.

(a) Term Loan.

(i) Term Loan Amounts. On the terms and subject to the conditions set forth herein, Lenders severally hereby agree to make to US Borrowers a term loan in an original principal amount equal to the Term Loan Commitment ("**Term Loan**"). Each Lender's obligation to fund the Term Loan shall be limited to such Lender's Term Loan Commitment Percentage, and no Lender shall have any obligation to fund any portion of the Term Loan required to be funded by any other Lender, but not so funded. No US Borrower shall have any right to reborrow any portion of the Term Loan that is repaid or prepaid from time to time, and any portion of the Term Loan Commitment not funded as of the close of business on the Closing Date shall thereupon automatically be terminated and the Term Loan Commitment Amount of each Lender as of such date shall be reduced by such Lender's Pro Rata Share of such total reduction in the Term Loan Commitment. The Term Loan shall be funded in one advance on the Closing Date.

(ii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) There shall become due and payable, and US Borrowers shall repay the Term Loan through, scheduled payments as set forth on Schedule 2.1 attached hereto. Notwithstanding the payment schedule set forth above, the outstanding principal amount of the Term Loan shall become immediately due and payable in full on the Termination Date; *provided*, that, the outstanding principal amount of the Term Loan shall become immediately due and payable in full on the effective date of termination of the US Revolving Loan Commitment by Borrower Representative's notice to Agent pursuant to Section 2.12(b).

(B) There shall become due and payable and US Borrowers shall prepay the Term Loan in the following amounts and at the following times:

(i) in an amount equal (I) to one hundred percent (100%) of the proceeds (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty) received by any US Credit Party (or Agent as loss payee or assignee) of any casualty with respect to Collateral (other than Collateral upon which the US Borrowing Base is calculated) of US Credit Parties upon which Agent maintained a Lien, (II) one hundred percent (100%) of the net cash proceeds (net of out-of-pocket expenses, including any Taxes payable, and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the applicable property) received by any US Credit Party of any Asset Disposition of Collateral (other than Collateral upon which

the US Borrowing Base is calculated) by a US Credit Party that is not made in the Ordinary Course of Business, (III) one hundred percent (100%) of the proceeds received by any US Credit Party of an extraordinary receipts (net of Taxes) constituting Collateral (other than Collateral upon which the US Borrowing Base is calculated) and (IV) the proceeds from the incurrence of Debt or the issuance and sale of any Debt (other than Permitted Debt), in each case by a US Credit Party and in accordance with Section 2.11 below.

Notwithstanding the foregoing and so long as no Event of Default or Default then exists (and without duplication of the dollar basket or other provisions of Section 2.1(b)(ii)(D)): (1) any such casualty proceeds in excess of \$500,000 in any fiscal year (other than with respect to Real Property Collateral, unless Agent shall otherwise elect) may be used by US Borrowers within one hundred eighty (180) days (or two hundred seventy (270) days in the event that such proceeds are committed in writing to be used within such 180-day period) from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as (x) prior to, or contemporaneously with, the receipt of such proceeds, US Borrowers have delivered to Agent a written notice indicating its intent to reinvest and (y) such proceeds are deposited into an account subject to an Account Control Agreement promptly upon receipt by the applicable US Credit Party; and (2) proceeds of personal property Asset Dispositions by a US Credit Party that are not made in the Ordinary Course of Business (other than Collateral upon which the US Borrowing Base is calculated or Intellectual Property, unless Agent shall otherwise elect) may be used by US Borrowers within one hundred eighty (180) days (or two hundred seventy (270) days in the event that such proceeds are committed in writing to be used within such 180-day period) from the receipt of such proceeds to purchase new or replacement assets of comparable value, *provided, however*, that such proceeds are deposited into an account owned or maintained by Agent promptly upon receipt by such US Credit Party. All sums held by Agent pending reinvestment as described in subsections (1) and (2) above shall be deemed additional collateral for the Obligations and may be commingled with the general funds of Agent.

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7.

(iii) upon receipt by any Credit Party of the proceeds of any Curative Equity pursuant to Section 10.11, in an amount equal to fifty percent (50%) of such proceeds in inverse order of maturity.

(iv) on the one hundred twentieth (120th) day following the last day of each fiscal year, beginning with the fiscal year ending December 31, 2019, an amount equal to fifty percent (50%) of such Excess Cash Flow for such fiscal year.

(C) Borrowers may from time to time, with at least two (2) Business Days prior delivery to Agent of an appropriately completed Payment Notification, prepay the Term Loan in whole or in part, without any prepayment fee or premium; *provided, however*, that each such prepayment shall be in an amount equal to \$100,000 or a higher integral multiple of \$25,000, unless such prepayment is in the remaining outstanding amount of the Term Loan.

(iii) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Term Loan shall be applied by Agent to the Obligations in inverse order of maturity. The monthly payments required under Schedule 2.1 shall continue in the same amount (for so long as the Term Loan and/or (if applicable) any advance thereunder shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the Term Loan.

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, the Term Loan shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in Tax Laws (other than changes to any (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (e) of the definition of Excluded Taxes and (C) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however*, that notwithstanding anything in this Agreement 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 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 applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender,

Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any Law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to maintain Loans bearing interest based upon the LIBOR Rate or to continue such maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender, (I) in the case of the pro rata share of the Term Loan held by such Lender and then outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such portion of the Term Loan, and interest upon such portion thereafter shall accrue interest at the Base Rate *plus* the Applicable Margin, and (II) such portion of the Term Loan shall continue to accrue interest at the Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Term Loan at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(b) Revolving Loans.

(i) Revolving Loans and Borrowings.

(A) On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to US Borrowers from time to time as set forth herein (each a "**US Revolving Loan**", and collectively, "**US Revolving Loans**") equal to such Lender's US Revolving Loan Commitment Percentage of US Revolving Loans requested by US Borrowers hereunder, *provided, however*, that after giving effect thereto, the US Revolving Loan Outstandings shall not exceed the US Revolving Loan Limit.

(B) On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Canadian Borrowers from time to time as set forth herein (each a "**Canadian Revolving Loan**", and collectively, "**Canadian Revolving Loans**") equal to such Lender's Canadian Revolving Loan Commitment Percentage of Canadian Revolving Loans requested by Canadian Borrowers hereunder, *provided, however*, that after giving effect thereto, the Canadian Revolving Loan Outstandings shall not exceed the Canadian Revolving Loan Limit.

(C) Borrower Representative shall deliver to Agent a Notice of Borrowing with respect to each proposed Revolving Loan Borrowing, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, (A) as provided in Section 2.5(c), with respect to obligations arising under Support Agreements and/or Lender Letters of Credit, and (B) to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The US Borrowing Base and the Canadian Borrowing Base shall be determined by Agent based on the most recent applicable Borrowing Base Certificates delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold reserves from the US Borrowing Base, the Canadian Borrowing Base, the US Revolving Loan Limit or the Canadian Revolving Loan Limit, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's Permitted Discretion, such reserves are necessary.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) Each Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and the applicable Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided, however*, that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the US Revolving Loan Outstandings exceed the US Revolving Loan Limit, then, on the next succeeding Business Day, US Borrowers shall repay the US Revolving Loans or cash collateralize Letter of Credit Liabilities in the manner specified in Section 2.5(e) or cause the cancellation of outstanding Letters of Credit, or any combination of the foregoing, in an aggregate amount equal to such excess. If at any time the Canadian Revolving Loan Outstandings exceed the Canadian Revolving Loan Limit, then, on the next succeeding Business Day, Canadian Borrowers shall repay the Canadian Revolving Loans in an aggregate amount equal to such excess.

(C) Principal payable on account of US Revolving Loans shall be payable by US Borrowers to Agent (I) immediately upon the receipt by any US Borrower or Agent of any payments on or proceeds from any US Borrower's Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date. Principal payable on account of Canadian Revolving Loans shall be payable by Canadian Borrowers

to Agent (I) immediately upon the receipt by any Canadian Borrower or Agent of any payments on or proceeds from any of any Canadian Borrower's Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(D) US Borrowers shall promptly repay the US Revolving Loans in an amount equal (I) to one hundred percent (100%) of the proceeds (net of out-of-pocket expenses, including any Taxes payable, and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty) received by any US Credit Party (or Agent as loss payee or assignee) of any casualty with respect to Collateral upon which the US Borrowing Base is calculated (or any Collateral if the Term Loan is no longer outstanding) of US Credit Parties upon which Agent maintained a Lien, (II) one hundred percent (100%) of the net cash proceeds (net of out-of-pocket expenses, including any Taxes payable, and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the applicable property) received by any US Credit Party of any Asset Disposition of Collateral upon which the US Borrowing Base is calculated (or any Collateral if the Term Loan is no longer outstanding) by a US Credit Party that is not made in the Ordinary Course of Business, (III) one hundred percent (100%) of the proceeds received by any US Credit Party of an extraordinary receipts (net of Taxes) constituting Collateral upon which the US Borrowing Base is calculated (or any Collateral if the Term Loan is no longer outstanding) and (IV) after the repayment in full of the Term Loan, the proceeds from the incurrence of Debt or the issuance and sale of any Debt (other than Permitted Debt), in each case by a US Credit Party and in accordance with Section 2.11 below. Canadian Borrowers shall promptly repay the Canadian Revolving Loans in an amount equal to (I) one hundred percent (100%) of the proceeds (net of out-of-pocket expenses, including any Taxes payable, and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty) received by any Canadian Credit Party (or Agent as loss payee or assignee) of any casualty with respect to assets of Canadian Credit Parties upon which Agent maintained a Lien, (II) one hundred percent (100%) of the net cash proceeds (net of out-of-pocket expenses, including any Taxes payable, and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the applicable property) received by any Canadian Credit Party of any Asset Disposition by a Canadian Credit Party that is not made in the Ordinary Course of Business and (III) one hundred percent (100%) of the proceeds received by any Canadian Credit Party of an extraordinary receipts (net of Taxes) constituting Collateral or the proceeds from the incurrence of Debt or the issuance and sale of any Debt (other than Permitted Debt), in each case by a Canadian Credit Party and in accordance with Section 2.11 below.

Notwithstanding the foregoing and so long as no Event of Default or Default then exists (and without duplication of the dollar basket or other provisions of Section 2.1(a)(ii)(B)): (1) any such casualty proceeds in excess of

\$500,000 in any fiscal year (other than with respect to Real Property Collateral, unless Agent shall otherwise elect) may be used by US Borrowers within one hundred eighty (180) days (or two hundred seventy (270) days in the event that such proceeds are committed in writing to be used within such 180-day period) from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as (x) prior to, or contemporaneously with, the receipt of such proceeds, US Borrowers have delivered to Agent a written notice indicating its intent to reinvest and (y) such proceeds are deposited into an account subject to an Account Control Agreement promptly upon receipt by the applicable US Credit Party; and (2) proceeds of personal property Asset Dispositions by a US Credit Party that are not made in the Ordinary Course of Business (other than Collateral upon which the US Borrowing Base is calculated or Intellectual Property, unless Agent shall otherwise elect) may be used by US Borrowers within one hundred eighty (180) days (or two hundred seventy (270) days in the event that such proceeds are committed in writing to be used within such 180-day period) from the receipt of such proceeds to purchase new or replacement assets of comparable value, *provided, however*, that such proceeds are deposited into an account owned or maintained by Agent promptly upon receipt by such US Credit Party. All sums held by Agent pending reinvestment as described in subsections (1) and (2) above shall be deemed additional collateral for the Obligations and may be commingled with the general funds of Agent.

(E) Borrowers shall repay the Revolving Loans in an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7.

(F) Upon receipt by any Credit Party of the proceeds of any Curative Equity pursuant to Section 10.11, Borrowers shall repay the Revolving Loans in an amount equal to fifty percent (50%) of such proceeds in accordance with Section 2.11 below.

(iii) Optional Prepayments; Revolving Loan Commitment Reductions. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided, however*, that any such partial prepayment shall be in an amount equal to \$100,000 or a higher integral multiple of \$25,000, or the full amount of such Revolving Loans then outstanding. Borrowers may from time to time, with at least two (2) Business Days prior delivery to Agent of an appropriately completed Payment Notification, permanently reduce the Canadian Revolving Loan Commitment and/or the US Revolving Loan Commitment, in whole or in part; *provided, however*, that (i) each such reduction shall be in an amount equal to \$100,000 or a higher integral multiple of \$25,000, unless such reduction is in the remaining outstanding amount of the applicable Revolving Loan Commitment, (ii) each such reduction shall be accompanied by any payment required under Section 2.1(b)(ii)(B), and (iii) each such reduction to zero shall be accompanied by any fees required under Section 2.2(f).

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, Revolving Loans shall accrue interest at a per annum rate equal to the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in Tax Laws other than changes to any (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (e) of the definition of Excluded Taxes and (C) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however*, that notwithstanding anything in this Agreement 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 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 applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any Law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate plus the Applicable

Margin, and (II) such Loans shall continue to accrue interest at Base Rate plus the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their sole discretion, the US Revolving Loan Commitment and/or the Canadian Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche, and the allocation of the Additional Tranche between the US Revolving Loan Commitment and the Canadian Revolving Loan Commitment, as applicable, requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche; *provided, however*, that Agent and Lenders shall have no obligation to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche to which Agent and Lenders have provided such written consent, (i) if applicable, each Lender's US Revolving Loan Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the US Revolving Loan Commitment as such Lender held immediately prior to such activation, (ii) if applicable, each Lender's Canadian Revolving Loan Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Canadian Revolving Loan Commitment as such Lender held immediately prior to such activation, and (iii) if applicable, Borrowers shall be thereupon obligated to pay in full to Agent the "ABL Commitment Increase Fee" pursuant to (and as such term is defined in) the Fee Letter. In the event Agent and all Lenders do not consent to the activation of a requested Additional Tranche within thirty (30) days after receiving a written request from Borrower Representative, then the Revolving Loan Commitments shall not be increased and, within the next ninety (90) days, Borrowers may terminate this Agreement upon written notice to Agent and, if (a) the US Borrowing Base on the date of such request would have supported any such increased US Revolving Loan Commitment and (b) the Canadian Borrowing Base on the date of such request would have supported any such increased Canadian Revolving Loan Commitment, upon repayment in full of all Obligations, no fee shall be due pursuant to Section 2.2(f) in connection with such termination.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, the Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a three (3) Business Day clearance period and all interest

accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of Lenders.

(b) Unused Line Fees.

(i) From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make US Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the US Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the US Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) 0.50% per annum. Such fee is to be paid monthly in arrears on the first day of each month.

(ii) From and following the Closing Date, Canadian Borrowers shall pay Agent, for the benefit of all Lenders committed to make Canadian Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Canadian Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the Canadian Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) 0.50% per annum. Such fee is to be paid monthly in arrears on the first day of each month.

(c) Minimum Balance Fee. On the first day of each month, commencing on November 1, 2018, US Borrowers agree to pay to Agent, for the ratable benefit of all Lenders, the sum of the Minimum Balance Fees due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(d) Collateral Management Fee. From and following the Closing Date, US Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a collateral management fee ("**Collateral Management Fee**") in an amount equal to the product obtained by *multiplying* (i) the greater of (A) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month and (B) the Minimum Balance, *by* (ii) one half of one percent (0.50%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account hereunder) or otherwise received by Agent for the account of Borrowers shall be subject to a three (3) Business Day clearance period. The Collateral Management Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) *[Reserved]*.

(f) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the US Revolving Loan Commitment and the Canadian Revolving Loan under this Agreement terminate for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or otherwise) prior to the Commitment Expiry Date, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the sum of the US Revolving Loan Commitment as of the Closing Date and the

Canadian Revolving Loan Commitment as of the Closing Date *by* the following applicable percentage amount: 3.00% for the first year following the Closing Date, 2.00% for the second year following the Closing Date, and 1.00% thereafter. All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(g) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay to Agent the fees set forth in the Fee Letter.

(h) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers, subject to the limitations set forth in Section 4.6 (in the case of audits and field examinations) and Section 4.14(d) (in the case of valuations or appraisals of the Collateral).

(i) Wire Fees. The applicable Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of such Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(j) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged. For the purposes of the *Interest Act* (Canada), the yearly rate of interest to which any rate calculated on the basis of a period of time different from the actual number of days in the year (360 days, for example) is equivalent is the stated rate multiplied by the actual number of days in the year (365 or 366, as applicable) and divided by the number of days in the shorter period (360 days, in the example), and the parties hereto acknowledge that there is a material distinction between the nominal and effective rates of interest and that they are capable of making the calculations necessary to compare such rates and that the calculations herein are to be made using the nominal rate method and not on any basis that gives effect to the principle of deemed reinvestment of interest. Each Borrower confirms that it understands and is able to calculate the rate of interest applicable to advances made under this Agreement based on the methodology for calculating per annum rates provided for herein. Each Borrower irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to this Agreement or any Financing Documents, that the interest payable hereunder and the calculation thereof has not been adequately disclosed to the Borrowers as required pursuant to Section 4 of the *Interest Act* (Canada).

(k) Automated Clearing House Payments. If Agent so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from any Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower

Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes (each, a "**Note**") in an original principal amount equal to (i) such US Lender's Revolving Loan Commitment Amount executed by US Borrowers on a joint and several basis, (ii) such Lender's Canadian Revolving Loan Commitment Amount executed by Canadian Borrowers on a joint and several basis, and (iii) and such Lender's Term Loan Commitment Amount executed by US Borrowers on a joint and several basis. Upon activation of an Additional Tranche in accordance with Section 2.1(c) hereof, the applicable Borrowers shall deliver to each Lender to whom such Borrowers previously delivered a Note, a restated Note evidencing such Lender's US Revolving Loan Commitment Amount and/or Canadian Revolving Loan Commitment Amount, as applicable.

Section 2.4 Availability Modifications.

(a) Agent shall have the right, at any time and from time to time after the Closing Date, in its Permitted Discretion to establish, modify, increase or eliminate reserves (including any change to the methodology for determining a reserve), to change any eligibility criteria for Eligible Accounts, Eligible Credit Card Receivables, Eligible Inventory and/or Eligible In-Transit Inventory to designate Collateral as ineligible in its Permitted Discretion or to modify advance rates in each case upon two (2) Business Days' prior notice to Borrower Representative (during which period Agent, upon the reasonable request of Borrower Representative, shall be available during normal business hours to discuss any such proposed change, reserve or designation with Borrower Representative to give Borrowers an opportunity to take such action as may be required so that the event, condition or circumstance that is the basis for such change, reserve or designation no longer exists in the manner and to the extent reasonably satisfactory to Agent in its Permitted Discretion); provided, that no such prior notice shall be required (i) for changes to any reserves resulting solely by virtue of mathematical calculations of the amount of the reserve in accordance with the methodology of calculation previously utilized (such as, but not limited to, rent), (ii) for any changes to reserves or modifications during the continuance of any Event of Default, (iii) with respect to any reserve established in respect of any Lien that has priority over or equal status to Agent's Lien under the Financing Documents or (iv) if the implementation of such reserve would result in an Overadvance or an Event of Default in respect of the failure to comply with the financial covenant set forth in Article 6; *provided, further*, that (i) no reserve shall be duplicative of any other reserve established and currently maintained, (ii) no reserve shall be duplicative of any eligibility criteria contained in the definitions of "Eligible Accounts", "Eligible Credit Card Receivables", "Eligible Inventory" and "Eligible In-Transit Inventory", and (iii) any change in eligibility criteria or any advance rate or the establishment of any reserve for Eligible Accounts, Eligible Credit Card Receivables, Eligible Inventory and Eligible In-Transit Inventory shall have a reasonable relationship to circumstances, conditions, events or contingencies that are the basis for such establishment or change as determined by Agent in good faith.

(b) For ten (10) Business Days following the receipt by Agent of the results of an Acceptable Appraisal and/or an Acceptable Field Exam, Agent, shall, upon the reasonable request of Borrower Representative, make itself available during normal business hours upon reasonable prior notice to discuss those results and any reserves and material categories of ineligible Collateral recommended therein with Borrower Representative to afford Borrowers an opportunity to take such action as may be required so that the circumstances, conditions, events or contingencies that are the basis for such reserve of ineligibility no longer exist. The foregoing to the contrary notwithstanding, Agent shall be permitted to update any Borrowing Base, any reserves, any ineligibility criteria and any advance rates based on the results of any Acceptable Appraisal or Acceptable Field Exam at any time, regardless of whether the ten (10) Business Day period referred to above has concluded.

Section 2.5 Letters of Credit and Letter of Credit Fees.

(a) Letter of Credit. On the terms and subject to the conditions set forth herein, the US Revolving Loan Commitment may be used by US Borrowers, in addition to the making of US Revolving Loans hereunder, for the issuance, prior to that date which is one year prior to the Termination Date, by (i) Agent, of letters of credit, Guarantees or other agreements or arrangements (each, a "**Support Agreement**") to induce an LC Issuer to issue or increase the amount of, or extend the expiry date of, one or more Letters of Credit and (ii) a Lender, identified by Agent, as an LC Issuer, of one or more Lender Letters of Credit, so long as, in each case:

(i) Agent shall have received a Notice of LC Credit Event at least five (5) Business Days before the relevant date of issuance, increase or extension; and

(ii) after giving effect to such issuance, increase or extension, (A) the aggregate Letter of Credit Liabilities do not exceed \$5,000,000, and (B) the US Revolving Loan Outstandings do not exceed the US Revolving Loan Limit.

Nothing in this Agreement shall be construed to obligate any Lender to issue, increase the amount of or extend the expiry date of any Letter of Credit, which act or acts, if any, shall be subject to agreements to be entered into from time to time between US Borrowers and such Lender. Each Lender that is an LC Issuer hereby agrees to give Agent prompt written notice of each issuance of a Lender Letter of Credit by such Lender and each payment made by such Lender in respect of Lender Letters of Credit issued by such Lender.

Notwithstanding anything to the contrary set forth herein, Borrowers agree and acknowledge that no part of the Revolving Loan Commitment will be available for the issuance of a Letter of Credit until such times as Agent notifies Borrower Representative that a Lender party to this Agreement is an LC Issuer.

(b) Letter of Credit Fee. US Borrowers shall pay to Agent, for the benefit of the Revolving Lenders in accordance with their respective Pro Rata Shares, a letter of credit fee with respect to the Letter of Credit Liabilities for each Letter of Credit, computed for each day from the date of issuance of such Letter of Credit to the date that is the last day a drawing is available under such Letter of Credit, at a rate per annum equal to the Applicable Margin then

applicable to Loans bearing interest based upon the LIBOR Rate. Such fee shall be payable in arrears on the last day of each calendar month prior to the Termination Date and on such date. In addition, US Borrowers agree to pay promptly to the LC Issuer any fronting or other fees that it may charge in connection with any Letter of Credit.

(c) Reimbursement Obligations of US Borrowers. If either (i) Agent shall make a payment to an LC Issuer pursuant to a Support Agreement, or (ii) any Lender shall notify Agent that it has made payment in respect of, a Lender Letter of Credit, (A) US Borrowers shall reimburse Agent or such Lender, as applicable, for the amount of such payment by the end of the day on which Agent or such Lender shall make such payment and (B) US Borrowers shall be deemed to have immediately requested that Revolving Lenders make a US Revolving Loan, in a principal amount equal to the amount of such payment (but solely to the extent US Borrowers shall have failed to directly reimburse Agent or, with respect to Lender Letters of Credit, the applicable LC Issuer, for the amount of such payment). Agent shall promptly notify Revolving Lenders of any such deemed request and each Revolving Lender hereby agrees to make available to Agent not later than noon (Eastern time) on the Business Day following such notification from Agent such Revolving Lender's Pro Rata Share of such US Revolving Loan. Each Revolving Lender hereby absolutely and unconditionally agrees to fund such Revolving Lender's Pro Rata Share of the US Revolving Loan described in the immediately preceding sentence, unaffected by any circumstance whatsoever, including, without limitation, (x) the occurrence and continuance of a Default or Event of Default, (y) the fact that, whether before or after giving effect to the making of any such US Revolving Loan, the US Revolving Loan Outstandings exceed or will exceed the US Revolving Loan Limit, and/or (z) the non-satisfaction of any conditions set forth in Section 7.2. Agent hereby agrees to apply the gross proceeds of each US Revolving Loan deemed made pursuant to this Section 2.5(c) in satisfaction of US Borrowers' reimbursement obligations arising pursuant to this Section 2.5(c). US Borrowers shall pay interest, on demand, on all amounts so paid by Agent pursuant to any Support Agreement or to any applicable Lender in honoring a draw request under any Lender Letter of Credit for each day from the date of such payment until US Borrowers reimburse Agent or the applicable Lender therefor (whether pursuant to clause (A) or (B) of the first sentence of this subsection (c)) at a rate per annum equal to the sum of two percent (2%) *plus* the interest rate applicable to US Revolving Loans for such day.

(d) Reimbursement and Other Payments by US Borrowers. The obligations of each US Borrower to reimburse Agent and/or the applicable LC Issuer pursuant to Section 2.5(c) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including the following:

- (i) any lack of validity or enforceability of, or any amendment or waiver of or any consent to departure from, any Letter of Credit or any related document;
- (ii) the existence of any claim, set-off, defense or other right which any US Borrower may have at any time against the beneficiary of any Letter of Credit, the LC Issuer (including any claim for improper payment), Agent, any Lender or any other Person, whether in connection with any Financing Document or any unrelated

transaction, *provided, however*, that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

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

(iv) any affiliation between the LC Issuer and Agent; or

(v) to the extent permitted under applicable Law, any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(e) Deposit Obligations of US Borrowers. In the event any Letters of Credit are outstanding at the time that US Borrowers prepay in full or are required to repay the Obligations or the US Revolving Loan Commitment is terminated, US Borrowers shall (i) deposit with Agent for the benefit of all Revolving Lenders cash in an amount equal to one hundred five percent (105%) of the aggregate outstanding Letter of Credit Liabilities to be available to Agent, for its benefit and the benefit of issuers of Letters of Credit, to reimburse payments of drafts drawn under such Letters of Credit and pay any fees and expenses related thereto, and (ii) prepay the fee payable under Section 2.5(b) with respect to such Letters of Credit for the full remaining terms of such Letters of Credit assuming that the full amount of such Letters of Credit as of the date of such repayment or termination remain outstanding until the end of such remaining terms. Upon termination of any such Letter of Credit and so long as no Event of Default has occurred and is continuing, the unearned portion of such prepaid fee attributable to such Letter of Credit shall be refunded to US Borrowers, together with the deposit described in the preceding clause (i) attributable to such Letter of Credit, but only to the extent not previously applied by Agent in the manner described herein.

(f) Participations in Support Agreements and Lender Letters of Credit.

(i) Concurrently with the issuance of each Supported Letter of Credit, Agent shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from Agent, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, Agent's Support Agreement liabilities and obligations in respect of such Supported Letter of Credit and US Borrowers' Reimbursement Obligations with respect thereto. Concurrently with the issuance of each Lender Letter of Credit, the LC Issuer in respect thereof shall be deemed to have sold and transferred to each Revolving Lender, and each such Revolving Lender shall be deemed irrevocably and immediately to have purchased and received from such LC Issuer, without recourse or warranty, an undivided interest and participation in, to the extent of such Lender's Pro Rata Share, such Lender Letter of Credit and US Borrowers' Reimbursement Obligations with respect thereto. Any purchase obligation arising pursuant to the immediately two preceding sentences shall be absolute and unconditional and shall not be affected by any circumstances whatsoever.

(ii) If either (A) Agent makes any payment or disbursement under any Support Agreement and/or (B) an LC Issuer makes any payment or disbursement under any Lender Letter of Credit, and (I) US Borrowers have not reimbursed Agent or the applicable LC Issuer, as applicable, in full for such payment or disbursement in accordance with Section 2.5(c), or (II) any reimbursement under any Support Agreement or Lender Letter of Credit received by Agent or any LC Issuer, as applicable, from any Credit Party is or must be returned or rescinded upon or during any bankruptcy or reorganization of any Credit Party or otherwise, each Revolving Lender shall be irrevocably and unconditionally obligated to pay to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of such payment or disbursement (but no such payment shall diminish the Obligations of US Borrowers under Section 2.5(c)). To the extent any such Revolving Lender shall not have made such amount available to Agent or the applicable LC Issuer, as applicable, before 12:00 Noon (Eastern time) on the Business Day on which such Lender receives notice from Agent or the applicable LC Issuer, as applicable, of such payment or disbursement, or return or rescission, as applicable, such Lender agrees to pay interest on such amount to Agent or the applicable LC Issuer, as applicable, forthwith on demand accruing daily at the Federal Funds Rate, for the first three (3) days following such Lender's receipt of such notice, and thereafter at the Base Rate *plus* the Applicable Margin in respect of Revolving Loans. Any such Revolving Lender's failure to make available to Agent or the applicable LC Issuer, as applicable, its Pro Rata Share of any such payment or disbursement, or return or rescission, as applicable, shall not relieve any other Revolving Lender of its obligation hereunder to make available such other Revolving Lender's Pro Rata Share of such payment, but no Revolving Lender shall be responsible for the failure of any other Lender to make available such other Lender's Pro Rata Share of any such payment or disbursement, or return or rescission.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in any Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in any Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day. Borrowers and each Lender hereby authorize and direct Agent, subject to the provisions of Section 10.7 hereof, to apply any prepayment in the Payment Account against then outstanding US Revolving Loans or Canadian Revolving Loans, as applicable; *provided, however*, that if Agent at any time determines that payments received by Agent in such Payment Account were in respect of a mandatory

prepayment event, Agent shall apply such payments in accordance with the provisions of Section 2.1(a)(ii) or 2.1(b)(ii), as applicable, and shall be fully authorized by Borrowers and each Lender to make corresponding Loan Account reversals in respect thereof. Payments made in a currency other than Dollars may be accepted by Agent in its sole discretion and, if so accepted, the Borrowers agree that Agent may convert the payment made to Dollars at the applicable Spot Rate in accordance with its normal practices.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided, however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Agent agrees to provide the Borrower with two (2) Business Days' notice prior to drawing on the Loan Account; provided however that, it is agreed and understood that no such prior notice shall be required with respect to interest, regularly scheduled payments of principal owing under Section 2.1(a) or any fee described in Section 2.2. Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the Laws of the State of Maryland, the *Criminal Code* (Canada) or the Laws of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable Law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by Law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be

paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy.

(a) Any and all payments by or on account of any obligation of the Credit Parties under any Financing Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Credit Parties shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.8) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made. The Credit Parties shall jointly and severally indemnify each Recipient, 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 2.8) payable or paid by such Recipient or its Affiliates or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including without limitation reasonable attorneys' and tax advisor fees and expenses), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, provided, however, that consistent with Section 2.10, the Canadian Credit Parties shall not have any obligation to indemnify a Recipient with respect to any Indemnified Taxes payable with respect to a US Obligation. A certificate as to the amount of such payment or liability delivered to Borrower Representative by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(b) The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(c) Any Lender that is entitled to an exemption from or reduction of United States federal or Canadian federal withholding Tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent, at the time or times reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or Agent and that is required by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Representative or Agent, shall deliver to Borrower Representative or Agent such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent as will enable Borrower Representative or Agent to determine whether or not such Lender is subject to United States or Canadian backup withholding or information reporting requirements. Each Lender that (i) is organized under the Laws of a jurisdiction other than the United States, and

(ii) (A) is a party hereto on the Closing Date or (B) purports to become an assignee of an interest as a Lender under this Agreement after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall execute and deliver to Borrower Representative and Agent one or more (as Borrowers or Agent may reasonably request) United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8BEN-E, W-8IMY (as applicable) and other applicable forms, certificates (including, in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) of Section 881(c) if the Code, a certificate reasonably establishing that such Lender (or its direct and indirect owners, as applicable) is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code) or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender's entitlement to a complete exemption from, or reduction of, withholding or deduction of Taxes. Any Lender that is an "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to Borrower Representative and Agent on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower Representative or Agent), executed copies of United States Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax. If a payment made to a Lender under any Financing 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 Borrower Representative and Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative or 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 Borrower Representative or Agent as may be necessary for Borrower Representative and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 2.8(c), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. Each Lender agrees to provide such updated United States forms and certificates required by this Section 2.8(c) as may be necessary upon a change in fact or circumstance or expiration of the applicable form which under applicable Law requires a new form or certification to claim exemption from or reduction in United States federal withholding taxes.

(d) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder or under any Support Agreement or Lender Letter of Credit to a level below that

which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided, however*, that notwithstanding anything in this Agreement 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 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 applicable Law", regardless of the date enacted, adopted or issued.

(e) If any Lender requires compensation under Section 2.8(d), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a) or 2.8(b), then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be

construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) The parties' obligations under this Section 2.8 shall survive the replacement of Agent, the repayment of the Loans and the termination of this Agreement.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, Notices of LC Credit Events and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, requesting Letters of Credit, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, and LC Issuer may provide such Letters of Credit for the account of a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, or the issuance of any Letter of Credit requested on behalf of a Borrower hereunder, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders and LC Issuer with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the

acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" shall mean such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability of US Borrowers; Rights of Contribution; Subordination and Subrogation.

(a) US Borrowers are defined collectively to include all Persons named as one of the US Borrowers herein; *provided, however*, that any references herein to "any US Borrower", "each US Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the US Borrowers herein. Each Person so named shall be jointly and severally liable for all of the Obligations of all Borrowers under this Agreement. Each US Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the US Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each US Borrower individually acknowledges that the benefit to each of the Persons named as one of the US Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual US Borrower.

(b) Canadian Borrowers are defined collectively to include all Persons named as one of the Canadian Borrowers herein; *provided, however*, that any references herein to "any Canadian Borrower", "each Canadian Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Canadian Borrowers herein. Each Person so named shall be jointly and severally liable for all of the Canadian Obligations of all of the Canadian Borrowers under this Agreement. Each Canadian Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Canadian Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Canadian Borrower individually acknowledges that the benefit to each of the Persons named as one of the Canadian Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Canadian Borrower.

(c) Each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in

Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as a Borrower or as to all such Persons taken as a whole.

(d) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each US Borrower for the Obligations, the Liens granted by the US Borrowers to secure the Obligations, the joint and several nature of the liability of each Canadian Borrower for the Canadian Obligations, and the Liens granted by the Canadian Borrowers to secure the Canadian Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or the Canadian Obligations, as applicable, or any Liens granted by such Borrower securing the Obligations, or the Canadian Obligations, as applicable, would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance, fraudulent transfer or transfer at undervalue under the applicable provisions of any fraudulent conveyance or fraudulent transfer Law or similar Law of any state, province, nation or other governmental unit, as in effect from time to time.

(e) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any applicable Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept applicable partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. Except as specifically provided in this Agreement or any Financing Document, all such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrowers.

(f) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or

consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under any Insolvency Law, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code (or similar provision in any Insolvency Law); (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code (or similar provision in any Insolvency Law); (vi) the disallowance, under Section 502 of the Bankruptcy Code (or similar provision in any Insolvency Law), of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(g) The Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other applicable Borrower (provided that a U.S. Borrower cannot seek a contribution from a Canadian Borrower for a U.S. Obligation) in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided, however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided, further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in a Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(g) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(g) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(g), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(g), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to \$0 through contributions and reimbursements made under the terms of this Section 2.10(g) or otherwise.

(h) Subject to Section 2.10(a) and (b), each Qualified ECP Credit Party hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honor all of its obligations under this Section 2.10 in respect of Swap Obligations. The obligations of each Qualified ECP Credit Party under this Section 2.10 shall remain in full force and effect until all of the Revolving Loan Commitments are terminated, all Letters of Credit have expired or been cancelled, replaced, backstopped or cash collateralized, and all Obligations payable by the Borrowers and the Guarantors under this Agreement and all other Financing Documents shall have been paid in full. Each Qualified ECP Credit Party intends that this Section 2.10(h) constitute, and this Section 2.10(h) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

(i) Notwithstanding any other provision contained herein or in any other Financing Document, if a "secured creditor" (as that term is defined under the BIA) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint and several basis, then such Person's Obligations (and the Obligations of each other Canadian Credit Party or any other applicable Credit Party), to the extent such Obligations are secured, shall be several obligations and not joint and several obligations.

Section 2.11 Collections and Lockbox Accounts.

(a) Borrowers shall maintain one or more Lockbox Accounts with a United States depository institution and with a Canadian depository institution, in each case designated from time to time by Borrower Representative and reasonably acceptable to Agent (the "**Lockbox Banks**"), for receipt and collection of all payments in respect of Accounts and proceeds of other Collateral, subject to the provisions of this Agreement, and shall execute with each Lockbox Bank and Agent a Lockbox Agreement and such other agreements related to such Lockbox Account as Agent may reasonably require. Borrowers shall direct Account Debtors to make payments on all Accounts, (i) to a Lockbox, for deposit into a Lockbox Account and/or (ii) directly into the Lockbox Accounts; *provided, however*, unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. All funds deposited into a Lockbox Account shall be transferred into the applicable Payment Account by the close of each Business Day. Notwithstanding the foregoing, WAVE and its Subsidiaries shall not be required to enter into lockbox arrangements with a Lockbox Bank or comply with the second sentence of this clause (a) until sixty (60) days after the Closing Date (such date, the "**WAVE Account Conversion Date**") so long as, on or prior to the Closing Date, WAVE and its Subsidiaries have provided Agent with evidence that standing wire instructions, in form and substance acceptable to Agent, with respect to each collection account maintained by WAVE and its Subsidiaries have been provided to East West Bank in accordance with the following sentence. Until the WAVE Account Conversion Date, WAVE and its Subsidiaries shall make collections on their Accounts directly from Account Debtors, promptly deposit such collections into a Deposit Account located at East West Bank and provide and maintain a standing order to East West Bank to transfer all funds in such Deposit Account to the applicable Payment Account by the close of each Business Day (it being agreed and understood that to the extent any such accounts have not been closed on or prior to the date that

is 120 days after the Closing Date, and are not otherwise Excluded Deposit Accounts, Borrowers shall enter into Lockbox arrangements in favor of Agent with respect to each such account). Following the WAVE Account Conversion Date, WAVE and its Subsidiaries shall comply with the second sentence of this clause (a).

(b) Borrowers shall at all times (or, with respect to WAVE and its Subsidiaries, at all times following the WAVE Account Conversion Date) maintain their operating accounts with banking institutions designated from time to time by Borrower Representative and reasonably acceptable to Agent, and each such operating account shall be subject to an Account Control Agreement providing for dominion in favor of Agent to spring upon the occurrence of an Event of Default and notification by Agent to the applicable banking institution.

(c) Notwithstanding anything in any Lockbox Agreement or Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockboxes and the Lockbox Accounts, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any Lockbox Agreement or Account Control Agreement or similar agreement, except to the extent of such losses arising solely from Agent's gross negligence or willful misconduct.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section, and representing proceeds of Collateral of the Canadian Credit Parties, to reduce the outstanding Canadian Revolving Loans in such order of application as Agent shall elect. Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section other than proceeds of Collateral of the Canadian Credit Parties, to reduce the outstanding Revolving Loans in such order of application as Agent shall elect; provided, that, Agent may apply funds transferred into the Payment Account pursuant to this Section to the Term Loan to the extent of any payments (whether of principal or interest) then due and payable. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative so long as no Event of Default exists at the time of such credit balance.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to a Lockbox or a Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to the applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at Law, if any Borrower, through acts or omissions, causes or permits

Account Debtors to send payments other than to a Lockbox or a Lockbox Account or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in a Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Account, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If Borrowers fail to comply with this Section 2.11(g), then, in addition to all other rights and remedies of Agent set forth in this Agreement, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile amounts received in or required to be deposited into the Lockbox Accounts.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to a Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to a Lockbox Account.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least thirty (30) days' prior written notice to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however,* that no such termination shall be effective until (i) Borrowers have paid all of the Obligations in immediately available funds, and all Letters of Credit and Support Agreements have expired or terminated or have been cash collateralized in accordance with this Agreement, and (ii) Borrowers have complied with Section 2.2(f). Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans or issue or procure any Letters of Credit or Support Agreements on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2(f) resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its sole discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Credit Party hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party is an entity as specified on Schedule 3.1, is duly organized, validly existing and in good standing under the Laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, and has all powers and all Permits that are necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits would not reasonably be expected to have a Material Adverse Effect. Each Credit Party is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (a) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (b) was incorporated or organized under the Laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party are within its powers, have been duly authorized by all necessary action pursuant to its Organizational Documents, require no further action by or in respect of, or filing with, any Governmental Authority and do not violate, conflict with or cause a breach or a default under (a) any Law applicable to any Credit Party or any of the Organizational Documents of any Credit Party, or (b) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as would not, with respect to this clause (b), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Transaction Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than Permitted Liens referred to in clause (d) and (k) of the definition thereof and those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of the Credit Parties (on a consolidated basis) fairly presents in all material respects the financial position of the Credit Parties (on a consolidated basis) as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since June 30, 2018, there has been no material adverse change in the business, operations, properties, or financial condition of the Credit Parties (taken as a whole).

Section 3.6 Litigation. Except as set forth on Schedule 3.6, as of the Closing Date, there is no Litigation pending against, or to such Credit Party's knowledge threatened (in writing) against or affecting, any Credit Party. There is no Litigation pending which would reasonably be expected to have a Material Adverse Effect or would reasonably be expected to affect the validity of any of the Transaction Documents in any material manner.

Section 3.7 Ownership of Property. Each Credit Party and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in and easements upon all properties and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased or subject to easements granted in favor of such Credit Party (as the case may be).

Section 3.8 No Default. No Event of Default or Default has occurred and is continuing. No Credit Party is in breach or default under or with respect to any Material Contract to which it is a party or by which its property is bound or affected, which breach or default would reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Credit Party's knowledge, threatened against any Credit Party. Hours

worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law or Canadian Economic Sanctions and Export Control Laws. None of the transactions contemplated by the Financing Documents violates the Canadian Economic Sanctions and Export Control Laws.

Section 3.13 Taxes. All federal, state, provincial, territorial and material municipal and local Tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a

Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal, state, provincial, territorial, and municipal Tax returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income Tax withholding, social security and unemployment Taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code and all other applicable Laws in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter or opinion letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise Tax under any of Sections 4971 through 5000A of the Code.

(b) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA, the provision of the Code and all other applicable Laws relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan or the issuance of any Letter of Credit, (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code. No condition exists or event or transaction has occurred with respect to any Pension Plan which would result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, would result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is insolvent, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise Tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code or that any such plan is or may be terminated.

Section 3.15 Consummation of Transaction Documents; Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the

obtaining, making or closing of the transactions contemplated by the Transaction Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Related Transactions. All transactions contemplated by the Transaction Documents to be consummated on or prior to the date hereof have been so consummated (including, without limitation, the disbursement and transfer of all funds in connection therewith) in all material respects pursuant to the provisions of the applicable Transaction Documents, true and complete copies of which have been delivered to Agent, and in compliance with all applicable Law, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.17 Material Contracts. Except for the Transaction Documents and the other agreements set forth on Schedule 3.17(a) (collectively, other than the Financing Documents, the "**Material Contracts**"), as of the Closing Date, no Credit Party is a party to (a) (i) employment agreements covering the management of any Credit Party, (ii) agreements for managerial, consulting or similar services to which any Credit Party is a party or by which it is bound, (iii) agreements regarding any Credit Party, its assets or operations or any investment therein to which any of its equity holders is a party or by which it is bound, and (iv) real estate leases, Intellectual Property licenses or other lease or license agreements to which any Credit Party is a party, either as lessor or lessee, or as licensor or licensee (other than licenses arising from the purchase of "off the shelf" products), in each case with respect to the preceding subclauses (a)(i) through (a)(iv) requiring payment of more than \$5,000,000 in any year, (b) any vendor or supply agreement to which any Credit Party is a party that is responsible for more than 10% of gross profit of the Loan Parties during the trailing twelve month period most recently ended (unless the Borrowers have entered into a substantially equivalent arrangement with a reasonably equivalent alternative supplier), (c) partnership agreements to which any Credit Party is a general partner or joint venture agreements to which any Credit Party is a party, or (d) any other agreements or instruments to which any Credit Party is a party, and the breach, nonperformance or cancellation of which, or the failure of which to renew, would reasonably be expected to have a Material Adverse Effect. Schedule 3.17(b) sets forth, with respect to each real estate lease agreement to which any Credit Party is a party (as a lessee), as of the Closing Date, the address of the subject property and the annual rental (or, where applicable, a general description of the method of computing the annual rental). The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Credit Party's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the

terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Credit Party, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Credit Party 's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Credit Party, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims arising under applicable Environmental Law, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All Intellectual Property existing as of the Closing Date which is issued, registered or pending with any United States, Canadian or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States, Canadian or foreign Governmental Authority) and all licenses under which any Credit Party is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefor) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or application therefor), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each such registered Intellectual Property (or application therefor) purported to be owned by such Credit Party, free and clear of any Liens and/or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in such Credit Party 's interest in such license or agreement or other property. To such Credit Party 's knowledge, each Credit Party conducts its business without infringement or claim of infringement of any Intellectual Property rights of others and there is no infringement or claim of infringement by others of any

Intellectual Property rights of any Credit Party, which infringement or claim of infringement would reasonably be expected to have a Material Adverse Effect.

Section 3.20 Solvency. After giving effect to the Loan advance and the liabilities and obligations of each Credit Party under the Transaction Documents, each Borrower and each additional Credit Party is Solvent.

Section 3.21 Full Disclosure. The written information (financial or otherwise) furnished by or on behalf of each Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Transaction Documents (excluding projections and other forward-looking information, pro forma financial information and information of a general economic or industry nature), were, when furnished and taken as a whole, correct in all material respects and did not, when furnished and taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made. All financial projections and other forward looking information and pro forma financial information delivered to Agent and Lenders by Credit Parties (or their agents) were prepared in good faith based upon assumptions that Credit Parties believed to be reasonable at the time made, in light of the circumstances under which they were made (it being understood that such financial information, projections or forecasts as they relate to future events are not to be viewed as fact and that actual results during the period or periods covered by such financial information, projections or assumptions may differ from the projected results set forth therein by a material amount).

Section 3.22 Interest Rate. The rate of interest paid under the Notes and the method and manner of the calculation thereof do not violate any usury or other Law or applicable Laws, any of the Organizational Documents, or any of the Transaction Documents.

Section 3.23 Subsidiaries. Credit Parties do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.24 Eligible Accounts; Eligible Credit Card Receivables. As to each Account that is identified by the applicable Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Account and otherwise constitutes an Eligible Account under such definition.

As to each Credit Card Receivable that is identified by the applicable Borrowers as an Eligible Credit Card Receivable in a Borrowing Base Certificate submitted to Agent, such Credit Card Receivable is not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Credit Card Receivable and otherwise constitutes an Eligible Credit Card Receivable under such definition.

Section 3.25 Eligible Inventory; Eligible In-Transit Inventory. As to each item of Inventory that is identified by the applicable Borrowers as Eligible Inventory or Eligible In-

Transit Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria) set forth in the definition of Eligible Inventory or Eligible In-Transit Inventory, as applicable, and otherwise constitutes Eligible Inventory or Eligible In-Transit Inventory, as applicable, under such definition.

Section 3.26 Canadian Pension Plans. No Credit Party maintains or contributes to any Canadian Defined Benefit Pension Plans.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Credit Party agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Credit Parties will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating balance sheet, cash flow and income statement (including year-to-date results) covering Credit Parties' and their Consolidated Subsidiaries' consolidated and consolidating operations during the period, prepared under GAAP, consistently applied, setting forth, at any time after December 31, 2018, in comparative form the corresponding figures as at the end of the corresponding month of the previous fiscal year and the projected figures for such period based upon the projections required hereunder, all in reasonable detail, certified by a Responsible Officer and in a form acceptable to Agent; provided, that, the financial statements provided under this clause (a) for the fiscal months ended August 31, 2018 shall be prepared separately for AVAD and its Subsidiaries (prior to giving effect to the Closing Date Acquisition) and WAVE and its Subsidiaries;

(b) promptly upon the request of Agent, evidence of payment and satisfaction of all payroll, withholding and similar Taxes due and owing by all Credit Parties with respect to the payroll period(s) occurring during such month;

(c) as soon as available, but no later than one hundred twenty (120) days after the last day of Credit Parties' fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its Permitted Discretion and an Excess Cash Flow Certificate; provided, that, the audited financial statements provided under this clause (c) for the fiscal year ended December 31, 2018 shall be prepared separately for AVAD and its Subsidiaries (prior to giving effect to the Closing Date Acquisition) and WAVE and its Subsidiaries;

(d) within ten (10) Business Days of delivery or filing thereof, (w) copies of all statements, reports and notices made available to any holders of any Subordinated Debt, (x) all reports and other filings made by Credit Parties with any stock exchange on which any securities of any Credit Party are traded and/or the SEC, and (y) board packages so long as, with respect to this clause (y), the Credit Parties will not be required to deliver or disclose to Agent or any Lender any materials (i) the delivery or disclosure of which is prohibited by Law, (ii) that is

subject to bona fide attorney-client or similar privilege or constitutes bona fide attorney work product or (iii) relates to the refinancing of the Obligations;

(e) a prompt written report of any legal actions pending or threatened against any Credit Party or any of its Subsidiaries that would reasonably be expected to result in damages or costs to any Credit Party or any of its Subsidiaries of \$100,000 or more; provided that, with respect to the Known Litigation, Credit Parties will (i) promptly notify Agent of any material development, court ruling or other event adverse to any Credit Party including, without limitation, any development, court ruling or other event that could reasonably be expected to result in fees, costs, damages or liabilities to the Credit Parties in excess of any amounts escrowed therefor under the Closing Date Acquisition Agreement as in effect on the Closing Date and (ii) include in each Compliance Certificate delivered to Agent with respect to each month that is the last month of a fiscal quarter of the Credit Parties, the information and representations set forth in clause (k) of the Compliance Certificate;

(f) prompt written notice of an event that materially and adversely affects the value of any material Intellectual Property;

(g) budgets, sales projections, operating plans on a month-by-month basis for each fiscal year and on an annual basis for the subsequent two (2) fiscal years, all within thirty (30) days following the end of each fiscal year, and such other financial information and information, reports or statements regarding the Credit Parties, their business and the Collateral as Agent may from time to time reasonably request;

(h) within thirty (30) days after the last day of each month, together with the monthly financial statements described in clause (a) above, a duly completed Compliance Certificate signed by a Responsible Officer, setting forth calculations showing compliance with the financial covenants set forth in Article VI to the extent such covenants are tested at such time;

(i) promptly upon their becoming available, copies of all Swap Contracts and Material Contracts;

(j) within fifteen (15) days after the last day of each month, separate duly completed Borrowing Base Certificates for the US Borrowers and the Canadian Borrowers, respectively, signed by a Responsible Officer, with aged listings of Accounts and accounts payable (by invoice date), a listing of the ten largest vendors, on a monthly and year to date basis, an Inventory perpetual listing and Inventory listing by location as of the most recent month end, and a roll-forward of Accounts with supporting documentation); and

(k) together with each Borrowing Base Certificate, a detailed report of Inventory in transit in the continental United States or Canada between owned or leased locations of the Borrowers or a location described in clause (k)(ii) of the definition of Eligible Inventory; provided that Borrowers shall not be required to deliver such report until delivery of the Borrowing Base Certificate for the month ending November 30, 2018.

Section 4.2 Payment and Performance of Obligations. Each Credit Party (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when

due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which would not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings Tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which would not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Credit Party will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, their respective existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business, or upon which a Borrowing Base is calculated, becomes damaged or destroyed, each applicable Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Credit Parties shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any, following which Agent shall return the security, if any, deposited with Agent pursuant to the definition of Permitted Contest.

(c) Each Credit Party will maintain or cause to be maintained, with financially sound and reputable insurers, insurance coverages substantially similar to, or in amounts or with coverage in excess of, the insurance coverages in existence on the Closing Date, or such other coverage as may be agreed to by Agent in its Permitted Discretion. All such insurance shall be provided by insurers having an A.M. Best policyholders rating of A- or better. Each of Agent and Lenders acknowledge that the insurance coverages as of the Closing Date comply with this Section 4.4.

(d) On or prior to the Closing Date, and at all times thereafter, Credit Parties will cause Agent to be named as an additional insured, assignee and lender's loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and

substance reasonably acceptable to Agent. Credit Parties shall deliver to Agent and Lenders (i) on the Closing Date, a certificate from Credit Parties' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Credit Parties, and (v) at least 60 days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event Credit Parties fail to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Credit Parties' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Credit Parties' interests. The coverage purchased by Agent may not pay any claim made by a Credit Party or any claim that is made against such Credit Party in connection with the Collateral. Such Credit Party may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Credit Party has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Credit Parties will be responsible for the costs of that insurance to the fullest extent provided by Law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Credit Parties are able to obtain on their own.

Section 4.5 Compliance with Laws and Material Contracts. Each Credit Party will comply, and cause each Subsidiary to comply, with the requirements of (a) all Permits that are necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, (b) all applicable Laws, and (c) Material Contracts, in each case, except to the extent that failure to so comply would not reasonably be expected to (i) have a Material Adverse Effect, or (ii) result in any Lien other than a Permitted Lien upon either (A) a material portion of the assets of any such Person in favor of any Governmental Authority, or (B) any Collateral which is part of a Borrowing Base or any Real Property Collateral.

Section 4.6 Inspection of Property, Books and Records. Each Credit Party will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Credit Party or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral

audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Credit Parties and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Credit Party or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Revolving Loans and the Term Loan solely on the Closing Date, (a) for the payment in full of the Debt outstanding under the Existing Credit Agreements, (b) to pay a portion of the cost of the Closing Date Acquisition, (c) to pay costs, expenses and fees in connection with the Financing Documents and the other Transaction Documents, and (d) for payments to each of the persons listed in the disbursement direction letter furnished by Borrowers to Agent on the date hereof. After the Closing Date, Borrowers shall use the proceeds of the Revolving Loans solely for working capital of Borrowers and their Subsidiaries and other general corporate purposes consistent with the terms of this Agreement. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 Estoppel Certificates. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default. After written request by Agent, Credit Parties, within fifteen (15) days and at their expense, will furnish Agent with a certificate, signed by a Responsible Officer of Borrower Representative, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing Documents, as updated pursuant to such certificate, are true, accurate and complete as of the date of such certificate.

Section 4.9 Notices of Litigation and Defaults. Credit Parties will give prompt written notice to Agent (a) of any litigation or governmental proceedings pending or threatened (in writing) against Credit Parties which would reasonably be expected to have a Material Adverse Effect with respect to Credit Parties or which in any manner calls into question the validity or enforceability of any Financing Document, (b) upon any Credit Party becoming aware of the existence of any Default or Event of Default, (c) if any Credit Party is in breach or default under or with respect to any Material Contract, or if any Credit Party is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default would reasonably be expected to have a Material Adverse Effect, (d) of any strikes or other labor disputes pending or,

to any Credit Party's knowledge, threatened against any Credit Party, (e) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that would reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property Rights of others, and (f) of all disputes and claims that involve more than \$100,000. Credit Parties represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice would be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Credit Parties as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials in excess of the amounts permitted under Environmental Laws shall occur or shall have occurred on any Real Property or any other assets of any Credit Party, such Credit Party will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such Real Property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such Real Property or other assets. Without limiting the generality of the foregoing, each Credit Party shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any Real Property by any Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Credit Parties will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials in excess of amounts permitted by Environmental Laws or Hazardous Materials Contamination in excess of amounts permitted by Environmental Laws and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment would reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Credit Party will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of Lenders on the Collateral (including Collateral acquired after the date hereof), (ii) unless Agent shall agree otherwise in writing, cause all US Subsidiaries of Credit Parties (other than any US Subsidiary that is a CFC, which shall only provide support for the Canadian Obligations) to be jointly and severally obligated with the other US Credit Parties under all covenants and obligations under this

Agreement, including the obligation to repay the Obligations, and (iii) unless Agent shall agree otherwise in writing, cause all Canadian Subsidiaries of Credit Parties to be jointly and severally obligated with the other Canadian Credit Parties, and to guarantee, under all covenants and obligations under this Agreement, including the obligation to repay the Canadian Obligations. Without limiting the generality of the foregoing, (x) Credit Parties shall, at the time of the delivery of any Compliance Certificate disclosing the acquisition by an Credit Party of any registered Intellectual Property or application for the registration of Intellectual Property, deliver to Agent a duly completed and executed supplement to the applicable Credit Party's Patent Security Agreement, Trademark Security Agreement or Copyright Security Agreement in the form of the respective Exhibit thereto, and (y) at the request of Agent, following the disclosure by Credit Parties on any Compliance Certificate of the acquisition by any Credit Party of any rights under a license as a licensee with respect to any registered Intellectual Property or application for the registration of any Intellectual Property owned by another Person, Credit Parties shall execute any documents requested by Agent to establish, create, preserve, protect and perfect a first priority lien in favor of Agent (subject to Permitted Liens), to the extent legally possible, in such Credit Party's rights under such license and shall use their commercially reasonable best efforts to obtain the written consent of the licensor which such license to the granting in favor of Agent of a Lien on such Credit Party's rights as licensee under such license.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Credit Parties will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the formation or acquisition of a new Subsidiary or the formation or creation of any Person as a result of a statutory division of any Credit Party, Credit Parties shall (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of equity interests or other equity interests of such Person, along with undated stock or equivalent powers for such certificates, executed in blank, subject to the limitations contained in clause (b) of the definition of Excluded Collateral; (ii) unless Agent shall agree otherwise in writing, cause such Person to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of Lenders, a first priority Lien on all real and personal property of such Person in existence as of such date and in all after acquired property, subject to Permitted Liens; (iii) unless Agent shall agree otherwise in writing, cause such Person (other than any new Person that is a CFC, which shall only provide support for the Canadian Obligations) to either (at the election of Agent) become a US Borrower hereunder with joint and several liability for all obligations of US Credit Parties hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; (iv) unless Agent shall agree otherwise in writing, cause such new Canadian Subsidiary to either (at the election of Agent) (A) become a Canadian Borrower hereunder with

joint and several liability for all obligations of Canadian Credit Parties hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent and to execute a Canadian Guarantee of the Canadian Obligations in form and substance satisfactory to Agent, or (B) become a Guarantor of the Canadian Obligations pursuant to a Canadian Guarantee in form and substance satisfactory to Agent; and (v) cause such Person to deliver certified copies of such Person's certificate or articles of incorporation or formation, together with good standing certificates, by-laws (or operating agreement or other governing documents), resolutions of the Board of Directors or other governing body, approving and authorize the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent.

(d) Upon the request of Agent, Credit Parties shall use commercially reasonable efforts to obtain a Collateral Access Agreement from the lessor of each leased property with respect to any business location where any portion of the Collateral included in or proposed to be included in a Borrowing Base, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Credit Parties shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

Section 4.12 Credit Card Notifications. Except as otherwise agreed by the Agent and subject to Section 7.4, each Borrower shall deliver to the Agent Credit Card Notifications executed on behalf of each such Borrower and by each Credit Card Processor, in form reasonably satisfactory to the Agent.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Credit Parties (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Credit Parties upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Credit Parties and constitute collections on Credit Parties' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Credit Parties to perform the same and Credit Parties have failed to take such action, execute in the name of Credit Parties any schedules, assignments, instruments, documents, and statements that Credit Parties are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Credit Parties are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Credit Parties to perform the same and Credit Parties have failed to take such action, do such other and further acts and deeds in the name of Credit Parties that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Credit Parties that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts or other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Credit Parties shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date of this Agreement that directs each Account Debtor to make payments into a Lockbox Account. Agent reserves the right to notify Account Debtors, following the occurrence of a Specified Event of Default, that Agent has been granted a Lien upon all Accounts.

(c) Borrowers will conduct a physical count of the Inventory at least twice per year and at such other times as Agent reasonably requests, and Borrowers shall provide to Agent a written accounting of such physical count in form and substance satisfactory to Agent. Each Borrower will use commercially reasonable efforts to at all times keep its Inventory in good and marketable condition. In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Subsidiary.

(d) Credit Parties will use commercially reasonable efforts to at all times keep its Fixed Assets in good repair and physical condition.

Section 4.15 Canadian Pension Plans.

(a) For each existing, or hereafter adopted, Canadian Pension Plan (which, for greater certainty, does not include Canadian Defined Benefit Pension Plans), each Canadian Credit Party will, and will cause each of its Subsidiaries to, in a timely fashion comply with and perform in all material respects all of its obligations under and in respect of such Canadian Pension Plan (which, for greater certainty, does not include Canadian Defined Benefit Pension Plans) unless any failure to so comply or perform would not reasonably be expected to have a Material Adverse Effect.

(b) All employer or employee payments, contributions or premiums required to be remitted, paid to or in respect of each Canadian Pension Plan (which, for greater certainty, does not include Canadian Defined Benefit Pension Plans) shall be paid or remitted by each Canadian Credit Party and each Subsidiary of each Canadian Credit Party in a timely fashion in accordance with the terms thereof, any funding agreements and all applicable Law, unless any failure to do so would not reasonably be expected to have a Material Adverse Effect.

ARTICLE 5 - NEGATIVE COVENANTS

Each Credit Party agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. Notwithstanding the foregoing, no payments shall be made in respect of any Subordinated Debt (including, without limitation, principal, accrued interest and any other amounts payable in respect thereof), except as expressly provided in Section 5.5 below. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Restricted Distributions. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Credit Party will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Restricted Distributions to any Credit Party or any Subsidiary; (ii) pay any Debt owed to any Credit Party or any Subsidiary; (iii) make loans or advances to any Credit Party or any Subsidiary; or (iv) transfer any of its property or assets to any Credit Party or any Subsidiary.

Section 5.5 Payments and Modifications of Certain Debt. No Credit Party will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the applicable Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the applicable Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Permitted Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination agreement or subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent and Lenders any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such

Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. No Credit Party will, or will permit any Subsidiary to, directly or indirectly (a) divide, consolidate, merge or amalgamate with or into any other Person (other than divisions, consolidations, mergers or amalgamations among Credit Parties provided that no US Credit Party shall consolidate or merger with or divide into a Canadian Credit Party if the surviving entity of such merger is not a US Credit Party), or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. No Credit Party will suffer or permit to occur any Change in Control.

Section 5.7 Purchase of Assets, Investments. No Credit Party will, or will permit any Subsidiary to, directly or indirectly (a) acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business; (b) engage or enter into any agreement to engage in any joint venture or partnership with any other Person; or (c) acquire or own or enter into any agreement to acquire or own any Investment in any Person other than Permitted Investments.

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, and except for transactions that are disclosed to Agent in advance of being entered into and which contain terms that are no less favorable to the applicable Credit Party or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Credit Party will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Credit Party; *provided, however*, so long as no Default or Event of Default shall have occurred and be continuing Borrowers may pay (a) the Management Fee in an aggregate amount not to exceed (x) \$250,000 with respect to the Management Fee on the Closing Date and (y) in any fiscal year the amount set forth in the Management Agreement as in effect on the date hereof, and (b) Management Expenses.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) would reasonably be expected to be adverse to the rights, interests or privileges of Agent or Lenders or their ability to enforce the same; (c) results in the imposition or expansion in any material respect of any obligation of or restriction or burden on any Credit Party or any Subsidiary; or (d) reduces in any material respect any rights or benefits of any Credit Party or any Subsidiaries (it being understood and agreed that any such determination shall be in the sole discretion of Agent). Each Credit Party shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of

amendments or other modifications to such documents, and such Credit Party agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto or extensions thereof. No Credit Party will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs) in a manner adverse to Agent or Lenders in any material respect.

Section 5.12 Lease Payments. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Credit Party or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Credit Party or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into an Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Credit Party as of the Closing Date. The provisions of this Section requiring Account Control Agreements shall not apply to (i) Excluded Deposit Accounts, (ii) operating accounts of WAVE and its Subsidiaries until the WAVE Account Conversion Date or (iii) Deposit Accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such; *provided, however*, that at all times that any Obligations remain outstanding, Borrowers shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll Taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Credit Parties that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Credit Parties and their equity holders, directors and officers, which information includes the name and address of each Credit Party and its equity holders, directors, managers and officers and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Credit Party will, or will permit any Subsidiary to,

directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Credit Party shall immediately notify Agent if such Credit Party has knowledge that any Credit Party, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Agreements Regarding Receivables. No Borrower may backdate, postdate or redate any of its invoices. No Borrower may make any sales on extended dating or credit terms beyond that customary in such Borrower's industry and consented to in advance by Agent. In addition to the Borrowing Base Certificates to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Borrower's learning thereof, in the event any Eligible Account becomes ineligible for any reason, other than the aging of such Account, and of the reasons for such ineligibility. Borrower Representative shall also notify Agent promptly of all material disputes and claims with respect to the Accounts of any Borrower, and such Borrower will settle or adjust such material disputes and claims at no expense to Agent; *provided, however*, no Borrower may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Accounts (i) which is outside the Ordinary Course of Business or (ii) which discount, credit or allowance exceeds an amount equal to \$25,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account. Nothing permitted by this Section 5.16, however, may be construed to alter any of the criteria for Eligible Accounts, Eligible Inventory or Eligible In-Transit Inventory provided in Section 1.1.

Section 5.17 Canadian Pension Plans. No Credit Party shall:

- (a) establish, sponsor, maintain, contribute or have any liability or obligation under any Canadian Defined Benefit Pension Plan; or
- (b) consummate any transaction that would result in any Person not already a Subsidiary becoming a Subsidiary if such Person sponsors, maintains or contributes or has any liability or obligation under one or more Canadian Defined Benefit Pension Plans, without the prior consent of Agent.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Senior Leverage Ratio. Credit Parties will not permit the Senior Leverage Ratio for any Defined Period, tested as of each Required Testing Date, to be more than, (a) for each Required Testing Date occurring during the period commencing on the Closing Date and ending on December 31, 2019, 4.50:1.00, (b) for each Required Testing Date occurring during the period commencing on January 1, 2020 and ending on December 31, 2020, 4.00:1.00, and (c) for each Required Testing Date thereafter, 3.50:1.00.

Section 6.2 Fixed Charge Coverage Ratio. Credit Parties will not permit the Fixed Charge Coverage Ratio for any Defined Period, as on each Required Testing Date, to be less than (a) for each Required Testing Date occurring during the period commencing on the Closing Date and ending on December 31, 2019, 1.00 to 1.00 and (b) for each Required Testing Date thereafter, 1.10:1.00.

Section 6.3 Evidence of Compliance. Credit Parties shall furnish to Agent, together with the financial reporting required of Credit Parties in Section 4.1 hereof, a Compliance Certificate as evidence of Credit Parties' compliance with the covenants in this Article and evidence that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Credit Parties' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans, of Agent to issue any Support Agreements on the Closing Date and of any LC Issuer to issue any Lender Letter of Credit on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist prepared by Agent or its counsel, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

(a) evidence of the consummation (concurrently with the funding of the Loans) of the Closing Date Acquisition and the other transactions contemplated by the Transaction Documents;

(b) the payment of all fees, expenses and other amounts due and payable under the Fee Letter and each Financing Document;

(c) concurrently with the Closing Date and after giving effect to the initial Loans hereunder, Borrowers shall have (i) repaid in full and extinguished the Existing Credit Agreements, and (ii) provided evidence to Agent of the unconditional release and termination of all Liens held by the lenders or applicable agents under the Existing Credit Agreements in the assets and properties of the Credit Parties;

(d) Agent's receipt of (i) UCC, PPSA, *Bank Act* (Canada), tax lien, and searches with respect to Credit Parties, and (ii) each Credit Party's Organizational Documents;

(e) Agent shall be satisfied with the results of its regulatory, legal, environmental and other due diligence, including, without limitation, a satisfactory audit report with respect to the Collateral, Inventory appraisals, Borrowers' material customer contracts, and a quality of earnings report for Borrowers;

(f) Agent shall be satisfied that, since June 30, 2018, there has been no material adverse change in any aspect of the business, operations, properties or financial condition of Credit Parties or their business, taken as a whole;

(g) the receipt of the initial Borrowing Base Certificates, prepared as of the Closing Date;

(h) evidence that the sum of (i) Borrowers' Revolving Loan Availability and (ii) Borrowers' unrestricted cash and cash equivalents on hand is at least \$7,000,000 after giving effect to (A) the initial Loans required to be made in order to repay in full the Existing Credit Agreements, and (B) all fees, expenses and other amounts that are required to be paid to Agent and Lenders hereunder and under the Fee Letter as of the Closing Date and in connection with the transactions evidenced by the other Transaction Documents;

(i) Agent's receipt and satisfaction with the final quality of earnings report for Credit Parties, interim financial statements as of July 31, 2018 for each of Parent and its Consolidated Subsidiaries, and WAVE and its Consolidated Subsidiaries, and a pro forma balance sheet for Parent and its Consolidated Subsidiaries (including Wave and its Subsidiaries) as of July 31, 2018, but reflecting the closing of the Transactions;

(j) Agent's receipt of evidence that Parent shall have received (x) cash equity contributions from Sponsor and its Investment Affiliates on the Closing Date in an aggregate amount of not less than \$17,640,000 on terms and conditions reasonably satisfactory to Agent and (y) rollover equity contributions from Sellers on the Closing Date in an aggregate amount of not less than \$1,400,000 on terms and conditions reasonably satisfactory to Agent; and

(k) Agent's receipt of duly executed counterparts of each of this Agreement, the Notes, each Guaranty, each Security Document, satisfactory legal opinions of counsel to Credit Parties and all other items to be delivered as of the Closing Date as identified on the closing checklist prepared by Agent's counsel.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Transaction Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan, Support Agreement and Lender Letter of Credit. The obligation of Lenders to make a Loan (other than Revolving Loans made pursuant to Section 2.5(c)) or an advance in respect of any Loan, of Agent to issue any Support Agreement

or of any LC Issuer to issue any Lender Letter of Credit (including on the Closing Date) is subject to the satisfaction of the following additional conditions:

(a) in the case of a Revolving Loan Borrowing, receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) and updated Borrowing Base Certificate from the applicable Borrowers, in the case of any Support Agreement or Lender Letter of Credit, receipt by Agent of a Notice of LC Credit Event in accordance with Section 2.5(a);

(b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit, the Canadian Revolving Loan Outstandings will not exceed the Canadian Revolving Loan Limit and the US Revolving Loan Outstandings will not exceed the US Revolving Loan Limit;

(c) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;

(d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; and

(e) the fact that no adverse change in the condition (financial or otherwise), properties, business, prospects, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement.

Each giving of a Notice of LC Credit Event hereunder, each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its sole discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), (c), (d) and (e) below against Borrowers and the other Credit Parties, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds, all issuances of Lender Letters of Credit and all undertakings in respect of Support Agreements: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) PPSA and *Bank Act* (Canada) searches in each jurisdiction in which the applicable Person is organized or maintains Collateral; (c) judgment, pending litigation, execution, bankruptcy, intellectual

property, federal Tax lien, personal property Tax lien, and corporate and partnership Tax lien searches, in each jurisdiction searched under clause (a) and (b) above; (d) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized; and (e) searches in the applicable public records with respect to the Real Property Collateral.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon (or such longer period as Agent may agree in its sole discretion), each of which shall be completed or provided in form and substance satisfactory to Agent.

ARTICLE 8 - [RESERVED]

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and without limiting any other grant of a Lien and security interest in any Security Document, each Credit Party hereby grants to Agent, for the benefit of itself and Lenders, a continuing first priority Lien on and security interest in, upon, and to the Collateral (subject to Permitted Liens) described on Schedule 9.1 attached hereto and made a part hereof (but, for the avoidance of doubt, any such Collateral shall not include any Excluded Collateral).

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) Schedule 9.2 sets forth (i) each chief executive office and principal place of business of each Credit Party and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Credit Parties regarding any of the Collateral are kept, which such Schedule 9.2 indicates in each case which Credit Party(ies) have Collateral and/or books and records located at such address, and, in the case of any such address not owned by one or more of the Credit Parties, indicates the nature of such location (e.g., leased business location operated by a Credit Party, third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(b) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Credit Party as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC and PPSA, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Credit Party to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and PPSA and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Credit Party and any other Person relating to

any such collateral, including any license to which a Credit Party is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Credit Party or any other Person.

(c) As of the Closing Date, no Credit Party has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC or the PPSA, as applicable), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Credit Party disclosed on Schedule 3.4) and Credit Parties shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Credit Party of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC or the STA, as applicable) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Credit Party has any interest (except for such control arising by operation of Law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Credit Parties is maintained).

(d) No Credit Party shall take any of the following actions or make any of the following changes unless Credit Parties have given at least thirty (30) days prior written notice to Agent of Credit Parties' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Credit Party as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Credit Party or allow any Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its records concerning the Collateral or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(e) Credit Parties shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon without the prior written consent of Agent (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default or Event of Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the US Borrowing Base to be less than the US Revolving Loan Outstandings or the Canadian Borrowing Base to be less than the Canadian Loan Outstandings). Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of

any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(f) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Credit Parties shall deliver to Agent all tangible Chattel Paper and all Instruments and documents owned by any Credit Party and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Credit Parties shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Credit Party and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Credit Parties also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Credit Parties will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Credit Parties shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Credit Parties.

(ii) Credit Parties shall deliver to Agent all letters of credit on which any Credit Party is the beneficiary and which give rise to letter of credit rights owned by such Credit Party which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Credit Parties shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Credit Parties shall promptly advise Agent upon any Credit Party becoming aware that it has any interests in any one or more commercial tort claims in a principal amount in excess of \$250,000 (the "**Threshold Amount**") and, in addition, following Credit Parties' advising Agent of any commercial tort claim an amount that exceeds the Threshold Amount, shall promptly advise Agent upon any Credit Party becoming aware of any other commercial tort claim on which any Credit Party is the beneficiary in a principal amount of at least the Threshold Amount for each such commercial tort claim (any and all of the foregoing commercial tort claims being referred to herein as the "**Perfected Commercial Tort Claims**"), which such notice shall include descriptions of the events and circumstances giving rise to each such Perfected Commercial Tort Claim and the dates such events and circumstances occurred, the potential defendants with respect such Perfected Commercial Tort Claims and any court proceedings that have been instituted with respect to such Perfected Commercial Tort Claims, and Credit Parties shall, with respect to any Perfected Commercial Tort Claims, execute and deliver to Agent such documents as Agent shall request to perfect, preserve

or protect the Liens, rights and remedies of Agent with respect to any such Perfected Commercial Tort Claims.

(iv) Except for Equipment (including, without limitation, rolling stock), in an aggregate amount of \$250,000, no Equipment (including, without limitation, rolling stock) or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Credit Parties' agents without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control. Borrowers have notified Agent that Inventory is currently located at the locations set forth on Schedule 9.2. Credit Parties shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Credit Parties shall cause all Equipment and other tangible personal property to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Agent, Credit Parties shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all of their rolling stock and other tangible personal property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Credit Parties shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is Real Property Collateral that is subject to a perfected first priority Mortgage in favor of Agent (subject only to those Permitted Liens referred to in clause (d), (h) and (k) of the definition thereof).

(vi) Each Credit Party hereby authorizes Agent to file one or more UCC and PPSA financing statements with respect to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Credit Party as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Credit Party now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Credit Party any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Credit Party also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Credit Party holds, and after the Closing Date Credit Parties shall promptly notify Agent in writing upon creation or

acquisition by any Credit Party of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States, or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Credit Parties shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Further Information. Credit Parties shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of Law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.2(b), Section 4.4(c), Section 4.6, Article 5, Section 7.4 and Section 9.2, or (iii) there shall occur any default in the performance of or compliance with Section 4.1 and/or Article 6 of this Agreement and Borrower Representative has received written notice from Agent or Required Lenders of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by such Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans) or in respect of any Swap Contract, or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans) or in respect of any Swap Contract, if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or the

counterparty under any such Swap Contract, to cause Debt having an individual principal amount in excess of \$350,000 or having an aggregate principal amount in excess of \$350,000 (or any amount, solely with respect to Swap Contracts), or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any Insolvency Law now or hereafter in effect or seeking the appointment of a trustee, receiver, interim receiver, receiver-manager, liquidator, custodian, monitor or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party seeking liquidation, reorganization or other relief with respect to it or its debts under any Insolvency Law now or hereafter in effect or seeking the appointment of a trustee, receiver, interim receiver, receiver-manager, liquidator, custodian, monitor or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against any Credit Party under any Insolvency Law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group would be required to make a contribution to such Pension Plan, or would incur a liability or obligation to such Pension Plan, in excess of \$250,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that would reasonably be expected to give rise to a Lien under Section 4068 of ERISA, (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$250,000, or (iv) with respect to a Canadian Pension Plan, any Lien arises (except for contribution amounts not yet due) in connection with such Canadian Pension Plan which would reasonably be expected to have a Material Adverse Effect.;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in

excess of \$250,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) the occurrence of a Change in Control;

(l) if any Credit Party is or becomes an entity whose equity is registered with the SEC (or any analogous Governmental Authority), and/or is publicly traded on and/or registered with a public securities exchange, such Credit Party's equity fails to remain registered with the SEC (or any analogous Governmental Authority), in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(m) [Reserved]; or

(n) Parent incurs any liabilities (other than liabilities arising, or expressly permitted to be incurred by Parent, under the Financing Documents), owns or acquires any assets (other than the equity interests of Credit Parties) or engages itself in any operations or business, except in connection with its ownership of Credit Parties and its rights and obligations under the Financing Documents.

Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of this Agreement two (2) times in any twelve (12) month period and Agent has given to Borrower Representative in connection with each such failure any notice to which Credit Parties would be entitled under this Section before such failure would become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Credit Parties any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitments. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the US Revolving Loan Commitment and/or the Canadian Revolving Loan Commitment and the obligations of Agent and Lenders with respect thereto, in whole or in part (and, if in part, each Lender's US Revolving Loan Commitment and/or Canadian Revolving

Loan Commitment, as applicable, shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations (including, without limitation, the Term Loan) to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided, however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or Lenders, the US Revolving Loan Commitment and the Canadian Revolving Loan Commitment and the obligations of Agent and Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations (including, without limitation, the Term Loan) shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and the applicable Borrowers will pay the same.

Section 10.3 Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at Law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC and PPSA in effect in the applicable jurisdiction(s) and under any other applicable Law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Credit Parties' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Credit Parties' original books and records, to obtain access to Credit Parties' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Credit Parties shall not resist or interfere with such action (if Credit Parties' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Credit Parties hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Credit Parties at Credit Parties' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Agent;

(iv) the right to notify postal authorities to change the address for delivery of Credit Parties' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Credit Parties' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Credit Parties' compliance with applicable Laws. Credit Parties shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Credit Parties' affairs, all of which contacts Credit Parties hereby irrevocably authorize.

(b) Each Credit Party agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable Law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Credit Parties. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable Law) purchase all or any part of the Collateral, free from any right of redemption by Credit Parties, which right is hereby waived and released. Each Credit Party covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal Law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Credit Parties will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Credit Parties shall be credited with the proceeds of the sale. Credit Parties shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Credit Party hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such

Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Credit Parties' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Credit Parties' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Cash Collateral. If (a) any Event of Default specified in Section 10.1(e) or 10.1(f) shall occur, (b) the Obligations shall have otherwise been accelerated pursuant to Section 10.2, or (c) the US Revolving Loan Commitment and the obligations of Agent and Lenders with respect thereto shall have been terminated pursuant to Section 10.2, then without any request or the taking of any other action by Agent or Lenders, US Borrowers shall immediately comply with the provisions of Section 2.5(e) with respect to the deposit of cash collateral to secure the existing Letter of Credit Liabilities and future payment of related fees.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, (a) the Loans and other Obligations shall bear interest at rates that are five percent (5.0%) per annum in excess of the rates otherwise payable under this Agreement, and (b) the fee described in Section 2.5(b) shall increase by a rate that is five percent (5.0%) in excess of the rate otherwise payable under such Section; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations (in the case of Canadian Borrowers, against and on account of any of the Canadian Obligations); except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by Law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent, except that at no time will payments received from Canadian Credit Parties or CFCs be applied to the US Obligations.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect, except that at no time will payments received from Canadian Credit Parties or CFCs or proceeds of Collateral of Canadian Credit Parties be applied to the US Obligations.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent from US Credit Parties in respect of the Obligations, and any and all proceeds of Collateral of US Credit Parties received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the US Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the US Obligations outstanding and to provide cash collateral to secure any and all Letter of Credit Liability and future payment of related fees, as provided for in Section 2.5(e); *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents, including the Canadian Obligations; and *sixth*, to the Obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

(d) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent from Canadian Credit Parties in respect of the Canadian Obligations, and any and all proceeds of Collateral of Canadian Credit Parties received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent by Canadian Credit Parties with respect to this Agreement, the

other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing by Canadian Credit Parties to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Canadian Obligations (including any interest which, but for the provisions of any Insolvency Law, would have accrued on such amounts); *fourth*, to the principal amount of the Canadian Obligations outstanding; and *fifth* to any other indebtedness or obligations of Canadian Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable Law, each Credit Party waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Credit Party may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Credit Party acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Credit Party for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Credit Party, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Credit Party and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Credit Party, Agent or any Lender for any Tax on the indebtedness; and (iv) to the fullest extent permitted by Law, expressly waives the benefit of any statute or rule of Law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to

any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Credit Parties to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable Law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of Taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Credit Party agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Credit Parties and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Credit Parties' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Credit Parties' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its sole and absolute discretion in respect of Credit Parties' obligations under the Financing Documents; provided that, at no time will payments received from Canadian Credit Parties or CFCs be applied to the US Obligations. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unencumbered Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by Law, each Credit Party, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Credit Party does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by Law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

Section 10.11 Right to Cure. Notwithstanding anything to the contrary contained in Section 10.1, upon an Event of Default resulting from a failure of Credit Parties to comply with the Senior Leverage Ratio set forth in Section 6.1 herein or the Fixed Charge Coverage Ratio set forth in Section 6.2 herein (each, a "**Subject Financial Covenant**"), such Event of Default shall, subject to the limitations in this Section 10.11, be deemed cured and cease to exist in the event that Credit Parties shall have satisfied all of the following conditions (the "**Cure Right**"): (a) within ten (10) Business Days after Agent has received (or if earlier, the date Agent is required to have received) the Compliance Certificate for the applicable Defined Period (the "**Cure Right Deadline**") in respect of which such non-compliance occurred (the "**Non-compliant Defined Period**"), the Borrower Representative shall have delivered to Agent an irrevocable notice to effect a cure of such Event of Default (the "**Equity Cure**"), (b) within ten (10) Business Days after delivery of such notice to Agent, Parent shall have received proceeds of Curative Equity for the sole and express purpose of effectuating the Equity Cure, and after giving effect to such Curative Equity, on a pro forma basis, Credit Parties shall be in compliance with

the Subject Financial Covenants, as such Subject Financial Covenants are recalculated in accordance with this Section 10.11. Upon the receipt by Parent of the cash proceeds of any Curative Equity pursuant to the exercise of the Cure Right, the Subject Financial Covenants shall be recalculated by giving effect, on a pro forma basis, to the following adjustments:

(a) such Curative Equity shall be deemed to have been received by Parent as of the last day of the Non-compliant Defined Period;

(b) EBITDA shall be increased by an amount equal to the Curative Equity, solely for the purpose of determining compliance with the Subject Financial Covenants in any Defined Period that includes the last day of the Non-compliant Defined Period, and not for any other purpose under this Agreement; and

(c) notwithstanding any mandatory prepayment made with the cash proceeds of any Curative Equity, any Debt so prepaid shall be deemed to remain outstanding for purposes of determining pro forma or actual compliance with the Subject Financial Covenants or for determining any pricing, financial covenant based conditions or baskets with respect to the covenants contained in this Agreement, in each case in the Non-compliant Defined Period and subsequent periods that include such Defined Period;

provided, that, (i) the Cure Right may be exercised no more than two (2) times during each fiscal year and no more than seven (7) times during the term of this Agreement, (ii) the Cure Right may not be exercised in two (2) consecutive quarters, (iii) at the time of the contribution of any Curative Equity, no Event of Default (other than an Event of Default arising due to a breach of the applicable Subject Financial Covenant and any other Subject Financial Covenant to the extent cured hereunder) shall have occurred and be continuing, and (iv) a Responsible Officer of Parent shall have delivered a certificate to Agent confirming Borrowers' receipt of Curative Equity and evidencing that the Equity Cure has been effected in accordance with the terms of this Section 10.11. Prior to the date of the delivery of such certificate conforming to the requirements of this Section 10.11, any Event of Default that has occurred as a result of a breach of a Subject Financial Covenant shall be deemed to be continuing.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 12.1 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties

hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Credit Parties) upon demand against

any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its sole discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Loan Commitment and payment in full of all Obligations, and, to the extent required by Agent in its sole discretion, the expiration, termination or cash collateralization (to the satisfaction of Agent) of all Swap Contracts secured, in whole or in part, by any Collateral; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any

time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the UCC in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of Lenders or Borrowers. Following any such assignment, Agent shall give notice to Lenders and Borrowers. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of Lenders, appoint a successor Agent; *provided, however*, that if Agent shall notify Borrowers and Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be

discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate

of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however*, that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending

settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Term Loan Payments. Payments of principal, interest and fees in respect of the Term Loan will be settled on the date of receipt if received by Agent on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any Insolvency Law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other

Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by Law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable Insolvency Law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "Additional Titled Agents"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Revolving Loans set forth in Section 7.2, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by

Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loans Outstanding in excess of \$0 or a Term Loan outstanding in excess of \$0; *provided, however*, that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a US Revolving Loan Commitment Amount and/or a Canadian Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount, as applicable, of each Non-Funding Lender shall be deemed to be \$0.

(c) The US Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate US Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate US Revolving Loan Outstandings of all Non-Funding Lenders as of such date. The Canadian Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Canadian Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate Canadian Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) *[Reserved]*.

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party, other than reimbursement obligations that have arisen pursuant to Section 2.5(c) in respect of Letters of Credit issued at the time such Non-Funding Lender was not then a Non-Funding Lender.

(f) Agent shall have no right to (i) make or disburse US Revolving Loans as provided in Section 2.1(b)(i) for the account of any Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), or (ii) assume that any Revolving Lender that was a Non-Funding Lender at the time of issuance of such Letter of Credit will fund any portion of the US Revolving Loans to be funded pursuant to Section 2.5(c) in respect of such Letter of Credit. In addition, no Revolving Lender that was a Non-Funding Lender at the time of issuance of any Letter of Credit for which funding or reimbursement obligations have arisen pursuant to Section 2.5(c), shall have an obligation to fund any portion of the US Revolving Loans to be funded pursuant to Section 2.5(c) in respect to such Letter of Credit, or to make any payment to

Agent or the L/C Issuer, as applicable, under Section 2.5(f)(ii) in respect of such Letter of Credit, or be deemed to have purchased any interest or participation in such Letter of Credit from Agent or the L/C Issuer, as applicable, under Section 2.5(f)(i).

(g) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.17 Buy-Out Upon Refinancing. MCF shall have the right to purchase from the other Lenders all of their respective interests in the Loan at par in connection with any refinancing of the Loan upon one or more new economic terms, but which refinancing is structured as an amendment and restatement of the Loan rather than a payoff of the Loan.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be materially amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 12.1(b); *provided, however*, that Agent shall be entitled, in its sole and absolute discretion, to provide its written consent to a proposed Swap Contract, in each case without the consent of any other Lender.

(b) In addition to the required signatures under Section 12.1(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent or LC Issuer are affected thereby, by Agent and LC Issuer, as the case may be;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or Reimbursement Obligation or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan or Reimbursement Obligation; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan or of any Reimbursement Obligation, or of interest on any Loan or Reimbursement Obligation (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise

dispose of all or substantially all of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.1(b) or the definitions of the terms used in this Section 12.1(b) insofar as the definitions affect the substance of this Section 12.1(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, US Revolving Loan Commitment, Canadian Revolving Loan Commitment, Term Loan Commitment, US Revolving Loan Commitment Amount, Canadian Revolving Loan Commitment Amount, Term Loan Commitment Amount, US Revolving Loan Commitment Percentage, Canadian Revolving Loan Commitment Percentage, Term Loan Commitment Percentage or that provide for Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

(c) Without limitation of the provisions of the preceding clause (a) and (b), no waiver, amendment or other modification to this Agreement shall, unless signed by each Eligible Swap Counterparty then in existence, modify the provisions of Section 10.7 in any manner adverse to the interests of each such Eligible Swap Counterparty.

Section 12.2 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to \$1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however*, that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of \$3,500 to be paid by the assigning Lender; *provided, however*, that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds. Notwithstanding the foregoing, any assignment or transfer of a US Revolving Loan Commitment shall include a corresponding assignment or transfer of a Canadian Revolving Loan

Commitment in an amount which bears the same proportion to the aggregate Canadian Revolving Loan Commitment as the related US Revolving Loan Commitment assigned to the aggregate US Revolving Loan Commitment, and vice versa in the case of an assignment or transfer of any Canadian Revolving Loan Commitment.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.15). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of each Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount and stated interest of the Loan owing to, such Lender pursuant to the terms hereof. The entries in such register shall be conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. No assignment shall be effective unless recorded in such register. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. The parties intend that the register be maintained such that the Loans are in "registered form" for the purposes of the Code.

(iv) Notwithstanding the foregoing provisions of this Section 12.2(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however*, 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.

(v) Notwithstanding the foregoing provisions of this Section 12.2(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement

Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 12.2(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender; *provided* each Participant shall be entitled to payments under Section 2.8 as if such Participant were a Lender if such Participant complies with Section 2.8(c) as if it were a Lender accepting an interest in a Loan through an assignment (provided, however, that such Participant shall not be entitled to receive any greater payment under Section 2.8 with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in applicable Law that occurs after the Participant acquired the applicable participation). Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Financing 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 Financing 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 for the purposes of the Code, including 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, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

Notwithstanding anything to the contrary set forth herein, in no event may any Lender effect an assignment of, or sell a Participation in, all or any portion of such Lender's Loan or Commitments under this Agreement to a Competitor.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a) or 2.8(b), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 12.2(a); *provided, however*, that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a), Section 2.8(b) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the \$3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 12.2(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 12.2(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 12.2(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 12.2(a), Borrowers, shall be effective for purposes of this Section 12.2(c) and Section 12.2(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.15.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar

writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an Assignment Agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided, however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided, however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided, however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided, however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, and to prospective contractual counterparties (or the professional advisors thereto) in Swap Contracts permitted hereby, *provided, however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" shall mean (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided, however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable Law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), 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 Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information

transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND (EXCEPT AS MAY OTHERWISE BE PROVIDED FOR THEREIN) EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) EACH CREDIT PARTY HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF MONTGOMERY AND STATE OF MARYLAND AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH CREDIT PARTY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH CREDIT PARTY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH CREDIT PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(c) Each Credit Party, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

Section 12.9 WAIVER OF JURY TRIAL. EACH CREDIT PARTY, AGENT AND LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH CREDIT PARTY, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH CREDIT PARTY, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF

REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity.

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent (limited, solely in the case of the costs, fees and disbursements of counsel, to the fees, disbursements and other out-of-pocket charges of one primary counsel to Agent and, if reasonably necessary or advisable, one local counsel to Agent in each relevant jurisdiction) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC, PPSA, *Bank Act* (Canada), searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. This Section 12.14(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) Each Credit Party hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collaterals, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Transaction Documents

(including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by a Credit Party, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of a Credit Party or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans and Letters of Credit, except that Credit Parties shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Credit Parties shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them. This Section 12.14(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) Notwithstanding any contrary provision in this Agreement, the obligations of Credit Parties under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE CREDIT PARTIES OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Transaction Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law,

rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.19 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.20 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Financing Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower in respect of any such sum due from it to Agent or any Lender hereunder or under the other Financing Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Agent or any Lender from any Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Agent or any Lender in such currency, Agent or such Lender, as the case may be, agrees to return the amount of any

excess to such Borrower (or to any other Person who may be entitled thereto under applicable Law).

Section 12.21 Canadian Anti-Money Laundering Legislation.

(a) Each Credit Party acknowledges that, pursuant to the Anti-Terrorism Laws and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lenders may be required to obtain, verify and record information regarding the Canadian Credit Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Canadian Credit Parties, and the transactions contemplated hereby. Each Credit Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or any prospective assignee or participant of a Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If Agent has ascertained the identity of any Credit Party or any authorized signatories of the Canadian Credit Parties for the purposes of applicable AML Legislation, then Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that neither Agent nor any other agent has any obligation to ascertain the identity of the Canadian Credit Parties or any authorized signatories of the Canadian Credit Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Credit Party or any such authorized signatory in doing so.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

(Signature Page to Credit and Security Agreement – AVAD)

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

US BORROWERS:

AVAD LLC, a Delaware limited liability company

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
 Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolf@Kingswood-capital.com

WAVE ELECTRONICS, INC., a Texas corporation

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
 Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolf@Kingswood-capital.com

(Signature Page to Credit and Security Agreement – AVAD)

WAVE ELECTRONICS ARIZONA, LLC, a Texas
limited liability company

By: Alex Wolf

Name: Alex Wolf

Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: ~~awolf@~~ awolf@kingwood-capital.com

WAVE ELECTRONICS CALIFORNIA, LLC, a
Texas limited liability company

By: Alex Wolf

Name: Alex Wolf

Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolf@kingwood-capital.com

(Signature Page to Credit and Security Agreement – AVAD)

WAVE ELECTRONICS FLORIDA, LLC, a Texas
limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolf@kingswood-capital.com

WAVE ELECTRONICS LOUISIANA, LLC, a
Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolf@kingswood-capital.com

(Signature Page to Credit and Security Agreement – AVAD)

WAVE ELECTRONICS NEW JERSEY, LLC, a
Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolfe@kingswood-capital.com

MSTR BRAND, INC., a Texas corporation

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolfe@kingswood-capital.com

(Signature Page to Credit and Security Agreement – AVAD)

ELECTRONICS OUTLET, LLC, a Delaware
limited liability company

By: Alex Wolf

Name: Alex Wolf

Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolf@kingswood-capital.com

(Signature Page to Credit and Security Agreement – AVAD)

CANADIAN BORROWER:

AVAD CANADA LTD., a British Columbia corporation

By: Alex Wolf

Name: Alex Wolf

Title: Vice President and Secretary

Address:

8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255

Attn: _____

Facsimile: _____

Email: awolf@Kingswood-capital.com

(Signature Page to Credit and Security Agreement – AVAD)

GUARANTOR:

KINGSWOOD AVAD LLC, a Delaware limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

Address:

11777 San Vicente Blvd Suite 650
Los Angeles, CA 90049

Attn: _____

Facsimile: _____

Email: awolfe@kingswood-capital.com

(Signature Page to Credit and Security Agreement – AVAD)

AGENT:

MIDCAP FINANCIAL TRUST, as Agent

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 

Name: Michael Levin

Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AVAD transaction
Facsimile: 301-941-1450
Email: notices@midcapfinancial.com

With a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
Email: legalnotices@midcapfinancial.com

Payment Account Designation

Sun National Bank
25 Park Place
Atlanta, GA 30303
ABA #: 061-000-104
Account Name: MidCap Financial Trust
Account #: 1000113400435
Attention: AVAD transaction

(Signature Page to Credit and Security Agreement – AVAD)

LENDER:

MIDCAP FINANCIAL TRUST, as a Lender

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AVAD transaction
Facsimile: 301-941-1450
Email: notices@midcapfinancial.com

With a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
Email: legalnotices@midcapfinancial.com

(Signature Page to Credit and Security Agreement – AVAD)

LENDER:

MIDCAP FUNDING H TRUST, as a Lender

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AVAD transaction
Facsimile: 301-941-1450
Email: notices@midcapfinancial.com

With a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
Email: legalnotices@midcapfinancial.com

(Signature Page to Credit and Security Agreement – AVAD)

LENDER:

APOLLO INVESTMENT CORPORATION, as a
Lender

By: Apollo Investment Management, L.P.,
its Investment Adviser

By: ACC Management, LLC, its General Partner

By: 
Name: Joseph D. Glatt
Title: Vice President

Address:

9 West 57th Street, 37th Floor
New York, NY 10019
Attn: Joseph D. Glatt
Facsimile: 646-417-6605
Email: jglatt@apolloip.com

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

| Lender | US Revolving Loan Commitment Amount | US Revolving Loan Commitment Percentage | Canadian Revolving Loan Commitment Amount | Canadian Revolving Loan Commitment Percentage | Term Loan Commitment Amount | Term Loan Commitment Percentage |
|-------------------------------------|--|--|--|--|--|--|
| MidCap Financial Trust | \$31,333,333.33 | 66.6666% | \$2,000,000 | 66.6666% | \$0 | 0% |
| MidCap Funding H Trust | \$0 | 0% | \$0 | 0% | \$16,666,666.67 | 66.6667% |
| Apollo Investment Corporation | \$15,666,666.67 | 33.3334% | \$1,000,000 | 33.3334% | \$8,333,333.33 | 33.3333% |
| TOTALS | \$47,000,000 | 100% | \$3,000,000 | 100% | \$25,000,00 | 100% |

EXHIBIT A TO CREDIT AGREEMENT (RESERVED)

EXHIBIT B TO CREDIT AGREEMENT (COMPLIANCE CERTIFICATE)**COMPLIANCE CERTIFICATE**

Date: _____, 201__

This Compliance Certificate is given by _____, a Responsible Officer of [_____], a [_____] (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of [_____], 2018 among Borrower Representative, certain Affiliates of Borrower Representative that are Borrowers, Kingswood AVAD LLC, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MIDCAP FINANCIAL TRUST, a Delaware statutory trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders, on behalf of the Borrower Representative and not in any individual capacity, that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in Schedule 1 hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(c) except as noted on Schedule 2 attached hereto, the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantor conduct business;

(d) except as noted on Schedule 3 attached hereto, the undersigned has no knowledge of (i) any federal or state Tax liens having been filed against any Borrower, Guarantor or any Collateral or (ii) any failure of any Borrower or any Guarantor to make required payments of withholding or other Tax obligations of any Borrower or any Guarantor during the accounting period to which the attached statements pertain or any subsequent period.

(e) Except on Schedule 4 hereto, Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts and investment accounts maintained by Borrowers and Guarantors;

(f) except as noted on Schedule 5 attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against any Borrower or any Guarantor that would reasonably be expected to result in damages or costs to any Credit Party or any of its Subsidiaries of \$100,000 or more; (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of any Borrower or any Guarantor which would reasonably be expected to have a Material Adverse Effect; or (iii) any default by any Borrower or any Guarantor under any Material Contract to which it is a party.

(g) except as noted on Schedule 6 attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any Schedule 5 to any previous Compliance Certificate delivered by the Company to Agent.

(h) except as noted on Schedule 7 attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(i) except as noted on Schedule 8 attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.

(j) Borrowers and Guarantors (if any) are in compliance with the covenants contained in Article 6 of the Credit Agreement, and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation of such covenants below, except as set forth below; in determining such compliance, the following calculations have been made: **[See attached worksheets]**. Such calculations and the certifications contained therein are true, correct and complete.

(k) **[The current balance of the Litigation Escrow Amount (as defined in the Closing Date Acquisition Agreement as in effect on Closing Date) available to the Credit Parties as of the date of this certificate is \$[_____] and there have been no material**

developments, court rulings or other events adverse to any Credit Party with respect to the Known Litigation except for the following: [please list]]¹

The foregoing certifications and computations are made as of _____, 201__
(end of month) and as of _____, 201__.

Sincerely,

[_____]

By: _____

Name: _____

Title: _____

¹ Clause (k) to be included in each Compliance Certificate delivered in respect of a month that is the last month of each fiscal quarter of the Credit Parties.

EBITDA Worksheet (Attachment to Compliance Certificate)

EBITDA for the applicable Defined Period is calculated as follows:

Net income (or loss) for such Defined Period of Parent and its Consolidated Subsidiaries, *minus* without duplication, the sum of the following amounts of Parent and its Consolidated Subsidiaries for such period to the extent included in determining consolidated net income (or loss) for such period:

\$ _____

(i) interest income,

\$ _____

(ii) federal, state and local income tax credits,

\$ _____

(iii) any extraordinary or non-recurring income or gains,

\$ _____

(iv) non cash income or gains,

\$ _____

(v) unrealized or realized gains in respect of obligations under hedging transactions, and gains resulting from currency translation or transaction gains related to currency re-measurements of Indebtedness, and all other foreign currency translation or transaction gains, and

\$ _____

(vi) gains from the receipt of proceeds under insurance policies net of any associated losses.

\$ _____

plus without duplication, the sum of the following amounts of Parent and its Consolidated Subsidiaries for such period to the extent deducted in determining consolidated net income (or loss) for such period:

\$ _____

(i) interest expense,

\$ _____

(ii) income taxes,

\$ _____

(iii) depreciation and amortization,

\$ _____

(iv) any extraordinary or non-recurring expenses or losses (including severance and IT related expenses at AVAD to be discontinued as of its conversion to the Eclipse ERP system),

\$ _____

(v) non-cash expenses or losses; provided, however, such expenses or losses shall exclude any non-cash expenses or losses related to Accounts and Inventory,

\$ _____

(vi) unrealized or realized losses in respect of obligations under hedging transactions, and losses resulting from currency translation or transaction gains related to currency re-

\$ _____

- measurements of Indebtedness, and all other foreign currency translation or transaction losses,
- (vii) charges, losses or expenses to the extent indemnified, insured, reimbursed or reimbursable or otherwise covered by a third party, in each case, but without duplication, \$ _____
- (viii) management fees and expenses paid or accrued which shall not exceed \$1,000,000 in the first three (3) years following the Closing and shall not exceed \$750,000 in the fourth and fifth years following the Closing, \$ _____
- (ix) with respect to the Closing Date Acquisition, costs, fees, charges or expenses, in each case, incurred in connection therewith prior to, on or within ninety (90) days following the Closing Date; provided that to the extent not funded on or before the Closing Date, such costs, fees, charges, or expenses do not exceed \$1,000,000, \$ _____
- (x) expenses, charges and fees (including expenses, charges and fees paid to Agent and Lenders) incurred during such period and after the Closing Date in connection with the administration (including in connection with any waiver, amendment, supplementation or other modification thereto of the Financing Documents) of the Financing Documents, \$ _____
- (xi) for the six (6) months following the Closing Date only, monthly losses related to Wave's Anaheim, California branch not to exceed \$350,000 in aggregate, \$ _____
- (xii) for the eighteen (18) months immediately following the Closing Date only, monthly expenses, charges and costs related to leasing and operating AVAD's Baltimore distribution center not to exceed \$725,000 in aggregate on a trailing twelve months basis and \$75,000 in any single month, \$ _____
- (xiii) for the eighteen (18) months immediately following the Closing Date, monthly unrealized cost synergies related to (i) headcount and fringes, (ii) occupancy, (iii) professional fees, and (iv) other unrealized synergies (collectively, the "**Unrealized Synergies Costs**"), and² \$ _____

² Notwithstanding the foregoing, for each month set forth below Unrealized Synergies Costs shall not exceed the amount set forth below for such month:

| <u>Month</u> | <u>Unrealized Synergies Costs</u> |
|-------------------|-----------------------------------|
| October 31, 2018 | \$650,000 |
| November 30, 2018 | \$650,000 |

- (xiv) for the eighteen (18) months following the Closing Date only, integration charges related to (i) AVAD's adoption of Wave's ERP system not to exceed \$850,000 in aggregate on a trailing twelve months basis, (ii) personnel, including severance and retention bonuses not to exceed \$750,000 in aggregate on a trailing twelve months basis, (iii) occupancy net of sublease income not to exceed \$525,000 in aggregate on a trailing twelve months basis and \$60,000 in any single month, (iv) general restructuring not to exceed \$1,200,000 in aggregate on a trailing twelve months basis and \$100,000 in any single month (collectively, the "**Integration Costs**").

\$ _____

EBITDA for the Defined Period:³

\$ _____

| | |
|--------------------|-----------|
| December 31, 2018 | \$650,000 |
| January 31, 2019 | \$600,000 |
| February 28, 2019 | \$600,000 |
| March 31, 2019 | \$600,000 |
| April 30, 2019 | \$450,000 |
| May 30, 2019 | \$450,000 |
| June 30, 2019 | \$450,000 |
| July 31, 2019 | \$400,000 |
| August 31, 2019 | \$400,000 |
| September 30, 2019 | \$400,000 |
| October 31, 2019 | \$100,000 |
| November 30, 2019 | \$100,000 |
| December 31, 2019 | \$100,000 |
| January 31, 2020 | \$100,000 |
| February 29, 2020 | \$100,000 |
| March 31, 2020 | \$100,000 |

- ³ Notwithstanding the foregoing, solely for the purposes of calculating the Senior Leverage Ratio, EBITDA for each month set forth below shall be deemed to be the amount set forth below for such month:

| <u>Period</u> | <u>EBITDA</u> |
|-------------------|----------------|
| November 30, 2017 | \$1,786,595.05 |
| December 31, 2017 | \$1,369,743.12 |
| January 31, 2018 | \$843,513.16 |
| February 28, 2018 | \$1,235,506.86 |
| March 31, 2018 | \$1,718,341.31 |
| April 30, 2018 | \$1,152,785.12 |
| May 31, 2018 | \$1,901,866.02 |
| June 30, 2018 | \$2,426,588.87 |
| July 31, 2018 | \$1,548,281.15 |
| August 31, 2018 | \$1,826,444.36 |

| | |
|--------------------|----------------|
| September 30, 2018 | \$2,761,999.80 |
|--------------------|----------------|

Senior Leverage Ratio Worksheet (Attachment to Compliance Certificate)

Senior Debt for the applicable Defined Period is calculated as follows:

The amount equal to the total aggregate Debt for borrowed money of Parent and its Subsidiaries, including, without limitation, the Obligations hereunder and Debt under capitalized leases, but excluding the outstanding balance of any Subordinated Debt and excluding, for avoidance of doubt, Letters of Credit (except to the extent such Letters of Credit have been drawn and not reimbursed)

\$ _____

EBITDA for the Defined Period (calculated pursuant to the EBITDA worksheet)

\$ _____

Covenant Compliance:

\$ _____

Senior Leverage Ratio (Ratio of Senior Debt to EBITDA) for the Defined Period

___ to 1.0

Maximum Senior Leverage Ratio for the Defined Period

_____ to 1.0

In Compliance

Yes/No

Fixed Charge Coverage Ratio Worksheet (Attachment to Compliance Certificate)

Fixed Charges for the applicable Defined Period is calculated as follows:

Interest expense, net of interest income, interest paid in kind and amortization of capitalized fees and expenses incurred to consummate the transactions contemplated by the Financing Documents and included in interest expense, included in the determination of net income of Parent and its Consolidated Subsidiaries for the Defined Period ("**Total Interest Expense**") \$ _____

Plus: Any provision for (or minus any benefit from) income or franchise Taxes included in the determination of net income for the Defined Period \$ _____

Plus: Payments of principal and interest for the Defined Period with respect to all Debt (including the portion of scheduled payments under capital leases allocable to principal but excluding mandatory prepayments required by Section 2.1 and excluding scheduled repayments of Revolving Loans and other Debt subject to reborrowing to the extent not accompanied by a concurrent and permanent reduction of the US Revolving Loan Commitment or the Canadian Revolving Loan Commitment (or equivalent loan commitment)) \$ _____

Plus: Permitted Distributions, including Tax distributions, for the Defined Period \$ _____

Plus: Integration Costs added back to EBITDA, for the Defined Period \$ _____

Fixed Charges for the applicable Defined Period: \$ _____

Operating Cash Flow for the applicable Defined Period is calculated as follows:

EBITDA for the Defined Period (calculated pursuant to the EBITDA Worksheet) \$ _____

Minus: Unfinanced Capital Expenditures for the Defined Period \$ _____

Minus: To the extent not already reflected in the calculation of EBITDA, other capitalized costs, defined as the gross amount paid in cash and capitalized during the Defined Period, as long term assets, other than amounts capitalized \$ _____

during the Defined Period as capital expenditures for property, plant and equipment or similar fixed asset accounts

Operating Cash Flow for the Defined Period: \$ _____

Covenant Compliance:

Fixed Charge Coverage Ratio (Ratio of Operating Cash Flow to Fixed Charges) for the Defined Period _____ to 1.0

Minimum Fixed Charge Coverage for the Defined Period _____ to 1.0

In Compliance Yes/No

EXHIBIT C TO CREDIT AGREEMENT (BORROWING BASE CERTIFICATES)

(See Attached)

**MidCap Funding X Trust
Borrowing Base Certificate**

BBR Date: October 2, 2018
Name: AVAD, LLC

USA

10/02/18

x

| <u>Accounts Receivable</u> | | Total | |
|--|----|--------------|--|
| 1. Summary Billed AR Aging | | | |
| 0 - 30 Days | \$ | - | |
| 31 - 60 Days | \$ | - | |
| 61 - 90 Days | \$ | - | |
| 90+ Days | \$ | - | |
| Total A/R | \$ | - | |
| 2. (Less): Ineligible Billed AR | | | |
| | \$ | - | |
| 3. Eligible Accounts | | | |
| | \$ | - | |

x

| <u>Computation of Availability</u> | | | |
|--|--|----|--------------|
| 4. Total Net Eligible Accounts: | | \$ | - |
| 5. Rollforward Calculation | | | |
| (Less): Cash Posted Since Last Aging | | | |
| Add: Revenues since last aging | | | |
| Add: Float Items (Cash Received, not applied to the loan balances) | | \$ | - |
| Plus/(Minus): Adjustments | | \$ | - |
| 6. Net Eligible Accounts | | \$ | - |
| 7. Advance Rate | | | 85.0% |
| Dilution Reserve | | | #DIV/0! |
| Advance Rate, net | | | #DIV/0! |
| 8. Net A/R Availability | | | #DIV/0! |
| 9. Credit Card Availability | | \$ | - |
| 10. Inventory Availability | | \$ | - |
| Rent Reserve | | \$ | (329,564.62) |
| WEPP Reserve | | \$ | (28,000.00) |
| 11. Total Reserves | | \$ | (357,564.62) |
| 12. Net Availability | | | #DIV/0! |

x

| <u>Computation of Loan</u> | | | |
|--|--|----|---------------|
| 13. Facility Limit | | \$ | 47,000,000.00 |
| 14. Available to Borrow (not to exceed limit) | | | #DIV/0! |
| 15. Loan Balance on Prior Borrowing Base Certificate | | \$ | - |
| 16. (Less): Cash Collections since last Borrowing Base Certificate | | \$ | - |
| 17. Increase/(Decrease): Adjustments | | \$ | - |
| 18. Total Loan Advances | | \$ | - |
| AVAD Funding Acct. #2551 | | | |
| Wave Funding Acct. #8676004636 | | | |
| 19. Ending Loan Balance | | \$ | - |
| 20. Letters of Credit | | \$ | - |
| 21. Remaining Availability (Lines 14-19-20) | | | #DIV/0! |

Pursuant to, and in accordance with, the terms and provisions of the Credit and Security Agreement and other Financing Loan Documents ("Documents"), between Midcap Funding X Trust, as assignee of MidCap Financial Trust ("Secured Party"), AVAD, LLC ("Borrower Representative") and other Credit Parties, Borrower Representative is executing and delivering to Secured Party this Borrowing Base Certificate accompanied by supporting data (collectively referred to as "Report"). Borrower Representative warrants and represents to Secured Party that this Report is true, correct, and based on information contained in Borrowers' own financial accounting records.

Borrower Representative, by the execution of this Report:

(a) Hereby ratifies, confirms, and affirms all of the terms, and further certifies that the Borrowers are in compliance with the Loan Documents as of October 02, 2018:

(b) Hereby certifies that the Borrowers have paid all State and Federal payroll withholding taxes immediately due and payable through October 02, 2018.

This document does not supercede any provisions of the Credit and Security Agreement. Capitalized Terms used herein and not otherwise defined shall have the meaning ascribed to them in the Credit and Security Agreement between Secured Party and Borrowers dated October 02, 2018.

(Responsible Officer's Signature)

Name: William Steckel
Title: CFO

EXHIBIT D TO CREDIT AGREEMENT (NOTICE OF BORROWING)**NOTICE OF BORROWING**

This Notice of Borrowing is given by _____, a Responsible Officer of [_____] a [_____] (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of [_____] 2018 among the Borrower Representative, certain Affiliates of Borrower Representative that are Borrowers, [_____] and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Kingswood AVAD LLC, **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to on _____, 201__ borrow \$_____ of Loans on _____, 201___. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, [**the US Revolving Loan Outstandings will not exceed the US Revolving Loan Limit**] [**the Canadian Revolving Loan Outstandings will not exceed the Canadian Revolving Loan Limit**].

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT E TO CREDIT AGREEMENT (PAYMENT NOTIFICATION)

PAYMENT NOTIFICATION

This Payment Notification is given by _____, a Responsible Officer of [_____] a [_____] (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of [_____] 2018 among the Borrower Representative, certain Affiliates of Borrower Representative that are Borrowers, [_____] and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), Kingswood AVAD LLC, **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

[Please be advised that funds in the amount of \$_____ will be wire transferred to Agent on _____, 20__.] [Such funds shall constitute [an optional] [a mandatory] prepayment of the Term Loan, with such prepayments to be applied in the manner specified in Section 2.1(a)(iii). [Such mandatory prepayment is being made pursuant to Section 2.1(a)(ii)(__) of the Credit Agreement.] [This notice constitutes an optional reduction of the [US Revolving Loan Commitment][Canadian Revolving Loan Commitment] in the amount of \$_____ pursuant to Section 2.1(b)(iii).]

Fax to MCF Operations 301-941-1450 no later than noon Eastern time.

Note: Funds must be received in the Payment Account by no later than noon Eastern time for same day application

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Payment Notification this ____ day of _____, 20__.

Sincerely,

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT F TO CREDIT AGREEMENT (EXCESS CASH FLOW CERTIFICATE)**EXCESS CASH FLOW CERTIFICATE**

This Excess Cash Flow Certificate is given by _____, a Responsible Officer of [_____], a [_____] (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of [_____], 2018 among Borrower Representative, certain Affiliates of Borrower Representative that are Borrowers, Kingswood AVAD LLC, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders, on behalf of the Borrower Representative and not in any individual capacity, that:

- (a) set forth below is a schedule of Excess Cash Flow for the fiscal year ended _____, 20__ and the calculation of the required prepayment of \$ _____; and
- (b) the schedule set forth below is based on the audited financial statements which have been delivered to Administrative Agent in accordance with Section 4.1(b) of the Credit Agreement.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Payment Notification this ____ day of _____, 20__.

Sincerely,

[_____]

By: _____
 Name: _____
 Title: _____

Excess Cash Flow Worksheet (Attachment to Excess Cash Flow Certificate)

Excess Cash Flow is defined as follows (each for the year ended _____, _____):

EBITDA for the Defined Period (calculated in the manner required by the Compliance Certificate) \$ _____

Less: (in each case, without duplication)

Regularly scheduled principal payments with respect to all Debt actually paid during such Defined Period (including Capital Leases allocable to principal, but excluding, for the avoidance of doubt, (i) mandatory prepayments required by Section 2.1(a)(ii)(B) of the Credit Agreement, (ii) repayments of Revolving Credit Loans and other Debt subject to reborrowing to the extent not accompanied by a concurrent and permanent reduction of the Revolving Credit Commitment (or equivalent loan commitment), and (iii) the amortization of debt discount or premium) _____

The aggregate amount of all prepayments of Revolving Credit Loans during such Defined Period to the extent accompanying permanent optional reductions of the Revolving Loan Commitment and all optional prepayments of Term Loans during such Defined Period, in each case, pursuant to Section 2.1(a)(ii)(C) of the Credit Agreement and, to the extent not financed with long-term Debt or equity issuances _____

Restricted Distributions made in cash during such Defined Period by Borrowers and to the extent permitted under Section 5.3 of the Credit Agreement, except to the extent financed with long-term Debt or equity issuances _____

The amount actually paid in cash during such Defined Period on account of Capital Expenditures (excluding the principal amount of Debt incurred in connection with such Capital Expenditures) _____

Interest expense (net of interest income) paid in cash during such Defined Period _____

Taxes of Borrower and the other Credit Parties paid in cash during such Defined Period _____

Management fees and expenses paid in cash during such Defined Period by Borrower and to the extent permitted under Section 5.8 and added back to net income in the computation of EBITDA for _____

such Defined Period

The amount actually paid in cash during such Defined Period on account of Capital Expenditures (excluding the principal amount of Debt incurred in connection with such expenditures and any such expenditures financed with Net Cash Proceeds pursuant to Section 2.1(a)(ii)(B)(i)

Unrealized Synergies Costs, to the extent added back to net income in the computation of EBITDA for such Defined Period

Integration Costs, to the extent added back to net income in the computation of EBITDA for such Defined Period

The amount of all net non-cash gains (exclusive of items reflected in Working Capital) (or plus net non-cash losses) included in arriving at net income for the Defined Period

Increase in Working Capital (calculated as the beginning of Defined Period Working Capital minus end of Defined Period Working Capital)

Plus:

Decrease in Working Capital (calculated as the beginning of Defined Period Working Capital minus end of Defined Period Working Capital)

extraordinary gains which are cash items not included in the calculation of EBITDA

Excess Cash Flow (if positive)

\$_____

Multiplied by:

Required prepayment percentage

50%

Equals:

Required prepayment amount:

\$_____

Schedule 1. 1(b)**Credit Card Issuers**

- Mastercard
- Visa
- American Express
- Discover
- American Express Travel Related Services Company, Inc.

Schedule 1.1(c)**Credit Card Processors**

- Paymentech
- PayPal

Schedule 1.1(d) – Competitors

ADI Global Distribution
Alarm.com
Allnet Distributing, Inc.
Almo Corporation
Anixter Inc. Tri-Ed
BlueStar, Inc.
Bose
Capitol Sales Company
Catalyst AV
CDW
Custom Plus Distributing
D&H Distributing Co.
DOW Electronics
Group One Northwest, Inc.
HCA Distributing
Home Controls
Honeywell
Ingram Micro
Interstate Electronic Co.
Legrand
Lennar
LG
Liberty AV Solutions
Nortek
Parts Express
Patrick Industries
Petra Industries, Inc.
Powerhouse Alliance
Professional Systems Network International (PSNI)
Progressive Group
Sam Zell
Samsung
Savant
SnapAV
Sony
Sound United
Stampede Global
Tech Data
Tri-Ed
USAV, LLC
Vickers AV
Walters Wholesale Electric Co.
Worthington Distribution

Schedule 1.1(e) – Extended Terms Account Debtors

| Wave Customer | Customer # / ID |
|---------------------------------|----------------------------|
| Lennar Homes LLC | 19347 |
| Reliant Energy/NRG | 10654 |
| IES Residential-HOUSTON | 1426 |
| Duke Energy Business Service | 22853 |
| American Defense | 4813 |
| MY ALARM CENTER LLC | 10445 |
| Home Pro Inc. | 447 |
| ENVISION SECURITY INC. | 14637 |
| EDMONSON ELECTRIC INC. | 21541 |
| Skyline Security Management Inc | 9533 |
| Strada Services Inc. | 13889 |
| SMART SYSTEMS TECHNOLOGIES | 23654 |
| SAFE HAVEN SECURITY | 25786 |
| AVAD Customer | |
| DISH Network | |

Schedule 2.1 – Amortization

On the first calendar day of each month, commencing on November 1, 2018, US Borrowers shall pay to Agent as a principal payment under the Term Loan outstanding an amount equal to the amount set forth below on each specified payment date as an amortization payment in respect of the Term Loan. Notwithstanding anything to the contrary contained in the foregoing, the entire remaining outstanding principal balance under the Term Loan shall mature and be due and payable on the Termination Date.

| <u>Payment Date</u> | <u>Payment Amount</u> |
|--|-----------------------|
| November 1, 2018 through and including October 1, 2019 | \$208,333 |
| November 1, 2019 through and including October 1, 2021 | \$260,417 |
| November 1, 2021 and thereafter | \$312,500 |

Schedule 3.1**Existence, Organizational ID Numbers, Foreign Qualification, Prior Names**

| Credit Party | Type of Entity / State of Formation | State Org. ID Number | Foreign Qualifications | Other Names Used in Past 5 Years |
|----------------------------------|--|-----------------------------|-------------------------------|---|
| Kingswood AVAD LLC | Delaware limited liability company | 6011091 | n/a | n/a |
| AVAD LLC | Delaware limited liability company | 050484722 | n/a | n/a |
| AVAD Canada Ltd. | British Columbia corporation | C11761851 | n/a | Amalgamated with Kingswood AVAD Canada Ltd. |
| Electronics Outlet, LLC | Delaware limited liability company | 6281338 | n/a | n/a |
| WAVE Electronics, Inc. | Texas corporation | 0163503700 | n/a | n/a |
| MSTR Brand, Inc. | Texas corporation | 0801859073 | n/a | MSTR Brands, LLC |
| WAVE Electronics Arizona, LLC | Texas limited liability company | 0802028241 | n/a | n/a |
| WAVE Electronics California, LLC | Texas limited liability company | 0802476870 | n/a | n/a |
| WAVE Electronics Florida, LLC | Texas limited liability company | 0801624321 | n/a | n/a |
| WAVE Electronics Louisiana, LLC | Texas limited liability company | 0801158211 | n/a | n/a |

| | | | | |
|----------------------------------|---------------------------------|------------|-----|-----|
| WAVE Electronics New Jersey, LLC | Texas limited liability company | 0801624285 | n/a | n/a |
|----------------------------------|---------------------------------|------------|-----|-----|

Schedule 3.4
Capitalization

| Kingswood AVAD LLC | Equity Held |
|---|----------------------|
| CLASS A UNITS | 958,326.96 |
| Kingswood WAVE Aggregator LP | 702,327.50 |
| Amended and Restated Thomas Jacoby Revocable Trust | 27,591.44 |
| Griffin Opportunities, LLC | 20,066.50 |
| SJK Family Limited Partnership LP | 25,083.13 |
| KCK Family Limited Partnership LP | 25,083.13 |
| Fred Farrar | 16,304.03 |
| Charles E .Lanham Family Wealth Trust for Kyle E. Lanham | 10,033.25 |
| Charles E. Lanham Family Trust for Lisa M. Lanham | 10,033.25 |
| Brad and Brandy Stroh 2015 Irrevocable Trust | 12,541.56 |
| Paul Kasper | 3,260.81 |
| Alex Wolf | 17,558.19 |
| Jim Renna | 12,541.56 |
| Mark Fukuda | 37,951.30 |
| Ainslie Fukuda | 27,108.07 |
| Bryan Stewart | 10,843.23 |
| CLASS B UNITS | 22,216,298.87 |
| Kingswood Opportunity Fund I LLC | 16,455,154.09 |
| Mark Fukuda | 1,080,214.65 |
| Gary Wermuth | 720,143.10 |
| Tom Jacoby | 450,089.44 |
| Fred Farrar | 180,035.77 |
| Jill Sawchak | 270,053.66 |
| Jon Zabel | 540,107.32 |

| AVAD LLC | Equity Held |
|---------------------------|--------------------|
| Kingswood AVAD LLC | 100% |

| AVAD Canada Ltd. | Shares Held |
|---------------------------|----------------------|
| Kingswood AVAD LLC | 25,057,780 (100%) |

| Electronics Outlet, LLC | Shares Held |
|--------------------------------|--------------------|
| AVAD LLC | 100% |

| WAVE Electronics, Inc. | Shares Held |
|-------------------------------|------------------------|
| Kingswood AVAD LLC | 2,850 shares (100%) |

| MSTR Brand, Inc. | Shares Held |
|-------------------------------|--------------------------|
| WAVE Electronics, Inc. | 100,000 shares (100%) |

| WAVE Electronics Arizona, LLC | Equity Held |
|--------------------------------------|--------------------|
| WAVE Electronics, Inc. | 100% |

| WAVE Electronics California, LLC | Equity Held |
|---|--------------------|
| WAVE Electronics, Inc. | 100% |

| WAVE Electronics Florida, LLC | Equity Held |
|--------------------------------------|--------------------|
| WAVE Electronics, Inc. | 100% |

| WAVE Electronics Louisiana, LLC | Equity Held |
|--|--------------------|
| WAVE Electronics, Inc. | 100% |

| WAVE Electronics New Jersey, LLC | Equity Held |
|---|--------------------|
| WAVE Electronics, Inc. | 100% |

Schedule 3.6

Litigation

None.

Schedule 3.17(a)**Material Contracts**

Distribution Agreement, dated May 25, 2018, between Savant Systems, Inc. and AVAD LLC

Non-Exclusive Distributor Agreement, dated April 1, 2004, between Digital Consumer Electronics Division of Samsung Electronics America, Inc. and AVAD LLC, as amended by the First Amendment, dated August 28, 2009

Schedule 3.17(b)**Real Estate Leases**

| <u>Lessee</u> | <u>Location</u> | <u>Address</u> | <u>City/State/Zip</u> | <u>Base Rent</u> |
|----------------------|---------------------------|---|------------------------------|-------------------------|
| AVAD LLC | HQ | 8501 E. Princess Dr., Suite 190 | Scottsdale, AZ 85255 | \$ 24,409.25 |
| AVAD LLC | Van Nuys | 16333 Raymer Street, Suite A | Van Nuys, CA 91406 | \$ 28,244.60 |
| AVAD LLC | San Diego | 8195 Mercury Ct., Suite 100 | San Diego, CA 92111 | \$ 8,440.41 |
| AVAD LLC | San Jose | 2120 Zanker Road | San Jose, CA 95131 | \$ 7,349.74 |
| AVAD LLC | Bellevue | 16120 Woodinville-Redmond N E, Unit 15 | Woodinville, WA 98072 | \$ 4,535.33 |
| AVAD LLC | Scottsdale | 17255 N 82nd Street Suite 100 | Scottsdale, AZ 85255 | \$ 6,256.09 |
| AVAD LLC | Centennial | 14 Inverness Drive East, Suite B-124 | Englewood, CO 80112 | \$ 1,023.59 |
| AVAD LLC | Phoenix Hub | 1603 South 35th Ave. | Phoenix, AZ 85009 | \$ 11,162.00 |
| AVAD LLC | Dallas | 2707 Realty Road, Suite 200 | Carrollton, TX 75006 | \$ 4,569.12 |
| AVAD LLC | Houston | 25003 Pitkin Road, G-500 | Spring, TX 77386 | \$ 1,300.00 |
| AVAD LLC | Elk Grove Village | 890 East Devon Avenue | Elk Grove Village, IL 60007 | \$ 25,462.91 |
| AVAD LLC | Minnetonka (Eden Prairie) | 9923 Valley View Road | Eden Prairie, MN 55344 | \$ 960.13 |
| AVAD LLC | Ft Lauderdale | 3038 S W 42nd Street | Ft. Lauderdale, FL 33312 | \$ 16,396.39 |
| AVAD LLC | Smyrna (Marietta) | 1351 Capital Circle, Suite A | Marietta, GA 30067 | \$ 913.43 |
| AVAD LLC | Charlotte | 1901 Associates Lane, Suite B | Charlotte, NC 28217 | \$ 616.43 |

| <u>Lessee</u> | <u>Location</u> | <u>Address</u> | <u>City/State/Zip</u> | <u>Base Rent</u> |
|---------------------------------|--------------------|--|---------------------------|------------------|
| AVAD LLC | Charlotte | 1901 Associates Lane, Suite C | Charlotte, NC 28217 | \$ 753.28 |
| AVAD LLC | Nashville | 5010 Linbar Drive, Suite 150 | Nashville, TN 37211 | \$ 3,416.06 |
| AVAD LLC | Gaithersburg | 8665 Grovemont Circle | Gaithersburg, MD 20877 | \$ 3,559.48 |
| AVAD LLC | Planview | 79 Express Street Unit F | Planview, NY 11803 | \$ 9,846.08 |
| AVAD LLC | Baltimore | 1500 Broening Highway, Suite 150 | Baltimore, MD 21224 | \$ 25,994.40 |
| AVAD LLC | Woburn | 165-A New Boston Street | Woburn, MA | \$ 4,637.43 |
| AVAD LLC | Irvine | 15791 Rockfield Blvd., Suite M | Irvine, CA 92618 | \$ 6,458.05 |
| AVAD Canada Ltd. | Calgary AB T2P 4H4 | 5000 64th Avenue S E, Suite 70 | Calgary, AB T2C4V3 | \$ 8,568.26 |
| AVAD Canada Ltd. | Mississauga, ON | 5655 Kennedy Road, Unit 4 | Mississauga, ON | \$ 20,119.15 |
| WAVE Electronics, Inc. | Farmer's Branch | 14280 and 14292 Gillis Road | Farmer's Branch, TX 75244 | \$ 10,417.81 |
| WAVE Electronics, Inc. | Houston | 8648 Glenmont Dr #130 | Houston, TX 77036 | \$ 22,809 |
| WAVE Electronics, Inc. | Houston | 8648 Glenmont Dr #190 | Houston, TX 77036 | \$ 10,253 |
| WAVE Electronics, Inc. | Houston | 8648 Glenmont Drive, Suite 120 | Houston, TX 77036 | \$ 2,500 |
| WAVE Electronics, Inc. | San Antonio | 12961 Park Central #1430 | San Antonio, TX 78216 | \$ 5,979.46 |
| WAVE Electronics, Inc. | Austin | 9208 Waterford Centre Blvd #120 | Austin, TX 78758 | \$ 10,279.11 |
| WAVE Electronics Louisiana, LLC | Baton Rouge | 14141 Airline Hwy, Building 3, Suite J | Baton Rouge, LA 70817 | \$ 2,250 |
| WAVE Electronics Louisiana, LLC | New Orleans | 509-A So. Al Davis Rd | New Orleans, LA 70123 | \$ 3,750 |

| <u>Lessee</u> | <u>Location</u> | <u>Address</u> | <u>City/State/Zip</u> | <u>Base Rent</u> |
|----------------------------------|-----------------|--|-----------------------|------------------|
| WAVE Electronics New Jersey, LLC | Edison | 320 Campus Dr | Edison, NJ 08837 | \$ 6,446 |
| WAVE Electronics Florida, LLC | Dania Beach | 326 N. Bryan Road, Building 500, Bays 514-515, Space #325 | Dania Beach, FL 33004 | \$ 6,933.20 |
| WAVE Electronics Arizona, LLC | Scottsdale | 16033 North 77th Street, Suite A-1 | Scottsdale, AZ 85260 | \$ 9,543.13 |
| WAVE Electronics California, LLC | Anaheim | 1515 Harris Court | Anaheim, CA 92806 | \$ 8,904 |
| WAVE Electronics, Inc. | Spring | 612 Spring Hill Drive, Suite 160 | Spring, TX 77386 | \$ 7,443.45 |

Schedule 3.18

Environmental Compliance

None.

Schedule 3.19**Intellectual Property****United States**

| Name of Grantor | Trademark/Trademark Application | Registration Date/Application Date | Registration Number/Application Number |
|------------------------|--|---|---|
| AVAD LLC | AVAD | 1/20/2009 | 3565918 |
| AVAD LLC | AVAD | 1/13/2009 | 3562528 |
| AVAD LLC | AVAD | 11/11/2008 | 3532478 |
| AVAD LLC | AVAD | 12/30/2008 | 3555301 |
| AVAD LLC | AVAD | 12/30/2008 | 3555300 |
| AVAD LLC | AVAD | 3/17/2009 | 3593076 |
| AVAD LLC | Proconnect | 4/18/2017 | 5186731 |
| AVAD LLC | Proflex | 3/3/2017 | 87/358089 |
| Wave Electronics, Inc. | Elura | 3/15/2016 | 4917219 |
| Wave Electronics, Inc. | Wave Electronics | 10/9/2012 | 4220774 |
| Wave Electronics, Inc. | Wave Electronics | 10/9/2012 | 4220772 |
| Wave Electronics, Inc. | Wave Electronics | 1/10/2012 | 4082765 |
| MSTR Brand, Inc. | MSTR Brand | 11/4/2014 | 4631232 |

Canada

| Owner | Registration No./Application No. | Trademark |
|------------------|---|------------------------------|
| Avad Canada Ltd. | TMA820631 | AVAD (and image) |
| Avad Canada Ltd. | TMA820632 | AVAD |
| Avad Canada Ltd. | APP No. 1724326 | HOUSE OF WARRANTIES & Design |
| AVAD LLC | APP No. 1656864 | PROCONNECT |
| AVAD LLC | APP No. 1656866 | PROFLEX |
| AVAD LLC | APP No. 1857994 | PROCONNECT |
| AVAD LLC | APP No. 1857993 | PROCONNECT |

Schedule 4.9**Litigation, Governmental Proceeding and Other Notice Events**

None.

Schedule 5.1**Debt; Contingent Obligations**

1. Promissory Note, dated June 30, 2017, by and between AVAD Canada Ltd. as Debtor and AVAD LLC as Creditor, in the original amount of \$1,304,647.92 and with a current balance of \$560,647.92, which note has been pledged to Agent as Collateral hereunder.

Schedule 5.2

Liens

None.

Schedule 5.7**Permitted Investments**

1. Promissory Note dated June 30, 2017 by and between AVAD Canada Ltd. as Debtor and AVAD LLC as Creditor, in the original amount of \$1,304,647.92 and with a current balance of \$560,647.92, which note has been pledged to Agent as Collateral hereunder

Schedule 5.8**Affiliate Transactions**

| Credit Party | Affiliate | Agreement with Affiliates |
|------------------------|-----------------------------------|---|
| All Credit Parties | Kingswood Capital Management, LLC | Amended and Restated Consulting Services Agreement by and between Kingswood AVAD LLC and Kingswood Capital Management, LLC, dated March 2018. |
| | | AVAD LLC Management Services Agreement between AVAD LLC and AVAD Canada Ltd., dated July 1, 2016 |
| WAVE Electronics, Inc. | Kingswood Capital Management, LLC | Consulting Services Agreement, dated October 2, 2018, between WAVE Electronics, Inc. and Kingswood Capital Management, LLC |

Schedule 5.11**Business Description**

| Credit Party | Business Description |
|----------------------------------|---|
| Kingswood AVAD, LLC | Holding company that owns 100% of the equity interests in AVAD LLC and |
| AVAD LLC | AVAD LLC is North America's premier AV solutions provider - specializing in both residential and commercial integration. Led by a team of experienced professionals in the AV industry, we work closely with custom integrators and the industry's top brands, to deliver cutting-edge integrated solutions for video, audio, lighting control, content management, networking, digital signage; plus whole-home and business automation. |
| AVAD Canada Ltd. | See business of AVAD LLC |
| Electronics Outlet, LLC | Electronics Outlet, LLC performs online close out sales, which are separate sales from AVAD LLC |
| WAVE Electronics, Inc. | Electronics distributor specializing in smart home solutions, home security systems, home theaters, speaker systems, and accessories. |
| MSTR Brand, Inc. | Private label A/V equipment for professional installers |
| WAVE Electronics Arizona, LLC | Supporting the sales and distribution efforts of WAVE Electronics, Inc. |
| WAVE Electronics California, LLC | Supporting the sales and distribution efforts of WAVE Electronics, Inc. |
| WAVE Electronics Florida, LLC | Supporting the sales and distribution efforts of WAVE Electronics, Inc. |
| WAVE Electronics Louisiana, LLC | Supporting the sales and distribution efforts of WAVE Electronics, Inc. |
| WAVE Electronics New Jersey, LLC | Supporting the sales and distribution efforts of WAVE Electronics, Inc. |

Schedule 5.14**Deposit Accounts and Securities Accounts**

| Credit Party | Name of Institution | Account Number | Type of Account |
|------------------------|----------------------------|-----------------------|------------------------|
| AVAD LLC | Bank of America | 1233903649 | Deposit Account |
| AVAD LLC | Bank of America | 1233611150 | Deposit Account |
| AVAD LLC | Chase | 253551342 | Deposit Account |
| AVAD LLC | Chase | 939832551 | Deposit Account |
| AVAD LLC | Chase | 939832809 | Deposit Account |
| AVAD LLC | Chase | 939833088 | Deposit Account |
| AVAD LLC | Bank of America | 1233157009 | Lockbox Account |
| AVAD Canada Ltd. | Scotia Bank | 476960455814 | Deposit Account |
| AVAD Canada Ltd. | Scotia Bank | 476960505110 | Deposit Account |
| AVAD Canada Ltd. | Bank of America | 1233062681 | Deposit Account |
| AVAD Canada Ltd. | Chase | 4000013412 (CAD) | Deposit Account |
| AVAD Canada Ltd. | Chase | 4000013414 (CAD) | Deposit Account |
| AVAD Canada Ltd. | Chase | 4000013415 (USD) | Deposit Account |
| WAVE Electronics, Inc. | East West Bank | 92803908 | Deposit Account |
| MSTR Brand, Inc. | East West Bank | 92804029 | Deposit Account |

| Credit Party | Name of Institution | Account Number | Type of Account |
|---------------------------------|----------------------------|-----------------------|------------------------|
| WAVE Electronics, Inc. | East West Bank | 92803919 | Deposit Account |
| WAVE Electronics, Inc. | East West Bank | 8676004636 | Checking Account |
| MSTR Brand, Inc. | East West Bank | 867004651 | Checking Account |
| WAVE Electronics, Inc. | Wells Fargo Bank | 4819936881 | Checking Account |
| Wave Electronics Louisiana, LLC | Regions Bank | 121086796 | Checking Account |

Schedule 7.4 – Post-Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. Within ten (10) Business Days of the Closing Date (or such longer time period to which Agent may agree in writing, including by electronic mail), each Borrower shall deliver to the Agent Credit Card Notifications executed on behalf of each such Borrower and by each Credit Card Processor;
2. Within seven (7) days after the Closing Date, Canadian Borrowers shall deliver to Agent evidence that standing wire instructions with respect to each collection account maintained by the Canadian Borrowers with JPMorgan Chase Bank, National Association have been provided to JPMorgan Chase Bank, National Association such that all Canadian Borrowers shall make collections on their Accounts directly from Account Debtors, promptly deposit such collections into a Deposit Account located at JPMorgan Chase Bank, National Association and provide and maintain a standing order to JPMorgan Chase Bank, National Association to transfer all funds in such Deposit Account to the applicable Payment Account by the close of each Business Day.
3. Within ninety (90) days after the Closing Date (or such longer time period to which Agent may agree in writing, including by electronic mail), Canadian Borrowers shall (a) deliver to Agent either (a) evidence that (i) each Deposit Account of the Canadian Credit Parties maintained at JPMorgan Chase Bank, National Association (including each Lockbox Account maintained by the Canadian Credit Parties at JPMorgan Chase Bank, National Association) has been closed, (ii) the Canadian Credit Parties have established their primary depository and treasury management relationship another financial institution reasonably acceptable to Agent (which shall include, without limitation, the establishment of a Lockbox (the "New Canadian Lockbox") and associated Lockbox Account (the "New Canadian Lockbox Account")), (iii) evidence that all Account Debtors of Canadian Borrowers have been directed to make payment directly to the New Canadian Lockbox or directly to the New Canadian Lockbox Account, and (iv) a duly executed Lockbox Agreement with respect to the New Canadian Lockbox Account, or (b) a duly executed Lockbox Agreement with respect to the Deposit Account of the Canadian Credit Parties maintained at JPMorgan Chase Bank, National Association (including each Lockbox Account maintained by the Canadian Credit Parties at JPMorgan Chase Bank, National Association);
4. Within thirty (30) days after the Closing Date (or such longer time period to which Agent may agree in writing, including by electronic mail), Borrowers shall deliver to Agent, each reasonably satisfactory to Agent, (i) a loss payable endorsement with respect to each of the Credit Parties' property insurance policies, and (ii) an additional insured endorsement and notice of cancellation endorsement with respect to each of the Credit Parties' liability insurance policies;

5. Within five (5) Business Days after the Closing Date (or such longer time period to which Agent may agree in writing, including by electronic mail), Borrowers shall deliver to Agent, the original of that certain Promissory Note, dated June 30, 2017, by and between AVAD Canada Ltd. as Debtor and AVAD LLC as Creditor, in the original amount of \$1,304,647.92 and with a current balance of \$560,647.92, which note has been pledged to Agent as Collateral hereunder; and
6. Within one (1) Business Day after the Closing Date (or such longer time period to which Agent may agree in writing, including by electronic mail), Borrowers shall deliver to Agent, duly executed deposit account control agreement terminations from East West Bank in respect of the Deposit Accounts of the Credit Parties maintained at East West Bank.

Borrowers' failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrowers' failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

Schedule 9.1 – Collateral

The Collateral consists of all of each Credit Party's assets, including without limitation, all of Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

- (a) all goods, Accounts, Equipment (including, without limitation, all rolling stock), Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located;
- (b) all of each Credit Party's books and records relating to any of the foregoing;
- (c) all Real Property Collateral; and
- (d) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding anything to the contrary contained in this Schedule 9.1 or otherwise in this Agreement or any other Financing Document, the term "Collateral" shall not include any Excluded Collateral.

Schedule 9.2**Location of Collateral**

A. Chief Executive Offices and Principal Place of Business of Credit Parties

| Name of Credit Party | Chief Executive Office | Principal Place of Business |
|----------------------------------|---|---|
| Kingswood AVAD LLC | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 |
| AVAD LLC | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 |
| Electronics Outlet, LLC | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 |
| AVAD Canada Ltd. | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 | 8501 E. Princess Drive, Suite 190, Scottsdale, AZ 85255 |
| WAVE Electronics, Inc. | 8648 Glenmont Dr #130 Houston, TX 77036 | 8648 Glenmont Dr #130 Houston, TX 77036 |
| WAVE Electronics Arizona, LLC | 16033 N 77th Street, Suite A1 Scottsdale, AZ 85260 | 16033 N 77th Street, Suite A1 Scottsdale, AZ 85260 |
| WAVE Electronics California, LLC | 1515 South Harris Ct. Anaheim, CA 92806 | 1515 South Harris Ct. Anaheim, CA 92806 |
| WAVE Electronics Florida, LLC | 325 N. Bryan Rd Dania Beach, FL 33004 | 325 N. Bryan Rd Dania Beach, FL 33004 |
| WAVE Electronics Louisiana, LLC | 14141 Airline Highway, Building 3, Suite J, Baton Rouge, LA 70817 | 14141 Airline Highway, Building 3, Suite J, Baton Rouge, LA 70817 |
| WAVE Electronics New Jersey, LLC | 320 Campus Dr Edison, NJ 08837 | 320 Campus Dr Edison, NJ 08837 |
| MSTR Brand, Inc. | 8648 Glenmont Dr #130 Houston, TX 77036 | 8648 Glenmont Dr #130 Houston, TX 77036 |

B. Addresses at which Collateral is located

| Location | Address | City/State/Zip | Landlord | Landlord Address | Landlord City/State/Zip |
|-----------------|------------------------------------|-----------------------|-------------------------------------|---------------------------------------|--------------------------------|
| *HQ | 8501 E. Princess Dr., Suite 190 | Scottsdale, AZ 85255 | *United Ins. CO of America, Inc. | 1500 North Priest Drive, Suite 132 | Tempe, AZ 85281 |
| *Phoenix Hub | 1603 South 35th Ave. | Phoenix, AZ 85009 | Eastgroup Properties LP | PO Box 676488 | Dallas, TX 75267 |

| <u>Location</u> | <u>Address</u> | <u>City/State/Zip</u> | <u>Landlord</u> | <u>Landlord Address</u> | <u>Landlord City/State/Zip</u> |
|---------------------------------|-------------------------------------|--------------------------------|--------------------------------------|---|---------------------------------|
| Dallas | 2707 Realty Road, Suite 200 | Carrollton, TX 75006 | SL3 DFW Industrial, LP. | 9600 Mopac Expy., Suite 250 | Austin, TX 78759 |
| Houston | 25003 Pitkin Road, G-500 | Spring, TX 77386 | Windsor Legacy Spring Hill, LLC | 7887 San Felipe, Suite 237 | Houston, TX 77063 |
| Elk Grove Village | 890 East Devon Avenue | Elk Grove Village, IL 60007 | AM B Partners II Local, L.P. | PO Box 84615 | Dallas, TX 75284 |
| Minnetonka (Eden Prairie) | 9923 Valley View Road | Eden Prairie, MN 55344 | Valley View Associates, LLC | 421 abasha Street N., Suite 200 | S t. Paul, MN 55102 |
| Ft Lauderdale | 3038 S W 42nd Street | Ft. Lauderdale, FL 33312 | Port 95-4, LTD | 1812 SW 31st Avenue | Pembroke Park, FL 33009 |
| Smyrna (Marietta) | 1351 Capital Circle, Suite A | Marietta, GA 30067 | Sealy Northwest Atalnata, LP | PO Box 74136 | Cleveland, OH 44194 |
| Charlotte | 1901 Associates Lane, Suite B | Charlotte, NC 28217 | Charlotte Portfolio of Three LLC | 19762 MacArthur Blvd, Suite 300 | Irvine, CA 92612 |
| Charlotte | 1901 Associates Lane, Suite C | Charlotte, NC 28217 | Charlotte Portfolio of Three LLC | 19762 MacArthur Blvd, Suite 300 | Irvine, CA 92612 |
| Nashville | 5010 Linbar Drive, Suite 150 | Nashville, TN 37211 | Linbar Business Center ssoc., LLC | PO Box 22149 | Nashville, TN 37202 |
| Gaithersburg | 8665 Grovemont Circle | Gaithersburg, MD 20877 | Halcyon Associates, LLC | 5500 MacArthur, Blvd. NW | Washington, DC 20016 |
| Planview | 79 Express Street Unit F | Planview, NY 11803 | Long Island Industrial Management | 45 Broadway, 25th Floor | New York, NY 10006 |
| Baltimore | 1500 Broening Highway, Suite 150 | Baltimore, MD 21224 | Duke Reality L.P. | 75 Remittance Drive, Suite 3205 | Chicago, IL 60675 |
| Woburn | 165-A New Boston Street | Woburn, MA | Cummins Properties LLC | 200 West Cummings Park | Woburn, MA 01801 |
| Irvine | 15791 Rockfield Blvd., Suite M | Irvine, CA 92618 | ICON Owner Pool 2 | P O Box 843993 | Los Angeles, CA 90084- 3993 |
| Calgary AB T2P 4H4 | 5000 64th Avenue S E, Suite 70 | Calgary, AB T2C4V3 | Calgary | bclMC Realty Corporation | 240-4th Avenue SW, Suite 301 |
| Mississauga, ON | 5655 Kennedy Road, Unit 4 | Mississauga, ON | 3883281 Canada Inc. | 4711 Yonge Street, Suite 1400 | Toronto, ON M2N 7E4 |
| *Farmer's Branch | 14280 and 14292 Gillis Road | Farmers Branch, TX 75244 | PB Gillis Road, LLC | 801 Grand Avenue | Des Moines, IA 50392- 1370 |
| *Houston Glenmont Dr #130 | 8648 Glenmont Drive, Suite 130 | Houston, TX 77036 | EastGroup Properties, L.P. | 4220 World Houston Parkway, Suite 170 | Houston, TX 77032 |
| *Houston Glenmont Dr #190 | 8648 Glenmont Drive, Suite 190 | Houston, TX 77036 | EastGroup Properties, L.P. | 4220 World Houston Parkway, Suite 170 | Houston, TX 77032 |
| *Houston Glenmont Dr #120 | 8648 Glenmont Drive, Suite 120 | Houston, TX 77036 | 7320 SWF, Ltd. | 8648 Glenmont Drive, Suite 120 | Houston, TX 77036 |

| <u>Location</u> | <u>Address</u> | <u>City/State/Zip</u> | <u>Landlord</u> | <u>Landlord Address</u> | <u>Landlord City/State/Zip</u> |
|-----------------|---|--------------------------|--|----------------------------------|--------------------------------|
| *San Antonio | 12961 Park Central, Suite 1430 | San Antonio, TX | Interpark-Tex, Ltd. | 7373 Broadway, Suite 201 | San Antonio, TX 78209 |
| *Austin | 9208 Waterford Centre Blvd., Suite 120 | Austin, TX 78758 | RAR2 - Waterford TX, LP | 200 Crescent Court, Suite 560 | Dallas, TX 75001-9032 |
| *Baton Rouge | 14141 Airline Highway, Building 3, Suite J | Baton Rouge, LA 70817 | Barringer Forman I, LLC | 6473 Hwy 44, Suite 201 | Gonzales, LA 70737 |
| *Jefferson | 509 Al Davis Road South, Suite A | Jefferson, LA 70123 | P.C. Wood, LLC | P.O. Box 9101 | Metairie, LA 70055 |
| *Edison | Raritan Center Business Park, Building CP-3, 320 Campus Drive | Edison, NJ 08837 | Federal Business Centers, Inc. | 300 Raritan Center Parkway | Edison, NJ 08837 |
| *Dania Beach | 326 N. Bryan Road, Building 500, Bays 514-515, Space #325 | Dania Beach, FL 33004 | Broward International Commerce Park, Limited Partnership | 327 N. Bryan Road | Dania Beach, FL 33004 |
| *Scottsdale | 16033 N. 77th Street, Suite A1 | Scottsdale, AZ 85260 | MJD Investments LLC | 1421 S. Dodge Street | Gilbert, AZ 85233 |
| *Anaheim | 1515 Harris Court | Anaheim, CA 92806 | RREEF AMERICA REIT II PORTFOLIO, L.P. | 535 Anton Blvd. Suite 200 | Costa Mesa, CA 92626 |
| *Spring | The Pines Business Park Phase II, Building I, 612 Spring Hill Drive, Suite 160 | Spring, TX 77386 | The Realty Associates Fund X, L.P. | 28 State Street, 10th Floor | Boston, MA 02109 |

*Locations at which, in addition to Collateral, Books and Records are held.

AMENDMENT NO. 1 TO CREDIT AND SECURITY AGREEMENT

THIS AMENDMENT NO. 1 TO CREDIT AND SECURITY AGREEMENT (this "**Amendment**") is made as of this 28th day of March, 2019, by and among Kingswood AVAD LLC, a Delaware limited liability company ("**Parent**"), each of Parent's US Subsidiaries identified on the signature pages hereof as US Borrowers (each individually, a "**US Borrower**", and collectively with any additional borrower that is a US Subsidiary that may hereafter be added to the Credit Agreement referred to below, "**US Borrowers**"), each of Parent's Canadian Subsidiaries identified on the signature pages hereof as Canadian Borrowers (each individually, a "**Canadian Borrower**", and collectively with any additional borrower that is a Canadian Subsidiary that may hereafter be added to the Credit Agreement referred to below, "**Canadian Borrowers**" and, together with US Borrowers, each individually a "**Borrower**", and collectively, "**Borrowers**"), the Lenders party hereto and MIDCAP FUNDING IV TRUST, a Delaware statutory trust, as successor-by-assignment to MidCap Financial Trust, as Agent for Lenders (in such capacity, "**Agent**"), and individually, as a Lender.

RECITALS

A. Agent and Lenders have previously entered into financing arrangements with Borrowers pursuant to that certain Credit and Security Agreement, dated as of October 2, 2018, by and among Agent, Lenders, Borrowers and the other Credit Parties from time to time party thereto (as amended, supplemented, restated or otherwise modified from time to time, including by this Amendment, the "**Credit Agreement**") and the other Financing Documents.

B. Borrowers have requested that Agent and Lenders fund an additional term loan on the date hereof, in a principal amount equal to \$5,000,000 (the "**First Amendment Term Loan**"), such that, after giving effect to the First Amendment Term Loan, the outstanding principal amount of the Term Loan is increased on the date hereof from \$23,958,335 to \$28,958,335.

C. Borrowers have further requested that Agent and Lenders (i) fund the First Amendment Term Loan and (ii) agree to amend the Credit Agreement in the manner specified in this Amendment, and Agent and Lenders have agreed to the foregoing requests, in each case on and subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders, and Borrowers hereby agree as follows:

1. **Recitals.** This Amendment shall constitute a Financing Document and the Recitals set forth above shall be construed as part of this Amendment as if set forth fully in the body of this Amendment.

2. **Definitions.** All capitalized terms used and not otherwise defined herein shall have their respective meanings as set forth in the Credit Agreement.

3. **Amendments to Credit Agreement.** Subject to the satisfaction of the conditions set forth in Section 8 below, and in reliance on the representations and warranties contained in Section 4 below, the Credit Agreement is hereby amended as follows:

(a) Section 1.1 of the Credit Agreement is hereby amended by adding thereto in appropriate alphabetical order, in addition and not in limitation, the following defined terms:

"**Closing Date Term Loan**" has the meaning set forth in Section 2.1(a)(i).

"**First Amendment**" shall mean that certain Amendment No. 1 to Credit and Security Agreement, dated as of March 28, 2019, by and among Agent, Lenders, and Borrowers and acknowledged and agreed to by Guarantors.

"**First Amendment Closing Date**" shall mean March 28, 2019.

"**First Amendment Term Loan**" has the meaning set forth in Section 2.1(a)(i).

"**First Amendment Term Loan Commitment Percentage**" means, as to any Lender, on the First Amendment Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "First Amendment Term Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the First Amendment Closing Date, such percentage for such Lender shall be deemed to be zero).

(b) Section 1.1 of the Credit Agreement is hereby amended by amending and restating in their entirety the following defined terms contained therein:

"**Term Loan Commitment**" means the sum of each Lender's Term Loan Commitment Amount, which as of the First Amendment Closing Date is equal to \$28,500,000.

"**Term Loan Commitment Amount**" means, (a) as to any Lender that is a Lender on the First Amendment Closing Date, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Amount", as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of the Term Loan outstanding and its commitment to make advances in respect of the Term Loan) pursuant to the terms of any and all effective Assignment Agreements to which such Lender is a party, and (b) as to any Lender that becomes a Lender after the First Amendment Closing Date, the amount of the "Term Loan Commitment Amount(s)" of other Lender(s) assigned to such new Lender pursuant to the terms of the effective Assignment Agreement(s) pursuant to which such new Lender shall become a Lender, as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of the Term Loan outstanding and its commitment to make advances in respect of the Term Loan)

pursuant to the terms of any and all effective Assignment Agreements to which such Lender is a party.

"Term Loan Commitment Percentage" means, as to any Lender, (a) on the First Amendment Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the First Amendment Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the First Amendment Closing Date, the percentage equal to the Term Loan Commitment Amount of such Lender on such date *divided by* the Term Loan Commitment on such date.

(c) Section 2.1(a)(i) of the Credit Agreement is hereby amended and restated in its entirety as follows:

(i) Term Loan Amounts. On the Closing Date, the Lenders then party to the Credit Agreement funded, severally and not jointly, to US Borrowers a term loan in an original aggregate principal amount of \$25,000,000 (the "**Closing Date Term Loan**") according to each such Lender's then existing Term Loan Commitment Amount (as such term was defined in the Credit Agreement prior to the First Amendment). As of the First Amendment Closing Date (before giving effect to the funding of the First Amendment Term Loan), the outstanding principal balance of the Closing Date Term Loan was \$23,958,335. On the First Amendment Closing Date, and on the terms and subject to the conditions set forth herein and in the First Amendment, Lenders severally and not jointly agree to make to US Borrowers an additional term loan in an original principal amount equal to \$5,000,000 (the "**First Amendment Term Loan**" and together with the Closing Date Term Loan, the "**Term Loan**"). The aggregate outstanding principal amount of the Term Loan (after giving effect to the funding of the First Amendment Term Loan) as of the First Amendment Closing Date is \$28,958,335. Each Lender's obligation to fund the First Amendment Term Loan shall be limited to such Lender's First Amendment Term Loan Commitment Percentage, and no Lender shall have any obligation to fund any portion of the First Amendment Term Loan required to be funded by any other Lender, but not so funded. No US Borrower shall have any right to reborrow any portion of the Term Loan that is repaid or prepaid from time to time, and any portion of the Term Loan Commitment not funded as of the close of business on the First Amendment Closing Date shall thereupon automatically be terminated and the Term Loan Commitment Amount of each Lender as of such date shall be reduced by such Lender's Pro Rata Share of such total reduction in the Term Loan Commitment. The First Amendment Term Loan shall be funded in one advance on the First Amendment Closing Date.

(d) Section 4.7 of the Credit Agreement is hereby amended and restated in its entirety as follows:

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Revolving Loans and the Closing Date Term Loan solely on the Closing Date, (a) for the payment in full of the Debt outstanding under the Existing Credit Agreements, (b) to pay a portion of the cost of the Closing Date Acquisition, (c) to pay costs, expenses and fees in connection with the Financing Documents and the other Transaction Documents, and (d) for payments to each of the persons listed in the disbursement direction letter furnished by Borrowers to Agent on the date hereof. Borrowers shall use the proceeds of the First Amendment Term Loan solely on the First Amendment Closing Date, (a) to fund the purchase of Inventory for use in the Borrowers' business, (b) to pay costs, expenses and fees in connection with the First Amendment and the Financing Documents entered into in connection therewith, and (c) to repay the Revolving Loans from time to time in whole or in part. After the Closing Date, Borrowers shall use the proceeds of the Revolving Loans solely for working capital of Borrowers and their Subsidiaries and other general corporate purposes consistent with the terms of this Agreement. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

(e) Annex A to the Credit Agreement is hereby amended and restated in its entirety as set forth on Annex A attached hereto.

(f) Schedule 2.1 to the Credit Agreement is hereby amended and restated in its entirety as set forth on Schedule 2.1 attached hereto.

4. **Representations and Warranties.** Each Borrower represents and warrants to Agent and Lenders that, before and after giving effect to this Amendment:

(a) all representations and warranties of the Credit Parties contained in the Financing Documents were true and correct in all material respects when made (except to the extent that any such representation or warranty is by its terms subject to a materiality qualification, in which case such representation or warranty was true, correct and complete in all respects) and, except to the extent that such representations and warranties relate expressly to an earlier date, continue to be true and correct in all material respects on the date hereof (except to the extent that any such representation or warranty is by its terms subject to a materiality qualification, in which case such representation or warranty is true, correct and complete in all respects);

(b) the execution and delivery by each Credit Party of this Amendment and the performance by it of the transactions herein contemplated (i) are and will be within its corporate powers, (ii) have been authorized by all necessary corporate action, and (iii) are not and will not be in contravention of any order of any court or other agency of government, of law or any other indenture, agreement or undertaking to which such Borrower is a party or by which the property of such Credit Party is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or undertaking or result in the imposition of any lien, charge or encumbrance of any nature on any of the properties of such Credit Party;

(c) this Amendment and all allonges, assignments, instruments, documents, and agreements executed and delivered in connection herewith, are and will be valid, binding, and enforceable against each Credit Party in accordance with their respective terms; and

(d) no Default or Event of Default has occurred and is continuing under the Credit Agreement or any of the other Financing Documents.

5. **Reaffirmation of Security Interest.** Each Credit Party confirms and agrees that: (i) all security interests and Liens granted by such Credit Party to Agent continue in full force and effect, and (ii) all Collateral remains free and clear of any Liens other than Liens in favor of Agent and Permitted Liens. Nothing herein contained is intended to impair or limit the validity, priority and extent of Agent's security interest in and Liens upon the Collateral.

6. **Enforceability.** This Amendment constitutes the legal, valid and binding obligation of each Credit Party, and is enforceable against each Credit Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

7. **Costs and Expenses.** Borrowers shall be responsible, in accordance with Section 12.14(a)(i) of the Credit Agreement, for the payment of all of Agent's costs and expenses incurred in connection with this Amendment and any related documents, including, without limitation, the reasonable fees and expenses of Agent's counsel. Borrowers hereby authorize Agent to pay all of such costs and expenses by charging same to any account of Borrowers maintained by Agent under the Credit Agreement.

8. **Conditions to Effectiveness.** This Amendment shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent:

(a) Agent shall have received a fully executed copy of this Amendment executed by Borrowers, each other Credit Party and each Lender, and each of the additional documents, instruments and agreements listed on the Closing Checklist attached hereto as Exhibit A, each in form and substance reasonably acceptable to Agent, together with such other documents, agreements and instruments as Agent may reasonably require or reasonably request;

(b) Borrowers shall have paid all fees, costs and expenses due and payable as of the date hereof under the Credit Agreement and the other Financing Documents (including, without limitation, the First Amendment Fee Letter of even date herewith between Borrowers and Agent); and

(c) no Default or Event of Default shall have occurred and be continuing or shall be caused by the transactions contemplated by this Amendment and the other Financing Documents delivered in connection herewith.

9. **No Waiver or Novation.** The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided in this Amendment, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements

executed or delivered in connection with any of the foregoing. This Amendment (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

10. Affirmation. Except as specifically amended pursuant to the terms hereof, the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Credit Party. Each Credit Party covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement (as amended hereby) and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

11. Miscellaneous.

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Amendment. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by Borrowers.

(b) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification), Section 12.6 (Confidentiality), Section 12.8 (Governing Law; Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(c) Headings. Section headings in this Amendment are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(d) Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Amendment under seal as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FUNDING IV TRUST
as Agent

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____

Name: _____

Title: _____

LENDERS:

MIDCAP FUNDING H TRUST, as Lender

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____

Name: _____

Title: _____

APOLLO INVESTMENT CORPORATION, as Lender

By: Apollo Investment Management, L.P.,
Its investment advisor

By: ACC Management, LLC,
its general partner

By: _____

Name: **JOSEPH D. GLATT**

Title: **VICE PRESIDENT**

MIDCAP FINANCIAL TRUST, as a Lender

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 
Name: Howard Widra
Title: Authorized Signatory

**WAVE ELECTRONICS NEW JERSEY, LLC, a
Texas limited liability company**

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

MSTR BRAND, INC., a Texas corporation

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

**ELECTRONICS OUTLET, LLC, a Delaware
limited liability company**

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

CANADIAN BORROWER:

AVAD CANADA LTD, a British Columbia corporation

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

**ACKNOWLEDGED AND AGREED
TO BY GUARANTORS:**

**KINGSWOOD AVAD LLC, a Delaware limited
liability company**

By: *Alex Wolf*
Name: Alex Wolf
Title: Vice President and Secretary

**Schedule 2.1 to
Amendment No. 1 to Credit and Security Agreement**

Schedule 2.1 – Amortization

On the first calendar day of each month, commencing on April 1, 2019, US Borrowers shall pay to Agent as a principal payment under the Term Loan outstanding an amount equal to the amount set forth below on each specified payment date as an amortization payment in respect of the Term Loan. Notwithstanding anything to the contrary contained in the foregoing, the entire remaining outstanding principal balance under the Term Loan shall mature and be due and payable on the Termination Date.

| <u>Payment Date</u> | <u>Payment Amount</u> |
|--|-----------------------|
| April 1, 2019 through and including October 1, 2019 | \$241,319.46 |
| November 1, 2019 through and including October 1, 2021 | \$301,649.32 |
| November 1, 2021 and thereafter | \$361,979.19 |

Annex A to Amendment No. 1 to Credit and Security Agreement

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)

| Lender | US Revolving Loan Commitment Amount | US Revolving Loan Commitment Percentage | Canadian Revolving Loan Commitment Amount | Canadian Revolving Loan Commitment Percentage | First Amendment Term Loan Commitment Amount | First Amendment Term Loan Commitment Percentage | Term Loan Commitment Amount¹ | Term Loan Commitment Percentage |
|-------------------------------|--|--|--|--|--|--|--|--|
| MidCap Financial Trust | \$31,333,333.33 | 66.6666% | \$2,000,000 | 66.6666% | \$3,333,333.33 | 66.6666% | \$19,305,556.67 | 66.6666% |
| MidCap Funding H Trust | \$0 | 0% | \$0 | 0% | \$0 | 0% | \$0 | 0% |
| Apollo Investment Corporation | \$15,666,666.67 | 33.3334% | \$1,000,000 | 33.3334% | \$1,666,666.67 | 33.3334% | \$9,652,778.33 | 33.3334% |
| TOTALS | \$47,000,000 | 100% | \$3,000,000 | 100% | \$5,000,000 | 100% | \$23,958,335 | 100% |

¹ The amounts set forth in this column represent the outstanding principal amount of the Term Loan as of the First Amendment Closing Date, after the making on the First Amendment Term Loan on the First Amendment Closing Date.

**Exhibit A to
Amendment No. 1 to Credit and Security Agreement**

Closing Checklist

[see attached]



AMENDMENT NO. 1 TO CREDIT AND SECURITY AGREEMENT (TERM LOAN INCREASE)

**\$50,000,000 REVOLVING CREDIT FACILITY AND \$30,000,000 TERM CREDIT FACILITY
to**

AVAD LLC; AVAD CANADA LTD.; WAVE ELECTRONICS, INC.; WAVE ELECTRONICS ARIZONA, LLC; WAVE ELECTRONICS CALIFORNIA, LLC; WAVE ELECTRONICS FLORIDA, LLC; WAVE ELECTRONICS LOUISIANA, LLC; WAVE ELECTRONICS NEW JERSEY, LLC; ELECTRONICS OUTLET, LLC and MSTR BRAND, INC.

Target Closing Date: March 28, 2019

CLOSING CHECKLIST

Key:

B Borrowers
BC Borrowers' US Counsel
BCC Borrowers' Canadian Counsel
A MidCap Financial Trust
AC MCF's US Counsel
ACC MCF's Canadian Counsel

| | <u>Closing Item</u> | <u>Responsible Party</u> | <u>Received</u> | <u>Approved</u> | <u>Comments</u> |
|-----------|---------------------------------|--------------------------|-----------------|-----------------|-----------------|
| I. | <u>US LOAN DOCUMENTS</u> | | | | |
| | | | | | |

| | | | | | |
|-------------|--|------|--|--|--|
| | A. Amendment No. 1 to Credit and Security Agreement | AC | | | |
| | • Schedules | AC | | | |
| | • Annexes | | | | |
| | • Exhibits | | | | |
| | B. Supplemental Fee Letter | AC | | | |
| | C. Closing Certificate | AC | | | |
| | D. Solvency Certificate | AC | | | |
| | E. Supplement to Trademark Security Agreement | AC | | | |
| | F. US Legal Opinion of Goodwin Procter (DE) | BC | | | |
| | G. US Legal Opinion of Dentons (TX) | BC | | | |
| | | | | | |
| II. | <u>CANADIAN DOCUMENTS</u> | | | | |
| | | | | | |
| | A. Legal opinion of Dentons Canada (Ontario, Alberta and British Columbia) | BCC | | | |
| | B. Good Standing Certificate | BCC | | | |
| | 1. British Columbia | | | | |
| | | | | | |
| III. | <u>ORGANIZATIONAL DOCUMENTS</u> | | | | |
| | | | | | |
| | A. Secretary's Certificate for Kingswood AVAD LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Amended and Restated Limited Liability Company Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | B. Secretary's Certificate for AVAD LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |

| | | | | | |
|--|---|------|--|--|--|
| | • Third Amended and Restated Limited Liability Company Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | • Foreign Qualifications to Do Business (Arizona; California; Texas) | B/BC | | | |
| | C. Secretary's Certificate for WAVE Electronics, Inc., with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | • Foreign Qualifications to Do Business (Colorado) | B/BC | | | |
| | D. Secretary's Certificate for WAVE Electronics Arizona, LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |
| | • Foreign Qualification to Do Business (AZ) | B/BC | | | |
| | E. Secretary's Certificate for WAVE Electronics California, LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |

| | | | | | |
|----|---|------|--|--|--|
| | <ul style="list-style-type: none"> Foreign Qualification to Do Business (CA) | B/BC | | | |
| F. | Secretary's Certificate for WAVE Electronics Florida, LLC, with Exhibits: | B/BC | | | |
| | <ul style="list-style-type: none"> Certificate of Formation | B/BC | | | |
| | <ul style="list-style-type: none"> Operating Agreement | B/BC | | | |
| | <ul style="list-style-type: none"> Incumbency Certificate | B/BC | | | |
| | <ul style="list-style-type: none"> Authorizing Resolutions | B/BC | | | |
| | <ul style="list-style-type: none"> Good Standing Certificate (TX) | B/BC | | | |
| | <ul style="list-style-type: none"> Foreign Qualification to Do Business (FL) | B/BC | | | |
| G. | Secretary's Certificate for WAVE Electronics Louisiana, LLC, with Exhibits: | B/BC | | | |
| | <ul style="list-style-type: none"> Certificate of Formation | B/BC | | | |
| | <ul style="list-style-type: none"> Operating Agreement | B/BC | | | |
| | <ul style="list-style-type: none"> Incumbency Certificate | B/BC | | | |
| | <ul style="list-style-type: none"> Authorizing Resolutions | B/BC | | | |
| | <ul style="list-style-type: none"> Good Standing Certificate (TX) | B/BC | | | |
| | <ul style="list-style-type: none"> Foreign Qualification to Do Business (LA) | B/BC | | | |
| H. | Secretary's Certificate for WAVE Electronics New Jersey, LLC, with Exhibits: | B/BC | | | |
| | <ul style="list-style-type: none"> Certificate of Formation | B/BC | | | |
| | <ul style="list-style-type: none"> Operating Agreement | B/BC | | | |
| | <ul style="list-style-type: none"> Incumbency Certificate | B/BC | | | |
| | <ul style="list-style-type: none"> Authorizing Resolutions | B/BC | | | |
| | <ul style="list-style-type: none"> Good Standing Certificate (TX) | B/BC | | | |
| | <ul style="list-style-type: none"> Foreign Qualification to Do Business (NJ) | B/BC | | | |
| I. | Secretary's Certificate for Electronics Outlet, LLC with Exhibits: | | | | |
| | <ul style="list-style-type: none"> Certificate of Formation | B/BC | | | |
| | <ul style="list-style-type: none"> Operating Agreement | B/BC | | | |

| | | | | | |
|------------|--|-------|--|--|--|
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | J. Secretary's Certificate for MSTR Brand, Inc., with Exhibits: | B/BC | | | |
| | • Certificate of Incorporation | B/BC | | | |
| | • Bylaws | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |
| | K. Officer's Certificate for AVAD Canada Ltd., with Exhibits: | B/BCC | | | |
| | • Articles | B/BCC | | | |
| | • Bylaws | B/BCC | | | |
| | • Incumbency Certificate | B/BCC | | | |
| | • Authorizing Resolutions | B/BCC | | | |
| | • Good Standing Certificate | B/BCC | | | |
| | | | | | |
| IV. | <u>LIEN AND LITIGATION DILIGENCE / FINANCIAL DILIGENCE / ACQUISITION DILIGENCE</u> | | | | |
| | | | | | |
| | A. Pre-Closing UCC Searches for Borrowers and other Credit Parties | AC/BC | | | |
| | B. Intellectual Property Searches | AC | | | |
| | C. Canadian lien searches (Corporate, PPSA/RDPRM, Bank Act, Provincial Bankruptcy, Federal Insolvency, Execution and CIPO) | BCC | | | |
| | | | | | |
| V. | <u>FUNDING DOCUMENTS AND DELIVERABLES</u> | | | | |
| | | | | | |
| | A. Notice of Borrowing | A/B | | | |

| | | | | | |
|-------------|---|-------------------|--|--|--|
| | B. Loan Disbursement Request/Funds Flow | A/B | | | |
| VI. | <u>OTHER ITEMS</u> | | | | |
| | A. Amended Allonge | BC | | | |
| VII. | <u>POST CLOSING DOCUMENTS AND DELIVERABLES (see indications above)</u> | | | | |
| | A. Post-Closing UCC, Judgment, Tax Lien and Litigation Searches for Borrowers /Credit Parties | | | | |
| | B. Post-Closing Canadian lien searches (Corporate, PPSA/RDPRM, Bank Act, Provincial Bankruptcy, Federal Insolvency, Execution and CIPO) | | | | |
| | C. Cash management agreements | | | | |
| | <ul style="list-style-type: none"> • Deposit Account Control Agreement – Scotia Bank | AC/ACC/ BC/BCC | | | |
| | <ul style="list-style-type: none"> • Deposit Account Control Agreement – EWB | AC/ACC/ BC/BCC | | | |
| | D. Landlord Agreements for each of the locations listed on Annex A | AC | | | |

ANNEX A**Landlord's Agreements**

| | <u>Lessee</u> | <u>Location</u> | <u>Lessor</u> | <u>Status</u> |
|-----|----------------------------------|--|---------------------------------------|---------------|
| 1. | WAVE Electronics Arizona, LLC | 16033 N. 77th St., Suite A1, Scottsdale, AZ 85260 | MJD INVESTMENTS LLC | |
| 2. | WAVE Electronics Louisiana, LLC | 509 Al Davis Rd. South, Suite A, Jefferson, LA 70123 | P.C. WOOD, LLC | |
| 3. | WAVE Electronics, Inc. | 9208 Waterford Center Blvd., Suite 120, Austin, TX 78578 | RAR2 – WATERFORD TX, L.P. | |
| 4. | WAVE Electronics California, LLC | 1515 Harris Court, Anaheim, CA 92806 | RREEF AMERICA REIT II PORTFOLIO, L.P. | |
| 5. | WAVE Electronics Louisiana, LLC | 14141 Airline Hwy, Baton Rouge, LA 70817 | MIE PROPERTIES-LA, LLC | |
| 6. | WAVE Electronics, Inc. | 14280-14292 Gillis Road, Farmers Branch, TX 75244 | ANGEL INDUSTRIAL PROPERTIES, INC. | |
| 7. | WAVE Electronics, Inc. | 8648 Glenmont Dr #130 & #190, Houston, TX 77036 | EASTGROUP PROPERTIES, L.P. | |
| 8. | AVAD LLC | Unit 4, 5655 Kennedy Road, Mississauga, Ontario | 3883281 CANADA INC. | |
| 9. | AVAD LLC | Suite 100 in Building 7 at 8195 Mercury Court, San Diego, California 92111 | MERCURY TECH CENTER LLC | |
| 10. | AVAD LLC | 1603 South 35th Avenue, Phoenix, AZ 85009 | EASTGROUP PROPERTIES, L.P. | |

| | | | |
|-----|----------|---|--|
| 11. | AVAD LLC | City or Town of Nashville, County of Davidson, State of Tennessee | LINBAR BUSINESS CENTER ASSOCIATES, LLC |
| 12. | AVAD LLC | 9923 Valley View Road, Eden Prairie, MN 55344 | VALLEY VIEW ASSOCIATES, LLC |
| 13. | AVAD LLC | 25003 Pitkin Road Suite G-50D , The Woodlands, TX 77386 | WINDSOR LEGACY SPRING HILL LLC |
| 14. | AVAD LLC | 2707 Realty Road, Ste. 200, Carrollton, TX 75006 | SL3 DFW INDUSTRIAL, LP |
| 15. | AVAD LLC | 1901 Associates Lane, Suite C, Charlotte, NC 28217 | CHARLOTTE PORTFOLIO OF THREE LLC |
| 16. | AVAD LLC | 1901 Associates Lane, Suite B, Charlotte, NC 28217 | CHARLOTTE PORTFOLIO OF THREE LLC |
| 17. | AVAD LLC | 14 Inverness Drive East, Suite A-116, Englewood, CO 80112 | INVERNESS PROPERTY, LLC |
| 18. | AVAD LLC | 16333 Raymer Street, Van Nuys, CA 91406 | BUILDING NUMBER TWENTY-FIVE, LLC |

Schedule R-1

Real Property Collateral

None.

CONSENT AND AMENDMENT NO. 2 TO CREDIT AND SECURITY AGREEMENT

THIS CONSENT AND AMENDMENT NO. 2 TO CREDIT AND SECURITY AGREEMENT (this "**Amendment**") is made as of this 26th day of July, 2019, by and among Kingswood AVAD LLC, a Delaware limited liability company ("**Parent**"), each of Parent's US Subsidiaries identified on the signature pages hereof as US Borrowers (each individually, a "**US Borrower**", and collectively with any additional borrower that is a US Subsidiary that may hereafter be added to the Credit Agreement referred to below, "**US Borrowers**"), each of Parent's Canadian Subsidiaries identified on the signature pages hereof as Canadian Borrowers (each individually, a "**Canadian Borrower**", and collectively with any additional borrower that is a Canadian Subsidiary that may hereafter be added to the Credit Agreement referred to below, "**Canadian Borrowers**" and, together with US Borrowers, each individually a "**Borrower**", and collectively, "**Borrowers**"), the Lenders party hereto and MIDCAP FUNDING IV TRUST, a Delaware statutory trust, as successor-by-assignment to MidCap Financial Trust, as Agent for Lenders (in such capacity, "**Agent**"), and individually, as a Lender.

RECITALS

A. Agent and Lenders have previously entered into financing arrangements with Borrowers pursuant to that certain Credit and Security Agreement, dated as of October 2, 2018, by and among Agent, Lenders, Borrowers and the other Credit Parties from time to time party thereto, as amended by that certain Amendment No. 1 to Credit and Security Agreement, dated as of March 28, 2019 (and as further amended, supplemented, restated or otherwise modified from time to time, including by this Amendment, the "**Credit Agreement**") and the other Financing Documents.

B. Borrowers have requested that Agent and Lenders activate an Additional Tranche on the date hereof pursuant to Section 2.1(c) of the Credit Agreement, in a commitment amount equal to \$10,000,000 (the "**Second Amendment Additional Tranche**"), such that, after giving effect to the Second Amendment Additional Tranche, the Aggregate Revolving Loan Commitment shall be increased on the date hereof from \$50,000,000 to \$60,000,000.

C. Borrowers have further requested that Agent and Lenders (i) activate the Second Amendment Additional Tranche and (ii) agree to amend the Credit Agreement in the manner specified in this Amendment, and Agent and Lenders have agreed to the foregoing requests, in each case on and subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders, and Borrowers hereby agree as follows:

1. **Recitals.** This Amendment shall constitute a Financing Document and the Recitals set forth above shall be construed as part of this Amendment as if set forth fully in the body of this Amendment.

2. **Definitions.** All capitalized terms used and not otherwise defined herein shall have their respective meanings as set forth in the Credit Agreement.

3. **Consent.** Subject to the satisfaction of the conditions set forth in Section 9 below, and in reliance on the representations and warranties contained in Section 5 below, Agent and each Lender hereby consents to the activation of the Second Amendment Additional Tranche on the Second Amendment Closing Date in accordance with the terms and provisions of this Amendment. This consent shall constitute the prior written consent of Agent and Lenders required pursuant to Section 2.1(c) of the Credit Agreement and is a limited consent and shall not be deemed to constitute a consent with respect to any future Additional Tranche or any current or future departure from the requirements of any provision of the Credit Agreement or any other Financing Document.

4. **Amendments to Credit Agreement.** Subject to the satisfaction of the conditions set forth in Section 9 below, and in reliance on the representations and warranties contained in Section 5 below, the Credit Agreement is hereby amended as follows:

(a) Section 1.1 of the Credit Agreement is hereby amended by adding thereto in appropriate alphabetical order, in addition and not in limitation, the following defined terms:

"**Second Amendment**" means that certain Consent and Amendment No. 2 to Credit and Security Agreement, dated as of July 26, 2019, by and among Agent, Lenders, and Borrowers and acknowledged and agreed to by Guarantors.

"**Second Amendment Additional Tranche**" has the meaning set forth in Section 2.1(c).

"**Second Amendment Closing Date**" shall mean July 26, 2019.

(b) Section 1.1 of the Credit Agreement is hereby amended by amending and restating in their entirety the following defined terms contained therein:

"**Additional Tranche**" means an additional amount of US Revolving Loan Commitment and/or Canadian Revolving Loan Commitment equal to \$20,000,000 in the aggregate (it being acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of \$4,000,000 each for a total of up to \$20,000,000). Each Additional Tranche shall be allocated to the US Revolving Loan Commitment and the Canadian Revolving Loan Commitment as determined by Borrower Representative. Notwithstanding the foregoing, after giving effect to the activation of the Second Amendment Additional Tranche on the Second Amendment Closing Date, the aggregate amount of any subsequent Additional Tranches that may be activated thereafter shall be \$10,000,000.

"**Aggregate Revolving Loan Commitment**" means the sum of (a) the Canadian Revolving Loan Commitment and (ii) the US Revolving Loan Commitment. For the avoidance of doubt, the Aggregate Revolving Loan

Commitment on the Second Amendment Closing Date after giving effect to the activation of the Second Amendment Additional Tranche shall be \$60,000,000.

"Canadian Revolving Loan Commitment Amount" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Canadian Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Canadian Revolving Loan Commitment Amount for such Lender shall be deemed to be \$0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Canadian Revolving Loans outstanding and its commitment to make Canadian Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, the aggregate Canadian Revolving Loan Commitment Amount of all Lenders on the Second Amendment Closing Date after giving effect to the activation of the Second Amendment Additional Tranche shall be \$4,000,000 (which amount is subject to reallocation from time to time in accordance with Section 1.6).

"Fee Letter" means that certain letter agreement, dated as of the Closing Date, among Agent and Borrowers, relating to fees payable to Agent (and/or to Lenders, in accordance with the agreements between Agent and Lenders), for its own account as the same may be amended, restated, supplemented or otherwise modified from time to time, including as supplemented by that certain fee letter, dated as of March 28, 2019, among Agent and Borrowers entered into in connection with the First Amendment.

"US Revolving Loan Commitment Amount" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "US Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the US Revolving Loan Commitment Amount for such Lender shall be deemed to be \$0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of US Revolving Loans outstanding and its commitment to make US Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by US Borrowers. For the avoidance of doubt, the aggregate US Revolving Loan Commitment Amount of all Lenders on the Second Amendment Closing Date after giving effect to the activation of the Second Amendment Additional Tranche shall be \$56,000,000 (which amount is subject to reallocation from time to time in accordance with Section 1.6).

(c) Section 2.1(c) of the Credit Agreement is hereby amended and restated in its entirety as follows:

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their sole discretion, the US Revolving Loan Commitment and/or the Canadian Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche, and the allocation of the Additional Tranche between the US Revolving Loan Commitment and the Canadian Revolving Loan Commitment, as applicable, requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche; *provided, however*, that Agent and Lenders shall have no obligation to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche to which Agent and Lenders have provided such written consent, (i) if applicable, each Lender's US Revolving Loan Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the US Revolving Loan Commitment as such Lender held immediately prior to such activation, (ii) if applicable, each Lender's Canadian Revolving Loan Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Canadian Revolving Loan Commitment as such Lender held immediately prior to such activation, and (iii) if applicable, Borrowers shall be thereupon obligated to pay in full to Agent the additional origination fee due and payable pursuant to paragraph 2 of the Fee Letter. In the event Agent and all Lenders do not consent to the activation of a requested Additional Tranche within thirty (30) days after receiving a written request from Borrower Representative, then the Revolving Loan Commitments shall not be increased and, within the next ninety (90) days, Borrowers may terminate this Agreement upon written notice to Agent and, if (a) the US Borrowing Base on the date of such request would have supported any such increased US Revolving Loan Commitment and (b) the Canadian Borrowing Base on the date of such request would have supported any such increased Canadian Revolving Loan Commitment, upon repayment in full of all Obligations, no fee shall be due pursuant to Section 2.2(f) in connection with such termination. The parties hereto acknowledge that, on the Second Amendment Closing Date, Borrowers shall have activated an Additional Tranche in an aggregate amount of \$10,000,000 (the "Second Amendment Additional Tranche"), \$9,000,000 of which is allocated to the US Revolving Loan Commitment and \$1,000,000 of which is allocated to the Canadian Revolving Loan Commitment. The Aggregate Revolving Loan Commitment, US Revolving Loan Commitment, Canadian Revolving Loan Commitment and outstanding Loans, in each case, in respect of any Additional Tranche (including without limitation the Second Amendment Additional Tranche), shall be governed in accordance with, and subject to, all of the terms and provisions of this Agreement and each of the Financing Documents applicable to the Aggregate Revolving Loan Commitment, US Revolving Loan

Commitment, Canadian Revolving Loan Commitment and outstanding Loans, respectively, in existence immediately prior to the activation of the such Additional Tranche (including without limitation the Second Amendment Additional Tranche). Without limiting the generality of the foregoing, it is agreed and understood that all Revolving Loans made after giving effect to each activation of an Additional Tranche (including without limitation the Second Amendment Additional Tranche activated on the Second Amendment Closing Date) shall (i) constitute Obligations under the Financing Documents and have all of the rights, remedies, privileges and protections applicable to the Revolving Loans under the Credit Agreement and the other Financing Documents and (ii) be secured by the Liens granted to the Agent under any Security Document.

(d) Annex A to the Credit Agreement is hereby amended and restated in its entirety as set forth on Annex A attached hereto.

5. **Representations and Warranties.** Each Borrower represents and warrants to Agent and Lenders that, before and after giving effect to this Amendment:

(a) all representations and warranties of the Credit Parties contained in the Financing Documents were true and correct in all material respects when made (except to the extent that any such representation or warranty is by its terms subject to a materiality qualification, in which case such representation or warranty was true, correct and complete in all respects) and, except to the extent that such representations and warranties relate expressly to an earlier date, continue to be true and correct in all material respects on the date hereof (except to the extent that any such representation or warranty is by its terms subject to a materiality qualification, in which case such representation or warranty is true, correct and complete in all respects);

(b) the execution and delivery by each Credit Party of this Amendment and the performance by it of the transactions herein contemplated (i) are and will be within its corporate powers, (ii) have been authorized by all necessary corporate action, and (iii) are not and will not be in contravention of any order of any court or other agency of government, of law or any other indenture, agreement or undertaking to which such Borrower is a party or by which the property of such Credit Party is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or undertaking or result in the imposition of any lien, charge or encumbrance of any nature on any of the properties of such Credit Party;

(c) this Amendment and all allonges, assignments, instruments, documents, and agreements executed and delivered in connection herewith, are and will be valid, binding, and enforceable against each Credit Party in accordance with their respective terms; and

(d) no Default or Event of Default has occurred and is continuing under the Credit Agreement or any of the other Financing Documents.

6. **Reaffirmation of Security Interest.** Each Credit Party confirms and agrees that: (i) all security interests and Liens granted by such Credit Party to Agent continue in full force

and effect, and (ii) all Collateral remains free and clear of any Liens other than Liens in favor of Agent and Permitted Liens. Nothing herein contained is intended to impair or limit the validity, priority and extent of Agent's security interest in and Liens upon the Collateral.

7. **Enforceability.** This Amendment constitutes the legal, valid and binding obligation of each Credit Party, and is enforceable against each Credit Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

8. **Costs and Expenses.** Borrowers shall be responsible, in accordance with Section 12.14(a)(i) of the Credit Agreement, for the payment of all of Agent's costs and expenses incurred in connection with this Amendment and any related documents, including, without limitation, the reasonable fees and expenses of Agent's counsel. Borrowers hereby authorize Agent to pay all of such costs and expenses by charging same to any account of Borrowers maintained by Agent under the Credit Agreement.

9. **Conditions to Effectiveness.** This Amendment shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent:

(a) Agent shall have received a fully executed copy of this Amendment executed by Borrowers, each other Credit Party and each Lender, and each of the additional documents, instruments and agreements listed on the Closing Checklist attached hereto as Exhibit A, each in form and substance reasonably acceptable to Agent, together with such other documents, agreements and instruments as Agent may reasonably require or reasonably request;

(b) Borrowers shall have paid all fees, costs and expenses due and payable as of the date hereof under the Credit Agreement and the other Financing Documents (including, without limitation, the additional origination fee of \$200,000 that is due and payable in connection with the activation of the Second Amendment Additional Tranche pursuant to paragraph 2 of the Fee Letter); and

(c) no Default or Event of Default shall have occurred and be continuing or shall be caused by the transactions contemplated by this Amendment and the other Financing Documents delivered in connection herewith.

10. **No Waiver or Novation.** The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided in this Amendment, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. This Amendment (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

11. **Affirmation.** Except as specifically amended pursuant to the terms hereof, the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Credit Party. Each Credit Party covenants and agrees to comply with all of

the terms, covenants and conditions of the Credit Agreement (as amended hereby) and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

12. **Miscellaneous.**

(a) **Reference to the Effect on the Credit Agreement.** Upon the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Amendment. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by Borrowers.

(b) **Incorporation of Credit Agreement Provisions.** The provisions contained in Section 11.6 (Indemnification), Section 12.6 (Confidentiality), Section 12.8 (Governing Law; Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(c) **Headings.** Section headings in this Amendment are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(d) **Counterparts.** This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGES]


IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Amendment under seal as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FUNDING IV TRUST,
as Agent

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 
Name: Maurice Amsellem
Title: Authorized Signatory

LENDERS:

APOLLO INVESTMENT CORPORATION, as a
Lender

By: Apollo Investment Management, L.P.,
Its investment advisor


By: ACC Management LLC,
its general partner

By: 
Name: JOSEPH D. GLATT
Title: VICE PRESIDENT

MIDCAP FUNDING IV TRUST,
as a Lender

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 
Name: Maurice Amsellem
Title: Authorized Signatory

US BORROWERS:

AVAD LLC, a Delaware limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS, INC., a Texas corporation

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS ARIZONA, LLC, a Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS CALIFORNIA, LLC, a Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS FLORIDA, LLC, a Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS LOUISIANA, LLC, a Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS NEW JERSEY, LLC, a
Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

MSTR BRAND, INC., a Texas corporation

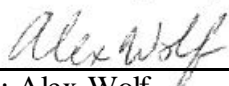
By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

ELECTRONICS OUTLET, LLC, a Delaware
limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

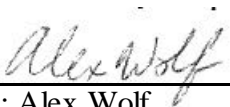
CANADIAN BORROWER:

AVAD CANADA LTD, a British Columbia corporation

By: 
Name: Alex Wolf
Title: Vice President and Secretary

**ACKNOWLEDGED AND AGREED
TO BY GUARANTORS:**

KINGSWOOD AVAD LLC, a Delaware limited liability company

By: 
Name: Alex Wolf
Title: Vice President and Secretary

Annex A to Consent and Amendment No. 2 to Credit and Security Agreement

ANNEX A TO CREDIT AGREEMENT (COMMITMENT ANNEX)¹

| Lender | US Revolving Loan Commitment Amount | US Revolving Loan Commitment Percentage | Canadian Revolving Loan Commitment Amount | Canadian Revolving Loan Commitment Percentage | First Amendment Term Loan Commitment Amount | First Amendment Term Loan Commitment Percentage | Term Loan Commitment Amount | Term Loan Commitment Percentage |
|-------------------------------|--|--|--|--|--|--|------------------------------------|--|
| MidCap Financial Trust | \$0 | 0% | \$0 | 0% | \$3,333,333.33 | 66.6666% | \$0 | 0% |
| Apollo Investment Corporation | \$18,666,666.67 | 33.3334% | 1,333,333.33 | 33.3334% | \$1,666,666.67 | 33.3334% | \$9,311,019.05 | 33.3334% |
| MidCap Funding IV Trust | \$37,333,333.33 | 66.6666% | \$2,666,666.67 | 66.6666% | \$0 | 0% | \$18,622,038.11 | 66.6666% |
| TOTALS | \$56,000,000 | 100% | \$4,000,000 | 100% | \$5,000,000 | 100% | \$27,933,057.16 | 100% |

¹ Each of the US Revolving Loan Commitment Amount, US Revolving Loan Commitment Percentage, Canadian Revolving Loan Commitment Amount, Canadian Revolving Loan Commitment Percentage, Term Loan Commitment Amount and Term Loan Commitment Percentage set forth on this Annex A reflects the applicable amount or percentage thereof as in effect on the Second Amendment Closing Date after giving effect to the activation of the Second Amendment Additional Tranche. Each of the First Amendment Term Loan Commitment Amount and First Amendment Term Loan Commitment Percentage set forth on this Annex A represents the applicable amount or percentage thereof as of the First Amendment Closing Date after the making of the First Amendment Term Loan. The First Amendment Term Loan made by MidCap Financial Trust on the First Amendment Closing Date was assigned to Midcap Funding IV Trust prior to the Second Amendment Closing Date.

**Exhibit A to
Consent and Amendment No. 2 to Credit and Security Agreement**

Closing Checklist

[see attached]



AMENDMENT NO. 2 TO CREDIT AND SECURITY AGREEMENT (\$10,000,000 ADDITIONAL TRANCHE)

**\$60,000,000 REVOLVING CREDIT FACILITY AND \$30,000,000 TERM CREDIT FACILITY
to**

**AVAD LLC; AVAD CANADA LTD.; WAVE ELECTRONICS, INC.; WAVE ELECTRONICS ARIZONA, LLC; WAVE
ELECTRONICS CALIFORNIA, LLC; WAVE ELECTRONICS FLORIDA, LLC; WAVE ELECTRONICS LOUISIANA, LLC; WAVE
ELECTRONICS NEW JERSEY, LLC; ELECTRONICS OUTLET, LLC and MSTR BRAND, INC.**

Target Closing Date: July 26, 2019

CLOSING CHECKLIST

Key:

B Borrowers
BC Borrowers' US Counsel
BCC Borrowers' Canadian Counsel
A MidCap Financial Trust
AC MCF's US Counsel
ACC MCF's Canadian Counsel

| | <u>Closing Item</u> | <u>Responsible Party</u> | <u>Received</u> | <u>Approved</u> | <u>Comments</u> |
|-----------|---------------------------------|--------------------------|-----------------|-----------------|-----------------|
| I. | <u>US LOAN DOCUMENTS</u> | | | | |

| | | | | | |
|-------------|---|------|--|--|--|
| | A. Amendment No. 2 to Credit and Security Agreement | AC | | | |
| | • Annexes | | | | |
| | • Exhibits | | | | |
| | B. Closing Certificate | AC | | | |
| | C. Solvency Certificate | AC | | | |
| | D. Trademark Security Agreement (Wave Electronics) | AC | | | |
| | E. US Legal Opinions | | | | |
| | • Goodwin Procter (DE corporate law) | BC | | | |
| | • Texas local counsel (TX corporate law) | BC | | | |
| | | | | | |
| II. | <u>CANADIAN DOCUMENTS</u> | | | | |
| | | | | | |
| | A. Legal opinion of Dentons Canada (British Columbia) | BCC | | | |
| | B. Good Standing Certificate British Columbia | BCC | | | |
| | | | | | |
| III. | <u>ORGANIZATIONAL DOCUMENTS</u> | | | | |
| | | | | | |
| | A. Secretary's Certificate for Kingswood AVAD LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Amended and Restated Limited Liability Company Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | B. Secretary's Certificate for AVAD LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Third Amended and Restated Limited Liability Company Agreement | B/BC | | | |

| | | | | | |
|--|---|------|--|--|--|
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | C. Secretary's Certificate for WAVE Electronics, Inc., with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | D. Secretary's Certificate for WAVE Electronics Arizona, LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |
| | E. Secretary's Certificate for WAVE Electronics California, LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |
| | F. Secretary's Certificate for WAVE Electronics Florida, LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |

| | | | | | |
|--|---|-------|--|--|--|
| | G. Secretary's Certificate for WAVE Electronics Louisiana, LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |
| | H. Secretary's Certificate for WAVE Electronics New Jersey, LLC, with Exhibits: | B/BC | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |
| | I. Secretary's Certificate for Electronics Outlet, LLC with Exhibits: | | | | |
| | • Certificate of Formation | B/BC | | | |
| | • Operating Agreement | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (DE) | B/BC | | | |
| | J. Secretary's Certificate for MSTR Brand, Inc., with Exhibits: | B/BC | | | |
| | • Certificate of Incorporation | B/BC | | | |
| | • Bylaws | B/BC | | | |
| | • Incumbency Certificate | B/BC | | | |
| | • Authorizing Resolutions | B/BC | | | |
| | • Good Standing Certificate (TX) | B/BC | | | |
| | K. Officer's Certificate for AVAD Canada Ltd., with Exhibits: | B/BCC | | | |
| | • Articles | B/BCC | | | |
| | • Bylaws | B/BCC | | | |

| | | | | | |
|------------|---|-------|--|--|--|
| | • Incumbency Certificate | B/BCC | | | |
| | • Authorizing Resolutions | B/BCC | | | |
| | • Good Standing Certificate | B/BCC | | | |
| | | | | | |
| IV. | <u>LIEN AND LITIGATION DILIGENCE / FINANCIAL DILIGENCE / ACQUISITION DILIGENCE</u> | | | | |
| | A. Pre-Closing SOS UCC Searches for Borrowers and other Credit Parties | AC | | | |
| | B. Intellectual Property Searches | AC | | | |
| | C. Canadian lien searches (Corporate PPSA/RDPRM, Bank Act, Provincial Bankruptcy, Federal Insolvency, Execution and CIPO) | BCC | | | |
| | | | | | |
| V. | <u>POST CLOSING DOCUMENTS AND DELIVERABLES (see indications above)</u> | | | | |
| | A. Post-Closing UCC Searches for Borrowers/Credit Parties | AC | | | |
| | B. Landlord Agreements for each of the locations listed on Annex A | AC | | | |

ANNEX A**Landlord's Agreements**

| | <u>Lessee</u> | <u>Location</u> | <u>Lessor</u> | <u>Status</u> |
|-----|----------------------------------|--|---------------------------------------|---------------|
| 1. | WAVE Electronics Arizona, LLC | 16033 N. 77th St., Suite A1, Scottsdale, AZ 85260 | MJD INVESTMENTS LLC | |
| 2. | WAVE Electronics Louisiana, LLC | 509 Al Davis Rd. South, Suite A, Jefferson, LA 70123 | P.C. WOOD, LLC | |
| 3. | WAVE Electronics, Inc. | 9208 Waterford Center Blvd., Suite 120, Austin, TX 78578 | RAR2 – WATERFORD TX, L.P. | |
| 4. | WAVE Electronics California, LLC | 1515 Harris Court, Anaheim, CA 92806 | RREEF AMERICA REIT II PORTFOLIO, L.P. | |
| 5. | WAVE Electronics Louisiana, LLC | 14141 Airline Hwy, Baton Rouge, LA 70817 | MIE PROPERTIES-LA, LLC | |
| 6. | WAVE Electronics, Inc. | 14280-14292 Gillis Road, Farmers Branch, TX 75244 | ANGEL INDUSTRIAL PROPERTIES, INC. | |
| 7. | WAVE Electronics, Inc. | 8648 Glenmont Dr #130 & #190, Houston, TX 77036 | EASTGROUP PROPERTIES, L.P. | |
| 8. | AVAD LLC | Unit 4, 5655 Kennedy Road, Mississauga, Ontario | 3883281 CANADA INC. | |
| 9. | AVAD LLC | Suite 100 in Building 7 at 8195 Mercury Court, San Diego, California 92111 | MERCURY TECH CENTER LLC | |
| 10. | AVAD LLC | 1603 South 35th Avenue, Phoenix, AZ 85009 | EASTGROUP PROPERTIES, L.P. | |

| | | | |
|-----|----------|---|--|
| 11. | AVAD LLC | City or Town of Nashville, County of Davidson, State of Tennessee | LINBAR BUSINESS CENTER ASSOCIATES, LLC |
| 12. | AVAD LLC | 9923 Valley View Road, Eden Prairie, MN 55344 | VALLEY VIEW ASSOCIATES, LLC |
| 13. | AVAD LLC | 25003 Pitkin Road Suite G-50D , The Woodlands, TX 77386 | WINDSOR LEGACY SPRING HILL LLC |
| 14. | AVAD LLC | 2707 Realty Road, Ste. 200, Carrollton, TX 75006 | SL3 DFW INDUSTRIAL, LP |
| 15. | AVAD LLC | 1901 Associates Lane, Suites B & C, Charlotte, NC 28217 | CHARLOTTE PORTFOLIO OF THREE LLC |
| 16. | AVAD LLC | 14 Inverness Drive East, Suite A-116, Englewood, CO 80112 | INVERNESS PROPERTY, LLC |
| 17. | AVAD LLC | 16333 Raymer Street, Van Nuys, CA 91406 | BUILDING NUMBER TWENTY-FIVE, LLC |



c/o MidCap Financial Services, LLC, as
Servicer
7255 Woodmont Avenue, Suite 200
Bethesda, MD 20814
www.midcapfinancial.com

April 29, 2020

VIA EMAIL

AVAD LLC, as Borrower Representative
8501 East Princess Drive, Suite 190
Scottsdale, Arizona 85255
Attn: Alex Wolf
email: awolf@kingswood-capital.com

RE: Consent and Amendment No. 3 to Credit and Security Agreement

Dear Sir or Madam:

We refer to that certain Credit and Security Agreement dated as of October 2, 2018 (as amended, modified, supplemented and restated from time to time, the "Credit Agreement") by and among MidCap Funding IV Trust, as administrative agent for the Lenders thereunder (in such capacity and together with its successors and assigns, "Agent" or "us"), and Kingswood AVAD LLC ("Parent"), as a Guarantor and as a Credit Party, each of Parent's Subsidiaries identified on the signature pages hereto as "Borrowers" (collectively, "Borrowers" and each individually, a "Borrower"), the other Credit Parties from time to time party thereto and the Lenders from time to time party thereto. Capitalized terms used but not defined herein shall have the meaning set forth in the Credit Agreement.

Borrowers have informed us that US Borrowers intend to incur certain loan obligations in reliance on the Small Business Administration's Paycheck Protection Program (the "Paycheck Protection Program") under the Coronavirus Aid, Relief, and Economic Security Act P.L. 116-136 (the "Act") in an aggregate principal amount of up to \$4,872,000 (the "SBA Loan"). The incurrence of the SBA Loan requires Agent's and Required Lenders' consent under the Credit Agreement, and accordingly, Borrowers have requested our consent to incur the SBA Loan. Agent and Required Lenders hereby consent to the incurrence of the SBA Loan by US Borrowers and agree that such SBA Loan shall constitute "Permitted Debt" under the terms of the Credit Agreement, subject to the following terms and conditions:

- (a) Borrowers shall have submitted all required forms, applications and certificates required for, and shall have been conditionally approved to receive, the SBA Loan under the Paycheck Protection Program; and
- (b) Borrowers shall (i) at all times comply with all terms applicable to the SBA Loan, including without limitation, any requirements with respect to the use of proceeds of the SBA Loan, and (ii) make only regularly scheduled payments of interest accruing on, and to the extent required under, the SBA Loan at a rate not exceeding 1.0% per annum in respect thereof.

The Credit Parties agree that any failure to comply with the foregoing conditions shall constitute an immediate and automatic Event of Default, subject to any applicable grace periods to cure any such failure provided for in the agreements, documents and/or instruments evidencing the SBA Loan. In addition to and the foregoing, Credit Parties, Agent and Required Lenders hereby agree as follows:

1. For the purposes of determining the Credit Parties' compliance with Section 5.1 of the Credit Agreement the amount of any Debt incurred under the SBA Loan that remains outstanding during any Defined Period shall not count against the basket amount described in clause (k) of the definition of "Permitted Debt" in the Credit Agreement.

2. In the event that all or any portion of the SBA Loan is forgiven pursuant to Section 1106 of the Act, the amount of the SBA Loan so forgiven (a) shall under no circumstances constitute "extraordinary receipts" (as such phrase is used in the Credit Agreement) and shall not be required to be applied to the prepayment of the Obligations under any provision of the Credit Agreement, including, for the avoidance of any doubt, under Sections 2.1(a)(ii)(B)(i)(III) and 2.1(b)(ii)(D)(III), and (b) shall constitute "extraordinary or non-recurring income or gain" (as such phrase is used in the calculation of EBITDA set forth in the Compliance Certificate) and shall be deducted from net income in any calculation of EBITDA.

3. No portion of the SBL Loan, whether or not forgiven pursuant to Section 1106 of the Act, shall under any circumstances constitute an Equity Cure under the Credit Agreement or any other Financing Document.

4. Section 1.1 of the Credit Agreement is hereby amended by adding the following definitions in appropriate alphabetical order, as follows:

"Amendment No. 3" means that certain Consent and Amendment No. 3 to Credit and Security Agreement dated as of April 29, 2020 by Agent and acknowledged and agreed to by the Credit Parties.

"GEM" means, collectively, Global Endowment Management, LP, a Delaware limited partnership, and its Investment Affiliates.

"CARES Unforgiven Debt" means the amount of the SBA Loan that (x) has been determined by the lender of the SBA Loan (or the Small Business Administration) to be ineligible for forgiveness pursuant to the provisions of the Paycheck Protection Program; provided that if such determination has not been made on or before the date that is six (6) months after the date of incurrence of the SBA Loan (or such longer period as may be approved in writing by Agent), all such SBA Loan shall be deemed "CARES Unforgiven Debt" until such time as a final determination is made by the lender of the SBA Loan (and, to the extent required, the Small Business Administration) and/or (y) is not included in any application for such forgiveness submitted in accordance with the Paycheck Protection Program.

"Paycheck Protection Program" has the meaning ascribed to such term in Amendment No. 3.

"SBA Loan" has the meaning ascribed to such term in Amendment No. 3.

5. The definitions of the terms "Change in Control," "Fixed Charges," "Investment Affiliate," and "Senior Debt," in each case, set forth in Section 1.1 of the Credit Agreement are hereby amended and restated in their entirety as follows:

"Change in Control" means any of the following events: (a) Sponsor and its Investment Affiliates shall cease among them to collectively own, directly or indirectly, at least 51% of the equity interests of Parent; (b) Sponsor, GEM and their respective Investment Affiliates shall cease among them to collectively possess the right to elect (through contract, ownership of voting securities or otherwise) at all times a majority of the board of directors (or similar governing body) of Parent and to direct the management policies and decisions of Parent; (c) Sponsor and its Investment Affiliates shall cease among them to collectively possess the right to elect (through contract, ownership of voting securities or otherwise) at all times the same number of board of directors (or similar governing body) of Parent as Sponsor and its Investment Affiliates collectively possess the right to elect (through contract, ownership of voting securities or otherwise) on April 29, 2020; (d) Parent ceases to own, directly or indirectly, 100% of the equity interests of any other Credit Party; or (e) the occurrence of any "Change of Control", "Change in Control", or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person.

"Fixed Charges" means, with respect to Parent and its Consolidated Subsidiaries for the applicable Defined Period, the sum of (a) interest expense, net of cash interest income, payable in cash during the Defined Period (excluding interest expense in respect of the SBA Loan other than CARES Unforgiven Debt), (b) any provision for (or minus any benefit from) income or franchise Taxes included in the determination of net income for such Defined Period to the extent payable in cash during such Defined Period (except to the extent paid from the Seller escrow under the Closing Date Acquisition Agreement), (c) payments of principal payable in cash during such Defined Period with respect to all Debt (including the portion of scheduled payments under capital leases allocable to principal, but excluding (i) mandatory prepayments required by Section 2.1, (ii) scheduled repayments of Revolving Loans and other Debt subject to reborrowing to the extent not accompanied by a concurrent and permanent reduction of the US Revolving Loan Commitment or the Canadian Revolving Loan Commitment, and (iii) principal payments in respect of the SBA Loan other than CARES Unforgiven Debt), (d) Permitted Distributions (other than as defined in clause (g)(i) thereof), including Tax distribution, payable in cash during such Defined Period, and (e) Integration Costs added back to EBITDA for the Defined Period.

"Investment Affiliate" means any fund or investment vehicle that (a) is organized by Sponsor or GEM, as applicable, for the purpose of making equity or debt investments in one or more companies and (b) is controlled by, or under common control with, Sponsor or GEM, as applicable. For purposes of this definition "control" means the power to direct or cause the direction of management and policies of a Person, whether by contract or otherwise.

"Senior Debt" means an amount equal to the total aggregate amount of Debt for borrowed money of Parent and its Subsidiaries, including, without limitation, the Obligations hereunder and Debt under capitalized leases, but excluding (i) the outstanding balance of any Subordinated Debt, (ii) the SBA Loan other than the CARES Unforgiven Debt, and

(iii) for avoidance of doubt, Letters of Credit (except to the extent such Letters of Credit have been drawn and not reimbursed).

6. The worksheets attached to Exhibit B (Compliance Certificate) to the Credit Agreement are hereby deemed amended to conform to the calculations of the financial covenants as modified in this letter agreement.

7. This letter agreement constitutes a Financing Document and shall not be superseded by the Credit Agreement or any other Financing Document entered into as of the date hereof and that this letter agreement cannot be modified or terminated except with the written consent of each of the undersigned.

8. The provisions of the Credit Agreement regarding choice of law, jurisdiction, venue and jury trial waiver are expressly incorporated herein and shall govern this letter agreement. No Person other than the parties hereto, shall (i) have any rights hereunder or (ii) be entitled to rely on this letter agreement, and all third-party beneficiary rights are hereby expressly disclaimed.

9. The consent and modifications to the Credit Agreement set forth in this letter agreement are effective solely for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to: (a) except as expressly provided herein, be a consent, amendment, waiver or modification of any term or condition of the Credit Agreement or of any other Financing Document, which shall remain and continue in full force and effect; (b) prejudice any right that Agent or the Lenders have or may have in the future under or in connection with the Credit Agreement or any other Financing Document; (c) waive any Default and/or Event of Default that may exist and is continuing as of the date hereof or occur hereafter; or (d) establish a custom or course of dealing among the Credit Parties, on the one hand, and Agent or any Lender, on the other hand.

10. This letter agreement may be executed in any number of counterparts and by any combination of the parties hereto in separate counterparts, each of which counterparts shall be an original and all of which taken together shall constitute one and the same letter agreement. Electronic signatures shall have the same effect as original signatures. This letter agreement shall become effective as of the date first above written when counterparts of this letter agreement shall have been executed by the Credit Parties and Agent on behalf of itself and the Required Lenders.

Please counter-sign this letter agreement below to indicate consent of each Credit Party and agreement to the terms and conditions set forth herein.

Sincerely,

MIDCAP FUNDING IV TRUST,
as Agent on behalf of itself and the Required Lenders

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By  _____

Name: Maurice Amsellem

Title: Authorized Signatory

Each Credit Party hereby acknowledges, understands and agrees to the terms and conditions set forth above, and have caused this letter agreement to be duly executed by their respective authorized officers as of the day and year first above written.

PARENT:

KINGSWOOD AVAD LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

BORROWERS:

AVAD LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS, INC.

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS ARIZONA, LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS CALIFORNIA, LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS FLORIDA, LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS LOUISIANA, LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

WAVE ELECTRONICS NEW JERSEY, LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

MSTR BRAND, INC.

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

ELECTRONICS OUTLET, LLC

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

AVAD CANADA LTD

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

**SECOND FORBEARANCE AGREEMENT AND AMENDMENT NO. 4 TO CREDIT
AND SECURITY AGREEMENT**

This SECOND FORBEARANCE AGREEMENT AND AMENDMENT NO. 4 TO CREDIT AND SECURITY AGREEMENT (this "Agreement") dated as of January 8, 2021, by and among AVAD LLC, a Delaware limited liability company ("AVAD"), Wave Electronics, Inc., a Texas corporation ("Wave Electronics"), Wave Electronics Arizona, LLC, a Texas limited liability company ("Wave Arizona"), Wave Electronics California, LLC, a Texas limited liability company ("Wave California"), Wave Electronics Florida, LLC, a Texas limited liability company ("Wave Florida"), Wave Electronics Louisiana, LLC, a Texas limited liability company ("Wave Louisiana"), Wave Electronics New Jersey, LLC, a Texas limited liability company ("Wave New Jersey"), MSTR Brand, Inc., a Texas corporation ("MSTR"), Electronics Outlet, LLC, a Delaware limited liability company ("Electronics Outlet", together with AVAD, Wave Electronics, Wave Arizona, Wave California, Wave Florida, Wave Louisiana, Wave New Jersey, and MSTR, collectively, "Borrowers" and each individually a "Borrower") and, the Lenders party hereto and MIDCAP FUNDING IV TRUST, a Delaware statutory trust, as successor-by-assignment from MidCap Funding X Trust, as successor by assignment from MidCap Financial Trust, as Agent for Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), and individually, as a Lender.

RECITALS:

WHEREAS, Agent, Lenders, Kingswood AVAD LLC, a Delaware limited liability company ("Holdings"), Borrowers, and AVAD Canada Ltd., a British Columbia corporation ("AVAD Canada"; together with Borrowers and Holdings, collectively the "Credit Parties" and each a "Credit Party") have entered into certain financing arrangements pursuant to that certain Credit and Security Agreement dated as of October 2, 2018 among Agent, the Credit Parties, and the Lenders from time to time party thereto (as amended hereby, and as the same may have heretofore been or may hereafter be further amended, modified, supplemented, extended, renewed, restated, replaced or otherwise modified, the "Credit Agreement");

WHEREAS, as of the date hereof, multiple Events of Default under the Credit Agreement and the other Financing Documents have occurred and are continuing;

WHEREAS, Agent, Lenders, and Borrowers are parties to that certain Forbearance Agreement, dated as of October 27, 2020 (as amended hereby, and as the same may have heretofore been or may hereafter be further amended, supplemented, extended, renewed, restated, replaced, or otherwise modified, the "First Forbearance Agreement"), as modified and extended by that certain Extension of Forbearance Period and Amendment of Forbearance Agreement dated December 31, 2020 (the "First Forbearance Extension");

WHEREAS, the "Forbearance Period" as defined in the First Forbearance Agreement ends on January 8, 2021;

WHEREAS, notwithstanding such Events of Default, Borrowers have requested that, subject to the terms and conditions of this Agreement, Agent and Lenders forbear from exercising their rights and remedies against the Borrowers (other than AVAD Canada) as a result of such Events of Default, which are continuing, and that Lenders agree to provide further Revolving Loans and other financial accommodations to Borrowers; and

WHEREAS, Agent and Lenders are willing to agree to forbear from exercising certain of their rights and remedies against the Borrowers (other than AVAD Canada) and provide certain further Revolving Loans and other financial accommodations to Borrowers solely for the period and on the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements, warranties and covenants contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1. **Interpretation.** All capitalized terms used herein (including the recitals hereto) will have the respective meanings ascribed thereto in the Credit Agreement unless otherwise defined herein. The foregoing recitals, together with all exhibits attached hereto, are incorporated by this reference and made a part of this Agreement. Unless otherwise provided herein, all section and exhibit references herein are to the corresponding sections and exhibits of this Agreement.

1.2. **Additional Definitions.** As used herein, the following terms will have the respective meanings given to them below:

(a) "Anticipated Defaults" means, collectively, the anticipated Events of Default identified on Exhibit A hereto as the "Anticipated Defaults".

(b) "Default Margin" means five percent (5.0%) per annum. The Default Margin is a part of, and not in addition to, the Default Rate.

(c) "Default Rate" means the rate of interest that is five percent (5.0%) in excess of the interest rate otherwise applicable under the Credit Agreement, in accordance with Section 10.5 of the Credit Agreement.

(d) "Existing Defaults" means, collectively, the Events of Default identified on Exhibit A hereto as the "Existing Defaults".

(e) "Forbearance Period" means the period commencing on the date hereof and ending on the date which is the earliest of (i) January 31, 2021; (ii) the occurrence or existence of any Event of Default, other than the Specified Defaults; or (iii) the occurrence of any Termination Event.

(f) "Independent Director" or "Independent Manager" shall mean a person that (i) is not an officer, director, employee, shareholder, "insider", "relative" or "affiliate" (as such terms are defined in Section 101 of the United States Bankruptcy Code, Title 11 U.S.C. § 101 et seq., as amended from time to time) of any Credit Party, (ii) is reasonably qualified to serve as, and to exercise independent judgment in carrying out the responsibilities of, a director or manager of

the Borrowers and (iii) has no interest in any Credit Party or any direct or indirect shareholder or equity holder of any Credit Party.

(g) "Specified Defaults" means, collectively, the Existing Defaults and the Anticipated Defaults.

(h) "Termination Event" means (i) the initiation of any action by any Credit Party or any Releasing Party (as defined herein) to invalidate or limit the enforceability of any of the acknowledgments set forth in Section 2, the release set forth in Section 8.6 or the covenant not to sue set forth in Section 8.7, or (ii) the occurrence of an Event of Default under Sections 10.1(e) or 10.1(f) of the Credit Agreement.

SECTION 2. ACKNOWLEDGMENTS

2.1. **Acknowledgment of Obligations.** Each Credit Party hereby acknowledges, confirms and agrees that as of the close of business on January 8, 2021, (a) Borrowers are indebted to Lenders in respect of the Revolving Loans in the principal amount of \$26,819,102.39, (b) Borrowers are indebted to Lenders in respect of the Term Loan in the aggregate principal amount of \$23,649,306.94, (c) Borrowers are indebted to Lenders in respect of the Letter of Credit Obligations in the principal amount of \$0, and (d) Borrowers are indebted to Lenders in respect of accrued and unpaid interest at the Default Margin in the amount of \$1,996,120.77. Each Credit Party hereby acknowledges, confirms and agrees that all such Obligations, together with interest accrued and accruing thereon (including interest at the Default Rate, which was implemented effective as of March 19, 2020 in accordance with Section 10.5 of the Credit Agreement), and all fees, costs, expenses and other charges now or hereafter payable by the Credit Parties to Agent and Lenders are unconditionally owing by Credit Parties to Agent and Lenders, as applicable, without offset, defense or counterclaim of any kind, nature or description whatsoever.

2.2. **Acknowledgment of Security Interests.** Each Credit Party hereby acknowledges, confirms and agrees that Agent has, and will continue to have, valid, enforceable and perfected first-priority continuing liens upon and security interests in the Collateral heretofore granted to Agent, for the benefit of Agent and Lenders, pursuant to the Credit Agreement and the Financing Documents or otherwise granted to or held by Agent, for the benefit of Agent and Lenders.

2.3. **Binding Effect of Documents.** Each Credit Party hereby acknowledges, confirms and agrees that: (a) this Agreement constitutes a Financing Document, (b) each of the Credit Agreement and the other Financing Documents to which it is a party has been duly executed and delivered to Agent by such Credit Party, and each is and will remain in full force and effect as of the date hereof except as modified pursuant hereto, (c) the agreements and obligations of such Credit Party contained in such documents and in this Agreement constitute the legal, valid and binding Obligations of such Credit Party, enforceable against it in accordance with their respective terms, and such Credit Party has no valid defense to the enforcement of such Obligations, (d) Agent and Lenders are and will be entitled to the rights, remedies and benefits provided for under the Credit Agreement and the other Financing Documents and applicable law, and (e) such Credit Party shall comply with all limitations, restrictions or prohibitions that would otherwise be effective or applicable under the Credit Agreement or any of the other Financing Documents during the continuance of any Event of Default, and except to the extent expressly provided

otherwise in this Agreement, any right or action of any Credit Party set forth in the Credit Agreement or the other Financing Documents that is conditioned on the absence of any Event of Default may not be exercised or taken as a result of the Existing Defaults.

SECTION 3. FORBEARANCE IN RESPECT OF SPECIFIED DEFAULTS

3.1. **Acknowledgment of Default.** Each Credit Party hereby acknowledges and agrees that the Existing Defaults have occurred and are continuing, each of which constitutes an Event of Default and entitles Agent and Lenders to exercise their rights and remedies under the Credit Agreement and the other Financing Documents, applicable law or otherwise. Each Credit Party represents and warrants that as of the date hereof, no Events of Default exist other than the Existing Defaults. Each Credit Party acknowledges that once an Event of Default (including the Specified Defaults) has occurred, no Credit Party shall have a right to cure such Event of Default and no such Event of Default shall be deemed cured and/or cease to exist and/or cease to be continuing unless and until such Event of Default is waived in writing in accordance with the Credit Agreement. Each Credit Party hereby acknowledges and agrees that Agent and Lenders have the exercisable right to declare the Obligations to be immediately due and payable under the terms of the Credit Agreement and the other Financing Documents. Each Credit Party acknowledges that, except as set forth herein, Lenders are no longer obligated to make any disbursements of the Revolving Loans.

3.2. Forbearance.

(a) In reliance upon the representations, warranties and covenants of the Credit Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection herewith, Agent and Lenders agree to forbear during the Forbearance Period from exercising their rights and remedies against the Borrowers (other than AVAD Canada) under the Credit Agreement and the other Financing Documents or applicable law in respect of the Specified Defaults. The Credit Parties acknowledge and agree that Agent and Lenders have not agreed to forbear from exercising their respective rights and remedies with respect to AVAD Canada as a result of the occurrence and continuance of the Existing Defaults and Agent hereby reserves the right to exercise any rights and remedies with respect to AVAD Canada, under the Credit Agreement, the other Financing Documents and applicable law.

(b) Upon the expiration or termination of the Forbearance Period, the agreement of Agent and Lenders to forbear from exercising their rights and remedies against the Borrowers (other than AVAD Canada) will automatically and without further action terminate and be of no force and effect, it being expressly agreed that the effect of such termination will be to permit Agent and Lenders to exercise immediately all rights and remedies under the Credit Agreement and the other Financing Documents and applicable law, including, but not limited to, (i) ceasing to make any further Loans or issuing any further Letters of Credit and (ii) accelerating all of the Obligations under the Credit Agreement and the other Financing Documents, in all events, without any further notice to any Credit Party, passage of time or forbearance of any kind.

3.3. **No Waivers; Reservation of Rights.**

(a) Agent and Lenders have not waived, are not by this Agreement waiving, and have no intention of waiving, any Events of Default which may be continuing on the date hereof or any Events of Default which may occur after the date hereof (whether the same or similar to the Specified Defaults or otherwise), and Agent and Lenders have not agreed to forbear with respect to any of their rights or remedies concerning any Events of Default (other than, during the Forbearance Period, the Specified Defaults to the extent expressly set forth herein with respect to the Borrowers (other than AVAD Canada)) occurring at any time.

(b) Subject to Section 3.2 above (solely with respect to the Specified Defaults and to the Borrowers other than AVAD Canada), Agent and Lenders reserve the right, in their discretion, to exercise any or all of their rights and remedies under the Credit Agreement and the other Financing Documents as a result of any other Events of Default occurring at any time. Agent and Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, may or will be construed as a waiver of any such rights or remedies.

3.4. **Additional Events of Default.** The parties hereto acknowledge, confirm and agree that any misrepresentation by any Credit Party, or any failure of any Credit Party to comply with the covenants, conditions and agreements contained in this Agreement, the Credit Agreement or any other Financing Document or in any other agreement, document or instrument at any time executed or delivered by any Credit Party with, to or in favor of Agent or any Lenders will constitute an immediate Event of Default under this Agreement, the Credit Agreement and the other Financing Documents (without any notice or grace or cure period). In the event that any Person, other than Agent or Lenders, at any time exercises for any reason (including, without limitation, by reason of any Specified Defaults, any other present or future Event of Default, or otherwise) any of its rights or remedies against any Credit Party or any obligor providing credit support for any Credit Party's obligations to such other Person, or against any Credit Party's or such obligor's properties or assets, such event will constitute an immediate Event of Default hereunder and an Event of Default under the Credit Agreement and the other Financing Documents (without any notice or grace or cure period).

SECTION 4. AMENDMENTS

Subject to the satisfaction of the conditions precedent set forth in Section 7 herein, the Credit Agreement is hereby amended as follows:

4.1. Clause (c) of the definition of "US Borrowing Base" in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

"(c) sixty-five percent (65%) *multiplied* by the value of the Eligible Inventory of US Borrowers, valued at the lower of first-in first-out cost or market cost; *plus*"

SECTION 5. COVENANTS AND AGREEMENTS

5.1. **Independent Board; No Change to Organizational Documents.**

(a) The board of managers or directors of each Borrower shall at all times be comprised entirely of Independent Directors or Independent Managers, as applicable, who are acceptable to Agent and qualified to serve as and to exercise independent judgment in carrying out the responsibilities of such independent board member or manager. Agent and Lenders acknowledge and agree that Bradley Dietz is acceptable to Agent and Lenders.

(b) No term of the Credit Parties' respective Organizational Documents, as in effect on the date hereof, shall be amended, waived or otherwise modified without having received the prior written consent of Agent.

5.2. Chief Restructuring Officer. If requested by Agent, within five (5) Business Days after such request, Borrowers shall retain a chief restructuring officer (the "CRO") acceptable to Agent and Lenders, pursuant to an engagement letter acceptable to Agent and Lenders, including the scope of the CRO's duties set forth therein. Thereafter, Borrowers shall continue to retain the CRO (or another Person acceptable to Agent) at all times during the Forbearance Period. The Borrowers shall authorize and direct the CRO to communicate directly and independently with the Agent, the Lenders and their advisors regarding the Credit Parties, their financial condition and operations and any other matters related thereto. The Credit Parties shall make the CRO available for calls with Agent and Lenders at such times and for such durations as Agent, Lenders, or any consultant of Agent or Lenders may reasonably request.

5.3. Budget Compliance; Forbearance Period Advances; Reporting.

(a) Budget; Forbearance Period Advances. Borrowers shall deliver a 13-week cash flow forecast acceptable to Agent on or before 5:00 p.m. Eastern Time on January 11, 2021 (the "Budget"). Upon Agent's confirmation in writing that the Budget is acceptable to Agent, the Budget will be attached hereto as Exhibit B and shall constitute the Budget for purposes of this Agreement. Borrowers hereby represent and warrant that the Budget was prepared by Borrowers' management and represents the good faith belief as to the probable course of Borrowers' business and financial affairs over the periods shown therein, subject to the assumptions stated therein. During the Forbearance Period, the Credit Parties shall only use proceeds of Revolving Loans to pay such expenses set forth in the Budget, as and when such expenses are due and payable in accordance with the Budget, and all Revolving Loan requests made during the Forbearance Period shall specify the applicable category(ies) in the Budget to which the requested Revolving Loan amounts relate. Borrowers shall not be entitled to request, and neither Agent nor Lenders shall be required to make, any Revolving Loans during the Forbearance Period except in accordance with this Section and otherwise subject to the terms and conditions set forth in the Credit Agreement; provided, however, that solely during the Forbearance Period (i) the condition to the making of US Revolving Loans set forth in Section 7.2(b) of the Credit Agreement shall be deemed satisfied so long as after giving effect to such borrowing, the US Revolving Loan Outstandings do not exceed the US Borrowing Base by more than \$9,700,000 (the "Overadvance Amount"), (ii) the condition to the making of Revolving Loans set forth in Section 7.2(c) of the Credit Agreement shall be deemed satisfied so long as the only Events of Default then in existence at such time are the Specified Defaults and (iii) the definition of the term "US Revolving Loan Limit" set forth in Section 1.1 of the Credit Agreement shall be deemed amended to add the Overadvance Amount thereto. The Credit Parties further acknowledge and agree that notwithstanding anything to the contrary set forth herein, the Agent and Lenders shall

have no obligation to make any Revolving Loans or other advances or financial accommodations to AVAD Canada, and any Revolving Loans or other advances or financial accommodations made to AVAD Canada from and after the date hereof shall be in the Agent's and the Lenders' sole and absolute discretion and shall not obligate Agent or any Lender to make any further Revolving Loans, advances or financial accommodations.

(b) Updated Cash Flow Forecast; Variance Report. Not later than the Wednesday of every week during the Forbearance Period (each, a "Variance Report Date"), Borrowers will shall deliver to Agent (i) an updated 13-week cash flow forecast in form and substance reasonably satisfactory to Agent, that adds an additional week to the end of the prior 13-week cash flow forecast submitted to Agent, and (ii) a variance report certified as true and correct in all material respects by a Responsible Officer of the Borrowers (each such report, a "Variance Report") that includes (x) a reconciliation of Borrowers' actual performance for the week ending the prior Friday to the projected performance for such week in the Budget, (y) a reconciliation of Borrowers' actual to budgeted performance for the period beginning on October 27, 2020 through the prior Friday, and (z) a written explanation in reasonable detail of the reasons for material line item variances during the applicable reconciliation periods. For the avoidance of doubt, no cash flow forecast delivered pursuant to this Section shall constitute the Budget or replace or supplement the Budget unless agreed in writing by Agent.

(c) Variance Test. Commencing with the Variance Report Date on January 13, 2021, and on each Variance Report Date thereafter, the calculations set forth in the Variance Report must demonstrate for (1) the two-week rolling period ending on the Friday preceding the applicable Variance Report Date and (2) the period commencing on October 27, 2020, and ending on the Friday preceding the applicable Variance Report Date (i.e. January 8, 2021 for the first such test), (i) cash receipts for such period in an amount equal to at least eighty percent (80%) of the aggregate amount set forth in the Budget for such period then ended, and (ii) aggregate disbursements for such period were no greater than ten percent (10%) more than the amount set forth in the Budget for such period.

(d) Additional Reporting. In addition to any other reporting required under the Credit Agreement, this Agreement, or any other Financing Document, Borrowers shall deliver to Agent, in form and substance reasonably acceptable to Agent, on each Variance Report Date: (i) a reporting of sales, vendor payments, and other payments (on a daily basis), and (ii) a reporting of backlogs, open orders, and inventory needs for key customers (on a weekly basis).

5.4. **Reserves.**

(a) Payroll Reserve. Borrowers hereby acknowledge that effective as of the date hereof, Agent will institute a payroll reserve against the Borrowing Base in an amount equal to \$500,000 (the "Payroll Reserve"). Borrowers hereby acknowledge, confirm, and agree that the Payroll Reserve is a permitted reserve under the Credit Agreement and hereby waive any objections to Agent continuing to institute a Payroll Reserve.

(b) General Reserve. Borrowers hereby acknowledge that effective as of the date hereof, Agent will institute a general reserve against the Borrowing Base in an amount equal to \$1,000,000 (the "General Reserve"), which shall be in addition to the Payroll Reserve.

Borrowers hereby acknowledge, confirm, and agree that the General Reserve is a permitted reserve under the Credit Agreement and hereby waive any objections to Agent continuing to institute the General Reserve, and that the Agent may reduce (or not reduce) the General Reserve in its discretion.

5.5. **Default Interest.** Each Credit Party hereby acknowledges and agrees that in accordance with Section 10.5 of the Credit Agreement, effective as of March 19, 2020, Agent implemented the Default Rate and that from and after such date, the Obligations have accrued and shall continue to accrue interest at the Default Rate. Notwithstanding the foregoing, the Lenders agree that during the Forbearance Period, the portion of interest accruing at the Default Margin shall not be required to be paid in cash and shall be instead be payable in cash upon the expiration or termination of the Forbearance Period.

5.6. **Sale Covenants.** The Credit Parties will comply with the following sale covenants (the "Sale Covenants"):

(a) **Investment Banker.** Borrowers have advised Agent that they have retained Jefferies LLC as an investment banker to pursue a sale of all or substantially all of the assets of or equity interest in the Credit Parties. At all times during the Forbearance Period, the Credit Parties shall continue to retain Jefferies LLC (or another investment banker acceptable to Agent, the "Investment Banker"). Credit Parties (i) agree to fully cooperate with Investment Banker, (ii) authorize Investment Banker to provide to Agent such information and reports from time to time with respect to the Credit Parties as Agent and Lender may reasonably request from time to time, including, without limitation, regarding Credit Parties' financial condition, business, assets, liabilities, prospects, and the sales process, and (iii) authorize Investment Banker to communicate directly with Agent and Lenders and any consultant retained by Agent or Lenders, at such times and for such durations as Agent, Lenders, or any consultant of Agent or Lenders may reasonably request. All fees and expenses of the Investment Banker shall be solely the responsibility of the Credit Parties (unless otherwise agreed in writing by Agent and Lenders), and in no event shall the Agent or Lenders have any liability or responsibility for the payment of the Investment Banker's fees or expenses or other liability to the Credit Parties, the Investment Banker or any other Person on account of or in connection with any services rendered by or any acts or omissions of the Investment Banker.

(b) **Definitive Agreement.** On or before January 22, 2021, Borrowers will enter into one or more agreements, in form and substance satisfactory to Agent, in respect of a sale of all or substantially all of the Borrowers' assets or equity, which agreements shall have terms and conditions acceptable to Agent.

(c) **Notice.** The Borrowers covenant and agree to (i) immediately deliver to Agent notice of (A) any amendment or other modification of any kind relating to any expressions of interest, offers, or agreements; and (B) any kind of notice (whether oral or written) from any prospective purchaser that such prospective purchaser does not intend to proceed with any or all of the transactions that are the subject of any such expressions of interest, offers, or agreements, and (ii) provide Agent and Lenders with all such information and reports as Agent and Lenders may reasonably request from time to time with respect to the progress of the transactions that are contemplated by such expressions of interest, offers, or agreements.

(d) **Consent.** Borrowers acknowledge, confirm and agree that the consummation of any transaction contemplated by the foregoing Sale Covenants shall in all events be subject to the terms and conditions of this Agreement, the Credit Agreement, and the other Financing Documents and the prior written consent of Agent and the Lenders.

(e) **Altamont Capital Partners Transaction.** Borrowers acknowledge, confirm, and agree that if at any time, Altamont Capital Partners provides notice that (i) it does not intend to move forward with a transaction in respect of all or substantially all of Borrowers' assets; or (ii) it intends to amend or modify the transaction terms set forth in the bid letter dated December 25, 2020, in a manner that is not acceptable to the Lenders, upon five (5) Business Days' notice to Borrowers from Agent, the Forbearance Period shall terminate.

5.7. **January Amortization Payment.** The Lenders agree that the amortization payments due on January 1, 2021, pursuant to Section 2.1(a)(ii)(A) of the Credit Agreement shall be deferred and shall instead be due at the end of the Forbearance Period.

SECTION 6. REPRESENTATIONS AND WARRANTIES

Each Credit Party hereby represents, warrants and covenants as follows:

6.1. **Representations in the Credit Agreement and the Other Financing Documents.** Each of the representations and warranties made by or on behalf of such Credit Party to Agent or any Lender in the Credit Agreement or any of the other Financing Documents was true and correct when made, and is, except for the Specified Defaults, true and correct on and as of the date of this Agreement with the same full force and effect as if each of such representations and warranties had been made by such Credit Party on the date hereof and in this Agreement. All of the information contained in the schedules attached to the Credit Agreement and remains true and correct. No amendments, modifications or other changes have been made to any Credit Party's Organizational Documents since the Closing Date (other than the amendments, modifications or other changes made pursuant to the Written Consent of Sole Stockholder of Wave Electronics, Inc., the Written Consent of Sole Stockholder of MSTR, Inc., and the Written Consent of Sole Member of AVAD LLC, each dated October 19, 2020).

6.2. **Binding Effect of Documents.** This Agreement has been duly authorized, executed and delivered to Agent and Lenders by such Credit Party, is enforceable in accordance with its terms and is in full force and effect.

6.3. **No Conflict.** The execution, delivery and performance of this Agreement by such Credit Party will not violate any requirement of law or contractual obligation of such Credit Party and will not result in, or require, the creation or imposition of any Lien on any of its respective properties or revenues.

SECTION 7. CONDITIONS TO EFFECTIVENESS OF CERTAIN PROVISIONS OF THIS AGREEMENT

The effectiveness of the terms and provisions of this Agreement is subject to the following conditions precedent:

(a) Agent's receipt of this Agreement, duly authorized, executed and delivered by the Borrowers (other than AVAD Canada); and

(b) Agent's receipt of all fees and other amounts payable on or prior to the closing date of this Agreement, including all attorneys', consultants' and other professionals' fees and expenses incurred by Agent.

SECTION 8. MISCELLANEOUS

8.1. **Continuing Effect of Financing Documents.** Except as modified pursuant hereto, no other changes or modifications to the Credit Agreement or any other Financing Document are intended or implied by this Agreement and in all other respects the Credit Agreement and the other Financing Documents, including, without limitation, all representations, warranties, covenants, security interests, proxies, powers of attorney and other rights of Agent and Lenders, are hereby ratified and reaffirmed by the Credit Parties as of the date hereof. To the extent of any conflict between the terms of this Agreement, the Credit Agreement and the other Financing Documents, the terms of this Agreement will govern and control. The Credit Agreement and this Agreement will be read and construed as one agreement.

8.2. **Costs and Expenses.** In addition to, and without in any way limiting, the obligations of Borrowers set forth in Section 12.14 of the Credit Agreement, each Borrower absolutely and unconditionally agrees to pay to Agent, on demand by Agent at any time, whether or not all or any of the transactions contemplated by this Agreement are consummated: all fees, costs and expenses incurred by Agent and any of its directors, officers, employees or agents (including, without limitation, fees, costs and expenses incurred of any counsel, consultant and other advisor to Agent), regardless of whether Agent or any such other Person is a prevailing party, in connection with (a) the preparation, negotiation, execution, delivery or enforcement of this Agreement, the Credit Agreement, any Guarantee, the other Financing Documents and any agreements, documents or instruments contemplated hereby and thereby, and (b) any investigation, litigation or proceeding related to this Agreement, the Credit Agreement, any Guarantee, or any other Financing Document or any act, omission, event or circumstance in any manner related to any of the foregoing.

8.3. **Further Assurances.** At the Credit Parties' expense, the parties hereto will execute and deliver such additional documents and take such further action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement.

8.4. **Successors and Assigns; No Third-Party Beneficiaries.** This Agreement will be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. No Person other than the parties hereto and, in the case of Sections 8.6 and 8.7 hereof, the Releasees, shall have any rights hereunder or be entitled to rely on this Agreement and all third-party beneficiary rights (other than the rights of the Releasees under Sections 8.6 and 8.7 hereof) are hereby expressly disclaimed.

8.5. **Survival of Representations, Warranties and Covenants.** All representations, warranties, covenants and releases of the Credit Parties made in this Agreement or any other document furnished in connection with this Agreement will survive the execution and delivery of

this Agreement and the Forbearance Period, and no investigation by Agent or any Lender, or any closing, will affect the representations and warranties or the right of Agent and Lenders to rely upon them.

8.6. **Release.**

(a) In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Credit Party, on behalf of itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (the Credit Parties and all such other Persons being hereinafter referred to collectively as the "Releasing Parties" and individually as a "Releasing Party"), hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent, each Lender, and each of their respective successors and assigns, and their respective present and former shareholders, members, managers, affiliates, subsidiaries, divisions, predecessors, directors, officers, investment managers, attorneys, employees, agents, legal representatives and other representatives (Agent, Lenders and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from any and all demands, actions, causes of action, suits, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every kind and nature, known or unknown, suspected or unsuspected, at law or in equity, which any Releasing Party or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the date of this Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with this Agreement, the Credit Agreement, any of the other Financing Documents or any of the transactions hereunder or thereunder. Releasing Parties hereby represent to the Releasees that they have not assigned or transferred any interest in any Claims against any Releasee prior to the date hereof.

(b) Each Credit Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense to any Claim and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered will affect in any manner the final, absolute and unconditional nature of the release set forth above.

8.7. **Covenant Not to Sue.** Each Releasing Party hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by any Releasing Party pursuant to Section 8.6 above. If any Releasing Party violates the foregoing covenant, each Borrower, for itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and

other representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

8.8. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable will not impair or invalidate the remainder of this Agreement.

8.9. **Reviewed by Attorneys.** Each Credit Party represents and warrants to Agent and Lenders that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to discuss this Agreement with, and have this Agreement reviewed by, such attorneys and other persons as such Credit Party may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person. The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto will be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

8.10. **Disgorgement.** If Agent or any Lender is, for any reason, compelled by a court or other tribunal of competent jurisdiction to surrender or disgorge any payment, interest or other consideration described hereunder to any person because the same is determined to be void or voidable as a preference, fraudulent conveyance, impermissible set-off or for any other reason, such indebtedness or part thereof intended to be satisfied by virtue of such payment, interest or other consideration will be revived and continue as if such payment, interest or other consideration had not been received by Agent or such Lender, and the Credit Parties will be liable to, and will indemnify, defend and hold Agent or such Lender harmless for, the amount of such payment or interest surrendered or disgorged. The provisions of this Section will survive repayment of the Obligations or any termination of the Credit Agreement or any other Financing Document.

8.11. **Tolling of Statute of Limitations.** Each and every statute of limitations or other applicable law, rule or regulation governing the time by which Agent must commence legal proceedings or otherwise take any action against any Credit Party with respect to any breach or default that exists on or prior to the expiration or termination of the Forbearance Period and arises under or in respect of the Credit Agreement or any other Financing Document shall be tolled during the Forbearance Period. Each Credit Party agrees, to the fullest extent permitted by law, not to include such period of time as a defense (whether equitable or legal) to any legal proceeding or other action by Agent in the exercise of its rights or remedies referred to in the immediately preceding sentence.

8.12. **Relationship.** Each Credit Party agrees that the relationship between Agent and such Credit Party and between each Lender and such Credit Party is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not constitute a partnership agreement, or any other association between Agent and such Credit Party or between any Lender and such Credit Party. Each Credit Party acknowledges that Agent and each Lender has acted at all times only as a creditor to such Credit Party within the normal and usual scope of the activities normally

undertaken by a creditor and in no event has Agent or any Lender attempted to exercise any control over such Credit Party or its business or affairs. Each Credit Party further acknowledges that Agent and each Lender has not taken or failed to take any action under or in connection with its respective rights under the Credit Agreement or any of the other Financing Documents that in any way or to any extent has interfered with or adversely affected such Borrower's ownership of Collateral.

8.13. No Effect on Rights Under Subordination Agreements. Agent's agreement pursuant to Section 3.2 of this Agreement shall not extend to any of Agent's rights or remedies under any Subordination Agreement in favor of Agent governing the Subordinated Debt which may arise as a result of the Specified Defaults, it being understood that the Specified Defaults shall at all times constitute Events of Default for purposes of any applicable Subordination Agreement in favor of Agent, and Agent shall at all times be permitted to enforce all rights and remedies in respect thereof (including, without limitation, blocking payments to any holders of Subordinated Debt in accordance with the Subordination Agreement).

8.14. Governing Law: Consent to Jurisdiction and Venue. The terms and conditions of Section 12.8 shall be incorporated herein as if such terms and conditions were made a part hereof *mutatis mutandis*.

8.15. Waivers; Acknowledgments.

(a) **Mutual Waiver of Jury Trial.** THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE BETWEEN AGENT OR ANY LENDER AND ANY CREDIT PARTY ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR THE CREDIT AGREEMENT OR THE OTHER FINANCING DOCUMENTS OR THE TRANSACTIONS RELATED THERETO.

(b) **Waivers/Acknowledgments by Credit Parties.** Each Credit Party hereby waives any right such Credit Party may have upon payment in full of the Obligations to require Agent to terminate its security interest in the Collateral, other collateral or in any other property of any Credit Party until termination of the Credit Agreement in accordance with its terms and the execution by each Credit Party of an agreement (i) indemnifying Agent and Lenders from any loss or damage Agent or any Lender may incur as the result of dishonored checks or other items of payment received by Agent or any Lender from any Credit Party, or any account debtor, and applied to the obligations and (ii) releasing in the same manner as described in Section 8.6 of this Agreement the Releasees from all claims arising on or before the date of such termination. Each Credit Party acknowledges that the foregoing waiver is a material inducement to Agent and Lenders entering into this Agreement and that Agent and Lenders are relying upon the foregoing waiver in its future dealings with the Credit Parties.

8.16. Counterparts. This Agreement may be executed and delivered via facsimile or other electronic transmission (including .pdf format) with the same force and effect as if an original were executed and may be executed in any number of counterparts, but all of such counterparts

will together constitute but one and the same agreement. No party hereto or to any such other Financing Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

[signatures on following page]

IN WITNESS WHEREOF, this Agreement is executed and delivered as of the day and year first above written.

CREDIT PARTIES:

AVAD LLC, a Delaware limited liability company, as a US Borrower

By _____
Name JOE MANABE
Title JOE MANABE

WAVE ELECTRONICS, INC., a Texas corporation, as a US Borrower

By _____
Name JOE MANABE
Title DIRECTOR

WAVE ELECTRONICS ARIZONA, LLC, a Texas limited liability company, as a US Borrower

By: Wave Electronics, Inc., its managing member

By _____
Name JOE MANABE
Title DIRECTOR

WAVE ELECTRONICS CALIFORNIA, LLC, a Texas limited liability company, as a US Borrower

By: Wave Electronics, Inc., its managing member

By _____
Name JOE MANABE
Title DIRECTOR

WAVE ELECTRONICS FLORIDA, LLC, a Texas limited liability company, as a US Borrower

By: Wave Electronics, Inc., its managing member

By _____
Name BRADLEY DEER
Title DIRECTOR

WAVE ELECTRONICS LOUISIANA, LLC, a Texas limited liability company, as a US Borrower

By: Wave Electronics, Inc., its managing member

By _____
Name BRADLEY DEER
Title DIRECTOR

WAVE ELECTRONICS NEW JERSEY, LLC, a Texas limited liability company, as a US Borrower

By: Wave Electronics, Inc., its managing member

By _____
Name BRADLEY DEER
Title DIRECTOR

MSTR BRAND, INC., a Texas corporation, as a US Borrower

By _____
Name BRADLEY DEER
Title DIRECTOR

ELECTRONICS OUTLET, LLC, a Delaware limited liability company, as a US Borrower

By: AVAD LLC, its managing member


By _____
Name J. BRADLEY DEW
Title SALE MANAGER

AGENT:

MIDCAP FUNDING IV TRUST,
as Agent

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner


By: 
Name: Maurice Amsellem
Title: Authorized Signatory

LENDERS:

APOLLO INVESTMENT CORPORATION, as a
Lender

By: Apollo Investment Management, L.P.,
Its investment advisor


By: ACC Management LLC,
its general partner

By:  _____
Name: Joseph D. Glatt
Title: Vice President

MIDCAP FUNDING IV TRUST, as a Lender

By: Apollo Investment Management, L.P.,
Its investment advisor

By: Apollo Capital Management GP, LLC,
its general partner

By: 

Name: Maurice Amsellem
Title: Authorized Signatory

EXHIBIT A
to
SECOND FORBEARANCE AGREEMENT

Existing Defaults

1. An Event of Default under Section 10.1(a)(iii) of the Credit Agreement have occurred and are continuing as a result of Credit Parties' failure to deliver to Agent the audited financial statements of the Credit Parties for the fiscal year ended December 31, 2019 by the date required by Section 4.1(c) of the Credit Agreement.
2. An Event of Default under Section 10.1(a)(iii) of the Credit Agreement has occurred and is continuing as a result of Credit Parties' failure to deliver to Agent the Excess Cash Flow Certificate for the fiscal year ended December 31, 2019 by the date required by Section 4.1(c) of the Credit Agreement.
3. Events of Default under Section 10(a)(iii) of the Credit Agreement have occurred and are continuing as a result of the failure of the Credit Parties' to timely deliver to Agent monthly financial statements and Compliance Certificates as required by Section 4.1(a) and Section 4.1(h) of the Credit Agreement, respectively.
4. Events of Default under Section 10.1(a)(iii) of the Credit Agreement has occurred and is continuing as a result of Credit Parties' failure to maintain a required maximum Senior Leverage Ratio for each of Defined Periods ended January 31, 2020, February 29, 2020, March 31, 2020, April 30, 2020, May 31, 2020, June 30, 2020, July 31, 2020, August 31, 2020, September 30, 2020, October 31, 2020 and November 30, 2020 in each case, as required by Section 6.1 of the Credit Agreement.
5. Events of Default under Section 10(a)(iii) of the Credit Agreement have occurred and are continuing as a result of the failure of the Credit Parties' to maintain a required minimum Fixed Charge Coverage Ratio for each of Defined Periods ended February 29, 2020, March 31, 2020, April 30, 2020, May 31, 2020, June 30, 2020, July 31, 2020, August 31, 2020, September 30, 2020, October 31, 2020, and November 30, 2020, in each case, as required by Section 6.2 of the Credit Agreement

Anticipated Defaults

1. An Event of Default under Section 10.1(a)(iii) of the Credit Agreement as a result of Credit Parties' failure to deliver to Agent the audited financial statements of the Credit Parties for the fiscal year ended December 31, 2020 by the date required by Section 4.1(c) of the Credit Agreement.
2. An Event of Default under Section 10.1(a)(iii) of the Credit Agreement as a result of Credit Parties' failure to deliver to Agent the Excess Cash Flow Certificate for the fiscal

year ended December 31, 2020 by the date required by Section 4.1(c) of the Credit Agreement.

3. Events of Default under Section 10.1(a)(iii) of the Credit Agreement as a result of Credit Parties' failure to maintain a required maximum Senior Leverage Ratio for each of Defined Periods ending December 31, 2020, and January 31, 2021, in each case, as required by Section 6.1 of the Credit Agreement.
4. Events of Default under Section 10(a)(iii) of the Credit Agreement as a result of the failure of the Credit Parties' to maintain a required minimum Fixed Charge Coverage Ratio for each of Defined Periods ending December 31, 2020 and January 31, 2021, in each case, as required by Section 6.2 of the Credit Agreement

EXHIBIT B
to
SECOND FORBEARANCE AGREEMENT

Budget

[See Attached]

| Wave | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | | |
|---------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|----------------|
| 13 Week Cash Flow Projection | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | Forecast | 13 Week |
| | 01/08/21 | 01/15/21 | 01/22/21 | 01/29/21 | 02/05/21 | 02/12/21 | 02/19/21 | 02/26/21 | 03/05/21 | 03/12/21 | 03/19/21 | 03/26/21 | 04/02/21 | Total | |
| Cash In - Collections | 3,770,964 | 4,034,595 | 2,968,235 | 3,712,622 | 4,409,688 | 4,409,688 | 4,602,813 | 4,667,188 | 5,150,000 | 5,214,375 | 5,214,375 | 4,828,125 | 4,828,125 | 57,810,791 | |
| Cash Out - Disbursements | (5,153,981) | (4,403,000) | (4,432,457) | (4,579,355) | (6,852,656) | (4,134,875) | (4,890,081) | (4,179,980) | (5,430,159) | (4,209,250) | (5,289,396) | (4,379,355) | (5,652,659) | (63,587,203) | |
| Net Weekly | (1,383,017) | (368,405) | (1,464,222) | (866,733) | (2,442,968) | 274,813 | (287,268) | 487,208 | (280,159) | 1,005,125 | (75,021) | 448,770 | (824,534) | (5,776,412) | |
| Cumulative | (1,383,017) | (1,751,422) | (3,215,644) | (4,082,377) | (6,525,345) | (6,250,532) | (6,537,801) | (6,050,593) | (6,330,752) | (5,325,627) | (5,400,648) | (4,951,878) | (5,776,412) | | |
| Accounts Receivable Collections | 3,770,964 | 4,034,595 | 2,968,235 | 3,712,622 | 4,409,688 | 4,409,688 | 4,602,813 | 4,667,188 | 5,150,000 | 5,214,375 | 5,214,375 | 4,828,125 | 4,828,125 | 57,810,791 | |
| Other | - | - | - | - | - | - | - | - | - | - | - | - | - | - | |
| Total Collections: | 3,770,964 | 4,034,595 | 2,968,235 | 3,712,622 | 4,409,688 | 4,409,688 | 4,602,813 | 4,667,188 | 5,150,000 | 5,214,375 | 5,214,375 | 4,828,125 | 4,828,125 | 57,810,791 | |
| Vendors - Non Ingram/Qolsys/Pmt Plans | 2,685,000 | 2,403,098 | 2,635,000 | 2,578,452 | 2,893,125 | 3,428,125 | 3,443,125 | 3,443,125 | 3,443,125 | 3,644,375 | 3,659,375 | 3,459,375 | 3,459,375 | 41,174,675 | |
| Vendors - Ingram | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 325,000 | 325,000 | 2,025,000 | |
| Vendors - Qolsys | 550,000 | 550,000 | 550,000 | 550,000 | 550,000 | - | - | - | - | - | - | - | - | 2,750,000 | |
| Vendors - other payment plans | 100,000 | 381,902 | 150,000 | 206,548 | - | 15,000 | - | - | - | 15,000 | - | - | - | 868,450 | |
| Sub total For Inventory Purchases | 3,460,000 | 3,460,000 | 3,460,000 | 3,460,000 | 3,568,125 | 3,568,125 | 3,568,125 | 3,568,125 | 3,568,125 | 3,784,375 | 3,784,375 | 3,784,375 | 3,784,375 | 46,818,125 | |
| Ingram Past Due Paydown | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 125,000 | 1,625,000 | |
| Total Vendor Payments: | 3,585,000 | 3,585,000 | 3,585,000 | 3,585,000 | 3,693,125 | 3,693,125 | 3,693,125 | 3,693,125 | 3,693,125 | 3,909,375 | 3,909,375 | 3,909,375 | 3,909,375 | 48,443,125 | |
| Payroll | 733,381 | - | 507,736 | - | 2,018,947 | - | 419,675 | - | 634,575 | - | 419,675 | - | 634,575 | 5,368,565 | |
| Branch Rent | - | - | - | 170,105 | - | - | - | 170,105 | - | - | - | 170,105 | - | 510,314 | |
| Operating | 360,525 | 625,950 | 234,075 | 742,200 | 349,700 | 249,700 | 671,634 | 234,700 | 311,575 | 217,825 | 744,700 | 217,825 | 317,825 | 5,278,234 | |
| Administrative | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 44,550 | 579,150 | |
| Insurance - PC, GL, WC | - | - | 23,596 | - | - | - | 23,596 | - | - | - | 23,596 | - | - | 70,788 | |
| Insurance-Health, Benefits, Bonus | - | 110,000 | - | - | - | 110,000 | - | - | - | - | 110,000 | - | - | 330,000 | |
| Other | 57,500 | 37,500 | 37,500 | 37,500 | 57,500 | 37,500 | 37,500 | 37,500 | 57,500 | 37,500 | 37,500 | 37,500 | 57,500 | 567,500 | |
| Total Disbursements: | 1,195,956 | 818,000 | 847,457 | 994,355 | 2,470,697 | 441,750 | 1,196,956 | 486,855 | 1,048,200 | 299,875 | 1,380,021 | 469,980 | 1,054,450 | 12,704,551 | |
| MidCap Revolver Interest | 198,025 | - | - | - | 211,834 | - | - | - | 211,834 | - | - | - | 211,834 | 833,527 | |
| MidCap Term Interest | 175,000 | - | - | - | 175,000 | - | - | - | 175,000 | - | - | - | 175,000 | 700,000 | |
| MidCap Principal Amort | - | - | - | - | 302,000 | - | - | - | 302,000 | - | - | - | 302,000 | 906,000 | |
| Total Financing Payments: | 373,025 | - | - | - | 688,834 | - | - | - | 688,834 | - | - | - | 688,834 | 2,439,527 | |
| Total Disbursements: | 5,153,981 | 4,403,000 | 4,432,457 | 4,579,355 | 6,852,656 | 4,134,875 | 4,890,081 | 4,179,980 | 5,430,159 | 4,209,250 | 5,289,396 | 4,379,355 | 5,652,659 | 63,587,203 | |
| Operational Burn | (686,876) | (273,330) | (446,745) | (493,151) | (1,875,389) | 153,558 | (575,576) | 143,216 | (352,950) | 404,066 | (676,081) | 181,817 | (402,653) | (4,900,095) | |
| Borrowing Base | | | | | | | | | | | | | | | |
| Total Billed A/R | 21,314,271 | 21,279,676 | 22,561,441 | 23,348,819 | 24,064,132 | 24,779,444 | 25,301,632 | 25,259,444 | 24,734,444 | 24,395,069 | 24,055,694 | 24,102,569 | 24,149,444 | 2,835,173 | |
| Less: Ineligible A/R | (11,938,452) | (11,930,254) | (12,122,519) | (12,240,625) | (12,347,922) | (12,455,219) | (12,533,547) | (12,527,219) | (12,448,469) | (12,397,563) | (12,346,657) | (12,353,688) | (12,360,719) | | |
| Total Eligible Accounts | 9,375,819 | 9,349,422 | 10,438,922 | 11,108,194 | 11,716,209 | 12,324,225 | 12,768,084 | 12,732,225 | 12,285,975 | 11,997,506 | 11,709,038 | 11,748,881 | 11,788,725 | | |
| Advance Rate, net | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | 84.3% | | |
| AR Base | 7,899,128 | 7,876,888 | 8,794,792 | 9,358,653 | 9,870,906 | 10,383,160 | 10,757,111 | 10,726,900 | 10,350,934 | 10,107,899 | 9,864,864 | 9,898,432 | 9,932,001 | | |
| Total Credit Card | 2,131,427 | 2,127,968 | 2,256,144 | 2,334,882 | 2,406,413 | 2,477,944 | 2,530,163 | 2,525,944 | 2,473,444 | 2,439,507 | 2,405,569 | 2,410,257 | 2,414,944 | 283,517 | |
| Less: Ineligible | (51,154) | (51,071) | (54,147) | (56,037) | (57,754) | (59,471) | (60,724) | (60,623) | (59,363) | (58,548) | (57,734) | (57,846) | (57,959) | | |
| Total Eligible Accounts | 2,080,273 | 2,076,896 | 2,201,997 | 2,278,845 | 2,348,659 | 2,418,474 | 2,469,439 | 2,465,322 | 2,414,082 | 2,380,959 | 2,347,836 | 2,352,411 | 2,356,986 | | |
| Advance Rate, net | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | 95.0% | | |
| Credit Card Base | 1,976,259 | 1,973,052 | 2,091,897 | 2,164,903 | 2,231,226 | 2,297,550 | 2,345,967 | 2,342,056 | 2,293,378 | 2,261,911 | 2,230,444 | 2,234,790 | 2,239,136 | | |
| Gross Inventory Value | 19,556,312 | 19,558,328 | 20,230,229 | 21,885,481 | 22,802,147 | 22,802,147 | 22,802,147 | 22,802,147 | 22,802,147 | 22,802,147 | 22,802,147 | 22,802,147 | 22,802,147 | 3,245,835 | |
| Less: Ineligible | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | (1,100,000) | | |
| Total Eligible Inventory | 18,456,312 | 18,458,328 | 19,130,229 | 20,785,481 | 21,702,147 | 21,702,147 | 21,702,147 | 21,702,147 | 21,702,147 | 21,702,147 | 21,702,147 | 21,702,147 | 21,702,147 | | |
| Advance Rate, net | 60.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | 65.0% | | |
| Inventory Base | 11,073,787 | 11,997,913 | 12,434,649 | 13,510,562 | 14,106,396 | 14,106,396 | 14,106,396 | 14,106,396 | 14,106,396 | 14,106,396 | 14,106,396 | 14,106,396 | 14,106,396 | | |
| Total Borrowing Base | 20,949,174 | 21,847,853 | 23,321,338 | 25,034,118 | 26,208,528 | 26,787,105 | 27,209,474 | 27,175,351 | 26,750,707 | 26,476,206 | 26,201,704 | 26,239,618 | 26,277,533 | | |
| Incremental Funding | 2,000,000 | 1,000,000 | | | | | | | | | | | | | |
| Revolver Balance | 28,013,017 | 29,381,422 | 30,845,644 | 31,712,377 | 34,155,345 | 33,880,532 | 34,167,801 | 33,680,593 | 33,960,752 | 32,955,627 | 33,030,648 | 32,581,878 | 33,406,412 | 5,393,395 | |
| Gross Availability | (7,063,843) | (7,533,569) | (7,524,306) | (6,678,258) | (7,946,816) | (7,093,427) | (6,958,326) | (6,505,242) | (7,210,045) | (6,479,421) | (6,828,944) | (6,342,259) | (7,128,879) | | |
| LCs and Loan Reserves | (659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | (1,659,918) | | |
| Net Availability | (7,723,761) | (9,193,487) | (9,184,224) | (8,338,176) | (9,606,734) | (8,753,345) | (8,618,244) | (8,165,160) | (8,869,963) | (8,139,339) | (8,488,862) | (8,002,177) | (8,788,797) | | |

THIS IS **EXHIBIT "B"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

THIS GENERAL SECURITY AGREEMENT dated as of October 2, 2018.

BETWEEN:

AVAD CANADA LTD.
(the “**Grantor**”)

- and -

MIDCAP FINANCIAL TRUST, as administrative agent
(the “**Agent**”)

WHEREAS pursuant to a credit and security agreement dated as of the date hereof, among, *inter alios*, the Grantor, AVAD LLC, Wave Electronics, LLC, Wave Electronics Arizona, LLC, Wave Electronics California, LLC, Wave Electronics Florida, LLC, Wave Electronics Louisiana, LLC, Wave Electronics New Jersey, LLC, and MSTR BRAND, INC. as borrowers (collectively, the “**Borrowers**”), Kingswood AVAD LLC, as a guarantor, the Agent, as administrative agent, and the additional lenders signatory thereto from time to time as lenders (the “**Lenders**”) (as the same may be further amended, restated, renewed or otherwise modified from time to time, the “**Credit Agreement**”), the Lenders have agreed to make available to the Borrowers certain credit facilities on the terms and conditions set out in the Credit Agreement;

AND WHEREAS in accordance with the Credit Agreement, the Grantor has agreed, in addition to its direct obligations as a Borrower, to also be a guarantor and to guarantee and be liable for the full and indefeasible payment and performance of any other Borrower’s Canadian Obligations;

AND WHEREAS the Grantor has agreed to execute and deliver this general security agreement (the “**Agreement**”) to and in favour of Agent as security for the payment and performance of the Canadian Obligations;

WITNESSES THAT FOR VALUE RECEIVED the Grantor covenants and agrees with Agent as follows:

SECTION 1. DEFINITIONS

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement. All terms used herein which are not otherwise defined herein or in the Credit Agreement shall have the meanings given to them in the PPSA. All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires. All references to Grantor, Borrowers, the Lenders or Agent (as defined in the recitals hereto), or any other person herein, shall include their respective successors and assigns. The words “hereof”, “herein”, “hereunder”, “this Agreement” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may have been or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. The word “including” when used in this Agreement shall mean “including, without limitation”. References herein to sections or schedules are to sections of and schedules to this Agreement unless otherwise indicated in this Agreement. References herein to any statute or any provision thereof include such statute or provision as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with the provisions of the Credit Agreement or is cured in a manner satisfactory to Agent, acting reasonably.

SECTION 2. GRANT OF SECURITY INTEREST

As security for the payment and performance of the Canadian Obligations, and without limiting any other grant of a Lien and security interest in any Security Document, the Grantor hereby grants to

Agent, for the benefit of itself and Lenders, a continuing first priority Lien on and security interest in, upon, and to the collateral described on Exhibit A attached hereto (the “**Collateral**”).

SECTION 3. REPRESENTATIONS AND WARRANTIES AND COVENANTS RELATING TO COLLATERAL

3.1 Control. The Grantor shall at all times take all steps necessary to give control in the manner provided for under the *Securities Transfer Act, 2006* (Ontario) (the “**STA**”), including without limitation, delivery to the Agent of security certificates endorsed in blank to the Agent or accompanied by a stock transfer power of attorney in form and substance satisfactory to Agent, over all Collateral that is a security and other Collateral that is investment property to the Agent on terms and conditions satisfactory to the Agent.

SECTION 4. EVENTS OF DEFAULT AND REMEDIES

4.1 Events of Default and Remedies. The occurrence or existence of any Event of Default under the Credit Agreement shall be deemed to be an “Event of Default” hereunder. Upon the occurrence of and during the continuance of an Event of Default under this Agreement, the Credit Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement, the Credit Agreement, the other Financing Documents or at Law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under PPSA in effect in the applicable jurisdiction(s) and under any other applicable Law;

4.2 Receiver. Agent may appoint, remove and reappoint any person or persons, including an employee or agent of Agent or of a Lender to be a receiver (the “**Receiver**”) which term shall include a receiver, interim receiver, receiver and manager of or agent for, all or any part of the Grantor or the Collateral. Any such Receiver shall, as far as concerns responsibility for his acts, be deemed to be the agent of the Grantor and not of Agent or the Lenders, and neither Agent nor the Lenders shall be in any way responsible for any misconduct, negligence or non-feasance of such Receiver, its employees or agents. Except as otherwise directed by Agent, all money received by such Receiver shall be received in trust for and paid to Agent, for the Lenders. Such Receiver shall have all of the powers and rights of Agent described in this Section 4.2. Agent may, either directly or through its agents or nominees, exercise any or all powers and rights of a Receiver. The Grantor shall pay all reasonable costs, charges and expenses incurred by Agent or any Lender or any Receiver or any nominee or agent of Agent or a Lender, whether directly or for services rendered (including, legal costs on a full indemnity basis, auditor’s costs, other legal expenses and Receiver remuneration) in enforcing this Agreement and in enforcing or collecting Canadian Obligations and all such expenses together with any money owing as a result of any borrowing permitted hereby shall be a charge on the proceeds of realization and shall be secured hereby. The Grantor shall pay all reasonable costs, charges and expenses incurred by Agent or any Receiver or any nominee or agent of Agent, whether directly or for services rendered (including, legal costs on a full indemnity basis, auditor’s costs, other legal expenses and Receiver remuneration) in enforcing this Agreement and in enforcing or collecting Canadian Obligations and all such expenses together with any money owing as a result of any borrowing permitted hereby shall be a charge on the proceeds of realization and shall be secured hereby.

SECTION 5. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW

5.1 Governing Law, Choice of Forum, Service of Process: Jury Trial Waiver.

- (a) The validity, interpretation and enforcement of this Agreement and the other Financing Documents and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

- (b) The Grantor irrevocably consents and submits to the non-exclusive jurisdiction of the Courts of the Province of Ontario, in the judicial district of Toronto and any appellate court thereof and waives any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or in any way connected with or related or incidental to the dealings of the Grantor, Agent and the Lenders in respect of this Agreement or the transactions related hereto whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agrees that any dispute with respect to any such matters shall be heard only in the courts described above (except that Agent and the Lenders shall have the right to bring any action or proceeding against the Grantor or its property in the courts of any other jurisdiction which Agent or the Lenders deem necessary or appropriate in order to realize on the Collateral or to otherwise enforce their rights against each Grantor or its property).
- (c) THE GRANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE GRANTOR, AGENT AND THE LENDERS IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. THE GRANTOR HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE GRANTOR OR THE AGENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE GRANTOR AND THE AGENT TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

- 5.2 Waiver of Notices. The Grantor hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonour with respect to any and all instruments and commercial paper, included in or evidencing any of the Canadian Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Canadian Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on the Grantor which Agent may elect to give shall entitle the Grantor to any other or further notice or demand in the same, similar or other circumstances.
- 5.3 Amendments and Waivers. Neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of Agent, and as to amendments, as also signed by an authorized officer of the Grantor. Agent shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Agent. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Agent of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent would otherwise have on any future occasion, whether similar in kind or otherwise.
- 5.4 Waiver of Counterclaims. The Grantor waives all rights to interpose any claims, deductions, set-offs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Canadian Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

- 5.5 Indemnification. Each of the Grantors shall, save and except for losses, claims, damages, liabilities, costs or expenses arising from the gross negligence or wilful misconduct of the Agent and/or the Lenders and their directors, agents, employees and counsel, indemnify and hold Agent and the Lenders, and their directors, agents and employees, harmless from and against any and all losses, claims, damages, liabilities, costs or expenses imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Documents, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 5.5 may be unenforceable because it violates any law or public policy, each of the Grantors shall pay the maximum portion which it is permitted to pay under applicable law to Agent or the Lenders in satisfaction of indemnified matters under this Section 5.5. The foregoing indemnity shall survive the payment of the Canadian Obligations, the termination of this Agreement and the termination of the Credit Agreement. All of the foregoing costs and expenses shall be part of the Canadian Obligations and secured by the Collateral.

SECTION 6. MISCELLANEOUS

- 6.1 Notices. All notices, requests and demands hereunder shall be in writing and shall be made in the manner set forth in Section 12.3 of the Credit Agreement.
- 6.2 Partial Invalidity. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.
- 6.3 Successors. This Agreement shall be binding upon the Grantor and its successors and permitted assigns and shall inure to the benefit of and be enforceable by Agent, the Lenders and their respective successors and permitted assigns, except that the Grantor may not assign its rights under this Agreement, the other Financing Documents and any other document referred to herein or therein without the prior written consent of the Agent.
- 6.4 Entire Agreement. This Agreement, the Credit Agreement and the other Financing Documents, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. **In the event of any inconsistency between the terms of the Credit Agreement and this Agreement, the terms of the Credit Agreement shall govern.**
- 6.5 Attachment. Each of the Grantor and Agent acknowledge and agree that value has been given for the granting of the security interest granted herein, the Grantor has rights in the Collateral or the power to transfer rights in the Collateral to the Agent (other than after-acquired Collateral) and that it has not agreed to postpone the time for attachment, except for after-acquired property forming part of the Collateral, the attachment to which will occur forthwith upon each the Grantor acquiring rights thereto.
- 6.6 Headings. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

- 6.7 Amalgamation. In the event that the Grantor amalgamates with any other person or persons, it is the intention of the parties that upon the completion of the amalgamation the security interest will (a) extend to all of the property and assets that (i) any of the amalgamating persons own, or (ii) the amalgamated person thereafter acquires, and (b) secure the payment and performance of all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by any of the amalgamating persons and the amalgamated person to the Agent and the Lenders. The security interests granted herein will attach upon the completion of the amalgamation to the property and assets of the amalgamating persons not previously subject to this security agreement at the time of amalgamation and to any property or assets thereafter owned or acquired by the amalgamated person when same becomes owned or is acquired. Upon any such amalgamation, the defined term "Grantor" shall include each of the amalgamated person, the defined term Collateral means all of the property, assets, undertaking and interests described in (a) above, and the defined term Canadian Obligations includes the obligations described in (b) above.
- 6.8 Further Assurances. The Grantor shall from time to time, whether before or after the security interest has become enforceable, do all acts and things and execute and deliver all transfers, assignments and agreements as the Agent may reasonably require for (a) protecting the Collateral, (b) perfecting the security interest, (c) obtaining control of the Collateral (for obtaining control of any Collateral that consists of securities, securities entitlements or future contracts in the manner provided under the PPSA or the STA, as applicable), (d) exercising all powers, authorities and discretions conferred upon the Agent, and (e) otherwise enabling the Agent and the Lenders to obtain the full benefits of this security agreement and the rights and powers herein granted. The Grantor shall, from time to time after the security interest has become enforceable, do all acts and things and execute and deliver all transfers, assignments and agreements as the Agent may require for facilitating the sale or other disposition of the Collateral in connection with its realization.
- 6.9 Acknowledgement. The Grantor acknowledges receipt of a copy of this Agreement. To the extent permitted by applicable law, the Grantor waives its right to receive a copy of any financing statement or financing change statement registered by or on behalf of the Agent, or any verification statement with respect to any financing or financing change statement registered by or on behalf of the Agent.
- 6.10 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Agent could purchase in the Toronto foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. The Grantor agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Agent may, in accordance with normal banking procedures, purchase, in the Toronto foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, the Grantor agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Agent against such loss. The term "rate of exchange" in this Section 6.10 means the spot rate at which Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.
- 6.11 Counterparts and Electronic Delivery. This Agreement may be executed in any number of separate counterparts and all such signed counterparts constitute one and the same agreement.

Delivery by facsimile or other electronic means of an originally executed signature page to this security agreement by a party is as effective as personal delivery of such signature page.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

AVAD CANADA LTD.

Per: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 
Name: Maurice Amsellem
Title: Authorized Signatory

EXHIBIT A**Collateral**

The Collateral consists of all of the Grantor's present and after acquired real and personal property, including without limitation, all of the Grantor's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

- (a) all goods, Accounts, Equipment (including, without limitation, all rolling stock), Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, Intangibles, documents of title, instruments (including any promissory notes), chattel paper, cash, deposit accounts, securities accounts, fixtures, securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located;
- (b) all of the Grantor's books and records relating to any of the foregoing;
- (c) all Real Property Collateral; and
- (d) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding anything to the contrary contained in this Exhibit A or otherwise in this Agreement or any other Financing Document, the term "Collateral" shall not include any Excluded Collateral.

THIS IS **EXHIBIT "C"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

CANADIAN TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT dated as of October 2, 2018, as it may be amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), is made by and among AVAD LLC ("AVAD"), AVAD Canada Ltd. ("AVAD Canada", and together with AVAD, the "Grantors") and Midcap Financial Trust, as administrative agent (in such capacity, the "Administrative Agent").

Reference is made to (a) the credit and security agreement, dated as on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the "Credit and Security Agreement"), by and among, *inter alios*, the Grantors and the Administrative Agent, and (b) the canadian general security agreement, dated on or about the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"), between AVAD Canada and the Administrative Agent. The Lenders have agreed to extend credit to the Borrowers subject to the terms and conditions set forth in the Credit Agreement and the Grantors are willing to execute and deliver this Agreement in order to induce the Lenders to make Loans to the Borrowers. Accordingly, the parties hereto agree as follows:

Section 1. Terms. Capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Security Agreement or the Credit and Security Agreement, as applicable. The interpretive provisions set forth in Section 1.3 of the Credit and Security Agreement shall apply hereto, *mutatis mutandis*.

Section 2. Grant of Security Interest. To secure the prompt payment and performance, in full when due of its Obligations, each Grantor hereby grants to the Administrative Agent, for the benefit of the Agent and the Lenders, a security interest (the "Security Interest") in all of such Grantor's right, title and interest in, to and under Collateral consisting of any trademarks arising under the Laws of the United States or Canada now owned or at any time hereafter acquired by such Grantor, including those registered or applied for trademarks listed on Schedule I; provided that no security interest is granted on any intent-to-use trademark applications filed in the Canadian Intellectual Property Office or the United States Patent and Trademark Office to the extent that, and solely during the period in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable Requirements of Law or other Excluded Collateral (the "Trademark Collateral"). Each Grantor authorizes and requests that the Canadian Intellectual Property Office or the United States Patent and Trademark Office, as applicable, record this Agreement.

Section 3. Security Agreement. The Security Interest granted to the Administrative Agent herein is granted in furtherance, and not in limitation, of the security interests granted to the Administrative Agent pursuant to the Security Agreement and the Credit and Security Agreement, as applicable. Each Grantor hereby acknowledges and affirms that the rights and remedies of the Administrative Agent with respect to the Trademark Collateral are more fully set forth in the Security Agreement and the Credit and Security Agreement, as applicable, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this Agreement and: (i) the Security Agreement, with respect to Trademark Collateral owned by AVAD Canada, the terms of the Security Agreement shall govern; and (ii) the Credit and Security Agreement, with respect to Trademark Collateral owned by AVAD, the terms of the Credit and Security Agreement shall govern.

Section 4. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually signed counterpart of this Agreement.

Section 5. Termination. Upon the termination of the Security Agreement or the Credit and Security Agreement in accordance with the terms of such agreement, or any disposition of the Trademark

Collateral in a transaction permitted under the Security Agreement or the Credit and Security Agreement, as applicable, following a written request therefor, the Administrative Agent shall execute, acknowledge, and deliver to each Grantor (at such Grantor's sole expense) an instrument in writing in recordable form releasing the grant and security interest in the applicable Trademark Collateral under this Agreement and take any other actions reasonably requested by such Grantor to effect such release.

Section 6. GOVERNING LAW. This Agreement is made under and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of law principles.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF each of the parties has executed this Agreement as of the date first written above.

AVAD CANADA LTD.

Per: *Alex Wolf*
Name: Alex Wolf
Title: Vice President and Secretary

AVAD LLC

Per: *Alex Wolf*
Name: Alex Wolf
Title: Vice President and Secretary

Accepted and Agreed:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: 
Name: Maurice Amsellem
Title: Authorized Signatory

Schedule I to Canadian Trademark Security Agreement

TRADEMARK REGISTRATIONS AND APPLICATIONS**Canada**

| Owner | Registration No./Application No. | Trademark |
|------------------|---|---------------------------------|
| Avad Canada Ltd. | TMA820631 | AVAD (and image) |
| Avad Canada Ltd. | TMA820632 | AVAD |
| Avad Canada Ltd. | APP No. 1724326 | HOUSE OF WARRANTIES & Design |
| Avad LLC | APP No. 1656864 | PROCONNECT |
| Avad LLC | APP No. 1656866 | PROFLEX |
| Avad LLC | APP No. 1857994 | PROCONNECT |
| Avad LLC | APP No. 1857993 | PROCONNECT |

THIS IS **EXHIBIT "D"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this "**Agreement**") is made as of October 2, 2018, by and among the Pledgors listed on the signature pages hereof and those additional entities that hereafter become parties hereto (collectively, the "**Pledgors**" and each, individually, a "**Pledgor**"), and **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, as agent (in such capacity, together with its successors and assigns, "**Agent**") for itself and the other Lenders (as defined herein). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement (as defined below).

RECITALS

A. Pursuant to that certain Credit and Security Agreement ("**Credit Agreement**"), dated as of even date herewith, by and among **KINGSWOOD AVAD LLC**, a Delaware limited liability company ("**Parent**"), **AVAD LLC**, a Delaware limited liability company, **WAVE ELECTRONICS, INC.**, a Texas corporation, **WAVE ELECTRONICS ARIZONA, LLC**, a Texas limited liability company, **WAVE ELECTRONICS CALIFORNIA, LLC**, a Texas limited liability company, **WAVE ELECTRONICS FLORIDA, LLC**, a Texas limited liability company, **WAVE ELECTRONICS LOUISIANA, LLC**, a Texas limited liability company, **WAVE ELECTRONICS NEW JERSEY, LLC**, a Texas limited liability company, **MSTR BRAND, INC.**, a Texas corporation, **ELECTRONICS OUTLET, LLC**, a Delaware limited liability company, **AVAD CANADA, LTD.**, an Ontario corporation, and such other borrowers that may become Borrowers under the Credit Agreement (as defined herein) from time to time (collectively, the "**Borrowers**", and each individually, a "**Borrower**"), the other Credit Parties from time to time party thereto, the financial institutions from time to time parties thereto, as lenders (collectively, the "**Lenders**"), and Agent (as the same may be amended, supplemented, modified, increased, renewed or restated from time to time), Agent and Lenders have agreed to make certain advances to the Borrowers, subject to the terms and conditions of the Credit Agreement;

B. Each Pledgor is the record and beneficial owner of the outstanding partnership interests, membership interests, limited liability company interests or shares of capital stock, as applicable, of the companies listed on Schedule I hereto and as set forth on such Schedule I hereto (such companies, collectively called the "**Companies**", and individually, a "**Company**"), and, each of the Pledgors expects to derive substantial benefit from the Loans (as such term is defined in the Credit Agreement) to be made to the Borrowers under the Credit Agreement; and

C. In order to induce Agent and the Lenders to enter into the Credit Agreement and as security for the Obligations, the Pledgors have agreed to pledge to Agent, for its benefit and the benefit of the Lenders, the Pledged Collateral (as such term is hereinafter defined) as collateral security for the Obligations.

AGREEMENT

NOW, THEREFORE, to induce Agent and the Lenders to enter into the Credit Agreement and to make the Loans, and for other good and valuable consideration, the receipt

and sufficiency of which are hereby acknowledged, Agent and each Pledgor hereby incorporate by this reference the foregoing Recitals and hereby covenant and agree as follows:

1. Certain Definitions.

As used above and elsewhere in this Agreement, the following terms shall have the following meanings:

(a) **"Equity Interests"** shall mean, with respect to a Person, all of the stock, shares, options, warrants, partnership interests, membership interests, participations, units or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

(b) **"Pledged Interests"** shall mean and include, with respect to each Pledgor, all Equity Interests now or hereafter owned by such Pledgor and the certificates, if any, representing such Equity Interests and any Equity Interests owned by such Pledgor on the books and records of such limited liability company, partnership or other organization or on the books and records of any securities intermediary pertaining to such Equity Interests and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any and all such Equity Interests.

(c) **"Pledged Stock"** shall mean and include, with respect to each Pledgor, all Equity Interests now or hereafter owned by such Pledgor and the certificates, if any, representing such Equity Interests and any Equity Interests owned by such Pledgor in the entries on the books of the Company of such Equity Interests or on the books of any securities intermediary pertaining to such Equity Interests, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests.

2. Grant of Assignment and Security Interest. Each Pledgor hereby pledges, assigns and grants to Agent, for the benefit of itself and the Lenders, as security for the Obligations a security interest in the following property of such Pledgor (collectively, the **"Pledged Collateral"**, wherever located, whether now owned or hereafter acquired or arising:

(a) all of the Equity Interests and all of such Pledgor's rights to participate in the management of any Company, all rights, privileges, authority and powers of such Pledgor as owner or holder of its Equity Interests in the Companies, including, but not limited to, all contract rights, general intangibles, accounts and payment intangibles related thereto, all rights, privileges, authority and powers relating to the economic interests of such Pledgor as owner or holder of its Equity Interests in the Companies, including, without limitation, all investment property, contract rights, general intangibles, accounts and payment intangibles related thereto, all options and warrants of such Pledgor for the purchase of any Equity Interest in any Company, all documents and certificates representing or evidencing such Pledgor's Equity Interests in the

Companies, all of such Pledgor's right, title and interest to receive payments of principal and interest on any loans and/or other extensions of credit made by such Pledgor to any Company, and any other right, title, interest, privilege, authority and power of such Pledgor in or relating to the Companies, all whether existing or hereafter arising, and whether arising under any operating agreement, shareholders' agreement, partnership agreement or other agreement, or any bylaws, certificate of formation, articles of organization or other organization or governing documents of any Company (as the same may be amended, modified or restated from time to time) or otherwise, or at law or in equity and all books and records of such Pledgor pertaining to any of the foregoing and all options, warrants, distributions, investment property, cash, instruments and other rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such interests, and such Pledgor shall promptly thereafter deliver to Agent a certificate duly executed by such Pledgor describing such percentage interests, options or warrants and certifying that the same have been duly pledged hereunder;

(b) all rights to receive cash distributions, profits, losses and capital distributions (including, but not limited to, distributions in kind and liquidating dividends and distributions) and any other rights and property interests related to the Equity Interests;

(c) all other securities, instruments or property (including cash) paid or distributed in respect of or in exchange for the Equity Interests, whether or not as part of or by way of spin-off, merger, consolidation, dissolution, reclassification, combination or exchange of stock (or other Equity Interests), asset sales, or similar rearrangement or reorganization or otherwise; and

(d) all proceeds (both cash and non-cash) of the foregoing, whether now or hereafter arising with respect to the foregoing.

3. Registration of Pledge in Books of the Companies; Application of Proceeds. Each Pledgor hereby authorizes and directs each Company, as applicable, to, within fifteen (15) Business Days of the Closing Date, register such Pledgor's pledge to Agent, for its benefit and the benefit of the Lenders, of the Pledged Collateral on the books of such Company and, following written notice to do so by Agent after the occurrence and during the continuance of an Event of Default to make direct payment to Agent of any amounts due or to become due to such Pledgor with respect to the Pledged Collateral. Any moneys received by Agent shall be applied to the Obligations in such order and manner of application as Agent may from time to time determine in its sole discretion.

4. Rights of Pledgors in the Pledged Collateral. Until any Event of Default occurs, each Pledgor shall be entitled to exercise all voting rights and to receive all dividends and other distributions that may be paid on any Pledged Collateral and that are not otherwise prohibited by the Financing Documents. Any cash dividend or distribution payable in respect of the Pledged Collateral that is, in whole or in part, made in violation of this Agreement or the Financing Documents shall be received by Pledgors in trust for Agent, for its benefit and the benefit of the Lenders, and shall be paid immediately to Agent and shall be retained by Agent as part of the Pledged Collateral. Upon the occurrence of an Event of Default, Pledgors shall, at the written direction of Agent, immediately send a written notice to the Companies instructing the Companies, and shall cause the Companies, to remit all cash and other distributions payable with

respect to the Pledged Collateral (until such time as Agent notifies Pledgors that such Event of Default has been waived or otherwise ceased to exist) directly to Agent. Nothing contained in this paragraph shall be deemed to permit the payment of any sum or the making of any distribution which is prohibited by any of the Financing Documents.

5. Representations and Warranties of Pledgors. Each Pledgor hereby represents and warrants to Agent as follows:

(a) Schedule I sets forth all of the Pledged Stock and/or Pledged Interests each Pledgor holds in each Company as of the Closing Date;

(b) Schedule I and Schedule II are true, correct and complete in all respects;

(c) All of the Pledged Collateral of each Pledgor that is in certificated form is registered in the name of such Pledgor;

(d) The Pledged Collateral constitutes at least the percentage of all the issued and outstanding Equity Interests of each Company as set forth on Schedule I;

(e) Pledgors have good and marketable title to the Pledged Collateral and Pledgors are the sole owners of all of the Pledged Collateral, free and clear of all security interests, pledges, voting trusts, agreements, liens, claims and encumbrances whatsoever, other than (i) the security interests, assignments and liens granted under this Agreement and the other Financing Documents and (ii) Permitted Liens referred to in clause (d) or (j) of the definition thereof;

(f) Other than a requirement of consent of other members contained in the operating agreements governing the Pledged Collateral (which such consent has been obtained), such Pledgor is not prohibited under any agreement with any other person or entity, or under any judgment or decree, from the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(g) No action has been brought or threatened that might prohibit or interfere with the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(h) Such Pledgor has full power and authority to execute and deliver this Agreement, and the execution and delivery of this Agreement does not conflict with any agreement to which such Pledgor is a party or any Law to which such Pledgor is subject or by which it is bound and does not constitute a default under any agreement or instrument binding upon such Pledgor, in each case except as could not reasonably be expected to result in a Material Adverse Effect; and

(i) This Agreement has been duly executed and delivered and constitutes the valid and legally binding obligation of such Pledgor and is fully enforceable against such Pledgor in accordance with its terms.

6. Covenants of Pledgors. Each Pledgor hereby covenants and agrees as follows:

(a) To do, or cause to be done, all things necessary to preserve and keep in full force and effect its interests in the Pledged Collateral and to defend, at its sole expense, the title to the Pledged Collateral and any part of the Pledged Collateral against the claim of any Person in any action or proceeding of which such Pledgor is aware which could reasonably be expected to materially and adversely affect its title to, or Agent's interest in, the Pledged Collateral;

(b) To cooperate fully with Agent's efforts to preserve the Pledged Collateral and to take such necessary actions to preserve the Pledged Collateral as Agent may in good faith direct in its Permitted Discretion;

(c) To cause each Company to maintain proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to the Pledged Collateral and which reflect the lien of Agent on the Pledged Collateral;

(d) Subject to Section 18 hereof, to deliver immediately to Agent any certificates representing the Equity Interests and (ii) to execute and deliver to Agent (x) one or more transfer powers, substantially in the form of Schedule IV attached hereto or otherwise in form and content satisfactory to Agent, pursuant to which such Pledgor assigns, in blank, all of its Equity Interests (the "**Transfer Powers**"), which such Transfer Powers shall be held by Agent as part of the Collateral, (y) an irrevocable proxy, in substantially the form of Schedule V hereto ("**Irrevocable Proxy**"), and (z) a registration page, in blank, executed by the applicable Pledgor, substantially in the form of Schedule VI hereto ("**Registration Page**") or otherwise in form and substance satisfactory to Agent;

(e) To execute and deliver to Agent such financing statements as Agent may request with respect to the Pledged Collateral and to take such other steps as Agent may from time to time reasonably request to perfect Agent's security interest in the Pledged Collateral under applicable Law;

(f) Not to sell, discount, allow credits or allowances, assign, extend the time for payment on, convey, lease, assign, transfer or otherwise dispose of the Pledged Collateral or any part of the Pledged Collateral, except as expressly permitted under the Credit Agreement;

(g) After the occurrence and continuance of an Event of Default, (i) not to receive any dividend or distribution or other benefit with respect to any Company and (ii) not to vote, consent, waive or ratify any action taken, that would violate or be inconsistent with any of the terms and provisions of this Agreement or any of the Financing Documents or that would materially impair the position or interest of Agent in the Pledged Collateral or dilute the Equity Interests pledged to Agent under this Agreement;

(h) Not to sell or otherwise dispose of or create, incur, assume or suffer to exist any lien upon any of the Pledged Collateral other than liens in favor of Agent and non-consensual Permitted Liens, for its benefit and the benefit of the Lenders, except as expressly permitted under the Credit Agreement;

(i) That such Pledgor will, upon obtaining ownership of any additional Equity Interests after the date hereof, which Equity Interests are not already Pledged Collateral, within ten (10) Business Days (or such longer period to which the Agent may agree in writing (including via email) in its sole discretion) deliver to Agent a Pledge Amendment, duly executed by such Pledgor, in substantially the form of Schedule VII hereto (a "**Pledge Amendment**") in respect of any such additional Equity Interests pursuant to which such Pledgor shall pledge to Agent, for its benefit and the benefit of the Lenders, all of such additional Equity Interests and shall comply with Section 5(d) hereof with respect to such additional Ownership Interests. Prior to the delivery to Agent of a Pledge Amendment with respect to any additional Equity Interests, all such additional Equity Interests shall be held by such Pledgor separate and apart from its other property and in express trust for Agent, for its benefit and the benefit of the Lenders;

(j) That such Pledgor consents to the admission of Agent (and its assigns or designee) as a member, partner or stockholder of each applicable Company upon Agent's acquisition of any of the Pledged Collateral after an Event of Default has occurred;

(k) Except with respect to those Pledged Interests existing as of the Closing Date for which such action has already been taken, such Pledgor shall not take any action to cause any Pledged Interests to be or become a "security" within the meaning of, or to be governed by, Article 8 (Investment Securities) of the Uniform Commercial Code as in effect under the laws of any state having jurisdiction (the "UCC") and shall not cause any Company to "opt in" or to take any other action seeking to establish any Pledged Interest as a "security" or to become certificated; and

(l) Within fifteen (15) Business Days of the Closing Date, each Company shall amend its operating agreement or limited liability agreement to include the provisions set forth in Schedule III hereto regarding certain rights of Agent in respect of this Agreement.

7. Rights of Agent. Agent may from time to time in its Permitted Discretion (a) require Pledgors to, and Pledgors shall, periodically deliver to Agent records and schedules, which show the status of the Pledged Collateral and such other matters which affect the Pledged Collateral, (b) verify the Pledged Collateral and inspect the books and records of the Companies with respect to the Pledged Collateral and make copies of or extracts from the books and records and (c) notify any prospective buyers or transferees of the Pledged Collateral of Agent's interest in the Pledged Collateral, but only to the extent the applicable Pledgor has had a reasonable period of time to do so but has failed to provide such notification. Each Pledgor agrees that Agent may at any time take such steps as Agent deems reasonably necessary to protect Agent's interest in and to preserve the Pledged Collateral. Each Pledgor hereby consents and agrees that Agent may at any time or from time to time pursuant to the Credit Agreement (a) extend or change the time of payment and/or the manner, place or terms of payment of any and all Obligations, (b) supplement, amend, restate, supersede, or replace the Credit Agreement or any other Financing Documents, (c) renew, extend, modify, increase or decrease loans and extensions of credit under the Credit Agreement, (d) modify the terms and conditions under which loans and extensions of credit may be made under the Credit Agreement, (e) settle, compromise or grant releases for any Obligations and/or any person or persons liable for payment of any Obligations, (f) exchange, release, surrender, sell, subordinate or compromise any collateral of any party now or hereafter securing any of the Obligations and (g) apply any

and all payments received from any source by Agent at any time against the Obligations in any order as Agent may determine pursuant to the terms of the Credit Agreement. Each of the foregoing shall be in such manner and upon such terms as Agent may determine, without notice to or further consent from any Pledgor and without impairing or modifying the terms and conditions of this Agreement which shall remain in full force and effect.

This Agreement shall remain in full force and effect and shall not be limited, impaired or otherwise affected in any way by reason of (i) any delay in making demand on any Pledgor for, or delay in enforcing or failure to enforce, performance or payment of any Obligations, (ii) any failure, neglect or omission on Agent's part to perfect, protect, exercise rights against, or realize on, any lien upon any property of any Pledgor or any other party securing the Obligations, (iii) any failure to obtain, retain or preserve, or the lack of prior enforcement of, any rights against any person or persons or in any property, (iv) the invalidity or unenforceability of any Obligations or rights in any Pledged Collateral under the Credit Agreement, (v) the existence or nonexistence of any defenses which may be available to any Pledgor with respect to the Obligations or (vi) the commencement of any bankruptcy, reorganization, liquidation, dissolution or receivership proceeding or case filed by or against any Pledgor or any Borrower.

8. Rights of Agent Following Event of Default. Upon the occurrence of an Event of Default (and in addition to all of its other rights, powers and remedies under this Agreement), Agent may, at its option, without notice to any Pledgor (except to the extent such notice is expressly required pursuant to the Credit Agreement) or any other party, do any one or more of the following:

(a) Declare any unpaid balance of the Obligations to be immediately due and payable (the occurrence or nonoccurrence of an Event of Default shall in no manner impair the ability of Agent to demand payment of any portion of the Obligations that is payable upon demand);

(b) Proceed to perform or discharge any and all of Pledgors' obligations, duties, responsibilities or liabilities and exercise any and all of its rights in connection with the Pledged Collateral for such period of time as Agent may deem appropriate, with or without the bringing of any legal action in or the appointment of any receiver by any court;

(c) Do all other acts which Agent may deem necessary or proper to protect Agent's security interest in the Pledged Collateral and carry out the terms of this Agreement;

(d) Upon concurrent notice from Agent to the applicable Pledgor, exercise all voting and management rights of any Pledgor as to the applicable Company or otherwise pertaining to the Pledged Collateral, and any such Pledgor, forthwith upon the request of Agent, shall use its best efforts to secure, and cooperate with the efforts of Agent to secure (if not already secured by Agent), all the benefits of such voting and management rights;

(e) Sell the Pledged Collateral in any manner permitted by the UCC and the Financing Documents and, upon any such sale of the Pledged Collateral, Agent may (i) bid for and purchase the Pledged Collateral and apply the expenses of such sale (including, without limitation, documented out-of-pocket attorneys' fees) as a credit against the purchase price or (ii)

apply the proceeds of any sale or sales to other persons or entities, in whatever order Agent in its sole discretion may decide, to the expenses of such sale (including, without limitation, documented out-of-pocket attorneys' fees), to the Obligations and the remainder, if any, shall be paid to Pledgors or to such other person or entity legally entitled to payment of such remainder; and

(f) Proceed by suit or suits in law or in equity or by any other appropriate proceeding or remedy to enforce the performance of any term, covenant, condition, or agreement contained in this Agreement, and institution of such a suit or suits shall not abrogate the rights of Agent to pursue any other remedies granted in this Agreement or to pursue any other remedy available to Agent either at law or in equity.

Agent shall have all of the rights and remedies of a secured party under the UCC and other applicable Laws. All costs and expenses, including reasonable and documented out-of-pocket attorneys' fees and expenses, incurred or paid by Agent in exercising or protecting any interest, right, power or remedy conferred by this Agreement, shall bear interest at a per annum rate of interest equal to the then highest rate of interest charged on any of the Obligations from the date of payment until repaid in full (other than contingent indemnification obligations for which no claim has been made) and shall, along with the interest thereon, constitute and become a part of the Obligations secured by this Agreement.

Each Pledgor hereby constitutes Agent as the attorney-in-fact of such Pledgor after an Event of Default has occurred and is continuing to take such actions and execute such documents as Agent may deem appropriate in the exercise of the rights and powers granted to Agent in this Agreement, including, but not limited to, filling-in blanks in the Transfer Power to cause a transfer of the Pledged Collateral pursuant to a sale of the Pledged Collateral. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment in full of the Obligations (other than contingent indemnification obligations for which no claim has been made). Each Pledgor shall indemnify and hold Agent harmless for all losses, costs, damages, fees, and expenses suffered or incurred in connection with the exercise of this power of attorney and shall release Agent from any and all liability arising in connection with the exercise of this power of attorney.

9. Performance by Agent. If any Pledgor shall fail to perform, observe or comply with any of the conditions, terms, or covenants contained in this Agreement or any of the other Financing Documents, Agent, without notice to or demand upon any Pledgor and without waiving or releasing any of the Obligations or any Event of Default, may (but shall be under no obligation to) at any time thereafter perform such conditions, terms or covenants for the account and at the expense of Pledgors, and may enter upon the premises of such Pledgor for that purpose and take all such action on the premises as Agent may consider necessary or appropriate for such purpose. All sums paid or advanced by Agent in connection with the foregoing and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the foregoing, together with interest thereon at a per annum rate of interest equal to the then highest rate of interest charged on the principal of any of the Obligations, from the date of payment until repaid in full, shall be paid by Pledgors to Agent on demand and shall constitute and become a part of the Obligations secured by this Agreement.

10. Indemnification. Agent shall not in any way be responsible for the performance or discharge of, and Agent does not hereby undertake to perform or discharge of, any obligation, duty, responsibility, or liability of any Pledgor in connection with the Pledged Collateral or otherwise. Each Pledgor hereby agrees, on a joint and several basis, to indemnify Agent and hold Agent harmless from and against all losses, liabilities, damages, claims, or demands suffered or incurred by reason of this Agreement or by reason of any alleged responsibilities or undertakings on the part of Agent to perform or discharge any obligations, duties, responsibilities, or liabilities of any Pledgor in connection with the Pledged Collateral or otherwise; provided, however, that the foregoing indemnity and agreement to hold harmless shall not apply to losses, liabilities, damages, claims, or demands suffered or incurred by reason of Agent's own gross negligence or willful misconduct. Agent shall have no duty to collect any amounts due or to become due in connection with the Pledged Collateral or enforce or preserve Pledgors' rights under this Agreement.

11. Termination. Upon payment in full of the Obligations (other than contingent indemnification obligations for which no claim has been made), and termination of any further obligation of Agent and the Lenders to extend any credit to Borrower under the Financing Documents, this Agreement shall terminate and Agent shall promptly execute appropriate documents to evidence such termination.

12. Release. Without prejudice to any of Agent's rights under this Agreement, Agent may take or release other security for the payment or performance of the Obligations, may release any party primarily or secondarily liable for the Obligations, and may apply any other security held by Agent to the satisfaction of the Obligations.

13. Pledgors' Liability Absolute. The liability of each Pledgor under this Agreement shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against any Pledgor or any other person, nor against other securities or liens available to Agent or Agent's respective successors, assigns, or agents. Each Pledgor waives any right to require that resort be had to any security or to any balance of any deposit account or credit on the books of Agent in favor of any other person.

14. Preservation of Pledged Collateral. Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral and in preserving rights under this Agreement if Agent takes action for those purposes as Pledgors may reasonably request in writing; provided, however, that failure to comply with any such request shall not, in and of itself, be deemed a failure to exercise reasonable care, and no failure by Agent to preserve or protect any rights with respect to the Pledged Collateral or to do any act with respect to the preservation of the Pledged Collateral not so requested by Pledgors shall be deemed a failure to exercise reasonable care in the custody or preservation of the Pledged Collateral.

15. Private Sale. Each Pledgor recognizes that Agent may be unable to effect a public sale of the Pledged Collateral by reason of certain provisions contained in the federal Securities Act of 1933, as amended, and applicable state securities laws and, under the circumstances then existing, may reasonably resort to a private sale to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Pledged Collateral for their own account for investment and not with a view to the distribution or resale of the Pledged Collateral. Each

Pledgor agrees that a private sale so made may be at a price and on other terms less favorable to the seller than if the Pledged Collateral were sold at public sale and that Agent has no obligation to delay sale of the Pledged Collateral for the period of time necessary to permit Pledgors to register or qualify the Pledged Collateral for public sale under the Securities Act of 1933, as amended, and applicable state securities laws, even if Pledgors would agree to do so. Each Pledgor agrees that a private sale made under the foregoing circumstances and otherwise in a commercially reasonable manner shall be deemed to have been made in a commercially reasonable manner under the UCC.

16. General.

(a) Final Agreement and Amendments. This Agreement, together with the other Financing Documents, constitutes the final and entire agreement and understanding of the parties and any term, condition, covenant or agreement not contained herein or therein is not a part of the agreement and understanding of the parties. Neither this Agreement, nor any term, condition, covenant or agreement hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(b) Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. No single or partial exercise of any power or right shall preclude other or further exercise of the power or right or the exercise of any other power or right. No course of dealing between the parties hereto shall be construed as an amendment to this Agreement or a waiver of any provision of this Agreement. No notice to or demand on any Pledgor in any case shall thereby entitle such Pledgor to any other or further notice or demand in the same, similar or other circumstances.

(c) Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

(d) Construction. As used herein, all references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph or subparagraph of this Agreement. The Recitals are incorporated herein as a substantive part of this Agreement and the parties hereto acknowledge that such Recitals are true and correct.

(e) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns hereunder. In the event of any assignment or transfer by Agent of any of the

Pledgors' obligations under the Financing Documents or the collateral therefor, Agent thereafter shall be fully discharged from any responsibility with respect to such collateral so assigned or transferred, but Agent shall retain all rights and powers given by this Agreement with respect to any of the Pledgors' obligations under the Financing Documents or collateral not so assigned or transferred. No Pledgor shall have any right to assign or delegate its rights or obligations hereunder.

(f) Severability. If any term, provision, covenant or condition of this Agreement or the application of such term, provision, covenant or condition to any party or circumstance shall be found by a court of competent jurisdiction to be, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such term, provision, covenant, or condition to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, provision, covenant or condition shall be valid and enforced to the fullest extent permitted by law.

(g) Notices. All notices required or permitted hereunder shall be given and shall become effective as provided in Section 12.3 of the Credit Agreement. All notices to Pledgors shall be addressed in accordance with the information provided on the signature page hereto.

(h) Remedies Cumulative. Each right, power and remedy of Agent as provided for in this Agreement, or in any of the other Financing Documents or now or hereafter existing by law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement, or in any of the other Financing Documents now or hereafter existing by law, and the exercise or beginning of the exercise by Agent of any one or more of such rights, powers or remedies shall not preclude the later exercise by Agent of any other rights, powers or remedies.

(i) Time of the Essence; Survival; Joint and Several Liability. Time is of the essence of this Agreement and each and every term, covenant and condition contained herein. All covenants, agreements, representations and warranties made in this Agreement or in any of the other Financing Documents shall continue in full force and effect so long as any of the obligations (other than contingent indemnification obligations for which no claim has been made) of any party under the Financing Documents (other than Agent) remain outstanding. Each person or entity constituting a Pledgor hereunder shall be jointly and severally liable for all of the obligations of Pledgors under this Agreement.

(j) Further Assurances. Each Pledgor hereby agrees that at any time and from time to time, at the expense of Pledgors, such Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby, or to enable Agent or any of its agents to exercise and enforce its rights and remedies under this Agreement with respect to any portion of such collateral.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered to be an original, but all of which shall constitute one in the same instrument. This Agreement may be executed and delivered by the signing and

delivery of this Agreement with original signatures or by facsimile or pdf copy. As used in this Agreement, the term "this Agreement" shall include all attachments, exhibits, schedules, riders and addenda.

(l) Costs. Each Pledgor shall be jointly and severally responsible for the payment of any and all reasonable fees, costs and expenses which Agent may incur by reason of this Agreement, including, but not limited to, the following: (i) any taxes of any kind related to any property or interests assigned or pledged hereunder; (ii) expenses incurred in filing public notices relating to any property or interests assigned or pledged hereunder; and (iii) any and all costs, expenses and fees (including, without limitation, reasonable and documented out-of-pocket attorneys' fees and expenses and court costs and fees), whether or not litigation is commenced, incurred by Agent in protecting, insuring, maintaining, preserving, attaching, perfecting, enforcing, collecting or foreclosing upon any lien, security interest, right or privilege granted to Agent or any obligation of Pledgors under this Agreement, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or related to this Agreement or any property or interests assigned or pledged hereunder.

(m) No Defenses. Pledgors' obligations under this Agreement shall not be subject to any set-off, counterclaim or defense to payment that any Pledgor now has or may have in the future.

(n) **CHOICE OF LAW; CONSENT TO JURISDICTION.** WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), EACH PLEDGOR HEREBY (A) SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN MARYLAND AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE AGENT FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. EACH PLEDGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OR PROCESS IN ANY PROCEEDING IN ANY MARYLAND STATE OR UNITED STATES COURT SITTING IN THE STATE OF MARYLAND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO SUCH PLEDGOR AT THE ADDRESS INDICATED HEREIN, AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

17. WAIVER OF JURY TRIAL. EACH PLEDGOR HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH PLEDGOR AND AGENT ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PLEDGOR AND AGENT WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

PLEDGORS:

AVAD LLC, a Delaware limited liability company

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

WAVE ELECTRONICS, INC., a Texas corporation

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

WAVE ELECTRONICS ARIZONA, LLC, a Texas limited liability company

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

WAVE ELECTRONICS CALIFORNIA, LLC, a Texas limited liability company

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

WAVE ELECTRONICS FLORIDA, LLC, a Texas limited liability company

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

WAVE ELECTRONICS LOUISIANA, LLC, a Texas limited liability company

By: Alex Wolf
 Name: Alex Wolf
 Title: Vice President and Secretary

WAVE ELECTRONICS NEW JERSEY, LLC,
LLC, a Texas limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

MSTR BRAND, INC., a Texas corporation

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

AVAD CANADA, LTD., a British Columbia corporation

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

KINGSWOOD AVAD LLC, a Delaware limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

ELECTRONICS OUTLET, LLC,
a Delaware limited liability company

By: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By:  _____

Name: Michael Levin

Title: Authorized Signatory

SCHEDULE I**PLEDGED INTERESTS**

| Pledgor (owner of Record of such Pledged Interests) | Companies | Pledged Interests Description | Percentage of Issuer | Percentage Pledged | Certificate No. |
|--|-----------------------------------|--------------------------------------|-----------------------------|---------------------------|------------------------|
| KINGSWOOD AVAD LLC | AVAD LLC | Membership interests | 100% | 100% | N/A |
| WAVE ELECTRONICS, INC. | WAVE ELECTRONICS, ARIZONA, LLC | Membership Interests | 100% | 100% | 1 |
| WAVE ELECTRONICS, INC. | WAVE ELECTRONICS, CALIFORNIA, LLC | Membership Interests | 100% | 100% | 1 |
| WAVE ELECTRONICS, INC. | WAVE ELECTRONICS, FLORIDA, LLC | Membership Interests | 100% | 100% | 1 |
| WAVE ELECTRONICS, INC. | WAVE ELECTRONICS, LOUISIANA, LLC | Membership Interests | 100% | 100% | 1 |
| WAVE ELECTRONICS, INC. | WAVE ELECTRONICS NEW JERSEY, LLC | Membership Interests | 100% | 100% | 1 |

PLEDGED STOCK

| Pledgor (owner of Record of such Pledged Stock) | Companies | Pledged Stock Description | Number of Outstanding Shares | Number of Outstanding Shares Pledged | Certificate No. |
|--|------------------------|----------------------------------|-------------------------------------|---|------------------------|
| KINGSWOOD AVAD, LLC | WAVE ELECTRONICS, INC. | Common stock | 2,850 | 2,850 | 57 |
| WAVE ELECTRONICS, INC. | MSTR BRAND, INC. | Common stock | 100,000 | 100,000 | 11 |
| KINGSWOOD AVAD LLC | AVAD CANADA, LTD. | Membership interests | 16,287,557 | 16,287,557 | C-1 |

SCHEDULE II**PLEDGOR INFORMATION**

| Name of Pledgor | Type of Entity | Jurisdiction of Organization | Organizational ID No. | Tax ID No.¹ |
|------------------------------|---------------------------------|-------------------------------------|------------------------------|-------------------------------|
| KINGSWOOD AVAD LLC | Limited Liability Company | Delaware | 6011091 | 81-2190067 |
| AVAD LLC | Limited Liability Company | Delaware | 050484722 | 20-2973125 |
| WAVE ELECTRONICS, INC. | Corporation | Texas | 163503700 | 76-0686384 |

¹ NTD: Please provide Tax ID numbers.

SCHEDULE III**LLC OPERATING AGREEMENT AMENDMENTS**

Please add a new Article as follows:

ARTICLE []
RIGHTS OF AGENT

Section [] In the event that Midcap Financial Trust (together with any successor and/or assign thereto, "Agent") exercises its rights and remedies (the "Pledge Rights") under and in accordance with that certain Pledge Agreement, dated September [], 2018, between Agent and the Pledgors from time to time party thereto (the "Pledge Agreement"), delivered in connection with that certain Revolving Credit and Security Agreement, dated as of September [], 2018, by and among AVAD LLC, a Delaware limited liability company, WAVE ELECTRONICS, INC., a Texas corporation, WAVE ELECTRONICS ARIZONA, LLC, a Texas limited liability company, WAVE ELECTRONICS CALIFORNIA, LLC, a Texas limited liability company, WAVE ELECTRONICS FLORIDA, LLC, a Texas limited liability company, WAVE ELECTRONICS LOUISIANA, LLC, a Texas limited liability company, WAVE ELECTRONICS NEW JERSEY, LLC, a Texas limited liability company, MSTR BRAND, INC., a Texas corporation, ELECTRONICS OUTLET, LLC, a Delaware limited liability company, AVAD CANADA, LTD., an Ontario corporation, the other entities from time to time party thereto as "Borrowers" (together with the Company, the "Borrowers", and each individually, a "Borrower"), KINGSWOOD AVAD LLC, a Delaware limited liability company ("Parent"), the other Credit Parties from time to time party thereto, Agent and the financial institutions party thereto as lenders ("Lenders") (as may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), notwithstanding anything contained in this Agreement to the contrary: upon the occurrence of an Event of Default (as defined in the Credit Agreement, (a) Agent shall be entitled to remove any or all of the Managers and appoint any representatives of Agent or any other person or entity, as Agent elects, to be the Manager(s) in order to fill the vacancy created by such removal and the Members shall not have the right to remove the Managers so appointed by Agent or to elect any new or additional Managers and (b) any limitations contained in this Agreement inconsistent with the provisions of the Pledge Agreement or this Article shall thereupon be deemed waived, void and of no further force and effect until all of the Obligations (as defined in the Credit Agreement) of the Borrowers to Agent and Lenders under the Credit Agreement have been fully and finally paid, including, without limitation, (i) any provision that requires approval of actions by a "Majority in Interest" and (ii) provisions requiring the approval of the "Board of Managers" for certain actions, it being agreed that the Board of Managers may be replaced by a sole Manager at Agent's option. Following the full and final payment to Agent and Lenders of the Obligations under the Credit Agreement, all such provisions shall be deemed to be reinstated and in full force and effect.

Section [] Notwithstanding anything contained in this Agreement to the contrary, all restrictions on transfer and assignability of any Member's interests in the Company shall be inapplicable, and of no force and effect, as to any transfer of any interests in the Company to

Agent (or any nominee affiliate, successor, assignee or transferee thereof) in accordance with the Pledge Agreement. In addition, so long as any pledge or hypothecation of equity interests is in effect, the Company shall not have the power to divide.

Section [___] Neither the Members nor Managers will amend this Agreement to provide that any limited liability company interests in the Company are securities governed by Article 8 of the Uniform Commercial Code or otherwise "opt in" of Article 8 of the Uniform Commercial Code.

Section [___] The provisions of this Article shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and any future Members or Managers and their respective successors and assigns.

Section [___] None of the provisions of this Article [___] or any other provision of this Agreement may be amended in any way which alters, limits, restricts or adversely affects Agent's ability to exercise its Pledge Rights, other rights under the Pledge Agreement or the intended result thereof, without the prior written consent of Agent.

SCHEDULE IV**EQUITY POWER**

FOR VALUE RECEIVED, the undersigned, _____, [**a** _____ **limited liability company/corporation**] ("**Pledgor**"), does hereby sell, assign and transfer to _____* all of its Equity Interests (as hereinafter defined) represented by Certificate No(s). _____* in _____, a _____ ("**Issuer**"), standing in the name of Pledgor on the books of said Issuer. Pledgor does hereby irrevocably constitute and appoint _____*, as attorney, to transfer the Equity Interest in said Issuer with full power of substitution in the premises. The term "Equity Interest" means any security, share, unit, partnership interest, membership interest, ownership interest, equity interest, option, warrant, participation, "equity security" (as such term is defined in Rule 3(a)11 1 of the General Rules and Regulations of the Securities Exchange Act of 1934, as amended, or any similar statute then in effect, promulgated by the Securities and Exchange Commission and any successor thereto) or analogous interest (regardless of how designated) of or in a corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust or other entity, of whatever nature, type, series or class, whether voting or nonvoting, certificated or uncertificated, common or preferred, and all rights and privileges incident thereto.

Dated: _____*

PLEDGOR:**[NAME OF PLEDGOR]**

By: _____

Name: _____

Title: _____

*To Remain Blank - Not Completed at Closing

SCHEDULE V

IRREVOCABLE PROXY

(Interests of _____)

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned (the "Pledgor") hereby irrevocably (to the fullest extent permitted by law) appoints and constitutes **MIDCAP FINANCIAL TRUST**, as Agent for certain Lenders (the "Proxy Holder"), the attorney and proxy of the undersigned with full power of substitution and resubstitution, to the full extent of the undersigned's rights with respect to all of the Pledged Interests (as defined in the Pledge Agreement, defined below) which constitute the shares or other equity interests (the "Interests") of _____ the "Company"). Upon the execution hereof, all prior proxies given by the undersigned with respect to any of the Interests are hereby revoked, and no subsequent proxies will be given with respect to any of the Interests.

This proxy is IRREVOCABLE, is COUPLED WITH AN INTEREST and is granted pursuant to that certain Pledge Agreement dated as of _____, 2018 (the "Pledge Agreement") for the benefit of the Proxy Holder in consideration of the credit extended pursuant to that Credit and Security Agreement dated as of _____, 2018 by and among the Company, certain affiliates of the Company, the Lenders from time to time party thereto and Proxy Holder, as amended, restated, modified or supplemented from time to time. Capitalized terms used herein but not otherwise defined in this irrevocable proxy have the meanings ascribed to such terms in the Pledge Agreement (or, if not defined in the Pledge Agreement, the meanings ascribed to such terms in the Credit Agreement as defined in the Pledge Agreement).

The Proxy Holder named above will be empowered and may exercise this irrevocable proxy, during the existence of an Event of Default, to take any of the following actions: (i) transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Interests, it being acknowledged by Pledgor and Company (by virtue of Company's execution of the Notice of Pledge attached to the Pledge Agreement) that such transfer and registration may be effected by Agent by the delivery of a Registration Page to Company reflecting Agent or its designee as the holder of such Pledged Interests, or otherwise by Agent through its irrevocable appointment as attorney-in-fact pursuant to this proxy and the Pledge Agreement, (ii) exchange certificates or instruments representing or evidencing Pledged Interests for certificates or instruments of smaller or larger denominations, (iii) exercise the voting and all other rights as a holder with respect thereto, with full power of substitution to do so, (iv) collect and receive all dividends and other payments and distributions made thereon, (v) notify the parties obligated on any of the Pledged Interests to make payment to Agent of any amounts due or to become due thereunder, (vi) endorse instruments in the name of Pledgor to allow collection of any of the Pledged Interests, (vii) enforce collection of any of the Pledged Interests by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or renew for any period (whether or not longer than the original period) any liabilities of any nature of any Person with respect thereto, (viii) sell in one or more sales after ten (10) days' notice of the time and place of any public sale (which notice Pledgor agrees is commercially reasonable) the whole or any part of the Pledged Interests, (ix) exercise all other rights, powers, privileges and remedies

to which a holder of the Pledged Interests would be entitled (including giving or withholding written consents of members, calling special meetings or members and voting at such meetings), (x) otherwise act with respect to the Pledged Interests as though Agent was the outright owner thereof, (xi) exercise any other rights or remedies Agent may have under the UCC or other applicable law, and (xii) take any action and execute any instrument which Agent may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.

This proxy shall remain in effect with respect to the Pledged Interests until the Termination pursuant to Section 11 of the Pledge Agreement, notwithstanding any limitations to the contrary set forth in the **[Certificate of Incorporation][Articles of Organization]**, **[By-Laws][Limited Liability Company Agreements][Limited Partnership Agreements]** or other organizational documents of the undersigned or the Company or the **[General Corporation Law][Limited Liability Company Act][Limited Partnership Act]** of the **[State of _____]**. **[bracketed references to be conformed as applicable for each pledged company]**

Any obligation of the undersigned hereunder shall be binding upon the heirs, successors and assigns of the undersigned (including any transferee of any of the Interests).

IN WITNESS WHEREOF, the undersigned has executed this irrevocable proxy as of this ____ day of _____, 20__.

By _____
 Print Name _____
 Title _____

SCHEDULE VI
REGISTRATION PAGE

_____ **[Issuer]**

[Stock][Unit][Interest] Ledger as of _____, ____*

| NAME | [CERTIFICATE NO.] | NUMBER OF [SHARES][UNITS][INTERSTS] |
|------|-------------------|--|
| | | |

Acknowledged By:

_____ **[Issuer]**

By _____
 Name _____
 Title _____

SCHEDULE VII**PLEDGE AMENDMENT**

This Pledge Amendment, dated _____, 20__ is delivered pursuant to Section 5(i) of the Pledge Agreement referred to below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Pledge Agreement. The undersigned hereby certifies that the representations and warranties in Section 4 of the Pledge Agreement are and continue to be true and correct, both as to the Pledged Collateral pledged prior to this Pledge Amendment and as to the Pledged Collateral pledged pursuant to this Pledge Amendment. The undersigned further agrees that this Pledge Amendment may be attached to that certain Pledge Agreement, dated September [___], 2018, among undersigned, as Pledgor, the other Pledgors from time to time party thereto, and MidCap Financial Trust, as Agent (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"; capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Pledge Agreement), and that the Pledged Collateral listed on this Pledge Amendment shall be and become a part of the Pledged Collateral referred to in said Pledge Agreement and shall secure all Obligations referred to and in accordance with said Pledge Agreement. Schedule I of the Pledge Agreement shall be deemed amended to include the Pledged Collateral listed on this Pledge Amendment. The undersigned Pledgor acknowledges that any Pledged Collateral issued by any Company owned by such Pledgor not included in the Pledged Collateral at the discretion of Agent may not otherwise be pledged by such Pledgor to any other Person or otherwise used as security for any obligations other than the Obligations.

PLEDGOR:

[NAME OF PLEDGOR]

By: _____
 Name: _____
 Title: _____

SCHEDULE VII- CONTINUED

| <u>Name and Address of Pledgor</u> | <u>Company</u> | <u>Class of Equity Interest</u> | <u>Certificate Number(s)</u> | <u>Number of Shares</u> |
|--|-------------------------------------|-------------------------------------|----------------------------------|-----------------------------|
| | <u>Initial Principal Amount</u> | <u>Issue Date</u> | <u>Maturity Date</u> | <u>Interest Rate</u> |

NOTICE OF PLEDGE

TO: _____ (the "**Company**")

Notice is hereby given that, pursuant to that certain Pledge Agreement of even date with this Notice (the "**Agreement**"), from undersigned ("**Pledgor**") and the other entities party thereto from time to time as Pledgors to MidCap Financial Trust, as agent (in such capacity, together with its successors and assigns, "**Agent**") in connection with financing arrangements in effect for Company, Agent and certain other financial institutions as lenders ("**Lenders**"), Pledgor has pledged and assigned to Agent and granted to Agent, for its benefit and the benefit of the Lenders, a continuing first priority security interest, subject to Section 18 of the Agreement, in, all of its right, title and interest, whether now existing or hereafter arising our acquired, in, to, and the Pledged Collateral (as defined in the Agreement).

Pursuant to the Agreement, the Company is hereby authorized and directed, and Company hereby agrees, to:

(i) register on its books Pledgor's pledge to Agent of the Pledged Collateral;
and

(ii) upon the occurrence of an Event of Default (or prior thereto, as may be required under the Agreement) make direct payment to Agent of any amounts due or to become due to Pledgor that are attributable, directly or indirectly, to Pledgor's ownership of the Pledged Collateral.

Pledgor hereby directs the Company to, and the Company hereby agrees to, comply with instructions originated by Agent with respect to the Pledged Collateral without further consent of the Pledgor. It is the intention of the foregoing to grant "control" to Agent within the meaning of Articles 8 and 9 of the UCC, to the extent the same may be applicable to the Pledged Collateral.

Pledgor hereby directs the Company, and the Company hereby agrees, (i) not to take any action to cause any equity interest of the Pledged Interest to be or become a "security" within the meaning of, or to be governed by, Article 8 (Investment Securities) of the UCC as in effect under the laws of any state having jurisdiction, (ii) not to "opt in" or to take any other action seeking to establish any equity interest of the Pledged Interest as a "security" and (iii) not to certificate any equity interest of the Pledged Interest.

Pledgor acknowledges and agrees that upon the execution and delivery of this Agreement by the parties hereto Agent's security interest in the Pledged Collateral shall be perfected by "control" (as such term is used in Articles 8 and 9 of the UCC).

Pledgor hereby requests the Company to indicate its acceptance of this Notice and consent to and confirmation of its terms and provisions by signing a copy of this Notice where indicated below and returning it to Agent.

PLEDGOR:

[NAME OF PLEDGOR]

By: _____
Name: _____
Title: _____

ACKNOWLEDGED BY COMPANY as of this ____ day of _____, 201__:

THE COMPANY:

[NAME OF COMPANY]

By: _____
Name: _____
Title: _____

THIS IS **EXHIBIT "E"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

RUN NUMBER : 068
 RUN DATE : 2021/03/09
 ID : 20210309100333.82

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 1
 (5008)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
 OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : AVAD CANADA LTD.

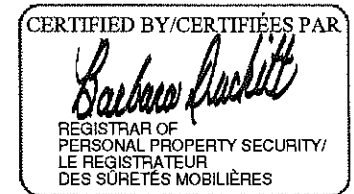
FILE CURRENCY : 08MAR 2021

ENQUIRY NUMBER 20210309100333.82 CONTAINS 8 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
 WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
 SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - NORTON ROSE - CARLA MACHADO
 222 BAY STREET, SUITE 3000
 TORONTO ON M5K 1E7

CONTINUED... 2



(crj5 06/2019)

RUN NUMBER : 068
RUN DATE : 2021/03/09
ID : 20210309100333.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(5889)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : AVAD CANADA LTD.
FILE CURRENCY : 08MAR 2021

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
743440905

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 1 20180906 0944 1590 8190 P PPSA 7

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME AVAD CANADA LTD. ONTARIO CORPORATION NO.
04 ADDRESS 20TH FLOOR, 250 HOWE STREET VANCOUVER BC V6C 3R8

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / MIDCAP FINANCIAL TRUST, AS AGENT
09 LIEN CLAIMANT ADDRESS 7255 WOODMONT AVE, SUITE 200 BETHESDA MD 20814

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE
X X X X X

11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING NORTON ROSE FULBRIGHT CANADA LLP (RD/CM)
17 AGENT ADDRESS 200 BAY STREET, SUITE 3800 ROYAL BANK PL TORONTO ON M5J 2Z4

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES



RUN NUMBER : 068
RUN DATE : 2021/03/09
ID : 20210309100333.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(5890)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : AVAD CANADA LTD.
FILE CURRENCY : 08MAR 2021

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF | TOTAL MOTOR VEHICLE PAGES SCHEDULE | REGISTRATION NUMBER | REGISTERED UNDER |
|----------------|---|--|------------------------------|--|
| 01 | 001 | 1 | 20190222 0902 1590 0535 | |
| 21 | RECORD FILE NUMBER | 743440905 | | |
| 22 | PAGE AMENDED | NO SPECIFIC PAGE AMENDED | CHANGE REQUIRED D ASSIGNMENT | RENEWAL YEARS |
| 23 | REFERENCE | FIRST GIVEN NAME | INITIAL | SURNAME |
| 24 | DEBTOR/ TRANSFEROR | BUSINESS NAME | AVAD CANADA LTD. | |
| 25 | OTHER CHANGE REASON/ DESCRIPTION | | | |
| 02/05 | DEBTOR/ TRANSFEREE | DATE OF BIRTH | FIRST GIVEN NAME | INITIAL SURNAME |
| 03/06 | TRANSFEEE | BUSINESS NAME | | |
| 04/07 | ADDRESS | ONTARIO CORPORATION NO. | | |
| 29 | ASSIGNOR | MIDCAP FINANCIAL TRUST, AS AGENT | | |
| 08 | SECURED PARTY/ LIEN CLAIMANT/ ASSIGNEE | MIDCAP FUNDING - X TRUST, AS AGENT | | |
| 09 | ADDRESS | 7255 WOODMONT AVE, SUITE 200 | BETHESDA | MD 20814 |
| 10 | COLLATERAL CLASSIFICATION | | | |
| 11 | MOTOR VEHICLE | CONSUMER GOODS | MOTOR VEHICLE INCLUDED | DATE OF MATURITY OR NO FIXED MATURITY DATE |
| 12 | GENERAL DESCRIPTION | YEAR MAKE | MODEL | V.I.N. |
| 14 | COLLATERAL DESCRIPTION | | | |
| 16 | REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT | NORTON ROSE FULBRIGHT CANADA LLP (RD/MT) 200 BAY STREET, SUITE 3800 ROYAL BANK PL TORONTO | | ON M5J 2Z4 |

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

4

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)



RUN NUMBER : 068
RUN DATE : 2021/03/09
ID : 20210309100333.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(5891)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : AVAD CANADA LTD.
FILE CURRENCY : 08MAR 2021

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF | TOTAL PAGES | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER | REGISTERED UNDER |
|----------------|--------------------------------------|--|---|-------------------------|-------------------------|
| 01 | 001 | 1 | | 20190222 0907 1590 0535 | |
| 21 | RECORD FILE NUMBER | 743440905 | | | |
| 22 | PAGE AMENDED | NO SPECIFIC PAGE AMENDED | CHANGE REQUIRED D ASSIGNMENT | RENEWAL YEARS | CORRECT PERIOD |
| 23 | REFERENCE | FIRST GIVEN NAME | INITIAL | SURNAME | |
| 24 | DEBTOR/ TRANSFEROR | BUSINESS NAME | AVAD CANADA LTD. | | |
| 25 | OTHER CHANGE | | | | |
| 26 | REASON/ | | | | |
| 27 | DESCRIPTION | | | | |
| 28 | | | | | |
| 02/ | DEBTOR/ | DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
| 03/ | TRANSFEREE | BUSINESS NAME | | | |
| 04/07 | ADDRESS | | | | ONTARIO CORPORATION NO. |
| 29 | ASSIGNOR | MIDCAP FUNDING X TRUST, AS AGENT | | | |
| 08 | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE | MIDCAP FUNDING IV TRUST, AS AGENT | | | |
| 09 | ADDRESS | 7255 WOODMONT AVE, SUITE 200 | BETHESDA | MD | 20814 |
| 10 | COLLATERAL CLASSIFICATION | | | | |
| | CONSUMER | MOTOR VEHICLE | DATE OF | NO FIXED | |
| | GOODS | INVENTORY EQUIPMENT ACCOUNTS OTHER | INCLUDED | AMOUNT MATURITY OR | MATURITY DATE |
| 11 | MOTOR | YEAR MAKE | MODEL | V.I.N. | |
| 12 | VEHICLE | | | | |
| 13 | GENERAL | | | | |
| 14 | COLLATERAL | | | | |
| 15 | DESCRIPTION | | | | |
| 16 | REGISTERING AGENT OR | NORTON ROSE FULBRIGHT CANADA LLP (RD/MT) | | | |
| 17 | SECURED PARTY/ LIEN CLAIMANT | ADDRESS | 200 BAY STREET, SUITE 3800 ROYAL BANK PL TORONT | ON | M5J 2Z4 |

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 5

CERTIFIED BY/CERTIFIÉES PAR
Barbara Aschitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)



RUN NUMBER : 068
RUN DATE : 2021/03/09
ID : 20210309100333.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(5893)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : AVAD CANADA LTD.
FILE CURRENCY : 08MAR 2021

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF | TOTAL PAGES | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER | REGISTERED UNDER |
|----------------|---|---------------------------------------|------------------------|-------------------------|-------------------------|
| 01 | 002 | 3 | | 20190321 1507 1590 2596 | |
| 21 | RECORD REFERENCED | FILE NUMBER | 743440905 | | |
| 22 | PAGE AMENDED | NO SPECIFIC PAGE AMENDED | CHANGE REQUIRED | RENEWAL YEARS | CORRECT PERIOD |
| 23 | REFERENCE DEBTOR/ TRANSFEROR | BUSINESS NAME | FIRST GIVEN NAME | INITIAL | SURNAME |
| 24 | | | | | |
| 25 | OTHER CHANGE REASON/ DESCRIPTION | | | | |
| 26 | | | | | |
| 27 | | | | | |
| 28 | | | | | |
| 02/ | DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME | |
| 05 | DEBTOR/ TRANSFEREE | BUSINESS NAME | | | |
| 03/ | | | | | ONTARIO CORPORATION NO. |
| 06 | | | | | |
| 04/07 | ADDRESS | | | | |
| 29 | ASSIGNOR SECURED PARTY/LIEN CLAIMANT/ASSIGNEE | | | | |
| 08 | | | | | |
| 09 | ADDRESS | SERVICER, 7255 WOODMONT AVENUE, SUITE | | | |
| 10 | COLLATERAL CLASSIFICATION | CONSUMER | MOTOR VEHICLE | DATE OF | NO FIXED |
| | GOODS | INVENTORY EQUIPMENT ACCOUNTS OTHER | INCLUDED | AMOUNT MATURITY OR | MATURITY DATE |
| 11 | MOTOR VEHICLE GENERAL COLLATERAL DESCRIPTION | YEAR MAKE | MODEL | V. I. N. | |
| 12 | | | | | |
| 13 | | | | | |
| 14 | | | | | |
| 15 | | | | | |
| 16 | REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT | ADDRESS | | | |
| 17 | | | | | |

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

7

CERTIFIED BY/CERTIFIÉES PAR
Barbara Luckitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj2tu 06/2019)



RUN NUMBER : 068
RUN DATE : 2021/03/09
ID : 20210309100333.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 7
(5894)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : AVAD CANADA LTD.
FILE CURRENCY : 08MAR 2021

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF | TOTAL PAGES | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER | REGISTERED UNDER |
|----------------|--------------------------------------|------------------------------------|------------------------|-------------------------|-------------------------|
| 01 | 003 | 3 | | 20190321 1507 1590 2596 | |
| 21 | RECORD FILE NUMBER | 743440905 | | | |
| 22 | PAGE AMENDED | NO SPECIFIC PAGE AMENDED | CHANGE REQUIRED | RENEWAL YEARS | CORRECT PERIOD |
| 23 | REFERENCE | FIRST GIVEN NAME | INITIAL | SURNAME | |
| 24 | DEBTOR/ TRANSFEROR | BUSINESS NAME | | | |
| 25 | OTHER CHANGE | | | | |
| 26 | REASON/ | | | | |
| 27 | DESCRIPTION | | | | |
| 28 | | | | | |
| 02/ | DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME | |
| 05 | DEBTOR/ | | | | |
| 03/ | TRANSFEREE | BUSINESS NAME | | | |
| 06 | | | | | ONTARIO CORPORATION NO. |
| 04/07 | ADDRESS | | | | |
| 29 | ASSIGNOR | | | | |
| 08 | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE | | | | |
| 09 | ADDRESS | 200 | | | |
| 09 | COLLATERAL CLASSIFICATION | | | | |
| | CONSUMER | | MOTOR VEHICLE | DATE OF | NO FIXED |
| | GOODS | INVENTORY EQUIPMENT ACCOUNTS OTHER | INCLUDED | AMOUNT MATURITY OR | MATURITY DATE |
| 10 | | | | | |
| 11 | MOTOR | YEAR MAKE | MODEL | V.I.N. | |
| 12 | VEHICLE | | | | |
| 13 | GENERAL | | | | |
| 14 | COLLATERAL | | | | |
| 15 | DESCRIPTION | | | | |
| 16 | REGISTERING AGENT OR | | | | |
| 17 | SECURED PARTY/ | ADDRESS | | | |
| | LIEN CLAIMANT | | | | |

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

CERTIFIED BY/CERTIFIÉES PAR
Barbara Aschitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj2tu 06/2019)



RUN NUMBER : 068
RUN DATE : 2021/03/09
ID : 20210309100333.82

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 8
(5895)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : AVAD CANADA LTD.
FILE CURRENCY : 08MAR 2021

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

| FILE NUMBER | REGISTRATION NUMBER | REGISTRATION NUMBER | REGISTRATION NUMBER | REGISTRATION NUMBER |
|-------------|-------------------------|-------------------------|-------------------------|-------------------------|
| 743440905 | 20180906 0944 1590 8190 | 20190222 0902 1590 0535 | 20190222 0907 1590 0536 | 20190321 1507 1590 2596 |

4 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR
Barbara Aschitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj5 06/2019)



Search ID #: Z13588321

Transmitting Party

WEST-END REGISTRATIONS LICENSING & SEARCHES
LTD. (P158)

10011 170 STREET
EDMONTON, AB T5P 4R5

Party Code: 50076967

Phone #: 780 483 8211

Reference #: 03295830-EDD3 5
1368

Search ID #: Z13588321

Date of Search: 2021-Mar-09

Time of Search: 08:00:27

Business Debtor Search For:

AVAD CANADA LTD.

Exact Result(s) Only Found

NOTE:

A complete Search may result in a Report of Exact and Inexact Matches.
Be sure to read the reports carefully.



Search ID #: Z13588321

Business Debtor Search For:

AVAD CANADA LTD.

Search ID #: Z13588321

Date of Search: 2021-Mar-09

Time of Search: 08:00:27

Registration Number: 18090603915

Registration Type: SECURITY AGREEMENT

Registration Date: 2018-Sep-06

Registration Status: Current

Expiry Date: 2025-Sep-06 23:59:59

Exact Match on:

Debtor

No: 1

Amendments to Registration

| | | |
|-------------|-----------|-------------|
| 19022205445 | Amendment | 2019-Feb-22 |
| 19022225108 | Amendment | 2019-Feb-22 |
| 19032125243 | Amendment | 2019-Mar-21 |

Debtor(s)**Block****Status**

1 AVAD CANADA LTD.
20TH FLOOR, 250 HOWE STREET
VANCOUVER, BC V6C 3R8

Current

Secured Party / Parties**Block****Status**

1 MIDCAP FINANCIAL TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA, MD 20814

Deleted by
19022205445**Block****Status**

2 BUSINESS NAME: MIDCAP FUNDING X TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA, MD 20814

Deleted by
19022225108**Block****Status**

3 MIDCAP FUNDING IV TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA, MD 20814

Current by
19022225108

Search ID #: Z13588321

Collateral: General

| <u>Block</u> | <u>Description</u> | <u>Status</u> |
|---------------------|---|----------------------|
| 1 | ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY. | Current |

Particulars

| <u>Block</u> | <u>Additional Information</u> | <u>Status</u> |
|---------------------|---|---------------------------|
| 1 | THE FULL AND COMPLETE ADDRESS OF THE SECURED PARTY IS: C/O MIDCAP FINANCIAL SERVICES, LLC, AS SERVICER, 7255 WOODMONT AVENUE, SUITE 200, BETHESDA, MD 20814 | Current By 19032125243 |

Search ID #: Z13588321

Business Debtor Search For:

AVAD CANADA LTD.

Search ID #: Z13588321

Date of Search: 2021-Mar-09

Time of Search: 08:00:27

Registration Number: 18092829584

Registration Type: LAND CHARGE

Registration Date: 2018-Sep-28

Registration Status: Current

Registration Term: Infinity

Exact Match on: Debtor No: 1

Amendments to Registration

| | | |
|-------------|-----------|-------------|
| 19022205405 | Amendment | 2019-Feb-22 |
| 19022224915 | Amendment | 2019-Feb-22 |
| 19032125134 | Amendment | 2019-Mar-21 |

Debtor(s)**Block****Status**

1 AVAD CANADA LTD.
20TH FLOOR, 250 HOWE STREET
VANCOUVER, BC V6C 3R8

Current

Secured Party / Parties**Block****Status**

1 MIDCAP FINANCIAL TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA, MD 20814

Deleted by
19022205405**Block****Status**

2 MIDCAP FUNDING X TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA, MD 20814

Deleted by
19022224915**Block****Status**

3 MIDCAP FUNDING IV TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA, MD 20814

Current by
19022224915

Search ID #: Z13588321

Particulars

Block **Additional Information**

Status

1 THE FULL AND COMPLETE ADDRESS OF THE SECURED PARTY IS:
 C/O MIDCAP FINANCIAL SERVICES, LLC, AS SERVICER, 7255 WOODMONT
 AVENUE, SUITE 200, BETHESDA, MD 20814

Current By
19032125134

Result Complete

Lterm: XPSP0050

For: PD43818 DYE AND DURHAM CORPORATION

07:00:11

Index: BUSINESS DEBTOR

List of matches:

Exact: AVAD CANADA LTD

Page: 1

Lterm: XPSP0050

For: PD43818 DYE AND DURHAM CORPORATION

07:00:11

Index: BUSINESS DEBTOR

Search Criteria: AVAD CANADA LTD.

***** P P S A S E C U R I T Y A G R E E M E N T *****

Reg. Date: SEP 06, 2018 Reg. Length: 7 YEARS
Reg. Time: 06:50:45 Expiry Date: SEP 06, 2025
Base Reg. #: 006194L Control #: D5534745

Block#

+++ Secured Party: MIDCAP FINANCIAL TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA MD 20814

=D0001

Base Debtor: AVAD CANADA LTD
(Business) 20TH FLOOR, 250 HOWE STREET
VANCOUVER BC V6C 3R8

General Collateral:

ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY.

Registering

Party: NORTON ROSE FULBRIGHT CANADA LLP
(RD/CM)
200 BAY ST, STE 3800
TORONTO ON M5J 2Z4

----- S E C U R E D P A R T Y T R A N S F E R -----

Reg. #: 331497L Reg. Date: FEB 22, 2019
Reg. Time: 07:42:53
Control #: D5866419
Base Reg. Type: PPSA SECURITY AGREEMENT
Base Reg. #: 006194L Base Reg. Date: SEP 06, 2018

Block#

** DELETED **

+++ Secured Party: MIDCAP FINANCIAL TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA MD 20814

*** ADDED ***

+++ Secured Party: MIDCAP FUNDING X TRUST, AS AGENT
7255 WOODMONT AVE, SUITE 200
BETHESDA MD 20814

Registering

Party: NORTON ROSE FULBRIGHT CANADA LLP
(RD/MT)
200 BAY STREET, SUITE 3800
TORONTO ON M5J 2Z4

Continued on Page 2

Search Criteria: AVAD CANADA LTD.

Page: 2

----- S E C U R E D P A R T Y T R A N S F E R -----

Reg. #: 331661L Reg. Date: FEB 22, 2019
Reg. Time: 08:19:13

THIS IS **EXHIBIT "F"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

BLOCKED ACCOUNT AGREEMENT

THIS AGREEMENT dated as of April 15, 2019

BETWEEN:

THE BANK OF NOVA SCOTIA

(hereinafter called “**Account Bank**”)

AND:

BNS ACCOUNT CUSTOMER

(hereinafter called “**Borrower**”)s

AND:

MIDCAP FUNDING IV TRUST

as agent for and on behalf of itself and the Lenders

(together with any successor or assign thereto acting in such capacity, the “**Agent**”)

WHEREAS the Borrower, the Agent and the Lenders (as hereinafter defined) have entered into the Credit Agreement which provides, *inter alia*, for financing for the Borrower by the Lenders as contemplated therein;

AND WHEREAS in order to secure the Obligations of the Borrower, the Borrower has entered into certain Collateral Documents, pursuant to which the Borrower has granted a security interest in favour of the Agent on behalf of itself and the Lenders in all of the Borrower’s present and after acquired personal property including, among other things, all right, title and interest of the Borrower in and to certain present and future accounts, contract rights, general intangibles, documents, instruments, chattel paper, deposit and other bank accounts and proceeds of the foregoing;

AND WHEREAS the Borrower has established the accounts listed in Schedule A, as such Schedule may be amended, restated or replaced from time to time (collectively, the “**Accounts**”) with the Account Bank.

NOW THEREFORE in order for the Borrower to comply with the requirements of the Credit Agreement and the other Financing Documents, and in consideration of the reciprocal obligations herein provided and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, each of the Account Bank, the Borrower and Agent agree as follows:

1. **Definitions.** In this Agreement, unless there is something in the subject matter or context inconsistent therewith, all capitalized terms used herein which are not otherwise defined

herein shall have the meanings ascribed thereto in the Credit Agreement. In addition, the following terms shall have the following meanings:

- (a) “Business Day” means a day other than a Saturday or Sunday when the Account Bank is open for business in Toronto, Ontario
 - (b) “Credit Agreement” means the credit agreement dated as of October 2, 2018 entered into among the Borrower, as borrower, as obligors, the Agent as administrative agent for the Lenders, and the financial institutions from time to time party thereto as lenders (the “Lenders”), as the same may be amended, varied, supplemented, restated, renewed or replaced at any time and from time to time; and
 - (c) “Notice Effective Date” means the date that is three Business Days after the receipt (or deemed receipt as the case may be) of a Trigger Notice.
2. **Establishment of Accounts.** The Account Bank will maintain the Accounts as long as the Borrower is in compliance with the terms of the Account Bank’s account documentation with respect thereto. In the event of any conflict between this Agreement and such account documentation, this Agreement shall control.
 3. **Deposits to Accounts.** Pursuant to the Credit Agreement, the Borrower has agreed to establish the Accounts with the Account Bank and to deposit or cause to be deposited to the Accounts, all revenues, receipts, monies, cash and proceeds and other sums of any nature received (or to be received) by or payable (or to become payable) to the Borrower, and proceeds of the Collateral in the manner specified in the Credit Agreement.
 4. **Security Interest of Agent and Lenders.** The Borrower has granted to Agent, for the benefit of the Lenders, a security interest in and lien upon, and pledged to Agent, all of its assets, which include cheques, drafts and other instruments received for deposit in the Accounts and all amounts at any time in or attributable to the Accounts, as security for the Obligations of the Borrower to the Agent and the Lenders. The Agent acknowledges and agrees that it shall take whatever action it considers appropriate and necessary to protect and enforce its rights respecting the Accounts, including completion and registration of any documents or financing statements in order to perfect any security interests in the Accounts. The Account Bank makes no representations and assumes no liability respecting the validity or the enforceability of any security interest the Agent and the Lenders, or any other party may have relating to the Accounts or the existence of any other liens or other interests respecting the Accounts. The Account Bank assumes no responsibility or liability for maintaining the perfection, registration or validity of the security interest of Agent in the Accounts.
 5. **Authority.** Until receipt by the Account Bank of written notice from Agent (such notice being in the form of Schedule B hereto and referred to as a “Trigger Notice”) and provided the Borrower is in compliance with the terms of the Account Bank’s account documentation, the Account Bank will comply only with the transfer, withdrawal and disbursement instructions of the Borrower. The Agent agrees with the Borrower that it will not deliver a

Trigger Notice to the Account Bank unless and until an Event of Default has occurred and is continuing and has not been either cured or waived in accordance with the provisions of the Credit Agreement and the Agent is entitled to enforce its security interest pursuant to the Credit Agreement. Upon receipt by the Account Bank of a Trigger Notice at the servicing branch (Business Service Centre) the Borrower waives authority to withdraw any amounts from, to draw upon or otherwise exercise any authority or powers with respect to the Accounts and all amounts held therein and the Accounts shall be under the sole dominion and control of Agent. The Account Bank will make commercially reasonable efforts to effect the changes required by the Trigger Notice, provided that the Account Bank may require up to three (3) Business Days to implement such changes required by the Trigger Notice and will not be liable for (a) any instructions from the Borrower that have been processed prior to a Notice Effective Date or (b) irrevocable electronic funds transfers or wire transfers that are subject to cut-off times and have been processed prior to a Notice Effective Date.

6. **No Duty to Inquire.** Subject to Section 12 and upon receipt by the Account Bank of a Trigger Notice, the Account Bank will not have any duty to inquire whether or not Agent is entitled to give, and has no duty to question, instructions, certificates or notices pursuant to any of the provisions of this Agreement or any other agreement. Any instructions, certificates or notices given by Agent following receipt by the Account Bank of a Trigger Notice will be conclusive authority for the Account Bank to act in accordance with the instructions, certificates or notices whether or not Agent is acting in good faith. The Account Bank is not obliged or required to monitor any requirements or obligations of Agent or the Borrower pursuant to this Agreement or any other agreement.
7. **Account Transfers.** If at any time after receipt by the Account Bank of a Trigger Notice the Account Bank terminates this Agreement, all amounts in the Accounts shall automatically and without further direction be remitted, at the Borrower's cost and expense, by transfer solely to the account of Agent (the "**Agent Account**") then specified by it in writing to the Account Bank.
8. **Reporting.** At such time or times as Agent may request, the Borrower will be responsible for providing copies of the DDA statements and cheques to the Lender. Upon receipt by the Account Bank of a Trigger Notice as mentioned in section 5, the Account Bank will make the necessary changes to ensure the Borrower's DDA statements are mailed to the Lender directly. The Borrower hereby expressly consents to the release of this information by the Account Bank to Agent. Borrower will reimburse the Account Bank for its reasonable expenses in providing such items to Agent.
9. **Charges and Waiver of Right of Set-Off.** Borrower shall be and at all times remain liable to the Account Bank for any contractually-agreed fees and service charges relating to the Accounts and chargebacks for any cheques, drafts and other payment items dishonoured or otherwise returned to the Account Bank with respect to the Accounts (all such contractually-agreed fees, service charges and chargebacks being hereinafter referred to, collectively, as "**Charges**"). The Borrower and Agent hereby acknowledge and agree that the Account Bank shall be entitled to recover any and all Charges from the Accounts and the Account Bank is hereby authorized to debit the Accounts at any time to recover any and all Charges; provided that the Account Bank shall first charge the Operating Account for any such Charges before

charging any other Account. The Account Bank may exercise its rights of set-off, consolidation and banker's lien to the extent required to satisfy any Charges associated with the Accounts, provided, that the Account Bank shall not exercise any such rights with respect to other liabilities owed to it by the Borrower. If there are insufficient funds on deposit in the Accounts to cover any outstanding Charges, the Borrower shall promptly pay to the Account Bank the amount of such Charges upon demand by the Account Bank. Following receipt by the Account Bank of a Trigger Notice, if the Borrower fails to pay such amount within ten (10) days of demand by the Account Bank, Agent shall promptly pay to the Account Bank the amount of all such outstanding Charges upon written notification from the Account Bank.

10. **Compliance with Court Order.** Notwithstanding any other provision contained herein, the Account Bank shall have the right to automatically freeze or debit the Accounts in accordance with any court order or notice of garnishment received by it, or any other legal requirement with which the Account Bank reasonably determines it is required to comply.
11. **Indemnity.** The Borrower shall indemnify and hold harmless the Account Bank, its employees, officers and directors from and against any and all loss, liability, cost, claim and expense incurred (including, without limitation, reasonable legal fees and expenses) by the Account Bank, its employees, officers and directors with respect to the performance of this Agreement, including, without limitation, claims that the Account Bank was not properly authorized to transfer credit balances from the Accounts to the Agent Account, except for such loss, liability, cost, claim and expense incurred as a result of gross negligence or willful misconduct of the Account Bank; provided that Agent's obligation to pay such Charges will terminate 180 days after termination of this Agreement with respect to all claims that Agent has not received notice of from Account Bank by such time.
12. **Scope of Duty.** The Account Bank undertakes to perform only such duties as are expressly set forth in this Agreement and to deal with the Accounts with the degree of skill and care that the Account Bank accords to all accounts and funds maintained and held by it on behalf of its customers. Notwithstanding any other provision of this Agreement, the parties agree that the Account Bank shall not be liable for any action taken by it or any of its directors, officers or employees in accordance with this Agreement except for its or their own gross negligence or willful misconduct. In no event shall the Account Bank be liable for losses or delays resulting from *force majeure*, computer malfunctions, interruption of communication facilities or other causes beyond the Account Bank's control or for indirect or consequential damages.
13. **Termination.** The Borrower shall have no right to modify or terminate this Agreement or any account agreement relating to the Accounts without the written consent of Agent. At any time prior to receipt by the Account Bank of a Trigger Notice, the Account Bank may terminate this Agreement and/or any account agreement relating to the Accounts upon thirty (30) days prior notice to Agent and the Borrower thereof. At any time following the receipt by the Account Bank of a Trigger Notice, the Account Bank may terminate this Agreement and/or any account agreement relating to the Accounts upon thirty (30) days prior notice to Agent thereof. The Agent may terminate this Agreement at any time. If this Agreement is

terminated at any time after receipt by the Account Bank of a Trigger Notice, the Account Bank shall remit the entire balance of the Accounts as provided in Section 7 hereof save and except for the amount of any Charges owing to the Account Bank and subject to the rights of the Account Bank set out in Section 9 hereof. If this Agreement is terminated at any time prior to receipt by the Account Bank of a Trigger Notice, the Account Bank shall remit the entire balance of the Accounts to the Borrower, save and except for the amount of any Charges owing to the Account Bank and subject to the rights of the Account Bank set out in Section 9 hereof.

14. **Amendments.** No change or modification of this Agreement is binding upon the parties unless it is in writing and signed by Agent, the Borrower and the Account Bank.
15. **Successors and Assigns.** This Agreement shall be binding upon the Account Bank and its successors and assigns and enure to the benefit of Agent and its successors and assigns.
16. **Notices.** Any notices or instructions permitted or required pursuant to this Agreement shall be in writing and shall be delivered to the party for which it is intended by registered mail (postage prepaid), prepaid courier or facsimile to the address of such party indicated below, or at such other address as any party hereto may stipulate by notice to the other parties from time to time. Any notice sent by registered mail shall be deemed to be received by the party for which it is on the date of actual delivery. Any notice delivered by prepaid courier shall be deemed to be received by the party for which it is intended on the date of actual delivery thereof if such delivery occurs prior to 5:00 p.m. on such Business Day and, otherwise, on the next following Business Day. Any notice sent by facsimile shall be deemed to be received by the party for which it is intended on the next Business Day following transmission. The addresses for notice of the parties are as follows:

Agent:

Midcap Funding IV Trust, as Agent
 c/o Midcap Financial Services, LLC, as servicer
 7255 Woodmont Avenue, Suite 200
 Bethesda, Maryland 20814
 Attention: Account Manager for AVAD transaction
 Fax No.: 301-941-1450

Account Bank:

The Bank of Nova Scotia – Business Service Centre
 4715 Tahoe Boulevard
 Mississauga, Ontario L4W 0B4
 Attention: Director/Manager
 Fax No.: 1-877-909-7038
 Telephone No: 1-888-855-1234
 Email: bsc@scotiabank.com

The Bank of Nova Scotia – Client Relationship Manager

Suite 305 650 West Georgia Street
Vancouver, BC V6B 4P6

Attention: Rocio Phillips

Fax No.: 604-668-2945

Borrower:

AVAD Canada Ltd.

8501 East Princess Drive, Suite 190

Scottsdale, Arizona 85255

Attention: Alex Wolf, Vice President and Secretary

Email: awolf@kingswood-capital.com

17. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and the remainder of this Agreement shall continue in full force and effect.
18. **Further Assurances.** The parties agree that each of them shall, upon reasonable request of the other, do, execute, acknowledge and deliver such acts, deeds and agreements as may be necessary or desirable to give effect to the terms of this Agreement.
19. **Counterparts.** This Agreement may be executed in counterparts. Each executed counterpart shall be deemed to be an original and all counterparts taken together shall constitute one and the same Agreement. Delivery of an executed signature page to this Agreement by any Person by facsimile or other form of electronic transmission shall be as effective as delivery of a manually executed copy of this Agreement by such Person.
20. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein.
21. **Jurisdiction.** Without prejudice to the ability of the Account Bank and the Agent to enforce this Agreement in any other proper jurisdiction, the Borrower irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario. To the extent permitted by applicable law, the Borrower irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province. In addition, the Borrower irrevocably waives, to the fullest extent permitted by applicable law (a) any objection which it may now or hereafter have to the laying of venue of any action, suit or proceeding brought in any court referred to in this Section 21; and (b) any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

THE BANK OF NOVA SCOTIA, as
Account Bank

Per: _____



Name: Rocio Phillips
Title: Client Relationship Manager

MIDCAP FUNDING IV TRUST, as Agent

By: Apollo Capital Management, L.P., its
investment manager

By: Apollo Capital Management GP, LLC, its
general partner

Per:



Name: Michael Levin

Title: Authorized Signatory

AVAD CANADA LTD., as Borrower

Per: Alex Wolf
Name: Alex Wolf
Title: Vice President and Secretary

SCHEDULE A

ACCOUNTS

Account No.



Account No.



SCHEDULE B

TRIGGER NOTICE

[AGENT'S LETTERHEAD]

_____, 20__

The Bank of Nova Scotia – Business Service Centre
 4715 Tahoe Boulevard
 Mississauga, Ontario L4W 0B4
 Attention: Director/Manager
 Fax No.: 1-877-909-7038
 Telephone No: 1-888-855-1234
 Email: bsc@scotiabank.com

Re: Canadian Dollar Account No(s). [REDACTED]
 [REDACTED]

Ladies and Gentlemen:

Reference is made to the Blocked Account Agreement, dated as of _____, 2019 between The Bank of Nova Scotia (the “**Account Bank**”), AVAD Canada Ltd. (“**Borrower**”), and Midcap Financial Trust, as agent, together with its successors and assigns (in such capacity “**Agent**”) under the Credit Agreement (the “**Agreement**”). All capitalized terms used in this letter without definition shall have the respective meanings specified in the Agreement.

Please be advised that an Event of Default has occurred and is continuing under the Credit Agreement. This letter shall constitute a Trigger Notice for the purpose, and within the meaning, of Section 5 of the Agreement. Accordingly upon your receipt of this letter and until we provide you with written notice to the contrary, please disregard any transfer, withdrawal, disbursement or other instructions from the Borrower and instead follow directions from us.

Thank you for your anticipated cooperation. Should you have any questions about these instructions, please contact the undersigned.

Very truly yours,

_____, as Agent

Per: _____

Name:

Title:

**Blocked Account Control Agreement
("Shifting Control") I JPMorgan Chase Bank, N.A.**

V4.1_0520

BLOCKED ACCOUNT CONTROL AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**") dated as of December 1, 2020, by and among the company entities listed on Schedule 1 attached hereto and incorporated herein by reference (individually and collectively "**Company**"), MidCap Funding IV Trust, as agent for certain lenders ("**Agent**") and JPMorgan Chase Bank, N.A. ("**Depository**").

The parties hereto refer to those account numbers listed on Schedule 1 attached hereto in the name of corresponding Company maintained at Depository (referred to individually and collectively herein as the "**Account**") and hereby agree as follows:

1. Company and Agent notify Depository that by separate agreement Company has granted Agent a security interest in the Account and all funds on deposit from time to time therein. Depository acknowledges being so notified.
2. Prior to the Effective Time (as defined below) Depository shall honor all withdrawal, payment, transfer or other fund disposition or other instructions which the Company is entitled to give under the Account Documentation (as hereinafter defined) (collectively, "**instructions**") received from the Company (but not those from Agent) concerning the Account. On and after the Effective Time (and without Company's consent), Depository shall honor all instructions received from Agent (but not those from Company) concerning the Account and Company shall have no right or ability to access or withdraw or transfer funds from the Account.

For the purposes hereof, the "**Effective Time**" shall be the opening of business on the second business day next succeeding the business day on which a notice purporting to be signed by Agent in substantially the same form as Exhibit A, attached hereto, with a copy of this Agreement attached thereto (a "**Shifting Control Notice**"), is actually received by the unit of Depository to whom the notice is required to be addressed; provided, however, that if any such notice is so received after 12:00 noon, Eastern time, on any business day, the Effective Time shall be the opening of business on the third business day next succeeding the business day on which such receipt occurs; and, provided further, that a "**business day**" is any day other than a Saturday, Sunday or other day on which Depository is or is authorized or required by law to be closed.

Notwithstanding the foregoing: (i) all transactions involving or resulting in a transaction involving the Account duly commenced by Depository or any affiliate prior to the Effective Time and so consummated or processed thereafter shall be deemed not to constitute a violation of this Agreement; and (ii) Depository and/or any affiliate may (at its discretion and without any obligation to do so) (x) cease honoring Company's instructions and/or commence honoring solely Agent's instructions concerning the Account at any time or from time to time after it becomes aware that Agent has sent to it a Shifting Control Notice but prior to the Effective Time therefor (including without limitation halting, reversing or redirecting any transaction referred to in clause (i) above), or (y) deem a Shifting Control Notice to be received by it for purposes of the foregoing paragraph prior to the specified unit's actual receipt if otherwise actually received by Depository (or if such Shifting Control Notice does not comply with the form attached hereto as Exhibit A or does not attach an appropriate copy of this Agreement), with no liability whatsoever to Company or any other party for doing so.


3. This Agreement supplements, rather than replaces, Depository's deposit account agreement, terms and conditions and other standard documentation in effect from time to time with respect to the Account or services provided in connection with the Account (the "**Account Documentation**"), which Account Documentation will continue to apply to the Account and such services, and the respective rights, powers, duties, obligations, liabilities and responsibilities of the parties thereto and hereto, to the extent not expressly conflicting with the provisions of this Agreement (however, in the event of any such conflict, the provisions of this Agreement shall control). Prior to issuing any instructions on or after the Effective Time, Agent shall provide Depository with such documentation as Depository may reasonably request to establish the identity and authority of the individuals issuing instructions on behalf of Agent. Agent may request the Depository to provide other services (such as automatic daily transfers) with respect to the Account on or after the Effective Time; however, if such services are not authorized or otherwise covered under the Account Documentation, Depository's decision to provide any such services shall be made in its sole discretion (including without limitation being subject to Company and/or Agent executing such Account Documentation or other documentation as Depository may require in connection therewith).
4. Depository agrees not to exercise or claim any right of offset, banker's lien or other like right against the Account for so long as this Agreement is in effect except with respect to (i) returned or charged-back items, reversals or cancellations of payment orders and other electronic fund transfers or other corrections or adjustments to the Account or transactions therein, (ii) overdrafts in the Account or (iii) Depository's charges, fees and expenses with respect to the Account or the services provided hereunder (collectively, the items referred to in the foregoing clauses (i) – (iii), the "Returned Items").
5. Notwithstanding anything to the contrary in this Agreement: (i) Depository shall have only the duties and responsibilities with respect to the matters set forth herein as is expressly set forth in writing herein and shall not be deemed to be an agent, bailee or fiduciary for any party hereto; (ii) Depository shall be fully protected in acting or refraining from acting in good faith without investigation on any notice (including without limitation a Shifting Control Notice), instruction or request purportedly furnished to it by Company or Agent in accordance with the terms hereof, in which case the parties hereto agree that Depository has no duty to make any further inquiry whatsoever; (iii) it is hereby acknowledged and agreed that Depository has no knowledge of (and is not required to know) the terms and provisions of the separate agreement referred to in section 1 above or any other related documentation or whether any actions by Agent (including without limitation the sending of a Shifting Control Notice), Company or any other person or entity are permitted or a breach thereunder or consistent or inconsistent therewith, (iv) Depository shall not be liable to any party hereto or any other person for any action or failure to act under or in connection with this Agreement except to the extent such conduct constitutes its own willful misconduct or gross negligence (and to the maximum extent permitted by law, shall under no circumstances be liable for any incidental, indirect, special, consequential or punitive damages); and (v) Depository shall not be liable for losses or delays caused by force majeure, interruption or malfunction of computer,


transmission or communications facilities, labor difficulties, court order or decree, the commencement of bankruptcy or other similar proceedings or other matters beyond Depository's reasonable control.

6. (a) Company hereby agrees to indemnify, defend and save harmless Depository against any loss, liability or expense (including reasonable fees and disbursements of counsel who may be an employee of Depository) (collectively, "**Covered Items**") incurred in connection with this Agreement or the Account (except to the extent due to Depository's willful misconduct or gross negligence) or any interpleader proceeding relating thereto or incurred as a result of following Company's direction or instruction.
- (b) To the extent Depository is not indemnified by Company pursuant to the foregoing within thirty (30) days of written demand by Depository to Agent, Agent hereby agrees to indemnify, defend and save harmless Depository against any Covered Items incurred on or after the Effective Time in connection with this Agreement or the Account (except to the extent due to Depository's willful misconduct or gross negligence) or any interpleader proceeding related thereto (i) as a result of following Agent's direction or instruction (including without limitation Depository's honoring of a Shifting Control Notice) or (ii) due to any claim by Agent of an interest in the Account or the funds on deposit therein; provided that Agent's obligation pursuant to this Section 6(b) with respect to Returned Items shall not exceed the aggregate amount of proceeds received or disbursed at the direction of Agent from the Account.
7. (a) Depository may terminate this Agreement (i) in its discretion upon the sending of at least thirty (30) days' advance written notice to the other parties hereto or (ii) because of a material breach by Company or Agent of any of the terms of this Agreement or the Account Documentation, upon the sending of at least five (5) days advance written notice to the other parties hereto.
- (b) Agent may terminate this Agreement in its discretion upon the sending of at least three (3) days advance written notice in substantially the same form as Exhibit B attached hereto, with a copy of the Agreement attached thereto (an "**Agent Termination Notice**") to the other parties hereto, provided that Depository may shorten or waive the requirement that notice be in advance and any such shortening or waiver shall be binding on all parties.
- (c) Any other termination, any amendment or waiver of this Agreement shall be effected solely by an instrument in writing executed by all the parties hereto. The provisions of sections 5 and 6 above shall survive any termination of this Agreement; provided, however, that the obligations of Agent under paragraph 5 and 6 above shall only survive for a period of one hundred twenty (120) days after such termination of the Agreement (it being understood and agreed that with respect to any claim made before the expiration of such 120 day period, the obligations relating to that claim remain until satisfied or otherwise resolved).
8. Company shall compensate Depository for the opening and administration of the Account and services provided hereunder in accordance with Depository's fee schedules from time to time in effect. Payment will be effected by a direct debit to the Account.
9. No party may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of the other parties; provided, however, that no consent will be required if the assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Depository.
10. This Agreement: (i) may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument; (ii) shall become effective when counterparts hereof have been signed and delivered by the parties hereto, and (iii) may be executed using Electronic Signatures, which the parties agree are intended to authenticate this writing and to have the same force and effect as manual signatures. "**Electronic Signature**" means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures. Each of the Company and the Agent represent and warrant on a continuous basis that (i) any Electronic Signature of such party on this Agreement constitutes valid execution of this Agreement by a duly authorized signer in accordance with applicable law and, as applicable, the Company's or the Agent's constitutional documents and (ii) this Agreement constitutes a valid, legal, enforceable and binding obligation of the Company and the Agent. Each of the Company and the Agent confirms that the Depository has relied on the foregoing representations and warranties when accepting an Electronic Signature on this Agreement. The Company and the Agent each confirm that this Agreement constitutes an electronic record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such printed copies will be treated to the same extent and under the same conditions as other original business records created and maintained in documentary form.
11. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the country of Canada. **All parties hereby waive all rights to a trial by jury in any action or proceeding relating to the Account or this Agreement.** All notices under this Agreement shall be in writing and sent (including via emailed pdf or similar file or facsimile transmission) to the parties hereto at their respective addresses, email addresses or fax numbers set forth below (or to such other address, email address or fax number as any such party shall designate in writing to the other parties from time to time).

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

| AVAD CANADA LTD. | |
|---|----------------------------------|
| By:  | Date: 12-1-20 |
| Name: MARK FUKUDA | |
| Title: CEO | |
| Address for Notices: | 8648 CLEMENT DR HOUSTON TX 77036 |
| Fax: | |
| Email Address: | MFUKUDA@WAVEINC.NET |

| | |
|--|---|
| MidCap Funding IV Trust, as Agent | |
| By: | Apollo Capital Management, L.P., its investment manager |
| By: | Apollo Capital Management GP, LLC, its general partner |
| By: |  |
| Date: | |
| Name: | Maurice Amsellem |
| Title: | Authorized Signatory |
| Address for Notices: | c/o MidCap Financial Services, LLC, as servicer 7255 Woodmont Avenue, Suite 200 Bethesda, Maryland 20814 Attention: Account Manager for AVAD transaction |
| Fax: | (301) 941-1450 |
| Email Address: | notices@midcapfinancial.com |

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

| AVAD CANADA LTD. | |
|-------------------------|-------|
| By: | Date: |
| Name: | |
| Title: | |
| Address for Notices: | |
| Fax: | |
| Email Address: | |

| MidCap Funding IV Trust, as Agent | |
|--|---|
| By: | Apollo Capital Management, L.P., its investment manager |
| By: | Apollo Capital Management GP, LLC, its general partner |
| By: | Date: |
| Name: | |
| Title: | |
| Address for Notices: | c/o MidCap Financial Services, LLC, as servicer 7255 Woodmont Avenue, Suite 200 Bethesda, Maryland 20814 Attention: Account Manager for AVAD transaction |
| Fax: | |
| Email Address: | notices@midcapfinancial.com |

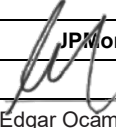
| JPMorgan Chase Bank, N.A. | |
|--|--|
| By: |  Date: |
| Name: | Edgar Ocampo |
| Title: | Vice President |
| Address for Instructions and other Notices: | JPMorgan Chase Bank, N.A. Attn: Amber Deines 201 N Central Ave, Floor 21 Phoenix, AZ, 85004-8001 Email: amber.deines@chase.com |
| Address For Assignment, Shifting Control and Termination Notices: | JPMorgan Chase Bank, N.A. Attn: Blocked Account Legal Team 10 South Dearborn, 6 th Floor Suite IL1-0096 Chicago, IL 60603-2300 Email: blocked.account.contracts@jpmchase.com |

Exhibit A | Shifting Control Notice

Date: _____

JPMorgan Chase Bank, N.A.

Address:, 10 South Dearborn, 6th Floor
 Suite IL1-0096
 Chicago, IL 60603-2300

Attention:, Blocked Account Legal Team
blocked.account.contracts@jpmchase.com

Re: Blocked Account Control Agreement dated as of December 1, 2020 (the "**Agreement**") by and among the company entities listed in Schedule 1 (individually and collectively, "**Company**"), MidCap Funding IV Trust ("**Agent**") and JPMorgan Chase Bank, N.A. ("**Depositary**") relating to account numbers listed in Schedule 1 (individually and collectively, "**Account**").

Ladies and Gentlemen:

This constitutes a Shifting Control Notice as referred to in section 2 of the Agreement, a copy of which is attached hereto.

| | |
|--|--|
| MidCap Funding IV Trust, as Agent | |
| By: | Apollo Capital Management, L.P., its investment manager |
| By: | Apollo Capital Management GP, LLC, its general partner |
| By: | Date: |
| Name: | |
| Title: | |

ATTACHMENT: Blocked Account Control Agreement (BACA)

Exhibit B | Agent Termination Notice

Date: _____

JPMorgan Chase Bank, N.A.

Address: 10 South Dearborn, 6th Floor
 Suite IL1-0096
 Chicago, IL 60603-2300

Attention: Blocked Account Legal Team
blocked.account.contracts@jpmchase.com

AVAD CANADA LTD.

Address: 8501 E PRINCESS DR STE 190, SCOTTSDALE, AZ 85255-5494

Attention:

Re: Blocked Account Control Agreement dated as of December 1, 2020 (the "**Agreement**") by and among the company entities listed in Schedule 1 (individually and collectively, "**Company**"), MidCap Funding IV Trust ("**Agent**") and JPMorgan Chase Bank, N.A. ("**Depository**") relating to account numbers listed in Schedule 1 (individually and collectively, "**Account**").

Ladies and Gentlemen:

This constitutes an Agent Termination Notice as referred to in section 7(b) of the Agreement, a copy of which is attached hereto.

| | |
|--|--|
| MidCap Funding IV Trust, as Agent | |
| By: | Apollo Capital Management, L.P., its investment manager |
| By: | Apollo Capital Management GP, LLC, its general partner |
| By: | Date: |
| Name: | |
| Title: | |

ATTACHMENT: Blocked Account Control Agreement (BACA)

Schedule 1 | List of Company Entities and Accounts

| Company | Account |
|------------------|------------|
| AVAD CANADA LTD. | ██████████ |
| AVAD CANADA LTD. | ██████████ |
| AVAD CANADA LTD. | ██████████ |

THIS IS **EXHIBIT "G"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N



March 15, 2021

Sent by Email

AVAD LLC, as Borrower Representative
8648 Glenmont Dr.
Suite 130
Houston, TX 77036
Attn: Mark Fukuda and Chris Tolle
Email: mfukuda@waveinc.net

and to

AVAD Canada Ltd.
8648 Glenmont Dr.
Suite 130
Houston, TX 77036
Attn: Mark Fukuda and Chris Tolle
Email: mfukuda@waveinc.net

with copy to:

Osler Hoskin & Harcourt LLP
1000 Rue De La Gauchetière Ouest
Bureau 2100
Montreal, QC
H3B 4W5

Attention: Sandra Abitan

Dear Sirs / Mesdames:

Re: Amounts owing by AVAD Canada Ltd. pursuant to the Credit and Security Agreement dated as of October 2, 2018 between, among others, AVAD LLC, AVAD Canada Ltd. and MidCap Funding IV Trust, as successor by assignment from MidCap Funding X Trust, as successor by assignment from MidCap Financial Trust, as agent for the lenders from time to time party thereto (as the same has been amended and may be further amended, restated, supplemented, and otherwise modified from time to time, the "Credit Agreement")

We are counsel to MidCap Funding IV Trust, as agent under the Credit Agreement (the "**Agent**").

We refer to: (i) the Credit Agreement, (ii) the General Security Agreement dated as of October 2, 2018 between AVAD Canada Ltd. (the "**Canadian Borrower**") and the Agent; (iii) the Canadian Trademark Security Agreement dated as of October 2, 2018 between AVAD LLC, the Canadian Borrower and the Agent; and (iv) the Pledge Agreement made as of October 2, 2018 between, among others, the Canadian Borrower and the Agent ((ii), (iii) and (iv) above being the "**Canadian Security Agreements**").

Pursuant to the Credit Agreement, the lenders party thereto (the "**Lenders**") extended certain credit facilities to, among others, the Canadian Borrower.

Certain events of default (as defined or otherwise described in the Credit Agreement and the Canadian Security Agreements) (the "**Events of Default**") have occurred which have not been cured or waived in accordance with the provisions of such agreements.

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Evan Cobb
+1 416.216.1929
Evan.Cobb@nortonrosefulbright.com



As a result of these Events of Default, the Canadian Obligations (as defined in the Credit Agreement), among other obligations, are hereby accelerated pursuant to Section 10.2(b) of the Credit Agreement and are immediately due and payable by the Canadian Borrower.

The Agent's records indicate that, as of the close of business on March 15, 2021, the amounts of the Canadian Obligations total approximately US \$498,024.91 plus additional interest, costs, fees and expenses (the "**Outstanding Canadian Obligations**").

Accordingly, on behalf of the Agent, we hereby demand payment from the Canadian Borrower of the Outstanding Canadian Obligations, with interest, fees and expenses as prescribed in the Credit Agreement.

If payment is not made immediately, the Agent expressly reserves the right to take such steps as it may consider necessary or appropriate to recover payment of the Outstanding Canadian Obligations. Those steps may include the enforcement of the security held by the Agent, in its capacity as such, under the Canadian Security Agreements by way of the appointment of a receiver or such other steps as the Agent considers necessary or desirable.

We enclose herewith a Notice of Intention to Enforce Security (the "**Notice**") issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) for the Canadian Borrower.

The Agent expressly reserves the right to proceed with enforcement of the security at any time prior to the date specified in the Notice if it becomes aware of any circumstances which might affect its position or if the Agent deems it appropriate or if the Canadian Borrower consents to such earlier enforcement.

The Agent further expressly reserves all rights to take any further steps with respect to the recovery of any of the Obligations (as defined in the Credit Agreement) against any other party.

Yours truly,

**MIDCAP FUNDING IV TRUST, as agent, by its solicitors
NORTON ROSE FULBRIGHT CANADA LLP**

Per:

A handwritten signature in black ink, appearing to read "Evan Cobb".

Name: Evan Cobb

Title: Partner

THIS IS **EXHIBIT "H"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY



A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

FORM 86
Notice of Intention to Enforce a Security
 (Rule 124)

TO: AVAD Canada Ltd. (the "**Debtor**"), an insolvent person

Take notice that:

1. Midcap Funding IV Trust, as agent (the "**Secured Creditor**"), a secured creditor, intends to enforce its security on the Debtor's property described below¹:

All of the Debtor's present and after acquired real and personal property other than the Excluded Collateral.
2. The security that is to be enforced is in the form of, *inter alia*, the agreements referred to in Schedule "A"
3. The total amount of indebtedness secured by the above described security as at March 15, 2021, was the sum of USD \$498,024.91, plus additional interest, costs, fees and expenses.
4. The Secured Creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the Debtor consents to an earlier enforcement.

DATED at Toronto, Ontario this 15th day of March, 2021.

MIDCAP FUNDING IV TRUST, as agent, by its
 counsel, Norton Rose Fulbright Canada LLP

Per:



Name: Evan Cobb

Title: Partner

¹ Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in (i) the Credit and Security Agreement, dated as of October 2, 2018 between, among others, AVAD Canada Ltd., as Borrower, and MidCap Funding IV Trust, as successor by assignment from MidCap Funding X Trust, as successor by assignment from MidCap Financial Trust, as agent for the lenders from time to time party thereto (the "**Agent**") (as the same has been amended and may be further amended, restated, supplemented, and otherwise modified from time to time); and (ii) the General Security Agreement dated as of October 2, 2018 between AVAD Canada Ltd. and the Agent.

Schedule "A"

Credit and Security Agreement, made as of October 2, 2018 between, among others, AVAD Canada Ltd., as Borrower, and MidCap Funding IV Trust, as successor by assignment from MidCap Funding X Trust, as successor by assignment from MidCap Financial Trust, as agent for the lenders from time to time party thereto (the "**Agent**"), as amended pursuant to (i) that certain Amendment No. 1 to Credit and Security Agreement dated as of March 28, 2019; (ii) that certain Amendment No. 2 to Credit and Security Agreement dated as of July 26, 2019; (iii) that certain Amendment No. 3. to Credit and Security Agreement dated as of April 29, 2020; and (iv) that certain Second Forbearance Agreement and Amendment No. 4 to Credit and Security Agreement dated as of January 8, 2021.

General Security Agreement dated as of October 2, 2018 between AVAD Canada Ltd. and the Agent.

Canadian Trademark Security Agreement dated as of October 2, 2018 between, among others, AVAD Canada Ltd. and the Agent.

Pledge Agreement dated as of October 2, 2018 between, among others, AVAD Canada Ltd. and the Agent.

CONSENT

TO: Midcap Funding IV Trust, as agent (the **Secured Creditor**)

FROM: AVAD Canada Ltd., an insolvent person (the **Insolvent Person**)

The Insolvent Person acknowledges receipt of a Notice of Intention to Enforce Security dated March ____, 2021 delivered by the Secured Creditor.

For consideration received, the receipt and sufficiency of which are hereby acknowledged, the Insolvent Person hereby consents to the immediate enforcement by the Secured Creditor of the security held by the Secured Creditor from the Insolvent Person, and for the same consideration waives any further notice from the Secured Creditor with respect to the enforcement of its security and the exercise of the other remedies of the Secured Creditor against the Insolvent Person.

DATED this ____ day of March, 2021

AVAD CANADA LTD.

Per: _____

Name:

Title:

THIS IS **EXHIBIT "I"** TO THE AFFIDAVIT
OF PATRICK REID SWORN BEFORE ME
REMOTELY AT THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO, ON MARCH 16, 2021
IN ACCORDANCE WITH O. REG. 431/20,
ADMINISTERING OATH OR DECLARATION REMOTELY

A handwritten signature in black ink, appearing to read "Evan Cobb", written in a cursive style.

A Commissioner for taking Affidavits (or as may be)

Evan Cobb LSO# 55787N

CONSENT

TO: Midcap Funding IV Trust, as agent (the **Secured Creditor**)
FROM: AVAD Canada Ltd., an insolvent person (the **Insolvent Person**)

The Insolvent Person acknowledges receipt of a Notice of Intention to Enforce Security dated March 15, 2021 delivered by the Secured Creditor.

For consideration received, the receipt and sufficiency of which are hereby acknowledged, the Insolvent Person hereby consents to the immediate enforcement by the Secured Creditor of the security held by the Secured Creditor from the Insolvent Person, and for the same consideration waives any further notice from the Secured Creditor with respect to the enforcement of its security and the exercise of the other remedies of the Secured Creditor against the Insolvent Person.

DATED this 15 day of March, 2021

AVAD CANADA LTD.

Per:



Name: MARK CURIA

Title: CEO

Court File No. _____

MIDCAP FUNDING IV TRUST
Applicant

-and- AVAD CANADA LTD.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF PATRICK REID

NORTON ROSE FULBRIGHT CANADA LLP

222 Bay Street, Suite 3000

Toronto ON M5K 1E7

Evan Cobb LSO#: 55787N

Tel: 416.216.1929

Email: evan.cobb@nortonrosefulbright.com

Lawyers for the Applicant

TAB 3

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MIDCAP FUNDING IV TRUST

Applicant

- and -

AVAD CANADA LTD.

Respondent

APPLICATION UNDER SECTION 243 (1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended
and s. 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43

CONSENT TO ACT

THE UNDERSIGNED hereby consents to act, pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 185, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, as the receiver, without security, of all of the assets, undertakings and properties of the Respondent, AVAD Canada Ltd., if so appointed by the Court, in accordance with the terms substantially as set out in the draft Order included in the Applicant's motion record.

MNP LTD.

Per: _____



Name: Sheldon Title

Title: Senior Vice-President

MIDCAP FUNDING IV TRUST
Applicant

-and- AVAD CANADA LTD.
Respondent

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

CONSENT TO ACT

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Evan Cobb LSO#: 55787N
Tel: 416.216.1929
Email: evan.cobb@nortonrosefulbright.com

Lawyers for the Applicant

TAB 4

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|------------------|---|---------------------|
| THE HONOURABLE |) | WEDNESDAY, THE 17TH |
| |) | |
| JUSTICE DIETRICH |) | DAY OF MARCH, 2021 |

BETWEEN:

MIDCAP FUNDING IV TRUST

Applicant

- and -

AVAD CANADA LTD.

Respondent

APPLICATION UNDER SECTION 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended
and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER
(Appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing MNP Ltd. as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of AVAD Canada Ltd. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day by way of videoconference via Zoom at Toronto, Ontario, due to the COVID-19 crisis.

ON READING the affidavit of Patrick Reid sworn March 16, 2021 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and the

Respondent, no one appearing for any other party although duly served as appears from the affidavit of service of [●] sworn [●] and on reading the consent of MNP Ltd. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP Ltd. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the

ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) with the consent of the Applicant, to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any inventory of the Debtor;
 - (ii) for assets other than inventory of the Debtor, without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (iii) for assets other than inventory of the Debtor, with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or similar legislation in any other Province of Canada, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (r) assign the Debtor into bankruptcy under the BIA, with MNP Ltd. being appointed as Licensed Insolvency Trustee of the Debtor; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**")

in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that, subject to paragraph 26 below, all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services,

utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

13. THIS COURT ORDERS that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that, subject to paragraph 26 below, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any

time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver's Certificates**”) for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

PROCEEDS

26. THIS COURT ORDERS that, subject to the prior receipt by the Receiver of an independent legal opinion satisfactory to the Receiver regarding the Applicant's security, the bank accounts held in the name of the Debtor (including without limitation those accounts that are the subject of any Lockbox Agreement between the Debtor and the Applicant) shall continue to operate, and the funds therein from time to time shall be applied to obligations owing under and the Credit and Security Agreement dated as of October 2, 2018 between, among others, the Applicant, as agent, and the Debtor, as amended from time to time (the “**Credit Agreement**”) in accordance with the Credit Agreement and any Lockbox Agreements (as defined in the Credit Agreement); provided, however, that such amounts as the Receiver deems advisable shall be segregated for the purpose of satisfying (i) the fees and disbursements of the Receiver; (ii) operating costs of the Debtor incurred after the date of this Order; and (iii) any amounts required to satisfy any claims that have legal priority ranking ahead of the Applicant or

where the claimant is asserting a priority ranking ahead of the Applicant, subject to a further determination by this Court.

SERVICE AND NOTICE

27. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "Receiver") of the assets, undertakings and properties AVAD Canada Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an application having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

MNP Ltd., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MIDCAP FUNDING IV TRUST
Applicant

-and- AVAD CANADA LTD.
Respondent

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER (APPOINTING RECEIVER)

NORTON ROSE FULBRIGHT CANADA LLP
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Lawyers for the Applicant

TAB 5

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____) ~~WEEKDAY~~WEDNESDAY, THE #17TH
JUSTICE _____DIETRICH) DAY OF ~~MONTH~~MARCH, 20~~YR~~21

PLAINTIFF[†]

Plaintiff

BETWEEN:

MIDCAP FUNDING IV TRUST

Applicant

- and -

DEFENDANT

Defendant

AVAD CANADA LTD.

Respondent

APPLICATION UNDER SECTION 243 (1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended
and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

[†]~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

ORDER
(~~#~~Appointing Receiver)

THIS MOTION made by the ~~Plaintiff~~² Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~ MNP Ltd. as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ AVAD Canada Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day by way of videoconference via Zoom at ~~330 University Avenue,~~ Toronto, Ontario, due to the COVID-19 crisis.

ON READING the affidavit of ~~[NAME]~~ Patrick Reid sworn ~~[DATE]~~ March 16, 2021 and the Exhibits thereto, and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicant and the Respondent, no one appearing for ~~[NAME]~~ any other party although duly served as appears from the affidavit of service of ~~[NAME]~~ sworn [DATE] and on reading the consent of ~~[RECEIVER'S NAME]~~ MNP Ltd. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~ Application and the ~~Motion~~ Application Record is hereby abridged and validated³ so that this ~~motion~~ Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ MNP Ltd. is hereby appointed Receiver, without security, of all of the

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting

such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) with the consent of the Applicant, to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any inventory of the Debtor;
 - (ii) for assets other than inventory of the Debtor, without the approval of this Court in respect of any transaction not exceeding \$ 100,000, provided that the aggregate

⁴ ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

consideration for all such transactions does not exceed \$~~_____~~250,000; and

(iii) ~~(ii) for assets other than inventory of the Debtor,~~ with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~or section 31 of the Ontario *Mortgages Act*, as the case may be,~~⁵ similar legislation in any other Province of Canada, shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (r) assign the Debtor into bankruptcy under the BIA, with MNP Ltd. being appointed as Licensed Insolvency Trustee of the Debtor; and
- (s) ~~(+)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that subject to paragraph 26 below, all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices

of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

13. THIS COURT ORDERS that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

RECEIVER TO HOLD FUNDS

14. ~~13.~~ THIS COURT ORDERS that, subject to paragraph 26 below, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the **“Post Receivership Accounts”**) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. ~~15.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to

their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. ~~16.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. ~~17.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

20. ~~19.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. ~~20.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~_____~~ 100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge")

⁶ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. ~~22.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~23.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule ~~"A"~~ hereto (the ~~"Receiver's Certificates"~~) for any amount borrowed by it pursuant to this Order.

25. ~~24.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

PROCEEDS

26. THIS COURT ORDERS that, subject to the prior receipt by the Receiver of an independent legal opinion satisfactory to the Receiver regarding the Applicant's security, the bank accounts held in the name of the Debtor (including without limitation those accounts that are the subject of any Lockbox Agreement between the Debtor and the Applicant) shall continue to operate, and the funds therein from time to time shall be applied to obligations owing under and the Credit and Security Agreement dated as of October 2, 2018 between, among others, the Applicant, as agent, and the Debtor, as amended from time to time (the "Credit Agreement") in accordance with the Credit Agreement and any Lockbox Agreements (as defined in the Credit Agreement); provided, however, that such amounts as the Receiver deems advisable shall be segregated for the purpose of satisfying (i) the fees and disbursements of the Receiver; (ii) operating costs of the Debtor incurred after the date of this Order; and (iii) any amounts required to satisfy any claims that have legal priority ranking ahead of the Applicant or where the claimant is asserting a priority ranking ahead of the Applicant, subject to a further determination by this Court.

SERVICE AND NOTICE

27. ~~25.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

28. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

29. ~~27.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. ~~29.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as

may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. ~~30.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. ~~31.~~ THIS COURT ORDERS that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff~~Applicant's security or, if not so provided by the ~~Plaintiff~~Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ MNP Ltd., the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ AVAD Canada Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an application having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~[RECEIVER'S NAME]~~ MNP Ltd., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

| <u>MIDCAP FUNDING IV TRUST</u> Applicant | <u>-and-</u> | Court File No. _____ <u>AVAD CANADA LTD.</u> Respondent |
|---|--------------|---|
| | | <p data-bbox="1377 337 1822 435" style="text-align: center;"><u>ONTARIO</u> <u>SUPERIOR COURT OF JUSTICE</u> <u>COMMERCIAL LIST</u></p> <p data-bbox="1377 472 1822 537" style="text-align: center;"><u>PROCEEDING COMMENCED AT</u> <u>TORONTO</u></p> <hr/> <p data-bbox="1365 607 1835 639" style="text-align: center;"><u>ORDER (APPOINTING RECEIVER)</u></p> <hr/> <p data-bbox="1209 711 1801 808"><u>NORTON ROSE FULBRIGHT CANADA LLP</u> <u>222 Bay Street, Suite 3000</u> <u>Toronto ON M5K 1E7</u></p> <p data-bbox="1209 846 1780 943"><u>Evan Cobb LSO#: 55787N</u> <u>Tel: 416.216.1929</u> <u>Email: evan.cobb@nortonrosefulbright.com</u></p> <p data-bbox="1209 1013 1541 1045"><u>Lawyers for the Applicant</u></p> |

MIDCAP FUNDING IV TRUST
Applicant

-and- AVAD CANADA LTD.
Respondent

Court File No. CV-21-123456-00

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**APPLICATION RECORD
(returnable March 17, 2021)**

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