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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2023
OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from_____ to _____
Commission file number: 001-37763

TURNING POINT BRANDS, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**20-0709285** (I.R.S. Employer Identification No.)
5201 Interchange Way, Louisville, KY (Address of principal executive offices)	**40229** (Zip Code)

(502) 778-4421
(Registrant's telephone number, including area code)

Former name, former address and former fiscal year, if changed since last report: not applicable

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.01 par value	TPB	New York Stock Exchange

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

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

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

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

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

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

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

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

As of June 30, 2023, the aggregate market value of the registrant's voting common stock held by non-affiliates of the registrant was approximately $360 million based on such closing sale price of the common stock as reported on the New York Stock Exchange.

At February 21, 2024, there were 17,617,859 shares outstanding of the registrant's voting common stock, par value $0.01 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for use in connection with its annual meeting of stockholders to be held on May 1, 2024, expected to be filed with the Securities and Exchange Commission on or about March 15, 2024, are incorporated by reference into Part III hereof.

TURNING POINT BRANDS, INC.
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Cautionary Note Regarding Forward-Looking Statements

This annual report on Form 10-K (this "Annual Report") contains forward-looking statements within the meaning of the federal securities laws. Forward-looking statements may generally be identified using words such as "anticipate," "believe," "expect," "intend," "plan" and "will" or, in each case, their negative, or other variations or comparable terminology. These forward-looking statements include all matters that are not historical facts. By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. Some, but not all, of these risks are described under Item 1A "Risk Factors" and elsewhere throughout this Annual Report. As a result, actual events may differ materially from those expressed in or suggested by the forward-looking statements. Any forward-looking statement made by us in this Annual Report on Form 10-K speaks only as of the date hereof. New risks and uncertainties come up from time to time, and it is impossible for us to predict these events or how they may affect it. We have no obligation, and do not intend, to update any forward-looking statements after the date hereof, except as required by federal securities laws.

PART I

Item 1. Business

Overview

Turning Point Brands, Inc. (the "Company," "we," "our," or "us") is a leading manufacturer, marketer and distributor of branded consumer products. We sell a wide range of products to adult consumers consisting of staple products with our iconic brands *Zig-Zag*® and *Stoker's*® and our next generation products to fulfill evolving consumer preferences. Among other markets, we compete in the alternative smoking accessories and Other Tobacco Products ("OTP") industries. The alternative smoking accessories market is a dynamic market experiencing robust secular growth driven by cannabinoid legalization in the U.S. and Canada, and positively evolving consumer perception and acceptance in North America. The OTP industry, which consists of non-cigarette tobacco products, exhibited low-single-digit consumer unit annualized growth over the four-year period ended 2023 as reported by Management Science Associates, Inc. ("MSAi"), a third-party analytics and information company. Our segments are led by our core proprietary and iconic brands: *Zig-Zag*® and CLIPPER® in the Zig-Zag Products segment and *Stoker's*® along with *Beech-Nut*® and *Trophy*® in the Stoker's Products segment. Our businesses generate solid cash flow which we use to invest in our business, finance acquisitions, increase brand support, expand our distribution infrastructure, and strengthen our capital position. We currently ship to approximately 820 distributors with an additional 650 secondary, indirect wholesalers in the U.S. that carry and sell our products. Under the leadership of a senior management team with extensive experience in the consumer products, alternative smoking accessories and tobacco industries, we have grown and diversified our business through new product launches, category expansions, and acquisitions while concurrently improving operational efficiency.

We believe there are meaningful opportunities to grow through investing in organic growth, acquisitions and joint ventures across all product categories. As of December 31, 2023, our products were available in approximately 197,000 U.S. retail locations which, with the addition of retail stores in Canada, brings our total North American retail presence to an estimated 217,000 points of distribution. Our sales team targets widespread distribution to all traditional retail channels, including convenience stores, and we have a growing e-commerce business.

In the fourth quarter of 2022, we contributed our NewGen Products business to South Beach Holdings LLC doing business as Creative Distribution Solutions ("CDS"), a newly-formed wholly-owned subsidiary. CDS is separately operated and reports to its own Board of Directors. During the first quarter of 2023, the business was designated an unrestricted subsidiary under the Senior Secured Notes (the "Notes") and concurrently we renamed what we previously referred to as our NewGen Products segment as our Creative Distribution Solutions segment as we believe this name better aligns with the goals and strategies of the segment. During the third quarter of 2023, the CDS business was restructured to eliminate certain unprofitable brands and to focus on a narrower set of products to better position it as a standalone business.

Zig-Zag Products

Our Zig-Zag Products ("Zig-Zag") segment principally includes rolling papers and make your own ("MYO") cigar wraps used as smoking accessories. The strength of the *Zig-Zag*® brand drives our leadership position in both the rolling papers and MYO cigar wrap markets. *Zig-Zag*® is the #1 premium and #1 overall rolling paper in the U.S. with approximately 34% total market share according to MSAi.[1] Management estimates that *Zig-Zag*® is also the #1 brand in the promising Canadian market. Rolling paper operations are aided by our sourcing relationship with Republic Technology International SAS ("RTI"). See "Distribution and Supply Agreements" below for our discussion of the *Zig-Zag*® distribution agreement.

In MYO cigar wraps, the *Zig-Zag*® brand commands a majority of the market and continues to innovate in novel ways through additional product introductions. For instance, we introduced *Zig-Zag*® 'Rillo sized wraps, which are similar in size to cigarillos, the most popular and fastest growing type of machine-made cigars. In June 2020, we purchased certain assets from our long-term commercial partner Durfort Holdings S.R.L (''Durfort'') which included the co-ownership in the intellectual property rights for all of our MYO Homogenized Tobacco Leaf ("HTL") cigar wraps products. In connection with the transaction, we entered into an exclusive Master Distribution Agreement to market and sell the original *Blunt Wrap*® cigar wraps within the U.S. which was effective October 9, 2020. In late 2021, we extended our MYO cigar wraps offering with entries into the growing hemp wraps and natural leaf wraps markets.

In July 2019, to extend our reach in Canada, we made a minority investment in Turning Point Brands Canada (formerly ReCreation Marketing) that we increased to a 65% ownership stake by July 2021. Turning Point Brands Canada is a specialty marketing and distribution firm focused on building brands in the Canadian cannabis accessories, tobacco and alternative products categories. Our majority ownership stake leverages Turning Point Brands Canada's significant expertise in marketing and distributing cannabis accessories and tobacco products throughout Canada. The remainder of Turning Point Brands Canada is owned by its management.

[1] Brand ranking and market share percentages obtained from MSAi for the 52-week period ended December 30, 2023.

In July 2021, we acquired certain assets of Unitabac, LLC ("Unitabac"), a marketer of mass-market cigars. In the acquisition, we acquired a robust portfolio of cigarillo products and all related intellectual property, including Cigarillo Non-Tip (NT) HTL products and Rolled Leaf and Natural Leaf Cigarillo Products that we are using to re-introduce the *Zig-Zag*® brand into a large and growing cigarillo market.

In February 2022, we announced an agreement with Flamagas, a renowned lighter manufacturer, for exclusive distribution of CLIPPER® lighters in the U.S. and Canada. CLIPPER® is the #1 reusable lighter in the world and the #2 overall world lighter brand but is currently underrepresented in the U.S. and Canada with significant potential for growth. We aim to use our existing distribution infrastructure to expand access of CLIPPER® lighters to more retailers and consumers.

Since mid-2019, we have been repositioning the business with growth initiatives focused on new product introductions and new channel expansions that are better aligned with the growing market trends. As a result of those initiatives, we have been successful in changing the growth profile of our Zig-Zag Products segment.

Stoker's Products

Our Stoker's Products ("Stoker's") segment includes both moist snuff tobacco ("MST") and loose-leaf chewing tobacco in addition to recent introductions in the modern oral product category. *Stoker's*® is our focus brand in both MST and chewing tobacco. In MST, *Stoker's*® remains among the fastest growing brands and holds a 10.7% share in the stores with distribution and a 6.9% share of the total U.S. MST non-pouch market. *Stoker's*® is a pioneer in the MST industry.[1] It was first to introduce the large 12 oz. tub packaging format and is manufactured using a proprietary process that we believe results in a superior product. Starting in 2015, we extended the *Stoker's*® MST franchise to include traditional 1.2 oz. cans to broaden retail availability. Our proprietary manufacturing process is conducted at our Dresden, Tennessee, plant and packaged in both our Dresden, Tennessee and Louisville, Kentucky facilities.

Stoker's® chewing tobacco has grown its market share considerably over the last several years becoming the largest brand family in the industry and is presently the #1 discount and #1 overall brand in the industry, with approximately a 31% market share. Our status in the chew market is further strengthened by *Beech-Nut*®, the #3 premium brand and #7 overall, as well as *Trophy*®, *Durango*®, and the five Wind River Brands. Collectively, the Company is the #2 marketer of chewing tobacco with approximately 36% market share.[1] Our chewing tobacco operations are facilitated through our long-standing relationship with Swedish Match (now owned by Philip Morris International Inc.), the manufacturer of our loose-leaf chewing tobaccos.

In 2023, the Company expanded its rollout of modern oral nicotine products, *FRĒ*® white nicotine pouches. Modern oral nicotine products are currently one of the fastest growing categories within the nicotine space.

Creative Distribution Solutions

The Creative Distribution Solutions segment primarily distributes third-party nicotine, non-nicotine and smoking products.

Competitive Strengths

We believe our competitive strengths include the following:

Large, Leading Brands with Significant Scale

We have built a portfolio of leading brands with significant scale that are well recognized by consumers, retailers, and wholesalers. Our *Zig-Zag*® and *Stoker's*® brands are each well established and date back 144 and 83 years, respectively.

- *Zig-Zag*® is the #1 premium and #1 overall rolling paper brand in the U.S., with significant distribution in Canada as well. *Zig-Zag*® is also the #1 MYO cigar wrap brand in the U.S., as measured by MSAi.[1] We acquired North American rolling papers distribution rights for *Zig-Zag*® in 1997. More importantly, we own the *Zig-Zag*® tobacco trademark in the U.S. which we leverage for our MYO cigar wraps product. Approximately 41% of our total 2023 *Zig-Zag*® branded net sales are under our own *Zig-Zag*® marks rather than those we license from RTI under the Distribution and Licensing Agreements described below.

- *Stoker's*® is among the fastest growing MST brands in the industry and is the #1 loose-leaf chewing tobacco brand.[1] We manufacture *Stoker's*® MST using only 100% American Leaf, utilizing a proprietary process to produce what we believe is a superior product.

[1] Brand rankings and market share percentages obtained from MSAi for the 52-week period ended December 30, 2023.

Zig-Zag® is an iconic brand and has strong, enduring brand recognition among a wide audience of consumers. CLIPPER® is the #1 reusable lighter in the world and the #2 overall world lighter brand with significant opportunities to grow as it is currently underrepresented in the U.S. and Canada. The *Stoker's*® brand is seen as an innovator in both the moist snuff and loose-leaf chewing tobacco markets.

Exposure to Growing Cannabinoid Consumption Trends

We believe that the cannabinoid market will continue to grow over the coming years as it becomes increasingly accepted by the public in the U.S. Our product offerings, particularly those in our Zig-Zag Products segment, are ideally positioned to benefit from continued growth in consumer consumption.

The legal cannabis market in the U.S. is projected to grow from $29.6 billion in 2023 to $45 billion by 2027, representing an 11.0% compounded annual growth rate, according to a June 2023 report of BDSA, a market research firm focused on the legal cannabis market. With flower being the leading form factor for cannabis consumption among consumers, we believe our product offerings provide us with significant opportunity to expand the number of retail channels we reach. A recent Gallup poll showed nearly seven in ten Americans now support legalizing cannabis nationwide, approximately twice the amount as twenty years ago. As of the end of 2023, 24 U.S. states and the District of Columbia had legalized cannabis for adult recreational use and a majority of states now have comprehensive public medical cannabis programs.

Successful Track Record of New Product Launches and Category Expansions

We have successfully launched new products and entered new product categories by leveraging the strength of our brands and methodically targeting markets which we believe have significant growth potential:

- In 2009, we extended the *Zig-Zag*® tobacco brand into the MYO cigar wraps market and captured a 50% market share within the first two years. We are now the market share leader for MYO cigar wraps with approximately a 55% share of the cigar wraps category and 76% of the share of the HTL cigar wraps sub-category. [1] We believe our success was driven by the *Zig-Zag*® tobacco branding, which we feel is widely understood by consumers to represent a favorable, customizable experience ideally suited to MYO products. In late 2021, we extended our *Zig-Zag*® MYO cigar wraps offering with entries into the growing hemp wraps and natural leaf wraps markets.
- We extended the *Zig-Zag*® brand into hemp rolling papers in 2018 and followed that with the launch of paper cones in 2019 with both products quickly establishing leading positions in their respective categories.
- We leveraged the proud legacy and value of the *Stoker's*® brand to introduce a 12 oz. MST tub, a size that was not offered by any other market participant at the time of introduction. *Stoker's*® MST has been among the fastest growing moist snuff brands in the industry in terms of pounds sold. While competitors have since introduced larger format tub packaging, the early entry and differentiation of the *Stoker's*® product have firmly established us as the market leader with over 55% of the tub market as of 2023. In 2015, we introduced *Stoker's*® MST in 1.2 oz. cans to further expand retail penetration, particularly in convenience stores. In 2023, we expanded our FRĒ® white nicotine pouches into the market with a broader rollout planned in 2024.
- We have also had success in acquiring, partnering with, and integrating new products and product lines, including:
  - Cigarillos, with the acquisition of Unitabac;
  - Lighters, with exclusive distribution of Clipper lighters in the U.S. and Canada; and
  - Liquid nicotine, with the acquisition of Vapor Beast and International Vapor Group, providing us with both B2B and B2C capabilities that we are able to leverage with our other product lines to reach new retail outlets and consumers.

We strategically target product categories that we believe demonstrate significant growth potential and for which the value of our brands is likely to have a meaningful impact. We believe that our track record and existing portfolio of brands provide growth advantages as we continue to evaluate opportunities to extend our product lines and expand into new categories.

Extensive Distribution Network and Data Driven Sales Organization

We have taken important steps to enhance our selling and distribution network and consumer marketing capabilities that allow us to grow our business while keeping our capital expenditure requirements relatively low. We have long-standing relationships in the core convenience store channel and wholesale distribution network with access to more than 217,000 retail outlets in North America. We are also increasing brand presence through non-traditional channels including headshops, dispensaries, and B2B e-commerce and are expanding our sales team dedicated to these channels. We have added brand dedicated platforms including ZigZag.com to facilitate our e-commerce brand presence as well as sell on Amazon and other e-commerce sites. Our CDS B2B business reaches thousands of smoke shops and our B2C business has over one million unique customers.

[1] Brand ranking and market share percentages obtained from MSAi for the 52-week period ended December 30, 2023.

We service our customer base with an experienced sales and marketing organization of approximately 180 professionals who possess in-depth knowledge of the OTP market. We extensively use data supported by leading technology, enabling our salesforce to analyze changing trends and effectively identify evolving consumer preferences at the store level and efficiently respond. We subscribe to a sales tracking system provided by MSAi that measures OTP product shipments by all market participants, on a weekly basis, from approximately 600 wholesalers to over 250,000 traditional retail stores in the U.S. This system enables us to understand share and volume trends across multiple categories at the store level, allowing us to allocate field salesforce coverage to the highest opportunity stores, thereby enhancing the value of new store placements and sales activity. Within our Stoker's segment, we have seen a positive correlation between the frequency of store calls by our salesforce and our retail market share.

Asset-light Business Model that Generates Resilient Free Cash Flow

We have a lean, asset-light manufacturing and sourcing model which leverages outsourced supplier relationships and requires low capital expenditures. We believe our asset-light model provides marketplace flexibility, allows us to achieve favorable margins and generates high free cash flow conversion.

As part of our asset-light operating model, we built long-standing and extensive relationships with leading, high-quality producers from whom we source products including loose-leaf chewing tobacco and cigarette paper, among others.

By outsourcing the production of certain products to a select group of suppliers with whom we have strong relationships, we are able to maintain low overhead costs and minimal capital expenditures. Our supplier relationships allow us to increase the breadth of our product offerings and quickly enter new markets as management is able to focus on brand building and innovation. In 2023, approximately 75% of our net sales were derived from outsourced production operations and our capital expenditures have ranged between $4.8 million and $7.7 million per year over the previous five years.

The stability of our cash flows is enhanced by the resilience of our Zig-Zag Products and Stoker's Products business segments which we believe have recession-resistant end-markets. These products are primarily staples that are small ticket purchases for repeat consumers. In addition, we believe the secular shift to the value category in the Stoker's Products segment will benefit the long-term resilience of our brands.

We do not outsource our MST production as a result of our proprietary manufacturing processes which are substantively different than those of our competitors.

Expertise to Succeed in Dynamic Regulatory Environments

We operate in a highly regulated environment involving many different government agencies. In 2009, the U.S. Food and Drug Administration ("FDA") was given jurisdiction over cigarettes and smokeless tobacco, which expanded in 2016 to include all other tobacco products including vaping and cigars. This was further expanded in 2022 to cover non-tobacco nicotine products. We believe we have a competitive advantage due to our management team's experience navigating the relevant regulatory environment. We have increased our investments in teams of professionals including regulatory lawyers, scientists, and quality assurance processes to ensure we maintain a competitive advantage in this area.

The FDA has implemented a premarket review process, referred to as the PMTA, or the Premarket Tobacco Application process, which requires all tobacco products introduced or changed since 2007 to submit an application to the FDA and receive marketing authorization prior to entering the market. For products already on the market when these requirements became effective, the FDA required applications for those products to be on file by certain dates depending on whether the products were originally-regulated under the Family Smoking Prevention Tobacco Control Act ("TCA"), whether they were later "deemed" tobacco products, or whether they contain non-tobacco nicotine and were not otherwise exempt from the TCA. The PMTA process is a very expensive and resource-intensive process and there are currently hundreds of competitors in the market but very few have the capability and or the resources to get their products successfully through this process. In the years since, the FDA has rejected millions of applications.

To date, we have spent approximately $26 million in order to file and supplement applications covering a broad portfolio of noncombustible products, including vaping products and novel oral nicotine products. By developing and submitting for FDA marketing authorization a deep suite of noncombustible products and leveraging our distribution platform, we believe that we have the opportunity to grow as consumers look toward potentially lower-risk product offerings. We believe this is a transformational event for the industry with potential for us to realize substantial benefits over time as the FDA accelerates enforcement thereby, creating significant barriers for new entrants as well as significant difficulties for existing companies who may not have the infrastructure needed to comply with these regulatory requirements. See "Risks Related to Legal, Tax and Regulatory Matters" under Item 1A "Risk Factors" and Note 1, "Organizations and Basis of Presentation" in the Notes to the Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K, for additional information.

In addition, we have been building and expanding an alternative logistics infrastructure across the U.S. to comply with the Prevent All Cigarette Trafficking Act ("PACT Act") which was recently extended to prohibit the use of the U.S. Postal Service to mail e-cigarette and related products directly to consumers and requires other common carriers to obtain adult signature on delivery.

Experienced Management Team

With extensive experience in consumer products, alternative smoking accessories and tobacco markets, our senior management team has enabled us to grow and diversify our business while improving operational efficiency. Members of management have previous experience at other leading tobacco companies. Given the professional experience of the senior management team we are able to analyze risks and opportunities from a variety of perspectives. Our senior leadership has embraced a collaborative culture in which combined experience, analytical rigor, and creativity are leveraged to assess opportunities and deliver products that satisfy consumers' demands. Our management team also brings a proven track record of patient and selective capital deployment into value enhancing transactions.

Growth Strategies

We are focused on building sustainable margins, expanding the availability of our products, developing innovative new products, and enhancing overall operating efficiencies with the goal of improving margins and cash flow. We adopted the following strategies to drive growth in our business and build stockholder value:

Grow Share of Existing Product Lines, Domestically and Internationally

We intend to remain a consumer centric organization with an innovative view and understanding of the alternative smoking accessories and OTP markets. We believe we have strong tailwinds for growth within our existing product lines. Within our Zig-Zag Products segment, we are benefitting from secular growth trends in the industry, driving market share gains in our traditional convenience store channel and expanding our presence into non-traditional channels including headshops, dispensaries and e-commerce to drive growth. Within our Stoker's Products segment, there is ample runway to gain market share driven by same store sales growth and further distribution gains as *Stoker's*® MST continues to be one of the fastest growing brands in the category.

In 2023, less than 10% of our revenues were generated outside of the U.S. We believe international sales represent a meaningful growth opportunity. Having established a strong infrastructure and negotiated relationships across multiple segments and products, we are pursuing an international growth strategy to broaden sales and strengthen margins. In 2021, we further invested in growth in Canada by increasing our ownership in Turning Point Brands Canada to 65%. Our goals include expanding our presence in the worldwide OTP industry on a targeted basis. For example, we are expanding *Zig-Zag*®'s retail penetration and product assortment in Canada including distributing CLIPPER® lighters, and selling our *Stoker's*® MST products in South America, Europe, Asia and Africa.

Expand into Adjacent Categories through Innovation and New Partnerships

We continually evaluate opportunities to expand into adjacent product categories by leveraging our current portfolio and distribution platform, as well as by forming new partnerships. We believe there are meaningful opportunities for growth within the alternative smoking accessories and OTP markets. We maintain a robust product pipeline and plan to strategically introduce new products in attractive, growing markets, both domestically and internationally, with specific focus on our papers and MYO wraps businesses. In particular, the strength of the *Zig-Zag*® brand provides a great platform to introduce a suite of complementary products such as our launch and expansion of hemp papers, paper cones, hemp wraps and natural leaf wraps. In 2022 we entered the lighter market through an exclusive distribution agreement for CLIPPER® lighters in the U.S. and Canada. CLIPPER® is the #1 reusable lighter in the world and the #2 overall world lighter brand but is currently underrepresented in the U.S. and Canada with significant potential for growth. As we have done successfully in the past, we will leverage our existing sales infrastructure to drive distribution of new products and are investing to expand our e-commerce distribution capabilities.

We have identified a number of new opportunities and we intend to leverage our existing brands and partnerships to continue the process of commercializing winning products that satisfy consumer needs.

Accelerate Growth Through National Distribution Network

Our business is built around a powerful sales and distribution infrastructure that currently reaches an estimated 217,000 retail outlets in North America. We have strong presence in independent convenience stores and now service most of the leading chain accounts. Through our e-commerce platforms we have alternative avenues through which to sell third-party products and an increasing amount of our proprietary products. This strategy allows new products to be tested with lower risk before we incorporate them into our wider brick and mortar distribution system.

Combining our different platforms, we have an expansive multi-channel distribution infrastructure that gives us a big competitive advantage when we introduce new products or acquire companies that we can integrate into our network. We believe our experienced salesforce, expansive distribution network, and leading market analytics put us in a strong position to swiftly execute new product launches in response to evolving consumer and market preferences.

Strategically Pursue Acquisitions

We believe there are meaningful acquisition opportunities in our fragmented markets. We regularly evaluate acquisition opportunities across our industries. In evaluating acquisition opportunities, our focus is on identifying acquisitions that would leverage our distribution platform, regulatory infrastructure and product offerings or enable category expansion in areas with high growth potential to drive profit generation.

The vast majority of our 2023 U.S. gross profit was derived from sales of products currently regulated by the FDA Center for Tobacco Products. We have significant experience in complying with the FDA regulatory regime with a compliance infrastructure composed of legal and scientific professionals. We believe many smaller OTP manufacturers currently lack this infrastructure, which is necessary to comply with the broad scope of FDA regulations. We believe our regulatory compliance infrastructure, combined with our skilled management and strong distribution platform, position us to act as a consolidator within the OTP industry.

We have a strong track record of enhancing our OTP business with strategic and accretive acquisitions. The Company itself was built through acquisitions that were subsequently grown through distribution gains, market share growth and brand extensions into new product categories. This is a playbook that we have drawn on over time with a consistent track record of success. We acquired the U.S. and Canadian rolling papers distribution rights for *Zig-Zag*® in 1997 and extended our product offerings including our entry into the MYO cigar wraps category in 2009. In 2003, we acquired the *Stoker's*® brand. We have since built the brand to the #1 position in the chewing tobacco industry while successfully leveraging the brand's value through our MST expansion where it remains among the fastest growing MST brands. Subsequent to our initial public offering ("IPO") in 2016, we completed a series of acquisitions that built the foundation of our CDS segment through (i) Vapor Beast, (ii) IVG, and (iii) Solace. Our investment in Turning Point Brands Canada in 2019 is accelerating *Zig-Zag*®'s growth through alternative channel penetration. In 2020, we acquired certain assets from Durfort including co-ownership of the intellectual property rights for our MYO cigar wraps products. The transaction increased our share of the economics in a MYO cigar wraps business that was benefitting from secular growth tailwinds and gave us access to a complimentary product in *Blunt Wrap*® through an exclusive distribution agreement. Our investment in 2021 in Old Pal gives us increased exposure to the large and growing cannabinoid market. In 2021, we also acquired certain assets from Unitabac, providing a platform to re-enter the large and growing cigarillo category.

Raw Materials, Product Supply, and Inventory Management

We source our products through a series of longstanding, highly valued relationships which allow us to conduct our business on an asset-light, distribution-focused basis.

The components of inventories were as follows (in thousands):

	December 31, 2023	December 31, 2022
Raw materials and work in process	$ 5,201	$ 7,283
Leaf tobacco	34,894	43,468
Finished goods - Zig-Zag Products	41,783	42,279
Finished goods - Stoker's Products	8,090	9,667
Finished goods - Creative Distribution Solutions	7,281	15,431
Other	1,711	1,787
Inventories	$ 98,960	$ 119,915

Zig-Zag Products

Pursuant to the *Zig-Zag*® distribution agreements, we are required to purchase from RTI all cigarette papers, cigarette tubes, and cigarette injecting machines that we sell, subject to RTI fulfilling its obligations under the *Zig-Zag*® distribution agreements. See "Distribution and Supply Agreements" below for a discussion of the *Zig-Zag*® distribution agreements. If RTI is unable or unwilling to perform its obligations or ceases its cigarette paper manufacturing operations, in each case, as set forth in the Distribution Agreements, we may seek third-party suppliers and continue the use of the *Zig-Zag*® trademark to market these products. To ensure we have a steady supply of premium cigarette paper products, as well as cigarette tubes and injectors, RTI is required to maintain, at its expense, a two-month supply of inventory in a bonded, public warehouse in the U.S.

We obtain our MYO cigar wraps from our supplier in the Dominican Republic. We also obtain our *Zig-Zag®* branded cigar products from the Dominican Republic.

Stoker's Products

We produce our moist snuff and loose-leaf chewing tobaccos from air-cured and fire-cured leaf tobacco, respectively. We utilize recognized suppliers that generally maintain 12- to 24-month supplies of our various types of tobacco at their facilities. We do not believe we are dependent on any single country or supplier source for tobacco. We generally maintain up to a two-month supply of finished, moist snuff and loose-leaf chewing tobacco on hand. This supply is maintained at our Louisville, Kentucky, facility and in two regional public warehouses to facilitate distribution. In December 2023, a third-party warehouse that stores our tobacco was damaged by a tornado, leading to a loss of some of our leaf tobacco inventory. We believe the losses will be fully covered by insurance. In light of alternative supply opportunities and our distribution schedule, we don't expect the loss of the tobacco to impact our ability to meet the demand for our products. See Item 1A "Risk Factors – Our business may be damaged by events outside of our or our suppliers' control, such as the impact of epidemics, political upheavals, or natural disasters".

We also utilize a variety of suppliers for the sourcing of additives used in our smokeless products and for the supply of our packaging materials. Thus, we believe we are not dependent on a single supplier for these products. There are no current U.S. federal regulations that restrict tobacco flavor additives in smokeless products. The additives that we use are food-grade, generally accepted ingredients.

All of our moist snuff products are manufactured at our facility in Dresden, Tennessee. Packaging occurs at the Dresden, Tennessee, location in addition to the facility in Louisville, Kentucky. All of our loose-leaf chewing tobacco production is fulfilled through our agreement with Swedish Match. See "Distribution and Supply Agreements" below for our discussion of the Swedish Match Manufacturing Agreement.

Creative Distribution Solutions Products

We have sourcing relationships that provide liquid nicotine products and certain other products without tobacco and/or nicotine for other companies' brands and for producing our own branded product lines. Our acquisition of several ecommerce platforms have (i) accelerated our entry into the non-traditional retail channel, where we believe a significant portion of liquid nicotine and adjacent products are sold; (ii) provided enhanced distribution of our products; and (iii) established best-in-class distribution and B2C platforms. Furthermore, we have established a sourcing group in Asia to ensure timely and cost-effective access to marketplace winners and new product launches, while also maximizing margins through thoughtful logistics strategies.

Distribution and Supply Agreements

The Zig-Zag Distribution and License Agreements

In 1992, we entered into two long-term exclusive distribution agreements with respect to sales of *Zig-Zag®* cigarette papers, cigarette tubes, and cigarette injector machines in the U.S. and Canada (collectively, the "Distribution Agreements"). The Distribution Agreements had an initial twenty-year term, which automatically renews for successive twenty-year terms unless terminated in accordance with the terms of the Distribution Agreements. The Distribution Agreements renewed for their second twenty-year term in November 2012.

Under the Distribution Agreements, we are required to purchase cigarette papers, cigarette tubes, and cigarette injector machines from the licensor; however, our licensor must provide us with sufficient quantities consistent with specific order-to-delivery timelines outlined in the Distribution Agreements. Our product supply is further protected by additional safeguards, including the right to seek third-party suppliers in certain circumstances and a two-month safety stock inventory to be kept in the U.S. at the licensor's expense. The Distribution Agreements also provide shared responsibility for duties, insurance, shipping, and taxes. The import duties and taxes in the U.S. and Canada are our responsibility, while the licensor is responsible for insurance, export duties, and shipping costs.

Each of the Distribution Agreements contains customary termination provisions, including failure to meet performance obligations, the assignment of the agreement or the consummation of a change of control, in each case, without consent of the licensor, upon certain material breaches, including our agreement not to promote, directly or indirectly, cigarette paper or cigarette paper booklets of a competitor, or upon our bankruptcy, insolvency, liquidation, or other similar event. The licensor also may terminate the Distribution Agreements if a competitor acquires a significant amount of our common stock or if one of our significant stockholders acquires a significant amount of one of our competitors. In the event of a termination, we have agreed that for a period of five years after the termination we will not engage, directly or indirectly, in the manufacturing, selling, distributing, marketing, or otherwise promoting, in the U.S. and Canada, of cigarette paper or cigarette paper booklets of a competitor without consent. There are certain de minimis exceptions to these provisions. For further details, see Item 1A "Risk Factors – We depend on a small number of key third-party suppliers and producers for our products".

In subsequent years, we entered into two licensing agreements, giving us the exclusive use of the *Zig-Zag*® brand name for e-cigarettes and related accessories in the U.S. and for paper cone products in the U.S. and Canada (collectively, the "License Agreements"). Each of the License Agreements terminates if the Distribution Agreements are terminated.

The Distribution Agreements and the License Agreements were initially entered into with Bolloré S.A. ("Bolloré"). In November 2020, Bolloré assigned the Distribution Agreements and the License Agreements to RTI. For a number of years, RTI has been the outsourced manufacturer of cigarette papers, cigarette tubes, cigarette injector machines and certain other products bearing the *Zig-Zag*® name.

Swedish Match Manufacturing Agreement

In 2008, we entered into a manufacturing and distribution agreement with Swedish Match whereby Swedish Match became the exclusive manufacturer of our loose-leaf chewing tobacco. Under the agreement, production of our loose-leaf chewing tobacco products was completely transitioned to Swedish Match's plant located in Owensboro, Kentucky, in 2009. We source all of the tobacco Swedish Match uses to manufacture our products along with certain proprietary flavorings and retain all marketing, design, formula, and trademark rights over our loose-leaf products. We also have the right to approve all product modifications and are solely responsible for decisions related to package design and branding of the loose-leaf tobacco produced for us. Responsibilities related to process control, manufacturing activities, and inventory management with respect to our loose-leaf products are allocated between us and Swedish Match as specified in the agreement. We also have rights to monitor production and quality control processes on an ongoing basis.

The agreement had an initial ten-year term and will automatically be renewed for five successive ten-year terms unless either party provides at least 180 days' notice prior to a renewal term of its intent to terminate the agreement, or unless otherwise terminated by mutual agreement of the parties in accordance with the provisions of the agreement. If a notice of non-renewal is delivered, the contract will expire two years after the date on which the agreement would have otherwise been renewed. The terms allow the agreement to be assumed by a buyer, terminated for uncured material breach, or terminated by us subject to a buyout. We also hold a right of first refusal to acquire the manufacturing plant as well as Swedish Match's chewing tobacco unit. The agreement was automatically renewed for the first of five 10-year renewal periods in September 2018.

In November 2022, Philip Morris International Inc., acquired Swedish Match.

Production and Quality Control

We primarily outsource our manufacturing and production processes and focus on packaging, marketing, and distribution. We currently manufacture less than 25% of our products as measured by net sales. Our in-house manufacturing operations are principally limited to (i) the manufacturing of our moist snuff products, which occurs at our facility in Dresden, Tennessee; and (ii) the packaging of our moist snuff products at our facilities in Dresden, Tennessee and Louisville, Kentucky. Our MST products are processed in-house, rather than outsourced, as a result of our proprietary manufacturing processes which are substantively different than those of our competitors.

We use proprietary production processes and techniques, including strict quality controls. Our quality control group routinely tests the quality of the tobacco, flavorings, application of flavorings, premium cigarette papers, tubes and injectors, cigars, MYO cigar wraps, liquid nicotine products, and packaging materials. We utilize sophisticated quality controls to test and closely monitor the quality of our products. The high quality of our tobacco products is largely the result of using high-grade tobacco leaf and food-grade flavorings and, on an ongoing basis, analyzing the tobacco cut, flavorings, and moisture content together with strict specifications for sourced products.

Given the importance of contract manufacturing to our business, our quality control group ensures that established, written procedures and standards are adhered to by each of our contract manufacturers. Responsibilities related to process control, manufacturing activities, quality control, and inventory management with respect to our loose-leaf are allocated between us and Swedish Match under the manufacturing agreement.

Sales and Marketing

We have grown the size and capacity of our salesforce and intend to continue strengthening the organization to advance our ability to deepen and broaden the retail availability of our products and brands.

As of December 31, 2023, we had a nationwide sales and marketing organization of approximately 180 professionals. Our sales and marketing group focuses on priority markets and sales channels and seeks to operate with a high level of efficiency. In 2023, our Zig-Zag and Stoker's Products sales and marketing efforts enabled our products to reach an estimated 217,000 retail outlets in North America and over 820 direct wholesale customers with an additional 650 secondary, indirect wholesalers in the U.S.

Our Zig-Zag and Stoker's Products sales efforts are focused on wholesale distributors and retail merchants in the independent and chain convenience store, tobacco outlet, food store, mass merchandising, drug store, and non-traditional retail channels. For Zig-Zag Products, we have also developed a growing e-commerce business along with a sales team focused on serving alternative channels such as headshops and dispensaries. Our CDS sales efforts are focused on alternative channels and winning new stores, increasing our products share and store share and growing the B2C engine to capture a greater share of direct-to-consumer online sales. We have expanded, and intend to continue to expand, the sales of our products into previously underdeveloped geographic markets and retail channels. In 2023, we derived more than 90% of our net sales from sales in the U.S., with the remainder primarily from sales in Canada.

We subscribe to a sales tracking system from MSAi that records all traditional OTP product shipments (ours as well as those of our competitors) from approximately 600 wholesalers to over 250,000 traditional retail stores in the U.S. This system enables us to understand individual product share and volume trends across multiple categories down to the individual retail store level, allowing us to allocate field salesforce coverage to the highest opportunity stores. Additionally, the ability to select from a range of parameters and to achieve this level of granularity means we can analyze marketplace trends in a timely manner and swiftly evolve our business planning to meet market opportunities.

We employ marketing activities to grow awareness, trial, and sales including selective trade advertising to expand wholesale availability, point-of-sale advertising and merchandising and permanent and temporary displays to improve consumer visibility, and social media. We comply with all regulations relating to the marketing of tobacco products, such as directing marketing efforts to adult consumers, and are committed to full legal compliance in the sales and marketing of our products. To date, we have neither relied upon, nor conducted, any substantial advertising in consumer media for our tobacco products.

For the years ended December 31, 2023, 2022, and 2021, we did not have any customer that accounted for 10% or more of our net sales. Our customers use an open purchase order system to buy our products and are not obligated to do so pursuant to ongoing contractual obligations. We perform periodic credit evaluations of our customers and generally do not require collateral on trade receivables. Historically, we have not experienced material credit losses. Sales to customers within our CDS segment are generally prepaid.

Competition

Many of our competitors are better capitalized than we are and have greater resources, financial and otherwise. We believe our ability to effectively compete and maintain strong market positions in our principal product lines are due to the high recognition of our brand names, the perceived quality of each of our products, and the efforts of our sales, marketing, and distribution teams. We compete against "big tobacco," including Altria Group, Inc. (formerly Philip Morris International Inc.); British American Tobacco p.l.c. (formerly R.J. Reynolds Tobacco Company); Swedish Match (now owned by Philip Morris International Inc.); Swisher International, Inc.; and manufacturers including U.K. based Imperial Brands, PLC, across our segments. "Big tobacco" has substantial resources and a customer base that has historically demonstrated loyalty to their brands.

Competition in the OTP market is based upon not only brand quality and positioning but also on price, packaging, promotion, and retail availability and visibility. Given the decreasing prevalence of cigarette consumption, the "big tobacco" companies continue to demonstrate an increased interest and participation in a number of OTP markets.

Zig-Zag Products

Our principal competitors for premium rolling paper sales are Republic Tobacco, L.P. and HBI International. Our major competitors in MYO cigar wraps are Good Times USA, LLC and New Image Global, Inc. We believe MYO cigar wrap products are used interchangeably with both rolling papers and finished cigar products by many consumers.

Stoker's Products

Our four principal competitors in the moist snuff category are Swedish Match (acquired in 2022 by Philip Morris International Inc.), the American Snuff Company, LLC (a unit of British American Tobacco p.l.c.), Swisher International Group, Inc. and U.S. Smokeless Tobacco Company (a division of Altria Group, Inc.). In the loose-leaf chewing tobacco market, our three principal competitors are Swedish Match (acquired in 2022 by Philip Morris International Inc.), the American Snuff Company, LLC (a unit of British American Tobacco p.l.c.), and Swisher International Group, Inc. We believe moist snuff products are used interchangeably with loose-leaf products by many consumers. For modern oral nicotine products, our four principal competitors are Swedish Match (acquired in 2022 by Philip Morris International Inc.), Modoral Brands Inc. (a unit of British American Tobacco p.l.c.), Swisher International Group, Inc. and Helix Innovations, LLC (a division of Altria Group, Inc.).

Creative Distribution Solutions Products

In the CDS segment, our competitors are varied as the market is relatively new and highly fragmented. Our direct competitors sell products that are substantially similar to the products that we sell through the same channels in which we sell such products. We compete with these direct competitors for sales through wholesalers and retailers including, but not limited to, smoke shops, national chain stores, tobacco shops, and convenience stores and in the online direct to consumer environment. As a result of our acquisitions of Vapor Beast, IVG and Solace we now also compete directly with other non-traditional distributors and retailers.

Patents, Trademarks, and Trade Secrets

We have numerous registered trademarks relating to our products, including: *Beech-Nut®*, *Trophy®*, *Havana Blossom®*, *Durango®*, *Stoker's®*, *Tequila Sunrise®*, *Fred's Choice®*, *Old Hillside®*, *Our Pride®*, *Red Cap®*, *Tennessee Chew®*, *Big Mountain®*, *Springfield Standard®*, *Snake River®*, *FRĒ®*, *Vapor Beast®*, *Vapor Shark®*, *DirectVapor®*, *VaporFi®* and *South Beach Smoke®*. The registered trademarks, which are significant to our business, expire periodically and are renewable for additional 10-year terms upon expiration. Flavor and blend formula trade secrets relating to our tobacco products, which are key assets of our businesses, are maintained under strict secrecy.

The *Zig-Zag®* trade dress trademark for premium cigarette papers and related products are owned by RTI and have been exclusively licensed to us in the U.S. and Canada. The *Zig-Zag®* trademark for e-cigarettes is also owned by RTI and has been exclusively licensed to us in the U.S. We own the *Zig-Zag®* trademark with respect to its use in connection with products made with tobacco including, without limitation, cigarettes, cigars, and MYO cigar wraps in the U.S.

Research and Development and Quality Assurance

We have a research and development and quality assurance function that tests raw materials and finished products in order to maintain a high level of product quality and consistency. Research and development largely bases its new product development efforts on our high-tech data systems. We spent approximately $0.6 million, $0.6 million, and $1.1 million dollars on research and development and quality control efforts for the years ended December 31, 2023, 2022, and 2021, respectively.

Human Capital

As of December 31, 2023, we employed 373 full-time and part-time employees. None of our employees are represented by unions. We believe we have a positive relationship with our employees.

We believe that our success is driven by our employees. Our human capital strategy, which is developed and overseen by our Chief People Officer ("CPO"), focuses on the health and safety of our employees, development and retention of current employees, and talent attraction. Our CPO is also responsible for our diversity, equity, and inclusion ("DE&I") strategies. The Chief Executive Officer ("CEO") and CPO regularly update the board of directors and its committees on the human capital management, as well as the implementation of new initiatives.

Health and Safety: Our health and safety programs are designed to address applicable regulations as well as the specific hazards and work environments of each of our facilities. We regularly conduct safety reviews and trainings at each of our locations to ensure compliance with applicable regulations and all policies and procedures. We maintain safety committees that meet regularly to discuss and address any potential issues in our warehouse and manufacturing facilities. In addition, we conduct quarterly Motor Vehicle Safety trainings and annual Motor Vehicle Records checks for those assigned to company vehicles or who are daily drivers. We utilize a number of metrics to assess the performance of our health and safety policies, procedures and initiatives, including lost workdays and any recordable or reportable incidents.

TPB Culture Committee: We implemented a Culture Committee in 2021 as a platform to discuss and implement ideas for Turning Point Brands to be the employer of choice. The committee is comprised of diverse individuals from different departments and geographic locations. The committee's focus is to recommend and implement best practices in the areas of health and safety, DE&I, employee engagement, talent development and retention, and community engagement.

Employee Engagement: To assess and improve employee retention and engagement, we implemented a new software system which frequently surveys our workforce to focus our efforts on maximizing employee engagement and retention. The system is configured to use text messaging, in addition to email notifications to increase the participation of our workforce.

Diversity, Equity and Inclusion: We place a high value on DE&I. As of December 31, 2023, approximately 33% of our workforce was female and 75% of our executive leadership roles were held by females. As of the same date, underrepresented minorities made up approximately 28% of our workforce, with 24% of our managerial roles held by underrepresented minorities.

Training and Talent Development: We provide technical and leadership training to employees at both the officer and non-officer levels. In 2020, the Company developed Turning Point University, an online training and development tool used by management and employees.

We believe that encouraging continual development for our employees is essential for us to maintain the strength and profitability of the Company, generally, and brands, specifically. The Company posts its openings internally to allow current employees to apply. In 2023, we had 20 internal promotions within the organization.

Retaining Talent: During the year ended December 31, 2023, our employee turnover rate was 18%. To retain our employees, we believe it is critical to continually focus on ensuring employees are highly engaged and feel valued. We address these retention efforts in a number of ways from formal surveys and quarterly business updates to regular informal discussions with employees that enable us to listen to, understand and address their concerns.

Employee Benefits: We offer comprehensive benefit programs to our employees that provides them with, among other things, medical, dental, and vision healthcare; 401(k) matching contributions; paid parental leave; tuition assistance; paid holidays; and paid vacation time.

Environmental, Social and Governance ("ESG")

We believe that focusing on our consumers and customers, while proactively and productively addressing the environment, our employees, our community, and society at large, is the key to driving value for all stakeholders. We recognize that incorporating ESG initiatives into our business strategy enhances our operating principles of winning with accountability, integrity, and responsibility, and will position our Company for greater success in the future. We believe that we will maximize shareholder returns by implementing strategies and establishing goals to address public health concerns, mitigate environmental risks, seek and integrate a diverse range of viewpoints, and display responsible behaviors to suppliers, customers, members of the organization and most of all to our consumers. Our Nominating and ESG Committee manages oversight of the Company's ESG efforts. As discussed below, our ESG initiatives are led by our ESG Executive Committee, as well as subordinate committees that focus on specific initiatives.

Public Health

One key aspect of our ESG program, is our distinct focus on our role in public health. We market and sell products intended for adult use only, many containing nicotine. As a result, public health plays a central role in all of our product initiatives. We believe in, and work diligently to apply, harm reduction principles to all of our products, from development through distribution and marketing. Our vision is built upon the idea that adult consumers, when presented with responsibly marketed and high-quality options, will, in large part, prefer products with a lower risk profile than others. This idea of moving adult consumers down the continuum of risk is a key driver of our future for sustainable growth. We intend to accomplish this by developing low-risk alternatives according to good product stewardship and manufacturing principles in order to increase adult consumer availability of and access to high-quality products that deliver satisfaction but at a lower risk to the user. We will continue to focus our research and development, scientific, policy, and product resources to increase the number of consumers choosing products that are lower risk.

In September 2020 and again in May 2022, we submitted to the FDA PMTA covering a large number of noncombustible products, including both vaping products and novel oral nicotine products. This is an important and necessary step to allow us to offer adult consumers an extensive portfolio of products that serve as alternatives to combustible cigarettes and satisfy a wide variety of consumer preferences. The filings provide detailed scientific data that we believe demonstrates that the products are "appropriate for the protection of public health," as required by law. Studies to support the applications were performed and included pharmacokinetics studies, a likelihood of use study, and a patterns of use study, in addition to a toxicological review. We also provided a detailed marketing plan to illustrate how we will continue to prevent youth exposure to the products. See "Risks Related to Legal, Tax and Regulatory Matters" under Item 1A "Risk Factors" of this Annual Report on Form 10-K.

Prevention of Youth Access

Our vision is a world where only adult consumers purchase and use products that are not intended for youth. As a seller of products intended for adult-use only, society demands a higher burden of responsibility from us, and we are committed to proactively preventing the underage appeal of and access to those products. We are dedicated to the responsible marketing of our adult use products and are fully committed to complying with all applicable laws and regulations governing them. We target marketing activities to both male and female current nicotine, cannabinoid, and other active consumers that are 21 years of age and older. The marketing of our adult use products does not include content directed toward minors, including child-oriented images or other themes where such imagery is reasonably understood to resonate with minors. We plan to continue to engage in appropriately targeted marketing activity, consistent with all legal requirements, industry standards, and best practices.

Preventing youth access and use of our adult-use products is a key to our continued success. All of our adult-use products are intended to be sold to and used by adults 21 years of age and older, and we are proactive in implementing programs to prevent youth access. For our own online retail (B2C) sales, we display our policies related to age to purchase, battery safety, and shipping restrictions. Additionally, we verify B2B customers using business licenses in order to further prevent bulk sales to consumers, which we believe contributes to social sourcing by youth.

Environmental Stewardship

Being good stewards of the planet will support our business success. Our major areas of focus are lowering vehicle emissions produced by our fleet, incorporating energy savings initiatives at our facilities, reducing water consumption in our operations, and increasing our recycling efforts. Within each of these categories we are concentrating on developing and measuring progress with an aim to define metrics against which we can track our efforts.

Social Impact

We focus our efforts on fostering a diverse and inclusive workforce while providing a safe work environment for our team. We value different perspectives and feel that an open and inclusive culture is not only the right thing to do, but fundamentally supports the business through diverse thought and opinions. Our DE&I efforts are evidenced through programs like our veterans and women focused business inclusion groups. Our goal is to provide an injury-free workplace where every employee has a safe work environment and feels empowered to speak up. We regularly monitor and provide training as part of our safety program and have active safety committees at each of our sites dedicated to implementing best practices.

Corporate Governance

Good corporate governance is critical to our operating principles of winning with accountability, integrity, and responsibility. Acting with accountability, integrity and responsibility is at the core of our business conduct policy. We train all employees on our business conduct policies. In addition, our governance program measures the diversity of our Board. We believe that Board diversity is critical to having a winning culture and strategy. We have established meaningful measures for our governance program and our targets and actions will allow us to achieve our goals in this area.

Our ESG Committees

In 2023, we continued integration of our ESG principles into our business practices. Our ESG committees are comprised of diverse individuals from different departments and geographic locations. The committees report to the ESG Executive Committee, comprised of the President and CEO, CFO, and General Counsel, who in turn works with the Board's Nominating and ESG Committee. The following committees report to the ESG Executive Committee:

- The Environmental Committee provides a platform to enhance and track the progress of our environmental practices within our business units. The committee is charged with recommending, implementing, and monitoring best practices in the areas of carbon emissions, waste, water, and biodiversity within our business units. In 2023, the Company continued to make substantial investments around reducing energy consumption and environmental waste in our manufacturing operations. Additionally, we have reduced our total mileage through innovative dispatch and scheduling procedures.
- The Social Committee provides a platform to achieve the objective of being the employer of choice. The committee is charged with recommending and implementing best practices in the areas of health and safety, DE&I, Talent Development and Retention, and Community Engagement.
- The Policies Committee provides a platform to review our governance practices and implement new or updated policies as our needs change. The committee is charged with recommending and implementing appropriate best practices in the areas of business ethics, political engagement, supply chain processes, and cybersecurity. The committee additionally is charged with recommending and implementing best practices in the areas of public health, responsible marketing, and youth access prevention. In 2023, the Policies Committee developed several new policies, particularly aimed at cybersecurity, and held training sessions with our marketing teams related to prevention of youth appeal.

Further information related to our ESG program can be found on our website.

Available Information

More information about Turning Point Brands is available on the Company's website at www.turningpointbrands.com. The U.S. Securities and Exchange Commission (the "SEC") maintains a website at https://www.sec.gov that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. On the investor relations portion of our website, www.turningpointbrands.com/investor-relations, we provide a link to our electronic filings with the SEC, including our Annual Report on Form 10-K, our quarterly reports on Form 10-Q, our current reports on Form 8-K, and any amendments to these reports. We make all such filings available free of charge as soon as reasonably practicable after filing. The information found on our website is not part of this or any other report we file with or furnish to the SEC.

Item 1A. Risk Factors

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

Risks Related to Our Business and Industry

- declining sales of tobacco products, and expected continuing decline of sales in the tobacco industry overall;
- our dependence on a small number of third-party suppliers and producers;
- the possibility that we will be unable to identify or contract with new suppliers or producers in the event of a supply or product disruption, as well as other supply chain concerns, including delays in product shipments and increases in freight cost;
- the possibility that our licenses to use certain brands or trademarks will be terminated, challenged or restricted;
- failure to maintain consumer brand recognition and loyalty of our customers;
- our reliance on relationships with several large retailers and national chains for distribution of our products;
- intense competition and our ability to compete effectively;
- competition from illicit sources and the damage caused by illicit products to our brand equity;
- contamination of our tobacco supply or products;
- uncertainty and continued evolution of the markets for our products;
- complications with the design or implementation of our new enterprise resource planning system could adversely impact our business and operations;

Risks Related to Legal, Tax and Regulatory Matters

- substantial and increasing regulation and changes in FDA enforcement priorities;
- regulation or marketing denials of our products by the FDA, which has broad regulatory powers;
- many of our products contain nicotine, which is considered to be a highly addictive substance;
- requirement to maintain compliance with master settlement agreement escrow account;
- possible significant increases in federal, state and local municipal tobacco- and nicotine-related taxes;
- our products are marketed pursuant to a policy of FDA enforcement priorities which could change, and our products could become subject to increased regulatory burdens by the FDA;
- our products are subject to developing and unpredictable regulation, such as court actions that impact obligations;
- increase in state and local regulation of our products has been proposed or enacted;
- increase in tax of our products could adversely affect our business;
- sensitivity of end-customers to increased sales taxes and economic conditions, including as a result of inflation and other declines in purchasing power;
- possible increasing international control and regulation;
- failure to comply with environmental, health and safety regulations;
- imposition of significant tariffs on imports into the U.S.;
- the scientific community's lack of information regarding the long-term health effects of certain substances contained in some of our products;
- significant product liability litigation;

Risks Related to Financial Results, Finances and Capital Structure

- our amount of indebtedness;
- the terms of our indebtedness, which may restrict our current and future operations;
- our ability to establish and maintain effective internal controls over financial reporting;
- identification of material weaknesses in our internal control over financial reporting, which, if not remediated appropriately or timely, could result in loss of investor confidence and adversely impact our stock price;

Risks Related to our Common Stock

- our certificate of incorporation and bylaws, as well as Delaware law and certain regulations, could discourage or prohibit acquisition bids or merger proposals, which may adversely affect the market price of our common stock;
- our certificate of incorporation limits the ownership of our common stock by individuals and entities that are Restricted Investors. These restrictions may affect the liquidity of our common stock and may result in Restricted Investors (as defined in our Certificate of Incorporation) being required to sell or redeem their shares at a loss or relinquish their voting, dividend and distribution rights;
- future sales of our common stock in the public market could reduce our stock price, and any additional capital raised by us through the sale of equity or convertible securities may dilute your ownership in us;
- we may issue preferred stock whose terms could adversely affect the voting power or value of our common stock;

General Risks

- our business may be damaged by events outside of our or our suppliers' control, such as the impact of epidemics (e.g., coronavirus), political upheavals, or natural disasters;
- adverse impact of climate change;
- our reliance on information technology;
- cybersecurity and privacy breaches, which have increased in part due to artificial intelligence;
- failure to manage our growth;
- failure to successfully integrate our acquisitions or otherwise be unable to benefit from pursuing acquisitions;
- fluctuations in our results;
- exchange rate fluctuations;
- adverse U.S. and global economic conditions;
- departure of key management personnel or our inability to attract and retain talent;
- infringement on or misappropriation of our intellectual property;
- third-party claims that we infringe on their intellectual property; and
- failure to meet expectations relating to environmental, social and governance factors

Risks Related to Our Business and Industry

Sales of tobacco products are generally expected to continue to decline.

As a result of restrictions on advertising and promotions, increases in regulation and excise taxes, health concerns, a decline in the social acceptability of tobacco and tobacco-related products, increased pressure from anti-tobacco groups, and other factors, the overall U.S. market for tobacco products has generally been declining in terms of volume of sales and is expected to continue to decline. These factors have intensified over time, especially as it relates to regulation. The general climate of declining sales of tobacco products is principally driven by the long-standing declines in cigarettes. OTP, on the other hand, has been more resilient as measured by MSAi. Our tobacco products comprised approximately 52% of our total 2023 net sales and, while some of our sales volume declines have been offset by higher prices or by increased sales in other product categories, there can be no assurance that these price increases or increased sales can be sustained, especially in an environment of increased regulation, product characteristic restrictions, and taxation and changes in consumer spending habits.

We depend on a small number of key third-party suppliers and producers for our products.

Our operations are largely dependent on a small number of key suppliers and producers to supply or manufacture our products pursuant to long-term contracts. In 2023, our two most important suppliers and producers were: (i) Swedish Match (acquired in 2022 by Philip Morris International Inc.), which produces all of our loose-leaf chewing tobacco in the U.S.; and (ii) RTI, which provides us with exclusive access to the *Zig-Zag*® cigarette paper and related accessories in the U.S. and Canada. See Item 1 – "Business – Distribution and Supply Agreements". Many of our suppliers compete with us in one or more product categories. For example, we have a supply agreement with Swedish Match to manufacture our loose-leaf chewing tobacco, and Swedish Match also manufactures its own brand of loose-leaf chewing tobacco, which it sells in the same channels as we do.

All of our loose-leaf tobacco products are manufactured for us by Swedish Match pursuant to a ten-year renewable agreement, which we entered into in 2008. The agreement will automatically be renewed for five successive ten-year terms unless either party provides at least 180 days' notice prior to a renewal term of its intent to terminate the agreement or unless otherwise terminated in accordance with the provisions of the agreement. If a notice of non-renewal is delivered, the contract will expire two years after the date on which the agreement would have otherwise been renewed. Under this agreement, we retain the rights to all marketing, distribution and trademarks over the loose-leaf brands that we own or license. The agreement renewed for an additional ten-year term in 2018. We share responsibilities with Swedish Match related to process control, manufacturing activities, quality control, and inventory management with respect to our loose-leaf products. We rely on the performance by Swedish Match of its obligations under the agreement for the production of our loose-leaf tobacco products. Any significant disruption in Swedish Match's manufacturing capabilities or our relationship with Swedish Match, a deterioration in Swedish Match's financial condition, or an industry-wide change in business practices with respect to loose-leaf tobacco products could have a material adverse effect on our business, results of operations, and financial condition. We entered into these agreements when Swedish Match was an independent company. In 2022, Swedish Match was acquired by Phillip Morris International. While Swedish Match continues to honor all obligations to us and has indicated that they will continue to do so in the future, relationship dynamics may change over time in light of their new owners.

All of our *Zig-Zag*® premium cigarette papers, cigarette tubes, and injectors are sourced from RTI, pursuant to the Distribution Agreements. The Distribution Agreements were initially entered into with Bolloré. In November 2020, Bolloré sold its rights to its trademarks for the *Zig-Zag*® brand name in the U.S. and Canada to RTI and, in connection with the sale, assigned the Distribution Agreements and the License Agreements to RTI. RTI is an affiliate of one of our competitors. The Distribution Agreements were most recently renewed in 2012 and pursuant to such agreements, we renegotiate pricing terms every five years.

Pursuant to agreements with certain suppliers, we have agreed to store tobacco inventory purchased on our behalf and generally maintain a 12- to 24-month supply of our various tobacco products at their facilities. We cannot guarantee our supply of these products will be adequate to meet the demands of our customers. Further, a major fire, violent weather conditions, or other disasters that affect us or any of our key suppliers or producers, including RTI or Swedish Match, as well as those of our other suppliers and vendors, could have a material adverse effect on our operations. For example, in December 2023, a third-party warehouse in Tennessee used to store some of the Company's leaf tobacco incurred significant tornado damage including damage to the Company's leaf tobacco. Although we have insurance coverage for these events, including Company's stock throughput insurance, which in the above case allowed the Company to book a $15.2 million insurance recovery receivable, a prolonged interruption in our operations, as well as those of our producers, suppliers, or vendors, could have a material adverse effect on our business, results of operations, and financial condition. In addition, we do not know whether we will be able to renew any or all of our agreements on a timely basis, on terms satisfactory to us, or at all.

Any disruptions in our relationships with RTI or Swedish Match or any other significant supplier, a failure to renew any of our agreements, an inability or unwillingness by any supplier to produce sufficient quantities of our products in a timely manner or finding a new supplier would have a significant impact on our ability to continue distributing the same volume and quality of products and maintain our market share, even during a temporary disruption, which could have a material adverse effect on our business, results of operations and financial condition.

We may be unable to identify or contract with new suppliers or producers in the event of a disruption to our supply of products.

In order to continue selling our products in the event of a disruption to our supply, we would have to identify new suppliers or producers that would be required to satisfy significant regulatory requirements. Only a limited number of suppliers or producers (if any) may have the ability to produce our products at the volumes we need, and it could be costly or time-consuming to locate and approve such alternative sources. Moreover, it may be difficult or costly to find suppliers to produce small volumes of our new products in the event we are looking only to supplement current supply as suppliers may impose minimum order requirements. In addition, we may be unable to negotiate pricing or other terms with our existing or new suppliers as favorable as those we currently enjoy. Even if we were able to successfully identify new suppliers and contract with them on favorable terms, these new suppliers would also be subject to stringent regulatory approval procedures that could result in prolonged disruptions to our sourcing and distribution processes.

Furthermore, there is no guarantee that a new third-party supplier could accurately replicate the production process and taste profile of our existing products. We cannot guarantee that a failure to adequately replace our existing suppliers would not have a material adverse effect on our business, results of operations, and financial condition.

Our licenses to use certain brands and trademarks may be terminated or not renewed.

We are reliant upon brand recognition in the OTP markets in which we compete as the OTP industry is characterized by a high degree of brand loyalty and a reluctance to switch to new or unrecognizable brands on the part of consumers. Some of the brands and trademarks under which our products are sold are licensed to us for a fixed period of time in respect of specified markets, such as our Distribution and License Agreements for use of the *Zig-Zag*® name and associated trademarks in connection with certain of our cigarette papers and related products. See Item 1 – "Business - Distribution and Supply Agreements" for a discussion of these agreements and their major provisions.

We have a number of Licensing Agreements with RTI. The first of these governs licensing, sourcing and the use of the *Zig-Zag*® name with respect to cigarette papers, cigarette tubes, and cigarette injector machines, the second of which governs licensing, sourcing and the use of the *Zig-Zag*® name with respect to e-cigarettes, vaporizers, and e-liquids, and the third of which governs the licensing, sourcing and use of the Zig-Zag trademark on paper cones. In 2023, we generated approximately $180.5 million in net sales of *Zig-Zag*® products, of which approximately $75.4 million was generated from products sold through the License Agreements. In the event that one or more of these Licensing Agreements are not renewed, the terms of the agreements bind us under a five-year non-compete clause, under which we cannot engage in direct or indirect manufacturing, selling, distributing or otherwise promoting of cigarette papers of a competitor to *Zig-Zag*® without RTI's consent, except in limited instances. We do not know whether we will renew these agreements on a timely basis, on terms satisfactory to us, or at all. As a result of these restrictions, if our Licensing Agreements with respect to the *Zig-Zag*® trademark are terminated, we may not be able to access the markets with recognizable brands that would be positioned to compete in these segments.

In the event that the licenses to use the brands and trademarks in our portfolio are terminated or are not renewed after the end of the term, there is no guarantee we will be able to find a suitable replacement, or if a replacement is found, that it will be on favorable terms. Any loss in our brand-name appeal to our existing customers as a result of the lapse or termination of our licenses could have a material adverse effect on our business, results of operations, and financial condition.

We may not be successful in maintaining the consumer brand recognition and loyalty of our products.

We compete in a market that relies on innovation and the ability to react to evolving consumer preferences. The alternative smoking accessories and tobacco industries in general, and the OTP industry, in particular, are subject to changing consumer trends, demands, and preferences. Therefore, products once favored may over time become disfavored by consumers or no longer perceived as the best option. Consumers in the OTP market have demonstrated a high degree of brand loyalty, but producers must continue to adapt their products in order to maintain their status among these customers as the market evolves. The *Zig-Zag*® brand has strong brand recognition among smokers, and our continued success depends in part on our ability to continue to differentiate the brand names that we own or license and maintain similarly high levels of recognition with target consumers. Trends within the alternative smoking accessories and OTP industries change often. Our failure to anticipate, identify, or react to changes in these trends could, among other things, lead to reduced demand for our products. Factors that may affect consumer perception of our products include health trends and attention to health concerns associated with tobacco and other products we sell, price-sensitivity in the presence of competitors' products or substitute products, and trends in favor of new Creative Distribution Solutions products that are currently being researched and produced by participants in our industry. For example, we have witnessed a shift in consumer purchases from chewing tobacco to moist snuff due to its increased affordability. Along with our biggest competitors in the chewing tobacco market, which also produce moist snuff, we have been able to shift priorities and adapt to this change. A failure to react to similar trends in the future could enable our competitors to grow or establish their brands' market shares in these categories before we have a chance to respond.

Consumer perceptions of tobacco-based products are likely to continue to shift, and our success depends, in part, on our ability to anticipate these shifting tastes and the rapidity with which the markets in which we compete will evolve in response to these changes on a timely and affordable basis. If we are unable to respond effectively and efficiently to changing consumer preferences, the demand for our products may decline, which could have a material adverse effect on our business, results of operations, and financial condition.

Regulations may be enacted in the future, particularly in light of increasing restrictions on the form and content of marketing of tobacco products, that would make it more difficult to appeal to our consumers or to leverage existing recognition of the brands that we own or license. Furthermore, even if we are able to continue to distinguish our products, there can be no assurance that the sales, marketing, and distribution efforts of our competitors will not be successful in persuading consumers of our products to switch to their products. Many of our competitors have greater access to resources than we do, which better positions them to conduct market research in relation to branding strategies or costly marketing campaigns. Any loss of consumer brand loyalty to our products or reduction of our ability to effectively brand our products in a recognizable way will have a material effect on our ability to continue to sell our products and maintain our market share, which could have a material adverse effect on our business, results of operations, and financial condition.

Our distribution efforts rely in part on our ability to leverage relationships with large retailers and national chains.

Our distribution efforts rely in part on our ability to leverage relationships with large retailers and national chains to sell and promote our products, which is dependent upon the strength of the brand names that we own or license and our salesforce effectiveness. In order to maintain these relationships, we must continue to supply products that will bring steady business to these retailers and national chains. We may not be able to sustain these relationships or establish other relationships with such entities, which could have a material adverse effect on our ability to execute our branding strategies, our ability to access the end-user markets with our products or our ability to maintain our relationships with the producers of our products. For example, if we are unable to meet benchmarking provisions in contracts or if we are unable to maintain and leverage our retail relationships on a scale sufficient to make us an attractive distributor, it would have a material adverse effect on our ability to source products, and on our business, results of operations and financial condition. In addition, there are factors beyond our control that may prevent us from leveraging existing relationships, such as industry consolidation.

If we are unable to develop and sustain relationships with large retailers and national chains, or we are unable to leverage those relationships due to factors such as a decline in the role of brick-and-mortar retailers in North America, our capacity to maintain and grow brand and product recognition and increase sales volume will be significantly undermined. In such an event, we may ultimately be forced to pursue and rely on local and more fragmented sales channels, which will have a material adverse effect on our business, results of operations and financial condition.

We face intense competition and may fail to compete effectively.

We are subject to significant competition across our segments and compete against companies in all segments that have access to significant resources in terms of technology, relationships with suppliers and distributors and access to cash flow and financial markets.

The OTP industry is characterized by brand recognition and loyalty, with product quality, price, marketing and packaging constituting the primary methods of competition. Substantial marketing support, merchandising display, competitive pricing and other financial incentives generally are required to introduce a new brand or to improve or maintain a brand's market position. Our principal competitors are "big tobacco," Altria Group, Inc. (formerly Phillip Morris) and British American Tobacco p.l.c. (formerly Reynolds) as well as Swedish Match (purchased by Philip Morris International Inc.), Swisher International and manufacturers of electronic cigarettes, including U.K.-based Imperial Brands PLC. These competitors are significantly larger than us and aggressively seek to limit the distribution or sale of other companies' products, both at the wholesale and retail levels. For example, certain competitors have entered into agreements limiting retail-merchandising displays of other companies' products or imposing minimum prices for OTP products, thereby limiting their competitors' ability to offer discounted products. In addition, the tobacco industry is experiencing a trend toward industry consolidation, most recently evidenced by the November 2022 acquisition of Swedish Match AB by Philip Morris International Inc., the December 2018 investment in Juul Labs by Altria, the July 2017 acquisition of Reynolds American, Inc., by British American Tobacco p.l.c., and the June 2015 acquisition of Lorillard, Inc., by Reynolds American, Inc. Additional industry consolidation could result in a more competitive environment if our competitors are able to increase their combined resources, enhance their access to national distribution networks, or become acquired by established companies with greater resources than ours. Any inability to compete due to our smaller scale as the industry continues to consolidate and be dominated by "big tobacco" could have a material adverse effect on our business, results of operations and financial condition.

"Big tobacco" has also established its presence in the Creative Distribution Solutions products market and has begun to make investments in other adjacent spaces, including health and wellness. There can be no assurance that our products will be able to compete successfully against these companies or any of our other competitors, some of which have far greater resources, capital, experience, market penetration, sales and distribution channels than us. In addition, there are currently relatively few U.S. restrictions on advertising for electronic cigarettes and vaporizer products and our competitors, including "big tobacco," may have more resources than us for advertising expenses in these spaces, which could have a material adverse effect on our ability to build and maintain market share, and thus have a material adverse effect on our business, results of operations and financial condition.

The competitive environment and our competitive position are also significantly influenced by economic conditions, the state of consumer confidence, competitors' introduction of low-priced products or innovative products, higher taxes, higher absolute prices and larger gaps between price categories and product regulation that diminishes the consumer's ability to differentiate tobacco products. Due to the impact of these factors, as well as higher state and local excise taxes and the market share of deep discount brands, the tobacco industry has become increasingly price competitive. As we seek to adapt to the price competitive environment, our competitors that are better capitalized may be able to sustain price discounts for long periods of time by spreading the loss across their expansive portfolios, with which we are not positioned to compete.

We also expect our competitors to continue to improve their technology infrastructure, including with the use of artificial intelligence ("AI") and machine learning solutions, to interact with clients, suppliers and other third-parties to sell their products, utilize (and even monetize) their data and support and grow their client base. Our ability to innovate our own technology infrastructure and integrate new technology solutions into our existing infrastructure will affect our ability to compete.

Competition from illicit sources may have an adverse effect on our overall sales volume, restricting the ability to increase selling prices and damaging brand equity.

Illicit trade and tobacco trafficking in the form of counterfeit products, smuggled genuine products and locally manufactured products on which applicable taxes or regulatory requirements are evaded, represent a significant and growing threat to the legitimate tobacco industry. Factors such as increasing tax regimes, regulatory restrictions, and compliance requirements have resulted in more consumers switching to illegal, cheaper tobacco products and providing greater rewards for smugglers. We expect that this trend will continue and even accelerate if additional regulatory requirements make it more difficult or expensive to obtain genuine products. Illicit trade can have an adverse effect on our overall sales volume, restrict the ability to increase selling prices, damage brand equity and may lead to commoditization of our products.

We have continued to see increases in the sale of illicit or unauthorized tobacco and nicotine products, which the FDA and other agencies have had limited success in combating. If we are unable to compete against these products, our sales volumes may be negatively materially impacted until and after the implementation of stronger enforcement activity.

Although we combat counterfeiting of our products by engaging in certain tactics, such as requiring all sales force personnel to randomly collect our products from retailers in order to be reviewed for authenticity and using a private investigation firm to help perform surveillance of retailers we suspect are selling counterfeit products, no assurance can be given that we will be able to detect or stop sales of all counterfeit products. In addition, we have in the past and will continue to bring suits against retailers and distributors that sell certain counterfeit products. While we have been successful in securing financial recoveries from and helping to obtain criminal convictions of counterfeiters in the past, no assurance can be given that we will be successful in any such suits or that such suits will be successful in stopping other retailers or distributors from selling counterfeit products. Even if we are successful, such suits could consume a significant amount of management's time and could also result in significant expenses to the Company. Any failure to track and prevent counterfeiting of our products could have a material adverse effect on our ability to maintain or effectively compete for the products we distribute under our brand names, which would have a material adverse effect on our business, results of operations and financial condition.

Contamination of, or damage to, our products could adversely impact sales volume, market share and profitability.

Our market position may be affected through the contamination of our tobacco supply or products during the manufacturing process or at different points in the entire supply chain. We keep significant amounts of inventory of our products in warehouses and it is possible that this inventory could become contaminated, or damaged during the storage period. For example, in December 2023, a third-party warehouse in Tennessee used to store some of the Company's leaf tobacco incurred significant tornado damage including damage to the Company's leaf tobacco. Although we have alternative sources of tobacco to ensure we meet all demand, if another event were to occur we may not have sufficient supply. In addition, our suppliers generally keep significant amounts of our inventory on hand and it is probable that such inventory could become contaminated or damaged even prior to arrival at our premises. If contamination or damage of our inventory or packaged products occurs, whether as a result of a failure in quality control by us or by one of our suppliers, we may incur significant costs in replacing the inventory and recalling products. We may be unable to meet customer demand and may lose customers who purchase alternative brands or products. In addition, consumers may lose confidence in the affected product.

Under the terms of our contracts, we impose requirements on our major suppliers to maintain quality and comply with product specifications and requirements, and on our third-party co-manufacturer to comply with all federal, state and local laws. These third-party suppliers, however, may not continue to produce products that are consistent with our standards or that are in compliance with applicable laws, and we cannot guarantee that we will be able to identify instances in which our third-party suppliers fail to comply with our standards or applicable laws.

A loss of sales volume from a contamination event may also affect our ability to supply our current customers and, in turn, recapture their business in the event they are forced to switch products or brands, even if on a temporary basis. We may also be subject to legal action as a result of a contamination, which could result in negative publicity and affect our sales. During this time, our competitors may benefit from an increased market share that could be difficult and costly to regain. Such a contamination event could have a material adverse effect on our business, results of operations and financial condition.

The market for certain of our products is subject to a great deal of uncertainty and is still evolving.

Novel nicotine and cannabinoid products, having been introduced to the market over the past fifteen years, are at a relatively early stage of development compared to "traditional" tobacco products, and represent core components of a market that is evolving rapidly, highly regulated and characterized by a number of market participants. Rapid growth in the use of, and interest in, these products is recent, and may not continue on a lasting basis. The long-term demand trends and market acceptance for these products is subject to a high level of uncertainty. Therefore, we are subject to all of the business risks associated with a new enterprise in an evolving market. Continued evolution, uncertainty and the resulting increased risk of failure of our new and existing product offerings in this market could have a material adverse effect on our ability to build and maintain market share and on our business, results of operations and financial condition. Further, there can be no assurance that we will be able to continue to effectively compete in the novel nicotine and cannabinoid products marketplace.

Complications with the design or implementation of our new enterprise resource planning system could adversely impact our business and operations.

We rely extensively on information systems and technology to manage our business and summarize operating results. We are currently engaged in the implementation of a new enterprise resource planning ("ERP") system, which is part of the remediation efforts for our material weakness in internal controls over financial reporting discussed below. This ERP system will replace our existing operating and financial systems. The ERP system is designed to accurately maintain the Company's financial records, enhance operational functionality and provide timely information to the Company's management team related to the operation of the business. The ERP system implementation process requires the investment of significant personnel and financial resources. We may not be able to successfully implement the ERP without experiencing delays, increased costs and other difficulties. If we are unable to successfully design and implement the new ERP system as planned, or successfully update or integrate our systems when necessary, our financial positions, results of operations and cash flows could be negatively impacted.

Risks Related to Legal, Tax and Regulatory Matters

We are subject to substantial and increasing regulation.

The tobacco industry has been under public scrutiny for over 50 years. Industry critics include special interest groups, the U.S. Surgeon General, and many legislators and regulators at the local, state and federal levels. A wide variety of federal, state, and local laws limit the advertising, sale, and use of tobacco, and these laws have proliferated in recent years. For instance, on May 4, 2022, the FDA proposed two tobacco products standards related to combusted tobacco products: (1) a ban on menthol as a characterizing flavor of cigarettes; and (2) a ban on all characterizing flavors (including menthol) in cigars, and in May 2023, the FDA proposed additional requirements for tobacco product manufacturing practice regarding the manufacture, design, packing and storage of tobacco products. Together with changing public attitudes towards tobacco consumption, the constant expansion of regulations has been a major cause of the overall decline in the consumption of tobacco products since the early 1970s. These regulations relate to, among other things, the importation of tobacco products and shipping throughout the U.S. market, increases in the minimum age to purchase tobacco products, imposition of taxes, sampling and advertising bans or restrictions, flavor bans or restrictions, ingredient and constituent disclosure requirements, and media campaigns and restrictions on where consumers may use tobacco products. Additional restrictions may be adopted or agreed to in the future. These limitations may make it difficult for us to maintain the value of any brand.

The trend toward increasing regulation of the tobacco industry experienced over the last few decades is likely to differ between the various U.S. states and Canadian provinces in which we currently conduct the majority of our business. Extensive and inconsistent regulation by multiple states and at different governmental levels could prove to be particularly disruptive to our business as we may be unable to accommodate such regulations in a cost-effective manner that allows us to continue to compete in an economically viable way. Regulations are often introduced without industry input and have significantly contributed to reduced industry sales volumes and increased illicit trade.

In 1986, federal legislation was enacted regulating smokeless tobacco products (including dry and moist snuff and chewing tobacco) by, among other things, requiring health warnings on smokeless tobacco packages and prohibiting the advertising of smokeless tobacco products on media subject to the jurisdiction of the Federal Communications Commission ("FCC"). Since 1986, other proposals have been made at the federal, state, and local levels for additional regulation of tobacco products. It is likely that additional proposals will be made in the coming years. For example, the PACT Act initially prohibited the use of the U.S. Postal Service to mail cigarette and smokeless tobacco products and also amended the Jenkins Act, which established cigarette sales reporting requirements for state excise tax collection, to require individuals and businesses that make interstate sales of certain cigarette or smokeless tobacco to comply with state tax laws. The PACT Act was later extended to also cover e-cigarette and related products. The extension of the PACT Act has resulted in increased costs and disruption to our Creative Distribution Solutions business, and those costs may continue to rise if we are unable to adjust our operations to respond relative to our competitors. See "—Many of our products have not obtained premarket authorization from the FDA and are currently marketed pursuant to a policy of FDA enforcement priorities, which could change. There could be a material adverse impact on our business development efforts if the FDA determines that our products are not subject to this compliance policy, or if our products become subject to increased regulatory enforcement burdens imposed by the FDA and other regulatory or legislative bodies" below for further details. Additional federal or state regulation relating to the manufacture, sale, distribution, advertising, labeling, mandatory ingredients disclosure and nicotine yield information disclosure of tobacco products could reduce sales, increase costs, and have a material adverse effect on our business, results of operations, and financial condition.

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (the "Tobacco Control Act") granted the FDA regulatory authority over tobacco products. The Tobacco Control Act also amended the Federal Cigarette Labeling and Advertising Act, which governs how cigarettes can be advertised and marketed, as well as the Comprehensive Smokeless Tobacco Health Education Act, which governs how smokeless tobacco can be advertised and marketed. In addition to the FDA and FCC, we are subject to regulation by numerous other federal agencies, including the Federal Trade Commission, the Department of Justice, the Alcohol and Tobacco Tax and Trade Bureau , the U.S. Environmental Protection Agency, the U.S. Department of Agriculture ("USDA"), the Consumer Product Safety Commission , the U.S. Customs and Border Protection and the U.S. Center for Disease Control and Prevention's Office on Smoking and Health. There have also been adverse legislative and political decisions and other unfavorable developments for the tobacco industry concerning cigarette smoking and the tobacco industry generally, which we believe have received widespread public attention. The FDA has, and other governmental entities have, expressed concerns about the use of flavors in tobacco products and an interest in significant regulation of such use, up to and including bans in certain products. There can be no assurance as to the ultimate content, timing or effect of any regulation of tobacco products by governmental bodies, nor can there be any assurance that potential corresponding declines in demand resulting from negative media attention would not have a material adverse effect on our business, results of operations and financial condition. Any such regulation has the potential to increase costs and have a material adverse effect on our business, results of operations, ability to compete, and financial condition.

Our products are regulated by the FDA, which has broad regulatory powers.

The vast majority of our 2023 U.S. net sales are derived from the sale of products that are currently regulated by the FDA. The Tobacco Control Act grants the FDA broad regulatory authority over the design, manufacture, sale, marketing and packaging of tobacco products. Among the regulatory powers conferred to the FDA under the Tobacco Control Act is the authority to impose tobacco product standards that are appropriate for the protection of the public health, require manufacturers to obtain FDA review and authorization for the marketing of certain new or modified tobacco products and impose various additional restrictions. Such restrictions may include requiring reduction or elimination of the use of particular constituents or components, requiring product testing, or addressing other aspects of tobacco product construction, constituents, properties or labeling.

Specifically, the Tobacco Control Act (i) increases the number of health warnings required on cigarette and smokeless tobacco products, increases the size of warnings on packaging and in advertising, requires the FDA to develop graphic warnings for cigarette packages, and grants the FDA authority to require new warnings, (ii) imposes restrictions on the sale and distribution of tobacco products, including significant restrictions on tobacco product advertising and promotion as well as the use of brand and trade names, (iii) bans the use of “light,” “mild,” “low” or similar descriptors on tobacco products, (iv) bans the use of “characterizing flavors” in cigarettes other than tobacco or menthol, (v) requires manufacturers to report ingredients and harmful constituents and requires the FDA to disclose certain constituent information to the public, (vi) authorizes the FDA to require the reduction of nicotine and the potential reduction or elimination of other constituents or additives, including menthol, (vii) establishes resource-intensive pre-market and “substantial equivalence” review pathways for tobacco products that are considered new, (viii) gives the FDA broad authority to deny product applications thereby preventing the sale or distribution of the product subject to the application (and requiring such product to be removed from the market, if applicable), and (ix) requires tobacco product manufacturers (and certain other entities) to register with the FDA.

The FDA charges user fees based on the USDA unit calculations pro-rated to the annualized FDA congressionally allocated budget. These fees only apply to certain products currently regulated by the FDA, which include our core products (other than cigarette paper products), but we may in the future be required to pay such fees on more of our products, and we cannot accurately predict which additional products may be subject to such fees or the magnitude of such fees, which could become significant. A change in which products are subject to these fees may also impact the amount of fees payable by us (or to which we are subject) due to the reallocation of fees across new product categories.

Although the Tobacco Control Act prohibits the FDA from issuing regulations banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll-your-own tobacco, or requiring the reduction of nicotine yields of a tobacco product to zero, it is likely that regulations with the FDA promulgated pursuant to the Tobacco Control Act could nonetheless result in a decrease in sales of these products in the U.S. We believe that such regulation could adversely affect our ability to compete against our larger competitors, who may be able to more quickly and cost-effectively comply with these new rules and regulations. Our ability to gain efficient and timely market clearance for new tobacco products, or even to keep existing products on the market, could also be affected by FDA rules, regulations and enforcement policies. Some of our currently marketed products that are subject to FDA regulation will require marketing authorizations from the FDA for us to continue marketing them (e.g., pre-market or substantial equivalence marketing authorizations, as applicable to the product), which we cannot guarantee we will be able to obtain. In addition, failure to comply with new or existing tobacco laws under which the FDA imposes regulatory requirements could result in significant financial penalties and government investigations of us. To the extent we are unable to respond to, or comply with, new FDA regulations it could have a material adverse effect on our business, results of operations and financial condition.

Many of our products contain nicotine, which is considered to be a highly addictive substance.

Many of our products contain nicotine, a chemical that is considered to be highly addictive. The Tobacco Control Act empowers the FDA to regulate the amount of nicotine found in tobacco products, but not to require the reduction of nicotine yields of a tobacco product to zero. Any FDA regulation, whether of nicotine levels or other product attributes, may require us to reformulate, recall and/or discontinue certain of the products we may sell from time to time, which may have a material adverse effect on our ability to market our products and have a material adverse effect on our business, results of operations and financial condition.

We are required to maintain cash amounts within an escrow account in order to be compliant with a settlement agreement between us and certain U.S. states and territories.

In November 1998, the major U.S. cigarette manufacturers entered into the Master Settlement Agreement (“MSA”) and the Smokeless Tobacco Master Settlement Agreement (“STMSA”) with 46 U.S. states and certain U.S. territories and possessions. Pursuant to the MSA and subsequent states’ statutes, a “cigarette manufacturer” (which is defined to also include a manufacturer of roll your own (“RYO”)/MYO cigarette tobacco) has the option of either becoming a signatory to the MSA, or, as we have elected, operating as a non-participating manufacturer (“NPM”) by funding and maintaining an escrow account, with sub-accounts on behalf of each settling state. These NPM escrow accounts are governed by states’ escrow and complementary statutes that are generally monitored by the Office of the State Attorney General. The statutes require NPM companies to deposit, on an annual basis, into qualified banks’ escrow funds based on the number of cigarettes or cigarette equivalents, which is measured by pounds of RYO/MYO tobacco sold. NPM companies are, within specified limits, entitled to direct the investment of the escrowed funds and withdraw any interest or appreciation, but cannot withdraw the principal for twenty-five years from the year of each annual deposit, except to withdraw funds deposited pursuant to an individual state’s escrow statute to pay a final judgment to that state’s plaintiffs in the event of such a final judgment. The investment vehicles available to us are specified in the state escrow agreements and are limited to low-risk government securities.

Various states have enacted or proposed complementary legislation intended to curb the activity of certain manufacturers and importers of cigarettes or MYO tobacco that are selling into MSA states without signing the MSA or who have failed to properly establish and fund a qualifying escrow account. We believe we have been fully compliant with all applicable laws, regulations, and statutes, although compliance-related issues may, from time to time, be disruptive to our business, any of which could have a material adverse effect on our business, results of operations, and financial condition.

Future changes to the MSA, such as legislation that extends the MSA to products to which it does not currently apply or legislation that limits the ability of companies to receive unused escrow funds after 25 years, may have a material adverse effect on our business, results of operations and financial condition. For example, Oregon recently passed a law that would create new fees on NPM companies for future sales of cigarettes. Despite the amounts maintained and funded to the escrow account, compliance with the funding requirements for the escrow account does not necessarily prevent future federal and/or state regulations with respect to the OTP industry from having a material adverse effect on our business, results of operations and financial condition.

Increases in tobacco-related taxes have been proposed or enacted and are likely to continue to be proposed or enacted in numerous jurisdictions.

Tobacco products, premium cigarette papers and tubes have long been subject to substantial federal, state and local excise taxes. Such taxes have frequently been increased or proposed to be increased, in some cases significantly, to fund various legislative initiatives or further disincentivize tobacco usage. Since 1986, smokeless products have been subject to federal excise tax. Federally, smokeless products are taxed by weight (in pounds or fractional parts thereof) manufactured or imported.

Since the State Children's Health Insurance Program ("S-CHIP"') reauthorization in early 2009, which utilizes, among other things, taxes on tobacco products to fund health insurance coverage for children, the federal excise tax increases adopted have been substantial and have materially reduced sales in the RYO/MYO cigarette smoking products market, and also caused volume declines in other markets. Although the RYO/MYO cigarette smoking tobacco and related products market had been one of the fastest growing markets in the tobacco industry in the five years prior to 2009, the reauthorization of S-CHIP increased the federal excise tax on RYO tobacco from $1.10 to $24.78 per pound, and materially reduced the MYO cigarette smoking tobacco market in the U.S. There have not been any increases enacted since 2009, but bills are introduced regularly, which, if enacted into law, could result in an increase in federal excise and other tobacco-related taxes. We cannot guarantee that we will not be subject to further increases, nor whether any such increases will affect prices in a way that further deters consumers from purchasing our products and/or affects our net revenues in a way that renders us unable to compete effectively.

In addition to federal excise taxes, every state and certain city and county governments have imposed substantial excise taxes on sales of tobacco products, and many have raised or proposed to raise excise taxes in recent years. Approximately one-half of the states tax MST on a weight-based versus ad valorem system of taxation. Additional states may consider adopting such revised tax structures as well. Tax increases, depending on their parameters, may result in consumers switching between tobacco products or may depress overall tobacco consumption, which is likely to result in declines in overall sales volumes.

Any future enactment of increases in federal or state excise taxes on our tobacco products or rulings that certain of our products should be categorized differently for excise tax purposes could adversely affect demand for our products and may result in consumers switching between tobacco products or a depression in overall tobacco consumption, which would have a material adverse effect on our business, results of operations and financial condition.

Many of our products have not obtained premarket authorization from the FDA and are currently marketed pursuant to a policy of FDA enforcement priorities, which could change. There could be a material adverse impact on our business development efforts if the FDA determines that our products are not subject to this compliance policy, or if our products become subject to increased regulatory enforcement burdens imposed by the FDA and other regulatory or legislative bodies.

Since their introduction, there has been significant uncertainty regarding whether, how and when tobacco regulations would apply to Creative Distribution Solutions products, such as electronic cigarettes or novel nicotine products. Based on a decision in December 2010 by the U.S. Court of Appeals for the D.C. Circuit, the FDA is permitted to regulate electronic cigarettes containing tobacco-derived nicotine as "tobacco products" under the Tobacco Control Act.

Effective August 8, 2016, FDA's regulatory authority under the Tobacco Control Act was extended to all remaining tobacco-derived products, including: (i) certain Creative Distribution Solutions products (such as electronic cigarettes, vaporizers and e-liquids) and their components or parts (such as tanks, coils and batteries); (ii) cigars and their components or parts (such as cigar tobacco); (iii) pipe tobacco; (iv) hookah products; or (v) any other tobacco product "newly deemed" by the FDA. These deeming regulations apply to all products made or derived from tobacco intended for human consumption, but excluding accessories of tobacco products (such as lighters). Subsequently, on April 14, 2022, the FDA Center for Tobacco Products also obtained jurisdiction over non-tobacco nicotine products ("NTN Products"), including synthetic nicotine. That law subjects NTN Products to the same requirements as tobacco-derived products.

The deeming regulations require us to (i) register with the FDA and report product and ingredient listings; (ii) market newly deemed products only after FDA review and approval; (iii) only make direct and implied claims of reduced risk if the FDA approves after finding that scientific evidence supports the claim and that marketing the product will benefit public health as a whole; (iv) refrain from distributing free samples; (v) implement minimum age and identification restrictions to prevent sales to individuals under age 18; (vi) develop an approved warning plan and include prescribed health warnings on packaging and advertisements; and (vii) refrain from selling the products in vending machines, unless the machine is located in a facility that never admits youth. Newly deemed tobacco products are also subject to the other requirements of the Tobacco Control Act, such as that they not be adulterated or misbranded. The FDA could in the future promulgate good manufacturing practice regulations for these and our other products, and indeed has indicated it intends to do so, which could have a material adverse impact on our ability and the cost to manufacture our products.

Marketing authorizations will be necessary in order for us to continue our distribution of certain of our Creative Distribution Solutions, cigar, and other novel nicotine products, such as our nicotine pouches. The FDA has announced various compliance policies whereby it does not intend to prioritize enforcement for lack of premarket authorization against newly-deemed products, provided that such tobacco products were marketed as of August 8, 2016; are not marketed in certain manners likely to be attractive to youth; and for which premarket applications were timely submitted. As a result of recent litigation and subsequent FDA Guidance, marketing applications for newly-deemed products were required to have been submitted no later than September 9, 2020, with the exception of our “preexisting” products (products in commerce as of February 15, 2007) which are already authorized. Under the FDA’s compliance policy, such products could remain on the market until September 9, 2021, unless the FDA makes an adverse determination prior to that date. Subsequent to September 9, 2021, the FDA indicated its enforcement priority is those applicants who have received negative action on their application, such as a Marketing Denial Order (“MDO”) or Refuse to File notification and who continue to illegally sell those unauthorized products, as well as products for which manufacturers failed to submit a marketing application. Further, NTN Product manufacturers were required to file a PMTA by May 14, 2022, in order to continue selling products currently on the market. NTN Products subject of a timely-filed PMTA, and not in receipt of a negative action, were allowed to remain on the market until July 13, 2022, at which time these products became subject to enforcement, similar to tobacco-derived products remaining under review.

In September 2020, we submitted applications on a timely basis for the appropriate authorizations for our products that are deemed products under the 2016 deeming regulations, not otherwise grandfathered. We believe that these products satisfy the criteria for current marketing pursuant to the FDA’s compliance policy. For our NTN Products, we filed several PMTAs by May 14, 2022. There can be no guarantee that the FDA will authorize these products, and the FDA may bring an enforcement action against our products for lack of premarket authorization and/or deny our premarket applications in the meantime. If the FDA were to issue additional MDOs that remained in effect it could have an adverse impact on our business.

We also have certain previously regulated tobacco products which the FDA removed from review but remain subject to “provisional” substantial equivalence submissions made on March 22, 2011; however, the FDA has the discretion to reinitiate review of these products. If the FDA establishes regulatory processes that we are unable or unwilling to comply with, our business, results of operations, financial condition and prospects could be adversely affected.

The anticipated costs of complying with future FDA regulations will be dependent on the rules issued and implemented by the FDA, the timing and clarity of any new rules or guidance documents accompanying these rules, the reliability and simplicity (or complexity) of the electronic systems utilized by the FDA for information and reports to be submitted, and the details required by FDA for such information and reports with respect to each regulated product. Failure to comply with existing or new FDA regulatory requirements could result in significant financial penalties and could have a material adverse effect on our business, results of operations, financial condition and ability to market and sell our products. Compliance and related costs could be substantial and could significantly increase the costs of operating in our product categories.

In addition, failure to comply with the Tobacco Control Act and with FDA regulatory requirements could result in litigation, criminal convictions or significant financial penalties and could impair our ability to market and sell certain of our products. At present, we are not able to predict whether the Tobacco Control Act will impact our products to a greater degree than competitors in the industry, which would affect our competitive position.

Furthermore, in addition to the FDA, there are restrictions being proposed or in effect at the federal, state, and local level related to our products. For example, the PACT Act has now been amended to apply to certain Creative Distribution Solutions products, which has impacts at the federal and state levels. These requirements are in addition to any increased regulation of internet sales that may be in effect or passed legislatively at the federal, state, or local levels, or promulgated via rulemaking by a government agency. Additionally, state attorneys general have monitored, and in some cases, have issued investigative requests and/or initiated litigation with regard to companies that sell these products related to online sales, marketing practices, and/or other aspects of the Creative Distribution Solutions business. Increased regulation of additives in tobacco products through federal, state, or local governments may also adversely affect our products. Some states have also adopted or are considering adopting laws that create a “registry” of products allowed to be sold by licensed distributors and retailers. Certain of our products may not meet the criteria to be added to or remain on these registries, which may discourage or prevent licensed distributors and retailers from selling such products. The application of these types of restrictions, and of any new laws or regulations which may be adopted in the future, to these products could result in additional expenses and require us to change our advertising and labeling, and methods of marketing and distribution of our products, any of which could have a material adverse effect on our business, results of operations and financial condition.

Some products we sell are subject to developing and unpredictable regulation.

Some of the products sold through our Creative Distribution Solutions distribution vehicles may be subject to uncertain and evolving federal, state and local regulations concerning hemp, CBD and other non-tobacco consumable products. Regulatory and related enforcement initiatives by authorities related to such products are unpredictable and impossible to anticipate. We believe that all levels of government, that have not already done so, are likely to seek in some way to regulate these products, but the type, timing, and impact of such regulations remains uncertain. These regulations include or could include restrictions prohibiting certain form factors, such as smokable hemp products, or age restrictions. Accordingly, we cannot give any assurance that such actions would not have a material adverse effect on the emerging business and our Creative Distribution Solutions strategy.

Significant increases in state and local regulation of our Creative Distribution Solutions products have been proposed or enacted and are likely to continue to be proposed or enacted in numerous jurisdictions.

There has been increasing activity on the state and local levels with respect to scrutiny of Creative Distribution Solutions products. State and local governmental bodies across the U.S. have indicated Creative Distribution Solutions products may become subject to new laws and regulations at the state and local levels. Further, some states and cities, have enacted regulations that require obtaining a tobacco retail license in order to sell electronic cigarettes and vaporizer products. If one or more states from which we generate or anticipate generating significant sales of Creative Distribution Solutions products bring actions to prevent us from selling our Creative Distribution Solutions products unless we obtain certain licenses, approvals or permits, and if we are not able to obtain the necessary licenses, approvals or permits for financial reasons or otherwise and/or any such license, approval or permit is determined to be overly burdensome to us, then we may be required to cease sales and distribution of our products to those states, which could have a material adverse effect on our business, results of operations and financial condition.

Certain states and cities have already restricted the use of electronic cigarettes and vaporizer products in smoke-free venues, imposed excise taxes, or limited sales of flavored Creative Distribution Solutions products. Additional city, state or federal regulators, municipalities, local governments and private industry may enact additional rules and regulations restricting electronic cigarettes and vaporizer products. Because of these restrictions, our customers may reduce or otherwise cease using our Creative Distribution Solutions products, which could have a material adverse effect on our business, results of operations and financial condition.

Canada and some Canadian provinces have restricted or are contemplating restrictions on the sales and marketing of electronic cigarettes. Furthermore, some Canadian provinces have limited the use of electronic cigarettes and vaporizer products in public places. These measures, and any future measures taken to limit the marketing, sale and use of Creative Distribution Solutions products may have a material adverse effect on our sales into Canada.

If our Creative Distribution Solutions products become subject to increased taxes it could adversely affect our business.

Presently the federal government and many states do not tax the sale of Creative Distribution Solutions products like they do the sale of conventional cigarettes or other tobacco products, all of which generally have high tax rates and have faced significant increases in the amount of taxes collected on their sales. In recent years, however, state and local governments have taken actions to move towards imposing excise taxes on Creative Distribution Solutions products. As of December 31, 2023, over half of states, as well as, certain localities have imposed excise taxes on electronic cigarettes and/or liquid nicotine. These tax structures may benefit one type of Creative Distribution Solutions product over another, which may result in consumers switching between Creative Distribution Solutions products, other traditional tobacco products, or may depress overall consumption in general. Should federal, state and local governments and or other taxing authorities begin or continue to impose excise taxes on Creative Distribution Solutions products, similar to those levied against conventional cigarettes and tobacco products, it may have a material adverse effect on the demand for these products, as consumers may be unwilling to pay the increased costs, which in turn could have a material adverse effect on our business, results of operations and financial condition.

Our distribution to our wholesalers and retailers is dependent on the demands of their customers who are sensitive to increased taxes and economic conditions affecting their disposable income.

Consumer purchases of tobacco products are historically affected by economic conditions, such as changes in employment, salary and wage levels, the availability of consumer credit, inflation, interest rates, fuel prices, sales taxes, and the level of consumer confidence in prevailing and future economic conditions. Discretionary consumer purchases, such as of OTP, may decline during recessionary periods or at other times when disposable income is lower, and taxes may be higher. As we are currently in an inflationary period, and the Federal Reserve has increased interest rates on several occasions since early 2022, consumer purchasing power has declined. While the decline has not as of yet, led to a decrease in sales of our products, continued economic pressures in our target consumer market could lead to a decrease in discretionary purchases which could have a material adverse impact on our business results of operations and financial conditions.

In addition, some states have begun collecting taxes on internet sales. These taxes apply to our online sales of Creative Distribution Solutions products into those states and may result in reduced demand from the independent wholesalers who may not be able to absorb the increased taxes or successfully pass them onto the end-user without experiencing reduced demand. Further, as a result of recent court decisions related to the taxability of internet purchases, states are now able to impose sales tax on internet purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state. Consequently, additional states are likely to seek or have begun to impose sales tax on our online sales. The requirement to collect, track and remit taxes may require us to increase our prices, which may affect demand for our products or conversely reduce our net profit margin, which could have a material adverse effect on our business, results of operations and financial condition.

We may be subject to increasing international control and regulation.

The World Health Organization's Framework Convention on Tobacco Control ("FCTC") is the first international public health treaty that establishes a global agenda to reduce initiation of tobacco use and regulate tobacco in an effort to encourage tobacco cessation. Over 180 governments worldwide have ratified the FCTC. The FCTC has led to increased efforts to reduce the supply and demand of tobacco products and to encourage governments to further regulate the tobacco industry. These efforts have, over time, expanded to focus broadly on consumer products containing nicotine, such as vapor products. The tobacco industry expects significant regulatory developments to take place over the next few years, driven principally by the FCTC. Regulatory initiatives that have been proposed, introduced or enacted include:

- the levying of substantial and increasing tax and duty charges;
- restrictions or bans on advertising, marketing and sponsorship;
- the display of larger health warnings, graphic health warnings and other labeling requirements;
- restrictions on packaging design, including the use of colors and generic packaging;
- restrictions or bans on the display of tobacco product packaging at the point of sale, and restrictions or bans on cigarette vending machines;
- requirements regarding testing, disclosure and performance standards for tar, nicotine, carbon monoxide and other smoke constituents levels;
- requirements regarding testing, disclosure and use of tobacco product ingredients;
- increased restrictions on smoking in public and workplaces and, in some instances, in private places and outdoors;
- elimination of duty-free allowances for travelers; and
- encouraging litigation against tobacco companies.

If the U.S. becomes a signatory to the FCTC and/or national laws are enacted in the U.S. that reflect the major elements of the FCTC, our business, results of operations and financial condition could be materially and adversely affected.

As part of our strategy, we have begun to expand our business into key international locations, such as introducing our moist snuff tobacco products in South America. International expansion may subject us to additional international regulation, either by the countries that are the object of the strategic expansion or through international regulatory regimes, such as the FCTC, to which those countries may be signatories.

To the extent our existing or future products become subject to international regulatory regimes that we are unable to comply with or fail to comply with, they may have a material adverse effect on our business, results of operations and financial condition.

Our failure to comply with certain environmental, health and safety regulations could adversely affect our business.

The storage, distribution and transportation of some of the products that we sell are subject to a variety of federal and state environmental regulations. In addition, our manufacturing facilities are similarly subject to federal, state and local environmental laws. We are also subject to operational, health and safety laws and regulations. Our failure to comply with these laws and regulations could cause a disruption in our business, an inability to maintain our manufacturing resources, and additional and potentially significant remedial costs and damages, fines, sanctions or other legal consequences that could have a material adverse effect on our business, results of operations and financial condition.

Imposition of significant tariffs on imports into the U.S., could have a material adverse effect on our business.

We are required to purchase all our cigarette papers, cigarette tubes and cigarette injector machines under the Distribution Agreements from the supplier in France. Additionally, a substantial portion of our Creative Distribution Solutions products are sourced from China. In 2018, the U.S. imposed significant additional tariffs on certain goods imported from outside the U.S. by executive administrative action, and these tariffs remain in place. These additional tariffs apply to a significant portion of our Creative Distribution Solutions products and may result in increased prices for our customers and in turn, reduced demand where customers are unable to absorb the increased prices or successfully pass them onto the end-user. Future administrations could impose additional tariffs. If the U.S. were to impose additional tariffs on goods we import, it is likely to make it more costly for us to import goods from other countries. While the current or future administrations may have a desire to repeal some or all of these tariffs no assurance can be given that they will do so. As a result, our business, financial condition and results of operations could be materially adversely affected.

The scientific community has not yet studied extensively the long-term health effects of certain substances contained in some of our products.

Electronic cigarettes, vaporizers and many of our Creative Distribution Solutions products were recently developed and therefore the scientific community has not had a sufficient period of time to study the long-term health effects of their use. Currently, there is no way of knowing whether these products are safe for their intended use. If the scientific community were to determine conclusively that use of any or all of these products poses long-term health risks, market demand for these products and their use could materially decline. Such a determination could also lead to litigation and significant regulation. Loss of demand for our product, product liability claims and increased regulation stemming from unfavorable scientific studies on these products could have a material adverse effect on our business, results of operations and financial condition.

We are subject to significant product liability litigation.

The tobacco industry has experienced, and continues to experience, significant product liability litigation. Most tobacco liability lawsuits have been brought against manufacturers and sellers of cigarettes by individual plaintiffs, often participating on a class-action basis, for injuries allegedly caused by cigarette smoking or by exposure to cigarette smoke. However, several lawsuits have also been brought against manufacturers and sellers of smokeless products for injuries to health allegedly caused by use of smokeless products. In addition to the risks to our business, results of operations and financial condition resulting from adverse results in any such action, ongoing litigation may divert management's attention and resources, which could have an impact on our business and operations. There can be no assurance that we will not sustain losses in connection with such lawsuits and that such losses will not have a material adverse effect on our business, results of operations and financial condition.

In addition to current and potential future claims related to our core tobacco products, we are subject to several lawsuits alleging personal injuries resulting from malfunctioning vaporizer devices and may be subject to claims in the future relating to our other Creative Distribution Solutions products. We are still evaluating these claims and the potential defenses to them. As a result of their relative novelty, electronic cigarette and vaporizer product manufacturers and sellers have only recently become subject to litigation. We may see increasing litigation over Creative Distribution Solutions products or the regulation of our products, as the regulatory regimes surrounding these products develop. For a description of current material litigation to which we or our subsidiaries are a party, see Item 3 "Legal Proceedings" and Note 18 "Contingencies" in Notes to the Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K, for additional information.

As a result, we may face substantial costs due to increased product liability litigation relating to new regulations or other potential defects associated with Creative Distribution Solutions products we ship, which could have a material adverse effect on our business, results of operations and financial condition.

Risks Related to Financial Results, Finances and Capital Structure

We have a substantial amount of indebtedness that could affect our financial condition.

As of December 31, 2023, we had $250.0 million in aggregate principal amount of our 5.625% senior secured notes due 2026 (the "Senior Secured Notes") outstanding and $118.5 million in aggregate principal amount outstanding under our 2.50% Convertible Senior Notes due July 15, 2024 (the "Convertible Senior Notes"). We also have the ability to borrow up to $75.0 million under our new asset-backed revolving credit facility entered into in November 2023 (the "2023 ABL Facility") under which only letters of credit of $1.4 million were outstanding as of December 31, 2023. We intend to apply a portion of the proceeds of the 2023 ABL Facility to repay a portion of the Convertible Senior Notes at maturity in July 2024. The 2023 ABL Facility bears interest at a floating rate. If we cannot generate sufficient cash flow from operations to service our debt, we may need to further refinance our debt, dispose of assets or issue equity to obtain necessary funds. We do not know whether we will be able to do any of this on a timely basis or on terms satisfactory to us or at all.

Our substantial amount of indebtedness could limit our ability to:

- obtain necessary additional financing for working capital, capital expenditures or other purposes in the future;
- plan for, or react to, changes in our business and the industries in which we operate;
- make future acquisitions or pursue other business opportunities;
- react in an extended economic downturn;
- pay dividends; and
- repurchase stock.

The terms of the agreement governing our indebtedness may restrict our current and future operations, which would adversely affect our ability to respond to changes in our business and to manage our operations.

The indenture governing the Senior Secured Notes and our 2023 ABL Facility each contain, and any future indebtedness of ours would likely contain, a number of restrictive covenants that impose significant operating and financial restrictions on us, including restrictions on our ability to, among other things:

- incur additional debt, disqualified stock and preferred stock;
- pay dividends and make other restricted payments;
- create liens;
- make investments and acquisitions;
- engage in sales of assets and subsidiary stock;
- enter into sale-leaseback transactions;
- enter into transactions with affiliates; and
- transfer all or substantially all of our assets or enter into merger or consolidation transactions.

Our 2023 ABL Facility also requires us to maintain certain financial ratios under certain limited circumstances. A failure by us to comply with the covenants or financial ratios in our debt instruments could result in an event of default under the facility, which could adversely affect our ability to respond to changes in our business and manage our operations. In the event of any default under our debt instruments, the lenders under the facility could elect to declare all amounts outstanding under such instruments to be due and payable and require us to apply all of our available cash to repay these amounts. If the indebtedness under one of our debt instruments were to be accelerated, it could cause an event of default and/or a cross-acceleration of our obligations under our other debt instruments and there can be no assurance that our assets would be sufficient to repay this indebtedness in full, which could have a material adverse effect on our business, results of operations, and financial condition. Further, in light of the recent increases in interest rates, it is more expensive for us to borrow under the floating rate in our 2023 ABL Facility than it was historically for us to borrow under our previous revolving credit facility.

If we fail to establish and maintain proper and effective internal control over financial reporting, our operating results and our ability to operate our business could be harmed.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that we establish and maintain internal control over financial reporting, and we are also required to establish disclosure controls and procedures under applicable SEC rules. An effective internal control environment is necessary to enable us to produce reliable financial reports and is an important component of our efforts to prevent and detect financial reporting errors and fraud. Management is required to provide an annual assessment on the effectiveness of our internal control over financial reporting and our independent registered public accounting firm is required to attest to the effectiveness of our internal control over financial reporting. Our and our auditor's testing may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses and render our internal control over financial reporting ineffective. In 2021 management concluded that we had two material weaknesses in our internal control over financial reporting. As noted below, management concluded, during this year's assessment, that we had one material weakness in our internal control over financial reporting, which is a material weakness that remains in existence from 2022 which the Company is continuing to remediate. No assurance can be given that we won't discover additional material weaknesses in the future. We have incurred and we expect to continue to incur substantial accounting and auditing expense and expend significant management time in complying with the requirements of Section 404, including the requirement to have such controls tested by our independent registered public accounting firm. While an effective internal control environment is necessary to enable us to produce reliable financial statements and is an important component of our efforts to prevent and detect financial reporting errors and fraud, disclosure controls and internal control over financial reporting are generally not capable of preventing or detecting all financial reporting errors and all fraud. A control system, no matter how well-designed and operated, is designed to reduce rather than eliminate the risk of material misstatements in our financial statements. There are inherent limitations on the effectiveness of internal controls, including collusion, management override and failure in human judgment. A control system can provide only reasonable, not absolute, assurance of achieving the desired control objectives and the design of a control system must reflect the fact that resource constraints exist.

If we are not able to comply with the requirements of Section 404, or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses:

- our reputation may be adversely affected and our business and operating results could be harmed;
- the market price of our stock could decline;
- we could fail to meet our financial reporting obligations; and
- we could be subject to litigation and/or investigations or sanctions by the SEC, the New York Stock Exchange or other regulatory authorities.

We identified a material weakness in our internal control over financial reporting which, if not remediated appropriately or in a timely manner, could result in loss of investor confidence and adversely impact our stock price.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis.

In connection with the preparation of our consolidated financial statements, management identified a material weakness in internal control related to ineffective information technology general controls ("ITGCs") in the areas of user access and program change-management over certain IT systems that support the Company's financial reporting processes. See Part II, Item 9A of this Annual Report on Form 10-K for additional information.

The material weakness remains unremediated as of December 31, 2023 and as a result, management concluded that our internal control over financial reporting was not effective as of December 31, 2023. Our remediation measures will result in additional technology, new personnel, the creation of training programs and other expenses. If we are unable to remediate the material weakness, or are otherwise unable to maintain effective internal control over financial reporting or disclosure controls and procedures, our ability to record, process and report financial information accurately, and to prepare financial statements within required time periods, could be adversely affected, which could subject us to litigation or investigations requiring management resources and payment of legal and other expenses, negatively affect investor confidence in our financial statements and in turn, adversely impact our stock price.

Risks Related to our Common Stock

Our certificate of incorporation and bylaws, as well as Delaware law and certain regulations, could discourage or prohibit acquisition bids or merger proposals, which may adversely affect the market price of our common stock.

Our certificate of incorporation authorizes our board of directors to issue preferred stock without stockholder approval. If our board of directors elects to issue preferred stock, it could be more difficult for a third party to acquire us. In addition, some provisions of our certificate of incorporation, bylaws and applicable law could make it more difficult for a third party to acquire control of us, even if the change of control would be beneficial to our stockholders, including:

- limitations on the removal of directors;
- limitations on the ability of our stockholders to call special meetings;
- limitations on stockholder action by written consent;
- establishing advance notice provisions for stockholder proposals and nominations for elections to the board of directors to be acted upon at meetings of stockholders; and
- limitations on the ability of our stockholders to fill vacant directorships or amend the number of directors constituting our board of directors.

Our certificate of incorporation limits the ownership of our common stock by individuals and entities that are Restricted Investors. These restrictions may affect the liquidity of our common stock and may result in Restricted Investors being required to sell or redeem their shares at a loss or relinquish their voting, dividend and distribution rights.

For so long as we or one of our subsidiaries is party to any of the Distribution Agreements, our certificate of incorporation will limit the ownership of our common stock by any "Restricted Investor" to 14.9% of our outstanding common stock and shares convertible or exchangeable therefor (including our non-voting common stock) (the "Permitted Percentage"). A "Restricted Investor" is defined as: (i) any entity that directly or indirectly manufactures, sells, markets, distributes or otherwise promotes cigarette paper booklets, filter tubes, injector machines or filter tips in the U.S., the District of Columbia, the territories, possessions and military bases of the U.S. and the Dominion of Canada (a "RTI Competitor"), (ii) any entity that owns more than a 20% equity interest in any RTI Competitor, or (iii) any person who serves as a director or officer of, or any entity that has the right to appoint an officer or director of, any RTI Competitor or of any entity that owns more than a 20% equity interest in any RTI Competitor (each, a "Restricted Investor"). Our certificate of incorporation further provides that any issuance or transfer of shares to a Restricted Investor in excess of the Permitted Percentage will be ineffective as against us and that neither we nor our transfer agent will register the issuance or transfer of shares or be required to recognize the transferee or owner as a holder of our common stock for any purpose except to exercise our remedies described below. Any shares in excess of the Permitted Percentage in the hands of a Restricted Investor will not have any voting or dividend rights and are subject to redemption by us in our discretion. The liquidity or market value of the shares of our common stock may be adversely impacted by such transfer restrictions.

As a result of the above provisions, a proposed transferee of our common stock that is a Restricted Investor may not receive any return on its investment in shares it purchases or owns, as the case may be, and it may sustain a loss. We are entitled to redeem all or any portion of such shares acquired by a Restricted Investor in excess of the Permitted Percentage ("Excess Shares") at a redemption price based on a fair market value formula that is set forth in our certificate of incorporation, which may be paid in any form, including cash or promissory notes, at our discretion. Excess Shares not yet redeemed will not be accorded any voting, dividend or distribution rights while they constitute Excess Shares. As a result of these provisions, a stockholder who is a Restricted Investor may be required to sell its shares of our common stock at an undesirable time or price and may not receive any return on its investment in such shares. However, we may not be able to redeem Excess Shares for cash because our operations may not have generated sufficient excess cash flow to fund the redemption and we may incur additional indebtedness to fund all or a portion of such redemption, in which case our financial condition may be materially weakened.

Our certificate of incorporation permits us to require that owners of any shares of our common stock provide certification of their status as a Restricted Investor. In the event that a person does not submit such documentation, our certificate of incorporation provides us with certain remedies, including the suspension of the payment of dividends and distributions with respect to shares held by such person and deposit of any such dividends and distributions into an escrow account. As a result of non-compliance with these provisions, an owner of the shares of our common stock may lose significant rights associated with those shares.

Although our certificate of incorporation contains the above provisions intended to assure compliance with the restrictions on ownership of our common stock by Restricted Investors, we may not be successful in monitoring or enforcing the provisions. A failure to enforce or otherwise maintain compliance could lead RTI to exercise its termination rights under the agreements, which would have a material and adverse effect on the Company's financial position and its results of operations.

In addition to the risks described above, the foregoing restrictions could delay, defer or prevent a transaction or change in control that might involve a premium price for our common stock or that might otherwise be in the best interest of our stockholders.

Future sales of our common stock in the public market could reduce our stock price, and any additional capital raised by us through the sale of equity or convertible securities may dilute our stockholders.

We may sell additional shares of common stock in public or private offerings and may also sell securities convertible to common stock, such as the Convertible Senior Notes. We may also be required to issue common stock and conversion of our Convertible Senior Notes at the exercise or vesting of certain awards. See Note 13, "Notes Payable and Long-Term Debt," of our Notes to Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K for further discussion.

We cannot predict the size of future issuances of our common stock or securities convertible into common stock or the effect, if any, that future issuances and sales of shares of our common stock will have on the market price of our common stock. Sales of substantial amounts of our common stock (including shares issued in connection with an acquisition), or the perception that such sales could occur, may adversely affect prevailing market prices of our common stock.

We may issue preferred stock whose terms could adversely affect the voting power or value of our common stock.

Our certificate of incorporation authorizes us to issue, without the approval of our stockholders, one or more classes or series of preferred stock having such designations, preferences, limitations and relative rights, including preferences over our common stock respecting dividends and distributions, as our board of directors may determine. The terms of one or more classes or series of preferred stock could adversely impact the voting power or value of our common stock. For example, we might grant holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we might assign to holders of preferred stock could affect the residual value of the common stock.

General Risks

Our business may be damaged by events outside of our or our suppliers' control, such as the impact of epidemics, political upheavals, or natural disasters.

We have manufacturing operations in Tennessee and Kentucky. Additionally, we have critical suppliers of raw materials and finished products in other regions of the U.S. and in other countries. Events may impact our ability to manufacture products or prevent critical suppliers from performing their obligations to us, through no fault of any party. Examples of such events could include the effect of epidemics; political upheavals including violent changes in government, regional conflicts, such as the war in Ukraine, and the reaction of the governments throughout the world to those conflicts such as the implementation of sanctions, widespread labor unrest, or breakdowns in civil order; and natural disasters, such as hurricanes, tornados, earthquakes or floods. In December 2023, a third-party warehouse in Tennessee used to store some of the Company's leaf tobacco incurred significant tornado damage including damage to the Company's leaf tobacco, which resulted in us recording a $15.2 million inventory reserve related to our leaf tobacco inventory. If such events were to occur or reoccur and disrupt our manufacturing capabilities or supply arrangements, there can be no assurance that we could quickly remedy the impact and there could be a material adverse impact on our business, results of operations, and financial condition.

Additionally, current macroeconomic conditions including high inflation, high gas prices and rising interest rates have caused and may continue to cause delays to supply chain and commercial markets, which limit access to, and increase the cost of, raw materials and services. Furthermore, challenging economic conditions can create the risk that our suppliers, distributors, logistics providers or other third-party partners suffer financial or operational difficulties, which may impact their ability to provide us with or distribute finished product or raw materials and services in a timely manner or at all. Any such delay or distribution challenges could have a material adverse impact on our business, results of operations and financial conditions.

Climate change may have an adverse impact on our business and results of operations.

Our operations may be impacted by adverse weather patterns or other natural disasters, such as hurricanes, earthquakes, floods, fires, tornadoes, tsunamis, typhoons and volcanic eruptions. While we seek to mitigate our business risks associated with climate change by seeking business partners, including within our supply chain, that are committed to operating in ways that protect the environment or mitigate environmental impacts, we recognize that there are inherent climate-related risks wherever business is conducted. Our operations may be vulnerable to the adverse effects of climate change, which are predicted to increase the frequency and severity of weather events and other natural cycles such as wildfires and droughts. For instance, if a hurricane or tornado were to shut down one of our facilities, our operations could be severely impacted. Such events have the potential to disrupt our operations, cause manufacturing facility closures, disrupt the business of our third-party suppliers and impact our customers, all of which may cause us to suffer losses and additional costs to maintain or resume operations.

Reliance on information technology means a significant disruption could affect our communications and operations.

We increasingly rely on information technology systems for our internal communications, controls, reporting and relations with customers and suppliers and information technology is becoming a significantly important tool for our sales staff. Our marketing and distribution strategy are dependent upon our ability to closely monitor consumer and market trends on a highly specified level, for which we are reliant on our highly sophisticated data tracking systems, which are susceptible to disruption or failure. In addition, our reliance on information technology exposes us to cyber-security risks, which could have a material adverse effect on our ability to compete. We expect our use of data to increase, including through the use of analytics, and the continued use of AI and machine learning solutions. In engaging in these data-related activities, we rely on our own technology systems and software, and those of third-party vendors. These data-related activities are vulnerable to potential disruption or failure.

Security and privacy breaches, including increasingly prevalent and sophisticated cyberattacks, may expose us to liability, cause us to lose customers or may disrupt our relationships and ongoing transactions with other entities with whom we contract throughout our supply chain. The failure of our information systems to function as intended, or the penetration by outside parties' intent on disrupting business processes, could result in significant costs, loss of revenue, assets or personal or other sensitive data and reputational harm.

Additionally, in connection with the preparation of our consolidated financial statements, management identified a material weakness in internal control related to ineffective ITGCs in the areas of user access and program change-management over certain IT systems that support the Company's financial reporting processes. See Part II, Item 9A of this Annual Report on Form 10-K for additional information. In the event we are unable to remediate the material weakness, or are otherwise unable to maintain effective internal control over financial reporting or disclosure controls and procedures, our ability to record, process and report financial information accurately, and to prepare financial statements within required time periods, could be adversely affected, which could subject us to litigation or investigations requiring management resources and payment of legal and other expenses, negatively affect investor confidence in our financial statements and, in turn, adversely impact our stock price.

Security and privacy breaches may expose us to liability and cause us to lose customers.

Federal and state laws require us to safeguard our wholesalers', retailers' and consumers' financial information, including credit information. Although we have established security procedures to protect against identity theft and the theft of our customers' financial information, our security and testing measures may not prevent security breaches. We have been in the past and may again in the future be subject to cyberattacks, including attacks that have resulted in the theft of customer financial information, such as credit card information; however, no cyberattack we have suffered to date has resulted in material liability to us. Companies have been increasingly subject to a wide variety of cybersecurity attacks, hacking, phishing, malware, ransomware and other attempts to gain unauthorized access to systems or data. These attacks have become increasingly sophisticated over time and may be conducted or "sponsored" by nation states with significant resources. The rapid evolution and increased adoption of AI technology and other evolving technology may also increase the prevalence and impact of cyber-attacks and might also intensify our cybersecurity risk.

We cannot guarantee that a future breach would not result in material liability or otherwise harm our business. In the event of any such breach, we may be required to notify governmental authorities or consumers under breach disclosure laws, indemnify consumers or other third parties for losses resulting from the breach, and expend resources investigating and remediating any vulnerabilities that contributed to the occurrence of the breach. Typically, we rely on encryption and authentication technology licensed from third parties to enhance transmission security of confidential information in relation to financial and other sensitive information that we have on file. Advances in computer capabilities, new discoveries in the field of cryptography, inadequate facility security or other developments may result in a compromise or breach of the technology used by us to protect customer data. Any compromise of our security, even a security breach that does not result in a material liability, could harm our reputation and therefore, our business and financial condition. In addition, a party who is able to circumvent our security measures or exploit inadequacies in our security measures, could, among other effects, misappropriate proprietary information (including trade secrets), cause interruptions in our operations or expose customers and other entities with which we interact to computer viruses or other disruptions. Actual or perceived vulnerabilities may lead to claims against us. While we maintain cyber errors and omissions insurance that covers certain cyber risks, our insurance coverage may be insufficient to cover all claims or losses. To the extent the measures we have taken prove to be insufficient or inadequate, we may become subject to litigation or administrative sanctions, which could result in significant fines, penalties or damages and harm to our reputation.

We may fail to manage our growth.

We have expanded over our history and intend to grow in the future. We acquired the *Stoker's*® brand in 2003 and have continued to develop it through the introduction of new products, such as moist snuff. Our acquisition of the Vapor Beast® brand in 2016 accelerated our entry into non-traditional retail channels while the 2018 acquisition of IVG added a top B2C platform which enhanced our marketing and selling of proprietary and third-party vapor products to adult consumers. The acquisition of certain tobacco assets and distribution rights from Durfort and BluntWrap USA secured long-term control of our Zig-Zag MYO cigar wrap products and provided us access to a portfolio of tobacco products with significant strategic value, and the acquisition of certain tobacco assets from Unitabac expanded our capabilities in the growing cigar market. However, any future growth will place additional demands on our resources, and we cannot be sure we will be able to manage our growth effectively. If we are unable to manage our growth while maintaining the quality of our products and profit margins, or if new systems that we implement to assist in managing our growth do not produce the expected benefits, our business, financial position, results of operations and cash flows could be adversely affected. We may not be able to support, financially or otherwise, future growth, or hire, train, motivate and manage the required personnel. Our failure to manage growth effectively could also limit our ability to achieve our goals as they relate to streamlined sales, marketing and distribution operations and the ability to achieve certain financial metrics.

We may fail to successfully integrate our acquisitions or otherwise be unable to benefit from pursuing acquisitions.

We believe there are meaningful opportunities to grow through acquisitions and joint ventures across all OTP and adjacent product categories and we expect to continue a strategy of selectively identifying and acquiring businesses with complementary products. We may be unable to identify, negotiate, and complete suitable acquisition opportunities on reasonable terms. There can be no assurance that any business acquired by us will be successfully integrated with our operations or prove to be profitable to us. We may incur future liabilities related to acquisitions. Should any of the following problems, or others, occur as a result of our acquisition strategy, the impact could be material:

- difficulties integrating personnel from acquired entities and other corporate cultures into our business;
- difficulties integrating information systems;
- the potential loss of key employees of acquired companies;
- the assumption of liabilities and exposure to undisclosed or unknown liabilities of acquired companies; or
- the diversion of management attention from existing operations

We are subject to fluctuations in our results that make it difficult to track trends and develop strategies in the short-term.

In response to competitor actions and pricing pressures, we have engaged in significant use of promotional and sales incentives. We regularly review the results of our promotional spending activities and adjust our promotional spending programs in an effort to maintain our competitive position. Accordingly, unit sales volume and sales promotion costs in any period are not necessarily indicative of sales and costs that may be realized in subsequent periods. Additionally, promotional activity significantly increases net sales in the month in which it is initiated, and net sales are adversely impacted in the month after a promotion. Accordingly, based upon the timing of our marketing and promotional initiatives, we have and may continue to experience significant variability in our results, which could affect our ability to formulate strategies that allow us to maintain our market presence across volatile periods. If our fluctuations obscure our ability to track important trends in our key markets, it may have a material adverse effect on our business, results of operations and financial condition.

We are subject to the risks of exchange rate fluctuations.

Currency movements and suppliers' price increases relating to premium cigarette papers and cigarette tubes are the primary factors affecting our cost of sales. These products are purchased under the Distribution Agreements and the License Agreements, and we make payments in euros. Thus, we bear certain foreign exchange rate risk for certain of our inventory purchases. In addition, as part of our strategy, we have begun strategic international expansions. As a result, we may be more sensitive to the risks of exchange rate fluctuations. To manage this risk, we sometimes utilize short-term forward currency contracts to purchase euros for our inventory purchases. We have a foreign exchange currency policy which governs our hedging of risk. While we engage in hedging transactions from time to time, no assurance can be made that we will be successful in eliminating currency exchange risks or that changes in currency rates will not have a material adverse effect on our business, results of operations and financial condition.

Adverse U.S. and global economic conditions could negatively impact our business, prospects, results of operations, financial condition or cash flows.

Our business and operations are sensitive to global economic conditions. These conditions include interest rates, energy costs, inflation, recession, fluctuations in debt and equity capital markets and the general condition of the U.S. and world economy. A material decline in the economic conditions affecting consumers, which causes a reduction in disposable income for the average consumer, may change consumption patterns, and may result in a reduction in spending on OTP or a switch to cheaper products or products obtained through illicit channels. The high rates of inflation experienced over the past two years in the United States and other economies in which we operate has had, and may continue to have, a negative impact on the purchasing power of consumers. Material inflation may also lead to significant increases in property, E&O and other insurance premiums which could affect our results of operations and liquidity and may also result in us self-insuring if the premiums become uneconomical. Electronic cigarettes, vaporizer, e-liquid, and other Creative Distribution Solutions products are relatively new to market and may be regarded by users as a novelty item and expendable. As such, demand for our Creative Distribution Solutions products may be particularly sensitive to economic conditions such as inflation, recession, high energy costs, unemployment, changes in interest rates and money supply, changes in the political environment, and other factors beyond our control, any combination of which could result in a material adverse effect on our business, results of operations and financial condition.

The departure of key management personnel and the failure to attract and retain talent could adversely affect our operations.

Our success depends upon the continued contributions of our senior management. Our ability to implement our strategy of attracting and retaining the best talent may be impaired by the decreasing social acceptance of tobacco usage. The tobacco industry competes for talent with the consumer products industry and other companies that enjoy greater societal acceptance. As a result, we may be unable to attract and retain the best talent, which could have a material adverse effect on our business, results of operations and financial condition.

Our intellectual property rights may be infringed or misappropriated.

We currently rely on trademark and other intellectual property rights to establish and protect our products, including the brand names and logos we own or license. Third parties have in the past infringed on and misappropriated and may in the future infringe or misappropriate, these trademarks and our other intellectual property rights. Our ability to maintain and further build brand recognition is dependent on the continued and exclusive use of these trademarks, service marks and other proprietary intellectual property rights, including the names and logos we own or license. Despite our attempts to ensure these intellectual property rights are protected, third parties may take actions that could materially and adversely affect our rights or the value of this intellectual property. Any enforcement concerning our intellectual property rights, whether successful or unsuccessful, could result in substantial costs to us and diversions of our resources. Expenses related to protecting and enforcing our intellectual property rights, the loss or compromise of any of these rights or the loss of revenues as a result of infringement or misappropriation could have a material adverse effect on our business, results of operations and financial condition, and may prevent the brands we own or license from growing or maintaining market share.

Third parties may claim that we infringe or misappropriate their intellectual property rights.

Competitors in the tobacco, liquid nicotine and other markets in which we operate may claim that we infringe on or misappropriate their intellectual property rights. Such claims, whether or not meritorious, may result in the expenditure of significant financial and managerial resources, injunctions against us and/or the payment of damages. Further, our distribution businesses distribute third-party product brands with those suppliers' branding and imagery. If that branding or imagery is alleged by other parties to infringe or otherwise violate intellectual property rights, we could be drawn into such litigation.

We may fail to meet expectations relating to environmental, social and governance factors.

Market participants, including investors, analysts, customers and other key stakeholders are increasingly focused on ESG factors. We determined to adopt a comprehensive ESG initiative with an initial focus on public health and began to roll-out this new initiative in 2020. However, the ESG factors by which companies' corporate responsibility practices are assessed differ among market participants, are constantly evolving and could result in greater expectations of us and/or cause us to undertake costly initiatives to satisfy such new criteria. We risk damage to our brand and reputation in the event that our corporate responsibility procedures or standards do not meet the standards expected of us. Furthermore, we could fail, or be perceived to fail, in our achievement of our publicly disclosed ESG initiatives or goals and we could also be criticized for the scope of such initiatives or goals. If we fail to satisfy the expectations of investors and other key stakeholders or our initiatives are not executed as planned, our reputation and financial results could be materially and adversely affected.

Item 1B. Unresolved Staff Comments

None

Item 1C. Cybersecurity

We rely on our technology infrastructure and information systems for our internal communications, controls, reporting and relations with customers and suppliers, to utilize our data, and to bill, collect, and make payments. Our technology infrastructure and information systems also support and form the foundation for our accounting and finance systems and form an integral part of our disclosure and accounting control environment. Our internally developed system and processes, as well as those systems and processes provided by third-party vendors, may be susceptible to damage or interruption from cybersecurity threats, which include any unauthorized access to our information systems that may result in adverse effects on the confidentiality, integrity, or availability of such systems or the related information. Potential cybersecurity threats include terrorist or hacker attacks, the introduction of malicious computer viruses, ransomware, falsification of banking and other information, insider risk, or other security breaches. Such attacks have become more and more sophisticated over time, especially as threat actors have become increasingly well-funded by, or themselves include, governmental actors with significant means. We expect that sophistication of cyber-threats will continue to evolve as threat actors increase their use of AI and machine-learning technologies.

We have implemented robust processes to assess, identify, and manage cybersecurity risks, including potentially material risks, related to our internal information systems and our products. In response to the increasing threats presented by cyber incidents, in 2023 we established a Cybersecurity Steering Committee, which meets bimonthly. This committee is comprised of our Chief Information Officer, Head of IT and Security Leader, along with our Deputy General Counsel who reports to our General Counsel. The Cybersecurity Steering Committee oversees activities related to the monitoring, prevention, detection, mitigation and remediation of cybersecurity risks. The Cybersecurity Steering Committee develops and implements cybersecurity risk mitigation strategies and activities, including the management of comprehensive incident response plans, oversees the cybersecurity risks posed by third-party vendors, ensures policies and procedures are current and followed, and receives regular updates on cybersecurity-related matters.

Our Board of Directors oversees our enterprise risk management process and our Audit Committee of the Board has direct oversight of our management of cybersecurity risks. Under the direction and supervision of our Chief Financial Officer, we conduct an annual comprehensive enterprise risk assessment, which includes details of our management of enterprise-wide risk topics, such as those related to cybersecurity risks. The Board of Directors receives the full results of the annual enterprise risk assessment, including an evaluation of cybersecurity risks presented, a detailed description of the actions we have taken to mitigate these risks. Our Cybersecurity Steering Committee reviews the results of any enterprise risk assessment with management on a bimonthly basis and with the Board of Directors quarterly or when risks are identified. Management provides a comprehensive update to the Audit Committee of the Board on cybersecurity threats and risk mitigation at least annually, and more frequently as relevant.

Our Chief Information Officer, reporting to our Chief Financial Officer, has principal responsibility for assessing and managing cybersecurity risks and threats, implementing the activities and systems necessary to address such risks and threats and preparing updates for the Board of Directors. Our Chief Information Security Officer reports to our Security Leader and has over 25 years of IT, cybersecurity, data security and regulatory compliance experience. Our Security Leader reports to our Chief Information Officer, and is responsible for the operation of our cybersecurity program and management of our cybersecurity team. Our Security Leader has 20 years of IT experience.

We have adopted the National Institute of Standards and Technology Cybersecurity Framework and the Center for Internet Security Critical Security Controls to continually evaluate and enhance our cybersecurity. Activities include mandatory quarterly online training for all employees, technical security controls, enhanced data protection, the maintenance of backup and protective systems, policy review and implementation, the evaluation and retention of cybersecurity insurance, periodic assessments of third-party service providers to assess cyber preparedness of key vendors, and running simulated cybersecurity drills, including vulnerability scanning, penetration testing and disaster recovery exercises, throughout our organization. These cybersecurity drills are performed both in-house and by a third-party service provider. We use automated tools that monitor, detect, and prevent cybersecurity risks and have a security operations center that operates 24 hours a day to alert us to any potential cybersecurity threats. Our Cybersecurity Steering Committee also has effected comprehensive incident response plans that outline the appropriate communication flow and response for certain categories of potential cybersecurity incidents. The Cybersecurity Steering Committee escalates events, including to the Chief Financial Officer and Board of Directors, as relevant, according to pre-defined criteria.

If we were to experience a cybersecurity incident, our Security Leader would inform the Cybersecurity Steering Committee, which would then evaluate and assess the materiality of the incident to the Company and the impact of the incident on the Company's information technology infrastructure and data integrity, and determine whether the incident should be reported to the Audit Committee of the Board in advance of the next regular cybersecurity update. The Cybersecurity Steering Committee, with the assistance and input of the Audit Committee of the Board, has established a set of predefined criteria that it uses to make such determinations. Once a cybersecurity incident has been reported to the Audit Committee of the Board, the Audit Committee of the Board, with the input of the Cybersecurity Steering Committee, will determine how to address it.

We engage subject matter experts such as consultants and auditors to assist us in establishing processes to assess, identify, and manage potential and actual cybersecurity threats, to actively monitor our systems internally using widely accepted digital applications, processes, and controls, and to provide forensic assistance to facilitate system recovery in the case of an incident. The Cybersecurity Steering Committee oversees and establishes the parameters of our engagement with these experts to ensure we obtain supplement assistance needed in this area, if any.

If we were to experience a cybersecurity incident, we may suffer interruptions in service, loss of assets or data, or reduced functionality. Security breaches of our systems which allow inappropriate access to or inadvertent transfer of information and misappropriation or unauthorized disclosure of confidential information, belonging to us or to our employees, providers, suppliers, customers or insurance companies could result in our suffering significant financial and reputational damage. Though we take steps to ensure our products and software are secure, a cyber-attack could result in the loss or compromise of our or our employees', suppliers' and customers' critical data. If a supplier or customer alleges that a cyber-attack causes or contributes to a loss or compromise of critical data, whether or not caused by us, we could face harm to our reputation and financial condition and incur regulatory repercussions. See Item 1A "Risk Factors – Security and privacy breaches may expose us to liability and cause us to lose customers". A cybersecurity incident could materially harm our reputation and financial condition and cause us to incur legal liability and increased costs when responding to such events.

Item 2. Properties

As of December 31, 2023, we operated manufacturing, distribution, office, and warehouse space in the U.S., all of which is leased with the exception of our Dresden, Tennessee manufacturing facility, which is owned. To provide a cost-efficient supply of products to our customers, we maintain centralized management of internal manufacturing and nationwide distribution facilities. Our two manufacturing and distribution facilities located in Louisville, Kentucky and Shepherdsville, Kentucky are used by all our segments. Our third manufacturing and distribution facility located in Dresden, Tennessee is used by our Stoker's Product segment. We believe our facilities are adequate for our current and anticipated future use.

Item 3. Legal Proceedings

For a description of our material pending legal proceedings, see Note 18, "Contingencies" in Notes to the Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

Also see Item 1A "Risk Factors - We are subject to significant product liability litigation" for additional details.

Item 4. Mine Safety Disclosures

Not applicable.

Information about our Executive Officers

Listed below are the executive officers of the Company. Our executive officers are appointed by, and serve at the discretion of, our board of directors. There are no family relationships between any of the executive officers, and there is no arrangement or understanding between any executive officer and any other person pursuant to which the executive officer was selected.

Graham Purdy, age 52, has served as our President and CEO since October 2022. Prior to October 2022, Mr. Purdy served as Chief Operating Officer since November 2019 after serving as President of our New Ventures Division since December 2017. Mr. Purdy joined the Company in 2004 and has held various leadership positions since that time. Prior to joining the Company, Mr. Purdy spent 7 years at Philip Morris, USA where he served in senior sales and sales management positions. Mr. Purdy holds a Bachelor of Arts from California State University, Chico.

David Glazek, age 46, was appointed Executive Chair of the Board in January 2023. Mr. Glazek served as a director of our Company since November 2012, and as our Lead Independent Director from January 2018 until October 2022, and as our non-executive Chair since September 2019. Mr. Glazek was a Partner and Portfolio Manager of Standard General L.P. from 2008 to 2023, and an investment banker at Lazard Frères & Co. from 2000 to 2003 and from 2006 to 2008. He also worked at the Blackstone Group. Throughout his career he has served on numerous public and private company boards of directors. In addition, he is an Adjunct Professor at Columbia Business School. Mr. Glazek holds a Bachelor of Arts from the University of Michigan and a J.D. from Columbia Law School.

Luis Reformina, age 46, was appointed Chief Financial Officer in May 2021 after serving as the Company's Chief Business Development Officer since October 2020. He joined the Company as Vice President of Business Development in 2019. Prior to joining the Company, Mr. Reformina spent nearly two decades in the finance and investment industry working at Point72 Asset Management, Waterfront Capital Partners, Perella Weinberg Partners and Vestar Capital Partners in various roles deploying capital across different industries. He began his career as an investment banker at Goldman Sachs & Co. Mr. Reformina holds a B.S, *summa cum laude*, in Electrical Engineering from Cornell University and an M.B.A from Stanford Graduate School of Business where he was an Arjay Miller Scholar.

Brittani N. Cushman, age 39, has been our Senior Vice President, General Counsel, and Secretary since November 2020 and has served in various roles in our legal department since joining the Company in October 2014, most recently serving as Senior Vice President of External Affairs. Prior to joining the Company, Ms. Cushman spent five years at Xcaliber International, Ltd., L.L.C., where she was most recently the General Counsel, responsible for all legal affairs. Ms. Cushman holds a Bachelor of Science in Business Administration, *magna cum laude*, in business management from the University of Tulsa and a J.D. from Washington and Lee University School of Law.

PART II

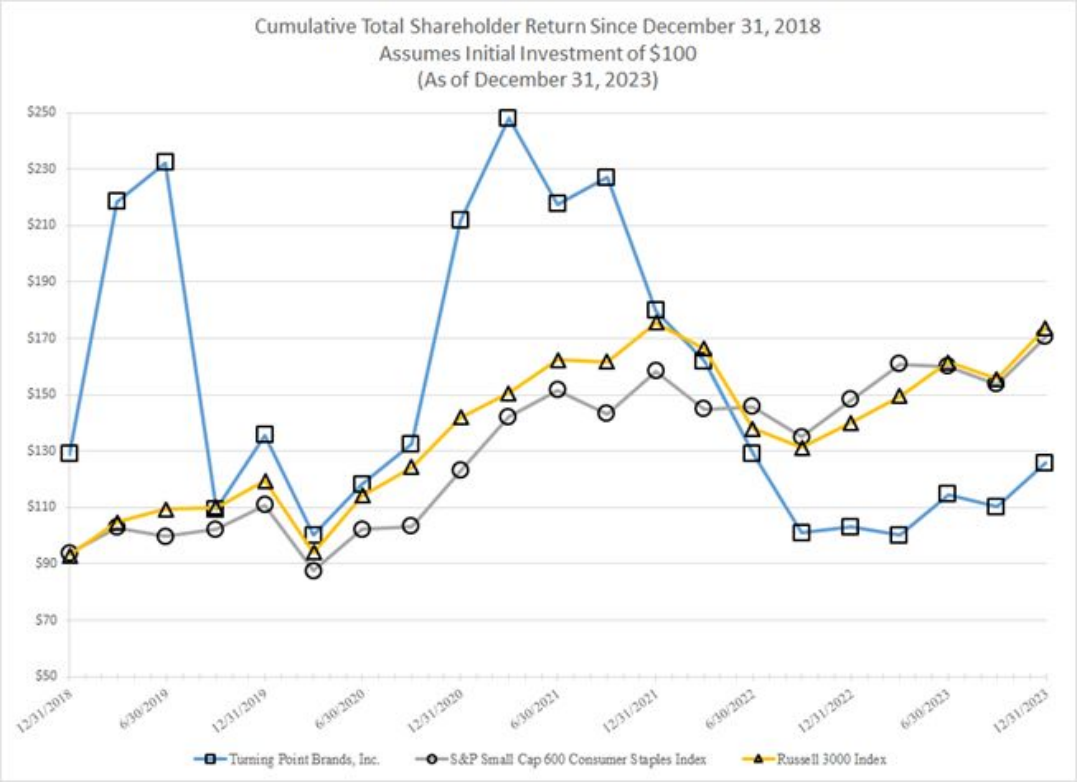
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

The principal stock exchange on which Turning Point Brands, Inc.'s common stock, par value $0.01 per share, (the "Common Stock") is listed is the New York Stock Exchange under the symbol "TPB." At February 21, 2024, there were 124 holders of record of the Company's Common Stock. The last reported sales price of the Company's Common Stock on February 21, 2024 was $22.88.

Dividends. We have a history of paying cash dividends. Future dividend amounts will be considered after reviewing financial results and capital needs and will be declared at the discretion of our Board of Directors.

Performance graph. The graph below compares the cumulative total shareholder return of our common stock for the last five years with the cumulative total return for the same period of the Russell 3000 Index and the S&P Small Cap 600 Consumer Staples Index. The information presented assumes the investment of $100 in common stock and each of the indices as of the market close on December 31, 2018 and the reinvestment of all dividends on a quarterly basis.



Issuer purchases of equity securities.

On February 25, 2020, the Company's Board of Directors approved a $50.0 million share repurchase program, which is intended for opportunistic execution based upon a variety of factors including market dynamics. On October 25, 2021, the Board of Directors increased the approved share repurchase program by $30.7 million bringing the authority at the time back to $50.0 million (including approximately $19.3 million available for repurchases under the Board of Directors' previous authorization). On February 24, 2022, the Board of Directors increased the approved share repurchase program by $24.6 million bringing total authority at that time to $50.0 million. As of December 31, 2023, we had $27.2 million of remaining authority under the repurchase program. This share repurchase program has no expiration date and is subject to the ongoing discretion of the Board of Directors. All repurchases to date under our stock repurchase programs have been made through open market transactions, but in the future, we may also purchase shares through privately negotiated transactions or 10b5-1 repurchase plans.

For the quarter ended December 31, 2023, the Company made no purchases of its common stock in connection with the repurchase program described above.

Item 6. Selected Financial Data

Reserved

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion is intended to help the reader understand the results of operations and financial condition of the Company. The discussion is provided as a supplement to, and should be read in conjunction with our historical consolidated financial statements and accompanying notes, which are included elsewhere in this Annual Report on Form 10-K and incorporated herein by reference. In addition, this discussion includes forward-looking statements subject to risks and uncertainties that may result in actual results differing from statements we make. See "Cautionary Note Regarding Forward-Looking Statements." Factors that could cause actual results to differ include those risks and uncertainties discussed in Item 1A "Risk Factors."

The following discussion relates to the audited financial statements of Turning Point Brands, Inc., included elsewhere in this Annual Report on Form 10-K. In this discussion, unless the context requires otherwise, references to "the Company" "we," "our," or "us" refer to Turning Point Brands, Inc., and its consolidated subsidiaries. References to "TPB" refer to Turning Point Brands, Inc., without any of its subsidiaries. We were incorporated in 2004 under the name North Atlantic Holding Company, Inc. On November 4, 2015, we changed our name to Turning Point Brands, Inc. Many of the amounts and percentages in this discussion have been rounded for convenience of presentation.

Overview

Turning Point Brands, Inc. is a leading manufacturer, marketer and distributor of branded consumer products. We sell a wide range of products to adult consumers consisting of staple products with our iconic brands *Zig-Zag*® and *Stoker's*® and our next generation products to fulfill evolving consumer preferences. Among other markets, we compete in the alternative smoking accessories and Other Tobacco Products ("OTP") industries. The alternative smoking accessories market is a dynamic market experiencing robust secular growth driven by cannabinoid legalization in the U.S. and Canada, and positively evolving consumer perception and acceptance in North America. The OTP industry, which consists of non-cigarette tobacco products, exhibited low-single-digit consumer unit annualized growth over the four-year period ended 2023 as reported by Management Science Associates, Inc., a third-party analytics and information company. Our segments are led by our core, proprietary brands: *Zig-Zag*® and CLIPPER® in the Zig-Zag Products segment and *Stoker's*® along with *Beech-Nut*® and *Trophy*® in the Stoker's Products segment. Our businesses generate solid cash flows which we use to invest in our business, finance acquisitions, increase brand support, expand our distribution infrastructure, and strengthen our capital position. We currently ship to approximately 820 distributors with an additional 650 secondary, indirect wholesalers in the U.S. that carry and sell our products. Under the leadership of a senior management team with extensive experience in the consumer products, alternative smoking accessories and tobacco industries, we have grown and diversified our business through new product launches, category expansions, and acquisitions while concurrently improving operational efficiency.

We believe there are meaningful opportunities to grow through acquisitions and joint ventures across all product categories. Our products are currently available in approximately 197,000 U.S. retail locations which, with the addition of retail stores in Canada, brings our total North American retail presence to an estimated 217,000 points of distribution. Our sales team targets widespread distribution to all traditional retail channels, including convenience stores. We also have a growing e-commerce business.

In the fourth quarter of 2022, we contributed our NewGen Products business to South Beach Holdings LLC doing business as Creative Distribution Solutions ("CDS"), a newly-formed wholly-owned subsidiary. CDS is separately operated and reports to its own Board of Directors. During the first quarter of 2023, the business was designated an unrestricted subsidiary under the Senior Secured Notes (the "Notes") and concurrently we renamed what we previously referred to as our NewGen Products segment as our Creative Distribution Solutions segment as we believe this name better aligns with the goals and strategies of the segment. During the third quarter of 2023, the CDS business was restructured to eliminate certain unprofitable brands and focus on a narrower set of products to better position it as a standalone business.

Products

We operate in three segments: Zig-Zag Products, Stoker's Products and Creative Distribution Solutions. In our Zig-Zag Products segment, we principally market and distribute (i) rolling papers, tubes, and related products; (ii) finished cigars and make-your-own ("MYO") cigar wraps and (iii) lighters and other accessories. In addition, we have a majority stake in Turning Point Brands Canada which markets and distributes cannabis accessories and tobacco products throughout Canada. In our Stoker's Products segment, we (i) manufacture and market moist snuff tobacco ("MST") and (ii) contract for and market loose leaf chewing tobacco products. In our Creative Distribution Solutions segment, we (i) market and distribute liquid nicotine products and certain other products without tobacco and/or nicotine; (ii) distribute a wide assortment of products to non-traditional retail via VaporBeast; and (iii) market and distribute a wide assortment of products to individual consumers via the VaporFi B2C online platform.

Our portfolio of brands includes some of the most widely recognized names in the alternative smoking accessories and OTP industries, such as *Zig-Zag*®, *Stoker's*®, *Vapor Beast*® and *VaporFi*®. The following table sets forth the market share and category rank of our core products and demonstrates their industry positions within measured distribution channels:

Brand	Product	TPB Segment	Market Share(1)	Category Rank(1)
Zig-Zag®	Cigarette Papers	Zig-Zag Products	34.4%	#1 premium, #1 overall
Zig-Zag®	MYO Cigar Wraps	Zig-Zag Products	55.1%	#1 overall
Stoker's®	Moist Snuff	Stoker's Products	6.9%	#3 discount, #6 overall
Stoker's®	Chewing Tobacco	Stoker's Products	30.5%	#1 discount, #1 overall

(1) Market share and category rank data for all products are derived from MSAi data 2023 52 weeks ended 12/30/23.

We subscribe to a sales tracking system from MSAi that records all OTP product shipments (ours as well as those of our competitors) from approximately 600 wholesalers to over 250,000 traditional retail stores in the U.S. This system enables us to understand individual product share and volume trends across multiple categories down to the individual retail store level, allowing us to allocate field salesforce coverage to the highest opportunity stores. Our sales and marketing group of approximately 180 professionals utilize the MSAi system to efficiently target markets and sales channels with the highest sales potential.

Our core Zig-Zag Products and Stoker's Products segments primarily generate revenues from the sale of our products to wholesale distributors who, in turn, resell the products to retail operations. Our acquisition of Vapor Beast in 2016 expanded our revenue streams as we began selling directly to non-traditional retail outlets. Our acquisition of IVG in 2018 enhanced our B2C revenue stream with the addition of the Vapor-Fi online platform. Our net sales, which include federal excise taxes, consist of gross sales net of cash discounts, returns, and selling and marketing allowances.

We rely on long-standing relationships with high-quality, established manufacturers to provide the majority of our produced products. Approximately 75% of our production, as measured by net sales, is outsourced to suppliers. The remaining production consists primarily of our moist snuff tobacco operations located in Dresden, Tennessee and Louisville, Kentucky. Our principal operating expenses include the cost of raw materials used to manufacture the limited number of our products which we produce in-house; the cost of finished products, which are generally purchased goods; federal excise taxes; legal expenses; and compensation expenses, including benefits and costs of salaried personnel. Our other principal expenses include interest expense and other expenses.

Key Factors Affecting Our Results of Operations

We consider the following to be the key factors affecting our results of operations:

- Our ability to further penetrate markets with our existing products;
- Our ability to introduce new products and product lines that complement our core business;
- Decreasing interest in some tobacco products among consumers;
- Price sensitivity in our end-markets;
- Marketing and promotional initiatives, which cause variability in our results;
- Cost related to increasing regulation of promotional and advertising activities;
- General economic conditions, including consumer access to disposable income and other conditions affecting purchasing power such as inflation and the interest rate environment;
- Labor and production costs;
- Cost of complying with regulation, including the "deeming regulation";
- Increasing and unpredictable regulation and/or marketing order decisions impacting Creative Distribution Solutions products;
- Counterfeit and other illegal products in our end-markets;
- Currency fluctuations;
- Our ability to identify attractive acquisition opportunities; and
- Our ability to successfully integrate acquisitions.

Recent Developments

ABL Facility

In November 2023, a wholly-owned subsidiary of the Company entered into a new asset-based revolving credit facility with committed borrowing capacity of up to $75.0 million. The facility is secured solely by the assets of the subsidiary, which consists of certain inventory lines and cash. Neither the Company or any of its other subsidiaries guarantees or provides other credit support for the new facility. The new facility is scheduled to mature in November 2027, and replaces a $25.0 million senior secured revolving credit facility which was scheduled to mature in August 2025. The Company currently has no borrowings outstanding under the new asset-based revolving credit facility.

Warehouse Damage

In December 2023, a third-party warehouse in Tennessee used to store some of the Company's leaf tobacco incurred significant tornado damage resulting in damage to the leaf tobacco. As a result, the Company recorded a $15.2 million inventory reserve related to its leaf tobacco inventory which is included in other operating income, net. The leaf tobacco inventory is covered by the Company's stock throughput insurance policy and the Company believes the inventory loss is probable of being fully recovered under the policy. As a result, the Company recorded a $15.2 million insurance recovery receivable which is included in other operating income, net. The Company does not expect to incur any delays in customer deliveries as a result of the damage.

Captive Insurer

In December 2023, the Company formed a captive insurance company, Interchange IC, incorporated in the District of Columbia, to write a portion of our general product, and officer and director liability coverages under deductible reinsurance policies. Interchange IC is a fully licensed captive insurance company holding a certificate of authority from the District of Columbia Department of Insurance, Securities and Banking. Interchange IC is a wholly-owned subsidiary of Turning Point Brands and will be consolidated in the Company's financial statements. As of December 31, 2023 Interchange IC had not been funded and had no activity.

Critical Accounting Policies and Uses of Estimates

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the U.S. When more than one accounting principle, or the method of its application, is generally accepted, we select the principle or method that is appropriate in the specific circumstances. Application of these accounting principles requires us to make estimates about the future resolution of existing uncertainties. Actual results could differ from these estimates. We evaluate our estimates, including those related to revenue recognition, inventory valuation and obsolescence, goodwill, intangibles, fair value, income taxes, stock-based compensation, litigation, and contingencies on an ongoing basis. We base these estimates on our historical experience and other assumptions we believe are appropriate under the circumstances. In preparing these consolidated financial statements, we have made our best estimates and judgments of the amounts and disclosures included in the consolidated financial statements.

Revenue Recognition

We recognize revenues in accordance with Accounting Standards Codification ("ASC") 606, Revenue from Contracts with Customers (Topic 606), which include excise taxes and shipping and handling charges billed to customers, net of cash discounts for prompt payment, sales returns and sales incentives, upon delivery of goods to the customer—at which time our performance obligation is satisfied—at an amount that we expect to be entitled to in exchange for those goods in accordance with the five-step analysis outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. We exclude from the transaction price, sales taxes and value-added taxes imposed at the time of sale (which do not include excise taxes on smokeless tobacco, cigars or vaping products billed to customers).

We record an allowance for sales returns, based principally on historical volume and return rates, which is included in accrued liabilities on the consolidated balance sheets. We record sales incentives, which consist of consumer incentives and trade promotion activities, as a reduction in revenues (a portion of which is based on amounts estimated as being due to wholesalers, retailers and consumers at the end of the period) based principally on historical volume and utilization rates. Expected payments for sales incentives are included in accrued liabilities on the consolidated balance sheets.

Goodwill and Other Intangible Assets

We follow the provisions of ASC 350, Intangibles – Goodwill and Other in accounting for goodwill and other intangible assets. Goodwill is tested for impairment annually on December 31, or more frequently if certain indicators are present, in accordance with ASC 350-20-35 and ASC 350-30-35, respectively.

When testing goodwill for impairment, we have the option to first perform qualitative testing to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value. If we choose not to complete a qualitative assessment for a given reporting unit or if the initial assessment indicates that it is more likely than not that the carrying value of a reporting unit exceeds its estimated fair value, additional quantitative testing is required. If the carrying value of a reporting unit exceeds its fair value, an impairment loss is recognized in the amount by which the carrying value of the reporting unit exceeds its fair value, limited to the amount of goodwill at the reporting unit. We determine fair values for each of the reporting units using a combination of the income approach and/or market approach. Under the income approach, fair value is determined based on the present value of estimated future cash flows, discounted at an appropriate risk-adjusted rate. Under the market approach, we select peer sets based on close competitors and review the revenue and EBITDA multiples to determine the fair value. See Note 10, "Goodwill and Other Intangible Assets" in Notes to Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K for further information on goodwill.

Indefinite-lived intangible assets are tested for impairment at least annually; however, these tests are performed more frequently when events or changes in circumstances indicate that the asset may be impaired. Impairment exists when carrying value exceeds fair value. The Company's fair value methodology is primarily based on the relief from royalty approach. See Note 10, "Goodwill and Other Intangible Assets" in Notes to Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K for further information on intangible assets.

Definite-lived intangible assets are amortized over their estimated useful lives, generally on a straight-line basis for periods ranging primarily from 3.5 to 15 years. The Company continually evaluates the reasonableness of the useful lives of these assets and upon a triggering event evaluates its asset group for impairment.

Fair Value

U.S. GAAP establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The three levels of the fair value hierarchy under U.S. GAAP are described below:

- Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets at the measurement date.
- Level 2 – Inputs to the valuation methodology include: quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in inactive markets; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 – Unobservable inputs that reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date.

Income Taxes

We account for income taxes under ASC 740. We record the effects of income taxes under the liability method in which deferred income tax assets and liabilities are recognized based on the difference between the financial and tax basis of assets and liabilities using the enacted tax rates in effect for the years in which the differences are expected to reverse. We assess our ability to realize future benefits of deferred tax assets by determining if they meet the "more likely than not" criteria in ASC 740, Income Taxes. If we determine that future benefits do not meet the "more likely than not" criteria, a valuation allowance is recorded.

Stock-Based Compensation

We measure stock compensation costs related to our stock options using the fair value-based method under the provisions of ASC 718, Compensation – Stock Compensation, which requires compensation cost for stock options to be recognized based on the fair value of stock options granted. We determine the fair value of these awards using the Black-Scholes option pricing model.

We grant performance-based restricted stock units ("PRSU") subject to both performance-based and service-based vesting conditions. The fair value of each PRSU is our stock price on the date of grant. For purposes of recognizing compensation expense as services are rendered in accordance with ASC 718, we assume all employees involved in the PRSU grant will provide service through the end of the performance period. Stock compensation expense is recorded based on the probability of achievement of the performance conditions specified in the PRSU grant.

We grant restricted stock units ("RSU") subject to service-based vesting conditions. The fair value of each RSU is our stock price on the date of grant. We recognize compensation expense as services are rendered in accordance with ASC 718. Stock compensation expense is recorded over the service period in the RSU grant.

Inventories

Inventories are stated at the lower of cost or net realizable value using the first-in, first-out ("FIFO") method. Leaf tobacco is presented in current assets in accordance with standard industry practice, notwithstanding the fact that such tobaccos are carried longer than one year for the purpose of curing. We recorded an inventory valuation allowance of $20.6 million and $4.5 million at December 31, 2023 and 2022, respectively.

Results of Operations

Summary

The table and discussion set forth below relates to our consolidated results of operations for the years ended December 31 (in thousands):

	For the year ended December 31,				
	2023	2022	% Change	2021	% Change
Consolidated Results of Operations Data:					
Net sales					
Zig-Zag products	$ 180,455	$ 190,403	-5.2%	$ 176,491	7.9%
Stoker's products	144,609	130,826	10.5%	124,280	5.3%
Total Zig-Zag and Stoker's products	325,064	321,229	1.2%	300,771	6.8%
Creative Distribution Solutions	80,329	93,784	-14.3%	144,700	-35.2%
Total net sales	405,393	415,013	-2.3%	445,471	-6.8%
Cost of sales	202,152	209,475	-3.5%	227,637	-8.0%
Gross profit					
Zig-Zag products	101,055	106,576	-5.2%	102,739	3.7%
Stoker's products	81,887	71,254	14.9%	68,084	4.7%
Total Zig-Zag and Stoker's products	182,942	177,830	2.9%	170,823	4.1%
Creative Distribution Solutions	20,299	27,708	-26.7%	47,011	-41.1%
Total gross profit	203,241	205,538	-1.1%	217,834	-5.6%
Selling, general, and administrative expenses	125,009	130,024	-3.9%	127,513	2.0%
Other operating income, net	(4,345)	–	NM	–	NM
Operating income	82,577	75,514	9.4%	90,321	-16.4%
Interest expense, net	14,645	19,524	-25.0%	20,500	-4.8%
Investment loss	11,914	13,303	-10.4%	6,673	99.4%
Other income	(4,000)	–	NM	–	NM
Goodwill and intangible impairment loss	–	27,566	NM	–	NM
Gain on extinguishment of debt	(1,664)	(885)	88.0%	(2,154)	-58.9%
Income before income taxes	61,682	16,006	285.4%	65,302	-75.5%
Income tax expense	23,901	4,849	392.9%	14,040	-65.5%
Consolidated net income	37,781	11,157	238.6%	51,262	-78.2%
Net loss attributable to non-controlling interest	(681)	(484)	40.7%	(797)	-39.3%
Net income attributable to Turning Point Brands, Inc.	$ 38,462	$ 11,641	230.4%	$ 52,059	-77.6%

Comparison of Year Ended December 31, 2023, to Year Ended December 31, 2022

Net Sales. For the year ended December 31, 2023, overall net sales decreased to $405.4 million from $415.0 million for the year ended December 31, 2022, a decrease of $9.6 million or 2.3%. The decrease in net sales was primarily driven by decreased sales volume in the Creative Distribution Solutions segment.

For the year ended December 31, 2023, net sales in the Zig-Zag Products segment decreased to $180.5 million from $190.4 million for the year ended December 31, 2022, a decrease of $9.9 million or 5.2%. The decrease in net sales was driven by anticipated declines in the U.S. rolling papers and wraps businesses which were impacted by a reduction of trade inventory, partially offset by growth in our Clipper products. Additionally, a discontinuation of an unprofitable product line negatively impacted Canadian sales by $4.9 million against the previous year.

For the year ended December 31, 2023, net sales in the Stoker's Products segment increased to $144.6 million from $130.8 million for the year ended December 31, 2022, an increase of $13.8 million or 10.5%. For the year ended December 31, 2023, Stoker's Products volume increased 4.2% and price/mix increased 6.3%. The increase in net sales was driven primarily by double-digit growth of *Stoker's*® MST. MST represented 68% of Stoker's Products revenue in 2023, up from 66% for the same period in 2022.

For the year ended December 31, 2023, net sales in the Creative Distribution Solutions segment decreased to $80.3 million from $93.8 million for the year ended December 31, 2022, a decrease of $13.5 million or 14.3%. The decrease in net sales was primarily the result of reduced volumes.

Gross Profit. For the year ended December 31, 2023, overall gross profit decreased to $203.2 million from $205.5 million for the year ended December 31, 2022, a decrease of $2.3 million or 1.1%. Gross profit as a percentage of net sales increased to 50.1% of net sales for the year ended December 31, 2023, from 49.5% of net sales for the year ended December 31, 2022. The overall decrease in gross profit was driven by decreased margins in the Creative Distribution Solutions segment partially offset by increased margin in the Stoker's Products segment.

For the year ended December 31, 2023, gross profit in the Zig-Zag Products segment decreased to $101.1 million from $106.6 million for the year ended December 31, 2022, a decrease of $5.5 million or 5.2%. Gross profit as a percentage of net sales remained steady at 56.0% of net sales for the years ended December 31, 2023 and 2022.

For the year ended December 31, 2023, gross profit in the Stoker's Products segment increased to $81.9 million from $71.3 million for the year ended December 31, 2022, an increase of $10.6 million or 14.9%. Gross profit as a percentage of net sales increased to 56.6% of net sales for the year ended December 31, 2023, from 54.5% of net sales for the year ended December 31, 2022, primarily as a result of the strong incremental margin contribution of MST.

For the year ended December 31, 2023, gross profit in the Creative Distribution Solutions segment decreased to $20.3 million from $27.7 million for the year ended December 31, 2022, a decrease of $7.4 million or 26.7%. Gross profit as a percentage of net sales decreased to 25.3% of net sales for the year ended December 31, 2023, from 29.5% of net sales for the year ended December 31, 2022, primarily as a result of channel mix.

Selling, General and Administrative Expenses. For the year ended December 31, 2023, selling, general and administrative expenses decreased to $125.0 million from $130.0 million for the year ended December 31, 2022, a decrease of $5.0 million or 3.9%. Selling, general, and administrative expenses for the year ended December 31, 2023, included $6.6 million of stock options, restricted stock and incentives expense, $0.2 million of transaction expenses, $0.4 million of restructuring expenses, $0.6 million of ERP/CRM expenses and $2.1 million of expense related to PMTA. Selling, general, and administrative expenses for the year ended December 31, 2022, included $5.3 million of stock options, restricted stock and incentives expense, $0.8 million of transaction expenses, $3.4 million of restructuring expenses, $2.0 million of ERP/CRM expenses and $4.6 million of expense related to PMTA.

Other Operating Income, net. For the year ended December 31, 2023, other operating income, net was $4.3 million as a result of a
$4.3 million gain from a federal excise tax refund and a $15.2 million gain related to insurance, partially offset by a $15.2 million reduction in inventory due to storm damage. For the year ended December 31, 2022 there was no other operating (income) expense.

Interest Expense, net. For the year ended December 31, 2023, interest expense, net decreased to $14.6 million from $19.5 million for the year ended December 31, 2022, primarily as a result of the repurchases of $44.0 million and $10.0 million in aggregate principal amount of Convertible Senior Notes in 2023 and 2022, respectively, and increased interest income on cash as a result of rising interest rates.

Investment Loss. For the year ended December 31, 2023, investment loss decreased to $11.9 million compared to $13.3 million of investment loss for the year ended December 31, 2022. The change is primarily a result of the 2023 impairment charges recognized on our investments in Docklight, Wild Hemp and Old Pal of $8.7 million, $2.3 million and $1.3 million, respectively, in 2023 compared to impairment charges of $7.9 million, $4.3 million and $1.4 million in 2022 related to our investments in Dosist, Real Brands and Old Pal, respectively.

Other Income. For the year ended December 31, 2023, other income was $4.0 million as a result of a $4.0 million gain related to a legal settlement.

Goodwill and Intangible Impairment Loss. For the year ended December 31, 2023 there was no goodwill and intangible impairment loss. For the year ended December 31, 2022, goodwill and intangible impairment loss was $27.6 million primarily as a result of fully impairing the goodwill balance of the Creative Distribution Solutions reporting unit.

Gain on Extinguishment of Debt. For the year ended December 31, 2023, gain on extinguishment of debt was $1.7 million as a result of the repurchase of $44.0 million in aggregate principal amount of our Convertible Senior Notes at a discount. For the year ended December 31, 2022, gain on extinguishment of debt was $0.9 million as a result of the repurchase of $10.0 million in aggregate principal of our Convertible Senior Notes at a discount.

Income Tax Expense. The Company's income tax expense was $23.9 million, or 38.7% of income before income taxes, for the year ended December 31, 2023, and included $6.4 million of valuation allowance for the deferred tax asset related to unrealized loss on investments and $1.7 million valuation allowance for foreign net operating losses. The Company's income tax expense was $4.8 million, or 30.3% of income before income taxes, for the year ended December 31, 2022.

Net Loss Attributable to Non-Controlling Interest. Net loss attributable to non-controlling interest was $0.7 million for the year ended December 31, 2023, compared to $0.5 million for the year ended December 31, 2022.

Net Income Attributable to Turning Point Brands, Inc. Due to the factors described above, net income attributable to Turning Point Brands, Inc. for the years ended December 31, 2023 and 2022, was $38.5 million and $11.6 million, respectively.

Comparison of Year Ended December 31, 2022, to Year Ended December 31, 2021

Net Sales. For the year ended December 31, 2022, overall net sales decreased to $415.0 million from $445.5 million for the year ended December 31, 2021, a decrease of $30.5 million or 6.8%. The decrease in net sales was primarily driven by decreased sales volume in the Creative Distribution Solutions segment.

For the year ended December 31, 2022, net sales in the Zig-Zag Products segment increased to $190.4 million from $176.5 million for the year ended December 31, 2021, an increase of $13.9 million or 7.9%. The increase in net sales was by led by double-digit growth in sales of U.S. rolling papers and e-commerce, other smoking accessories, and Canadian businesses partially offset by a double-digit decline in the wraps business.

For the year ended December 31, 2022, net sales in the Stoker's Products segment increased to $130.8 million from $124.3 million for the year ended December 31, 2021, an increase of $6.5 million or 5.3%. For the year ended December 31, 2022, Stoker's Products volume decreased 2.6% and price/mix increased 7.9%. The increase in net sales was driven by the continuing double-digit growth of *Stoker's*® MST offset by high single-digit decline in loose-leaf chewing tobacco. MST represented 66% of Stoker's Products revenue in 2022, up from 63% a year earlier.

For the year ended December 31, 2022, net sales in the Creative Distribution Solutions segment decreased to $93.8 million from $144.7 million for the year ended December 31, 2021, a decrease of $50.9 million or 35.2%. The decrease in net sales was primarily the result of volume declines as a result of the changing regulatory environment relating to liquid nicotine products.

Gross Profit. For the year ended December 31, 2022, overall gross profit decreased to $205.5 million from $217.8 million for the year ended December 31, 2021, a decrease of $12.3 million or 5.6%. Gross profit as a percentage of net sales increased to 49.5% for the year ended December 31, 2022, from 48.9% for the year ended December 31, 2021. The increase in gross profit as a percentage of net sales was driven by product mix.

For the year ended December 31, 2022, gross profit in the Zig-Zag Products segment increased to $106.6 million from $102.7 million for the year ended December 31, 2021, an increase of $3.8 million or 3.7%. Gross profit as a percentage of net sales decreased to 56.0% of net sales for the year ended December 31, 2022, from 58.2% of net sales for the year ended December 31, 2021. The decrease in gross profit as a percentage of net sales is a result of product mix including the launch of our CLIPPER lighter products which have lower gross profit margins.

For the year ended December 31, 2022, gross profit in the Stoker's Products segment increased to $71.3 million from $68.1 million for the year ended December 31, 2021, an increase of $3.2 million or 4.7%. Gross profit as a percentage of net sales decreased to 54.5% of net sales for the year ended December 31, 2022, from 54.8% of net sales for the year ended December 31, 2021. The decrease in gross profit as a percentage of net sales is primarily a result of product mix shift including mix of discount loose-leaf products.

For the year ended December 31, 2022, gross profit in the Creative Distribution Solutions segment decreased to $27.7 million from $47.0 million for the year ended December 31, 2021, a decrease of $19.3 million or 41.1%. Gross profit as a percentage of net sales decreased to 29.5% of net sales for the year ended December 31, 2022, from 32.5% of net sales for the year ended December 31, 2021, primarily as a result of product mix and the highly promotional environment.

Selling, General and Administrative Expenses. For the year ended December 31, 2022, selling, general and administrative expenses increased to $130.0 million from $127.5 million for the year ended December 31, 2021, an increase of $2.5 million or 2.0%. Selling, general, and administrative expenses for the year ended December 31, 2022, included $5.3 million of stock options, restricted stock and incentives expense, $0.8 million of transaction expenses, $3.4 million of restructuring expenses, $2.0 million of ERP/CRM expenses and $4.6 million of expense related to PMTA. Selling, general, and administrative expenses for the year ended December 31, 2021, included $7.6 million of stock options, restricted stock and incentives expense, $1.3 million of transaction expenses, $0.9 million of restructuring expenses and $1.7 million of expense related to PMTA. The increase in selling, general and administrative expenses is a result of increased PMTA spend in 2022 and expenses related to of our new ERP/CRM system.

Interest Expense, net. For the year ended December 31, 2022, interest expense, on a net basis, decreased to $19.5 million from $20.5 million for the year ended December 31, 2021, primarily as a result of interest income earned on our cash balance in 2022 that offset the interest expense.

Investment Loss. For the year ended December 31, 2022, investment loss increased to $13.3 million compared to $6.7 million of investment loss for the year ended December 31, 2021, primarily as a result of impairments of our investments. See Note 11, “Other Assets” in Notes to the Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K for additional information on the investment impairments.

Goodwill and Intangible Impairment Loss. For the year ended December 31, 2022, Goodwill and intangible impairment loss was $27.6 million primarily as a result of fully impairing the goodwill balance of the Creative Distribution Solutions reporting unit. For the year ended December 31, 2021 there was no Goodwill and intangible impairment loss. See Note 10, “Goodwill and Other Intangible Assets” in Notes to the Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K for further information on goodwill and intangible assets.

Gain on Extinguishment of Debt. For the year ended December 31, 2022, gain on extinguishment of debt was $0.9 million as a result of the repurchase of $10.0 million principal of our Convertible Senior Notes at a discount. For the year ended December 31, 2021, gain on extinguishment of debt was $2.2 million as a result of forgiveness of the unsecured loan issued to us under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the “CARES Act”) partially offset by the repayment of the 2018 First Lien Credit Facility.

Income Tax Expense. The Company’s income tax expense was $4.8 million, or 30.3% of income before income taxes, for the year ended December 31, 2022. The Company’s income tax expense was $14.0 million, or 21.5% of income before income taxes, for the year ended December 31, 2021, and included discrete tax deductions of $7.5 million related to the forgiveness of the $7.5 million unsecured loan and $7.2 million relating to stock option exercises during the year.

Net Loss Attributable to Non-Controlling Interest. Net loss attributable to non-controlling interest was $0.5 million for the year ended December 31, 2022, compared to $0.8 million for the year ended December 31, 2021.

Net Income Attributable to Turning Point Brands, Inc. Due to the factors described above, net income attributable to Turning Point Brands, Inc. for the years ended December 31, 2022 and 2021, was $11.6 million and $52.1 million, respectively.

EBITDA and Adjusted EBITDA

To supplement our financial information presented in accordance with generally accepted accounting principles in the United States, or U.S. GAAP, we use non-U.S. GAAP financial measures including EBITDA and Adjusted EBITDA. We believe Adjusted EBITDA provides useful information to management and investors regarding certain financial and business trends relating to our financial condition and results of operations. Adjusted EBITDA is used by management to compare our performance to that of prior periods for trend analyses and planning purposes and is presented to our Board of Directors. We believe that EBITDA and Adjusted EBITDA are appropriate measures of operating performance because they eliminate the impact of expenses that do not relate to operating performance. In addition, our debt instruments contain covenants which use Adjusted EBITDA calculations.

We define “EBITDA” as net income before interest expense, gain (loss) on extinguishment of debt, provision for income taxes, depreciation, and amortization. We define “Adjusted EBITDA” as net income before interest expense, gain (loss) on extinguishment of debt, provision for income taxes, depreciation, amortization, other non-cash items, and other items we do not consider the ordinary course in our evaluation of ongoing operating performance noted in the reconciliation below.

Non-U.S. GAAP measures should not be considered a substitute for, or superior to, financial measures calculated in accordance with U.S. GAAP. Adjusted EBITDA excludes significant expenses required to be recorded in our financial statements by U.S. GAAP and is subject to inherent limitations. Other companies in our industry may calculate this non-U.S. GAAP measure differently than we do or may not calculate it at all, limiting its usefulness as a comparative measure. The tables below provide reconciliations between net income and Adjusted EBITDA.

(in thousands)	Years ended December 31,		
	2023	**2022**	**2021**
Consolidated net income	$ 38,462	$ 11,641	$ 52,059
Add:			
Interest expense, net	14,645	19,524	20,500
Gain on extinguishment of debt	(1,664)	(885)	(2,154)
Income tax expense	23,901	4,849	14,040
Depreciation expense	3,121	3,388	3,105
Amortization expense	3,237	1,911	1,907
EBITDA	$ 81,702	$ 40,428	$ 89,457
Components of Adjusted EBITDA			
Corporate and CDS restructuring (a)	389	3,444	1,026
ERP/CRM (b)	552	1,962	–
Stock options, restricted stock, and incentives expense (c)	6,561	5,273	7,557
Transactional expenses and strategic initiatives (d)	165	801	1,267
FDA PMTA (e)	2,098	4,554	1,668
Non-cash asset impairment (f)	12,177	41,136	7,100
FET Refund (g)	(4,345)	–	–
Legal settlement (h)	(4,000)	–	–
Adjusted EBITDA	$ 95,299	$ 97,598	$ 108,075

(a) Represents costs associated with corporate and CDS restructuring, including severance.
(b) Represents cost associated with scoping and mobilization of new ERP and CRM systems and cost of duplicative ERP licenses.
(c) Represents non-cash stock options, restricted stock, incentives expense and Solace performance stock units.
(d) Represents the fees incurred for transaction expenses.
(e) Represents costs associated with applications related to FDA premarket tobacco product application (“PMTA”).
(f) Represents impairment of goodwill, intangible and investment assets.
(g) Represents a federal excise tax refund included in other operating income, net.
(h) Represents other income from litigation settlement.

Liquidity and Capital Resources

Our principal uses for cash are working capital, debt service, and capital expenditures. As of December 31, 2023, we have $117.9 million cash on hand and have up to $60.0 million of availability under the new 2023 ABL Facility.

Our Convertible Senior Notes, with an outstanding balance of $118.5 million as of December 31, 2023, mature in July 2024. On November 7, 2023, one of our wholly-owned subsidiaries entered into a new 2023 ABL Facility to refinance up to $75.0 million of the Convertible Senior Notes at maturity. As a result, we classified $60.0 million related to the Convertible Senior Notes in long-term liabilities on our December 31, 2023 Balance Sheet. With our strong cash balance, free cash flow generation and borrowing availability under the 2023 ABL Facility, we expect to have ample liquidity to address the remaining balance of the Convertible Senior Notes maturing in 2024, and to satisfy our operating cash requirements for the foreseeable future.

Our working capital, which we define as current assets less cash and current liabilities, decreased to $49.4 million at December 31, 2023, compared with $109.9 million at December 31, 2022. The decrease in working capital is primarily a result of the portion of the Convertible Senior Notes to be paid during the third quarter of 2024.

(in thousands)	As of December 31, 2023	As of December 31, 2022
Current assets	$ 149,730	$ 151,251
Current liabilities	100,336	41,376
Working capital	$ 49,394	$ 109,875

For the years ended December 31, 2023 and 2022, we invested $5.7 million and $7.7 million, respectively, in capital expenditures. We had unrestricted cash on hand of $117.9 million and $106.4 million as of December 31, 2023 and 2022, respectively. We had restricted assets of $31.7 million and $31.0 million as of December 31, 2023 and 2022, respectively. Restricted assets consist of escrow deposits under the MSA and insurance deposits. On the 25th anniversary of each annual deposit, we are entitled to receive reimbursement of the principal amount of escrow remaining for that year. See “Master Settlement Agreement” below for details.

Cash Flows from Operating Activities

For the year ended December 31, 2023, net cash provided by operating activities increased to $66.9 million from $30.3 million for the year ended December 31, 2022, an increase of $36.6 million or 121%, primarily due to the timing of changes in inventory and other working capital.

For the year ended December 31, 2022, net cash provided by operating activities decreased to $30.3 million from $68.2 million for the year ended December 31, 2021, a decrease of $37.9 million or 56%, primarily due to changes in working capital including an increase in inventory.

Cash Flows from Investing Activities

For the year ended December 31, 2023, net cash used in investing activities decreased to $5.9 million from $18.8 million for the year ended December 31, 2022, a decrease of $12.9 million or 69%, primarily due to a decrease in purchases of investments in our MSA escrow account.

For the year ended December 31, 2022, net cash used in investing activities decreased to $18.8 million from $58.8 million for the year ended December 31, 2021, a decrease of $40.0 million or 68%, primarily due to the decrease in acquisitions and investments.

Cash Flows from Financing Activities

For the year ended December 31, 2023, net cash used in financing activities increased to $49.5 million from $43.3 million for the year ended December 31, 2022, an increase of $6.2 million or 14%, primarily due to $41.8 million in repurchases of Convertible Senior Notes during the period, offset by a decrease in repurchases of common stock of $29.2 million during 2023.

For the year ended December 31, 2022, net cash used in financing activities was $43.3 million compared to net cash provided by financing activities of $57.1 million for the year ended December 31, 2021, a decrease of $100.4 million or 176%, primarily due to the net proceeds from the Senior Secured Notes partially offset by the repayment in full of the 2018 First Lien Term Loan in the first quarter of 2021.

Long-Term Debt

Notes payable and long-term debt consisted of the following at December 31, 2023 and 2022, in order of preference:

	December 31, 2023	December 31, 2022
Senior Secured Notes	$ 250,000	$ 250,000
Convertible Senior Notes	118,541	162,500
Gross notes payable and long-term debt	368,541	412,500
Less deferred finance charges	(3,183)	(5,743)
Less current maturities	(58,294)	–
Notes payable and long-term debt	$ 307,064	$ 406,757

Senior Secured Notes

On February 11, 2021, we closed a private offering (the "Offering") of $250 million aggregate principal amount of our 5.625% senior secured notes due 2026 (the "Senior Secured Notes"). The Senior Secured Notes bear interest at a rate of 5.625% and will mature on February 15, 2026. Interest on the Senior Secured Notes is payable semi-annually in arrears on February 15 and August 15 of each year, commencing on August 15, 2021.We used the proceeds from the Offering (i) to repay all obligations under and terminate the 2018 First Lien Credit Facility, (ii) to pay related fees, costs, and expenses and (iii) for general corporate purposes.

Obligations under the Senior Secured Notes are guaranteed by the Company's existing and future wholly-owned domestic subsidiaries (the "Guarantors") that guarantee any credit facility (as defined in the indenture governing the Senior Secured Notes or the "Senior Secured Notes Indenture") or capital markets debt securities of the Company or Guarantors in excess of $15.0 million. The Senior Secured Notes and the related guarantees are secured by first-priority liens on substantially all of the assets of the Company and the Guarantors, subject to certain exceptions.

The Company may redeem the Senior Secured Notes, in whole or in part, at any time on or after February 15, 2023, at the redemption prices (expressed as a percentage of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, on the Senior Secured Notes to be redeemed to (but not including) the applicable redemption date if redeemed during the period indicated below:

On or after February 15, 2023	102.813%
On or after February 15, 2024	101.406%
On or after February 15, 2025 and thereafter	100.000%

If we experience a change of control (as defined in the Senior Secured Notes Indenture), we must offer to repurchase the Senior Secured Notes at a repurchase price equal to 101% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest.

The Senior Secured Notes Indenture contains covenants that, among other things, restrict the ability of the Company and its restricted subsidiaries to: (i) grant or incur liens; (ii) incur, assume or guarantee additional indebtedness; (iii) sell or otherwise dispose of assets, including capital stock of subsidiaries; (iv) make certain investments; (v) pay dividends, make distributions or redeem or repurchase capital stock; (vi) engage in certain transactions with affiliates; and (vii) consolidate or merge with or into, or sell substantially all of our assets to another entity. These covenants are subject to a number of limitations and exceptions set forth in the Senior Secured Notes Indenture. The Senior Secured Notes Indenture provides for customary events of default. We were in compliance with all covenants as of December 31, 2023.

We incurred debt issuance costs attributable to the issuance of the Senior Secured Notes of $6.4 million which are amortized to interest expense using the straight-line method over the expected life of the Senior Secured Notes.

2021 Revolving Credit Facility

In connection with the Offering, we also entered into a new $25.0 million senior secured revolving credit facility (the "2021 Revolving Credit Facility") with the lenders party thereto and Barclays Bank PLC, as administrative agent and collateral agent (in such capacity, the "Agent"). On May 10, 2023, the Company and certain of its subsidiaries, as guarantors, entered into an amendment (the "Amendment") to the 2021 Revolving Credit Facility (as amended, the "Amended Revolving Credit Facility"). The Amendment includes certain modifications to the 2021 Revolving Credit Facility relating to the replacement of the London Inter-Bank Offered Rate with a Secured Overnight Financing Rate ("SOFR") as the interest rate benchmark under the 2021 Revolving Credit Facility and adjusts certain other provisions to reflect current documentation standards and other agreed modifications.

On November 7, 2023, in connection with the entry by a subsidiary of the Company in a new asset-backed revolving credit facility, the Company terminated the Amended Revolving Credit Agreement. See “2023 ABL Facility” below.

The Company had letters of credit outstanding under the Amended Revolving Credit Facility of approximately $1.4 million that were terminated with the facility.

We incurred debt issuance costs attributable to the issuance of the Amended Revolving Credit Facility of $0.5 million, with a remaining $0.2 million written off to gain on debt extinguishment upon termination of the facility.

2023 ABL Facility

On November 7, 2023, TPB Specialty Finance, LLC, a wholly-owned subsidiary of the Company (the “ABL Borrower”), entered into a new $75.0 million asset-backed revolving credit facility (the “2023 ABL Facility”), with the several lenders thereunder, and Barclays Bank Plc, as administrative agent (the “Administrative Agent”) and as collateral agent (the “Collateral Agent”) and First-Citizens Bank & Trust Company as additional collateral agent (the “Additional Collateral Agent”). Under the 2023 ABL Facility, the ABL Borrower may draw up to $75.0 million under Revolving Credit Loans and Last In Last Out (“LILO”) Loans. The 2023 ABL Facility includes a $40.0 million accordion feature. In connection with the 2023 ABL Facility, Turning Point Brands contributed certain existing inventory to the ABL Borrower. The 2023 ABL Facility is secured on a first priority basis (subject to customary exceptions) by all assets of the ABL Borrower.

The 2023 ABL Facility contains customary borrowing conditions including a borrowing base equal to the sum of (a) the lesser of (1) 85% of the lower of (A) the market value (on a first in first out basis) of the sum of eligible inventory, plus eligible in-transit inventory of the ABL Borrower and (B) 85% of the cost of the sum of eligible inventory, plus eligible in-transit inventory of the ABL Borrower and (2) 85% of the net orderly liquidation value (“NOLV”) percentage of the lower of (1)(A) or (1)(B); plus (b) 85% of the face value of all eligible accounts of the ABL Borrower minus (c) the amount of all eligible reserves. The 2023 ABL Facility also includes a LILO borrowing base equal to the sum of (a) the lesser of: (1) 10% of the lower of (A) the market value (on a first in first out basis) of the sum of eligible inventory, plus eligible in-transit inventory of the ABL Borrower and (B) the cost of the sum of eligible inventory, plus eligible in-transit inventory and (2) 10% of the NOLV percentage of the lower of (1)(A) or (1)(B); plus (b) 10% of the face amount of eligible account; minus (c) the amount of all eligible reserves.

Amounts borrowed under the 2023 ABL Facility are subject to an interest rate margin per annum equal to (a) from and after the closing date until the last day of the first full fiscal quarter ended after the closing date, (i) 1.25% per annum, in the case base rate loans, and (ii) 2.25% per annum, in the case of revolving credit loans that are SOFR Loans, (b)(i) 2.25% per annum, in the case of LILO loans that are base rate loans, and (ii) 3.25% per annum, in the case of LILO loans that are SOFR loans, (c) on the first day of each fiscal quarter, the applicable interest rate margins will be determined from the pricing grid below based upon the historical excess availability for the most recent fiscal quarter ended immediately prior to the relevant date, as calculated by the Administrative Agent.

Level	Historical Excess Availability	Applicable Margin for SOFR Loans	Applicable Margin for Base Rate Loans
I	Greater than or equal to 66.66%	1.75%	0.75%
II	Less than 66.66%, but greater than or equal to 33.33%	2.00%	1.00%
III	Less than 33.33%	2.25%	1.25%

The 2023 ABL Facility also requires the Company and its restricted subsidiaries to maintain a fixed charge coverage ratio of at least 1.00 to 1.00 as of the end of any four consecutive fiscal quarters if excess availability shall be less than the greater of (a) 12.5% of the line cap and (b) $9.4 million, at any time and continuing until excess availability is equal to or exceeds the greater of (i) 12.5% of the line and (ii) $9.4 million for thirty (30) consecutive calendar days; provided that such $9.4 million level shall automatically increase in proportion to the amount of any increase in the aggregate revolving credit commitments thereunder in connection with any incremental facility.

The 2023 ABL Facility will mature on the earlier of (x) November 7, 2027 and (y) the date that is 91 days prior to the maturity date of any material debt of the ABL Borrower or the Company or any of its restricted subsidiaries (subject to customary extensions agreed by the lenders thereunder); provided that clause (y) shall not apply to the extent that on any applicable date of determination (on any date prior to the date set forth in clause (y)), (A) the sum of (x) cash that is held in escrow for the repayment of such material debt pursuant to arrangements satisfactory to the Administrative Agent, (y) cash that is held in accounts with the Administrative Agent and/or the Additional Collateral Agent, plus (z) excess availability, is sufficient to repay such material debt and (B) the ABL Borrower has excess availability of at least $15.0 million after giving effect to such repayment of material debt, including any borrowings under the commitments in connection therewith.

The Company has not drawn any borrowings under the 2023 ABL Facility but has letters of credit of approximately $1.4 million outstanding under the facility and has an available balance of $60.0 million as of December 31, 2023.

The Company incurred debt issuance costs attributable to the 2023 ABL Facility of $2.6 million which are amortized to interest expense using the straight-line method over the expected life of the 2023 ABL Facility.

Convertible Senior Notes

In July 2019, the Company closed an offering of $172.5 million in aggregate principal amount of its 2.50% Convertible Senior Notes due July 15, 2024 (the "Convertible Senior Notes"). The Convertible Senior Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on January 15 and July 15 of each year, beginning on January 15, 2020. The Convertible Senior Notes are senior unsecured obligations of the Company.

In the fourth quarter of 2022, a wholly owned subsidiary of the Company repurchased $10.0 million in aggregate principal amount of the Convertible Senior Notes on the open market resulting in a $0.9 million gain on extinguishment of debt. Subsequent principal repurchases occurred in 2023 for an aggregate principal amount of $44.0 million resulting in a gain on extinguishment of debt of $1.9 million. The repurchased notes continue to be held by our subsidiary and may be resold subject to compliance with applicable securities law. As of December 31, 2023, $118.5 million aggregate principal remains outstanding and held by third parties.

The Convertible Senior Notes held by third parties are convertible into approximately 2,217,807 shares of TPB Common Stock under certain circumstances prior to maturity at a conversion rate of 18.7092 shares per $1,000 principal amount of the Convertible Senior Notes, which represents a conversion price of approximately $53.45 per share, subject to adjustment under certain conditions, but will not be adjusted for any accrued and unpaid interest. The conversion price is adjusted periodically as a result of dividends paid by the Company in excess of pre-determined thresholds of $0.04 per share. Upon conversion, the Company may pay cash, shares of common stock or a combination of cash and stock, as determined by the Company at its discretion. The conditions required to allow the holders to convert their Convertible Senior Notes were not met as of December 31, 2023.

As discussed above, on November 7, 2023, a wholly-owned subsidiary of the Company entered into the new 2023 ABL Facility to refinance up to $75.0 million of the Convertible Senior notes at maturity. As a result, the Company classified $60.0 million related to the Convertible Senior Notes in Notes payable and long-term debt on the Company's December 31, 2023 Consolidated Balance Sheets. Based on current liquidity, free cash flow generation and availability under the 2023 ABL Facility, the Company believes it will have sufficient liquidity to address the maturity of the remaining Convertible Senior Notes.

The Company incurred debt issuance costs attributable to the Convertible Senior Notes of $5.9 million which are amortized to interest expense using the straight-line method over the expected life of the Convertible Senior Notes.

In connection with the Convertible Senior Notes offering, the Company entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions have a strike price of $53.45 per share and a cap price of $82.86 per share, and are exercisable when, and if, the Convertible Senior Notes are converted. The Company paid $20.53 million for these capped calls at the time they were entered into and charged that amount to additional paid-in capital.

Distribution Agreements

For a description of our material distribution agreements, see Item 1 "Business - Distribution and Supply Agreements."

Master Settlement Agreement

On November 23, 1998, the major U.S. cigarette manufacturers, Philip Morris USA, Inc., Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company and R.J. Reynolds Tobacco Company, entered into the MSA with attorneys general representing states that agreed to settle certain recovery actions (the "Settling States"). In order to be in compliance with the MSA and subsequent states' statutes, we were required to fund an escrow account with each of the Settling States based on the number of cigarettes or cigarette equivalents (which is measured by pounds of MYO cigarette smoking tobacco) sold in such state. We discontinued our generic category of MYO in 2019 and our Zig-Zag branded MYO cigarette smoking tobacco in 2017. Thus, pending a change in MSA legislation, we have no remaining product lines covered by the MSA and will not be required to make future escrow deposits. Each year's deposit will be released from escrow after 25 years.

The following table summarizes our escrow deposit balances (in thousands) by sales year as of:

Sales Year	Deposits as of December 31, 2023	Deposits as of December 31, 2022
1999	$ 211	$ 211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	82	82
Total	$ 32,073	$ 32,073

Off-Balance Sheet Arrangements

During 2023, we executed various foreign exchange contracts for the purchase of €20.1 million and sale of €15.2 million with maturity dates ranging from July 2023 to September 2024. At December 31, 2023, we had foreign currency contracts outstanding for the purchase of €15.2 million and sale of €15.2 million. The fair value of the foreign currency contracts were based on quoted market prices and resulted in an asset of $0.3 million included in Other current assets and liability of $0.1 million included in Accrued liabilities at December 31, 2023. We had no interest rate swap contracts at December 31, 2023 and 2022.

During 2022, we executed various foreign exchange contracts for the purchase of €28.9 million and sale of €28.9 million with maturity dates ranging from August 2022 to June 2023. At December 31, 2022, we had foreign currency contracts for the purchase of €18.5 million and sale of €18.5 million. The fair value of the foreign currency contracts were based on quoted market prices and resulted in an asset of $1.2 million included in Other current assets and liability of $0.0 million included in Accrued liabilities at December 31, 2022.

Future Cash Requirements

The Company's primary future cash requirements will be to fund operations, lease payments, debt service and capital expenditures. The Company's contractual obligations primarily include long-term debt and lease obligations. For information regarding our long-term debt obligations and cash payment obligations thereunder, please see Note 13, "Notes Payable and Long-Term Debt" in Notes to the Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K. For information regarding our lease obligations and cash payment obligations thereunder, please see Note 16, "Lease Commitments" in the Notes to the Consolidated Financial Statements in Part II, Item 8 of this Annual Report on Form 10-K.

In 2023, we made no repurchases of our common stock and have $27.2 million of authorization remaining under our Board approved repurchase program. In 2022, we spent $29.2 million to repurchase 1,021,052 shares at an average price of $28.62 per share.

Regulation and Legislation

While we are subject to several regulatory regimes and requirements, the following may meaningfully impact operations or resources:

Federal Regulation

Tobacco products, cigarette papers, and cigarette tubes are subject to federal excise taxes. Any future increases in federal excise taxes on the Company's products could have a material adverse effect on the results of operations or financial condition of the Company. The Company is unable to predict the likelihood of passage of future increases in federal excise taxes. As of December 31, 2023, federal excise taxes are not assessed on certain novel nicotine products, including nicotine pouches, e-cigarettes and related products.

State and Local Regulation

As of December 31, 2023, the states require excise tax payments on most of our products. These required taxes may increase over time or be expanded to cover additional product categories and may in some cases impact the consumer demand of the products. In addition, there are several local taxing jurisdictions requiring taxes and/or licensing. Several states have also implemented or are considering implementing additional regulations on our products, including sales restrictions and registry requirements. These requirements may impact which products we are allowed to offer for sale or may influence retailers' likelihood of carrying regulated products more generally.

FDA Regulation

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act ("FSPTCA") authorized the FDA to immediately regulate the manufacture, sale, and marketing of four categories of tobacco products – cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. On August 8, 2016, the FDA deeming regulation became effective. The deeming regulation gave the FDA the authority to also regulate cigars, pipe tobacco, e-cigarettes, vaporizers and e-liquids as "deemed" tobacco products under the FSPTCA.

The FDA currently assesses tobacco product user fees on six classes of regulated tobacco products and computes user fees using a methodology similar to the methodology used by the U.S Department of Agriculture to compute the Tobacco Transition Payment Program ("TTPP," also known as the "Tobacco Buyout") assessment. First, the total, annual, congressionally established user fee assessment is allocated among the various classes of tobacco products using the federal excise tax weighted market share of tobacco products subject to regulation. Then, the assessment for each class of tobacco products is divided among individual manufacturers and importers.

In August 2016, the FDA's regulatory authority under the Tobacco Control Act was extended to all tobacco products not previously covered, including: (i) certain Creative Distribution Solutions products (such as electronic cigarettes, vaporizers and e-liquids) and their components or parts (such as tanks, coils and batteries); (ii) cigars and their components or parts (such as cigar tobacco and wraps); (iii) pipe tobacco; (iv) hookah products; and (v) any other tobacco product "newly deemed" by the FDA. These "deeming regulations" apply to all products made or derived from tobacco intended for human consumption, but excluding accessories of tobacco products (such as lighters). Accordingly, the FDA has since regulated our cigar and cigar wrap products as well as our liquid nicotine products containing tobacco-derived nicotine and products intended or reasonably expected to be used to consume such e-liquids.

Subsequently, on April 14, 2022, the FDA Center for Tobacco Products also obtained jurisdiction over non-tobacco nicotine products ("NTN Products"), including synthetic nicotine. That law subjects NTN Products to the same requirements as tobacco-derived products, including not selling these products to persons under 21 years of age, not marketing these products as modified risk tobacco products without authorization, and not distributing free samples of these products. Additionally, NTN Products became subject to premarket filing requirements. Under the new law, manufacturers were required to file a Premarket Tobacco Application ("PMTA") by May 14, 2022, in order to continue selling products currently on the market. NTN Products subject of a timely-filed PMTA, and not in receipt of a negative action, were allowed to remain on the market until July 13, 2022, at which time these products became subject to enforcement, similar to tobacco-derived products remaining under review.

A successful PMTA must demonstrate that the subject product is "appropriate for the protection of public health," taking into account the effect of the marketing of the product on all sub-populations while a Substantial Equivalence Report must demonstrate that a new product either has the same characteristics as its predicate product or different characteristics but does not raise different questions of public health. We submitted premarket filings for certain of our regulated products in order to continue selling these products while they remain under review. We have continued to supplement these applications with additional information and have responded to information requests from the FDA; however, there can be no guarantee that the FDA will accept such amendments and responses or that the applications will meet the standard of "appropriate for the protection of public health" or "substantially equivalent," as appropriate. The FDA has indicated its enforcement priority is those applicants who have received negative action on their application, such as a Marketing Denial Order or Refuse to File notification and who continue to illegally sell those unauthorized products, as well as products for which manufacturers failed to submit a marketing application. Despite these stated enforcement priorities, given the FDA's limited resources we expect that for a period of time there may be a lack of enforcement, which may adversely impact our ability to compete in the marketplace against those who continue to sell unauthorized products. There can be no guarantee that the FDA will not shift its enforcement priorities or that it will increase in ability to enforce against unauthorized products over time.

In addition, we currently distribute many third-party manufactured liquid nicotine products for which we are completely dependent on the manufacturer complying with the premarket filing requirements. There can be no assurance that these third-party products will receive a marketing order or otherwise remain in compliance with relevant legal requirements. While we will take measures to pursue regulatory compliance for our own privately-branded or proprietary products that compete with these third-party products, there is no assurance that such proprietary products would be as successful in the marketplace or can fully displace third-party products that are currently being distributed by us, which could adversely affect our results of operations and liquidity. Additionally, FDA has limited resources, which may impact its ability to meaningfully enforce these provisions. This may adversely affect our ability to compete in the marketplace against those who continue to sell unauthorized products; however, regulatory uncertainty in the FDA's enforcement policies may likewise affect operations or sales of our proprietary products if the FDA's policies or priorities shift.

On May 4, 2022, the FDA proposed two tobacco product standards related to combusted tobacco products: (1) a ban on menthol as a characterizing flavor in cigarettes; and (2) a ban on all characterizing flavors (including menthol) in cigars. On June 21, 2022, the FDA also issued a proposed product standard related to restricting the level of nicotine in traditional cigarettes. These product standards are required to go through the formal rulemaking process where we have had the opportunity to provide comments with regard to the impact such standards would have on our products. These proposed rules remain pending. The FDA's policy on these and other regulated products may change or expand over time in ways not yet known and may significantly impact our products or our premarket filings.

On March 8, 2023, the FDA proposed requirements for tobacco product manufacturing practice ("TPMPs"). Once finalized, TPMPs would establish requirements for tobacco product manufacturers regarding the manufacture, design, packing and storage of finished and bulk tobacco products. This product standard is required to go through the formal rulemaking process, where we have had the opportunity to comment on the proposed rule with regard to any impact on any of our products and manufacturing practices. Nonetheless, implementation may result in additional resource requirements for quality management and changes to existing manufacturing operations.

Prevent All Cigarette Trafficking Act ("PACT Act")

On December 27, 2020, President Trump signed the Further Consolidated Appropriations Act, 2021, into law. This law included an amendment to the Jenkins Act expanding the definition of "cigarette" to include "electronic nicotine delivery systems," or ENDS, and required that the United States Postal Service promulgate regulations clarifying the applicability of the prohibition on delivery sales of cigarettes to ENDS. We have received appropriate shipping exemptions from carrier services we use to carry the affected freight. Failure to comply with the PACT Act could result in significant financial or criminal penalties. To the extent we are unable to respond to, or comply with, these new requirements, we could lose our shipping exemptions, be subject to civil or criminal penalties, or there could be a material adverse effect on our business, results of operations and financial condition.

Inflation

Inflation in general and the recent rapid increases in costs of goods and services, such as food and gas prices have had a substantial negative effect on the purchasing power of consumers. While historically, we have been able to pass on most cost increases to our consumers, no assurance can be given that we will continue to be able to do so. In addition, we have been able to maintain a relatively stable variable cost structure for our products due, in part, to our successful procurement with regard to our tobacco products and, in part, to our existing contractual agreement for the purchase of our premium cigarette papers.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Foreign Currency Sensitivity

Our inventory purchases from RTI and Clipper are denominated in euros. Accordingly, we have exposure to potentially adverse movements in the euro exchange rate. In addition, RTI provides a contractual hedge against catastrophic currency fluctuation in our agreement. We do not use derivative financial instruments for speculative trading purposes, nor do we hedge our foreign currency exposure in a manner that offsets the effects of changes in foreign exchange rates.

We regularly review our foreign currency risk and hedging programs and may as part of that review determine at any time to change our hedging policy. During 2023, we executed various foreign exchange contracts for the purchase of €20.1 million and sale of €15.2 million with maturity dates ranging from July 2023 to September 2024. At December 31, 2023, we had foreign currency contracts outstanding for the purchase of €15.2 million and sale of €15.2 million. A 10% change in the euro to U.S. dollars exchange rate would change pre-tax income by approximately $2.6 million per year.

Credit Risk

At December 31, 2023 and 2022, we had bank deposits, including MSA escrows, in excess of federally insured limits of approximately $119.0 million and $105.2 million, respectively. The Company has chosen to invest a portion of the MSA escrows, from time to time, in U.S. Government securities including Treasury notes and Treasury bonds.

We sell our products to distributors, retail establishments, and individual consumers throughout the U.S. and also have sales of *Zig-Zag*® premium cigarette papers in Canada. In 2023, 2022, and 2021, we had no customers that accounted for more than 10% of our net sales. We perform periodic credit evaluations of our customers and generally do not require collateral on trade receivables. Historically, we have not experienced significant losses due to customer credit issues.

Interest Rate Sensitivity

In February 2021, we issued the Senior Secured Notes in an aggregate principal amount of $250 million. In July 2019, we issued Convertible Senior Notes in an aggregate principal amount of $172.5 million, which after total repurchases of $54 million, results in an outstanding principal balance of $118.5 million. We carry the Senior Secured Notes and Convertible Senior Notes at face value. Since the Senior Secured Notes and Convertible Senior Notes bear interest at a fixed rate, we have no financial statement risk associated with changes in interest rates. However, the fair value of the Senior Secured Notes and Convertible Senior Notes change when the market price of our stock fluctuates, or interest rates change.

In November 2023, the ABL Borrower entered into the 2023 ABL Facility to refinance a portion of the Convertible Senior Notes at or before maturity. The 2023 ABL Facility is subject to a floating rate. Accordingly, if we make borrowings under the 2023 ABL Facility, we will be exposed to fluctuations in interest rates.

Item 8. Financial Statements and Supplementary Data

TURNING POINT BRANDS, INC.

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Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Turning Point Brands, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Turning Point Brands, Inc. and its subsidiaries (the Company) as of December 31, 2023 and 2022, the related consolidated statements of income, comprehensive income, changes in stockholders' equity and cash flows for each of the three years in the period ended December 31, 2023, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013. Our report dated February 28, 2024 expressed an opinion that the Company had not maintained effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

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

Fair Value of Non-Marketable Equity Investments with Impairment Charges

As described in Note 11 to the financial statements, for the year ended December 31, 2023, the Company recorded an impairment loss of $10.9 million on two non-marketable equity investments, one of which is recorded using the equity method with the other recorded at original cost, as adjusted for impairment and observable price changes.

Investments accounted for under the equity method of accounting are assessed for impairment, which includes estimating the fair value of the investment, when events or circumstances suggest that any loss in value of the investment may be other than temporary. A loss in value of an investment that is other than a temporary decline is recognized when evidence of a loss in value indicates, but would not necessarily be limited to, absence of an ability to recover the carrying amount of the investment or inability of the investee to sustain an earnings capacity that would justify the carrying amount of the investment.

For equity investments that do not qualify to be accounted for under the equity method of accounting and do not have a readily determinable fair value, the Company has elected a practical expedient to record the investment at the original cost, as adjusted for impairment and observable price changes. Under the practical expedient, if a qualitative analysis indicates impairment exists, the fair value of the investment is required to be estimated and any excess of the carrying value over the estimated fair value is recognized as an impairment loss.

The Company's assessment of two non-marketable equity investments identified significant events negatively impacting each investments' business strategy, deterioration in operating results, and adverse cannabinoid market conditions, which management determined to be indicators of impairment. Consequently, the Company estimated the fair values of these investments using a market approach derived from applying market multiples of comparable public companies to the financial results of each investment. The Company then compared the estimated fair value to the carrying value of each of these investments and recorded impairment losses equal to the differences.

We identified the estimates of the fair values of these non-marketable equity investments as a critical audit matter because of the complexity of the valuation methodology and the significant assumptions used by management in estimating the fair values of each investment, including the market multiples applied to the financial results of the investees. Auditing management's estimates of fair values of these investments involved a high degree of auditor judgment and an increased audit effort, including the use of our valuation specialists, due to the impact these assumptions have on the estimates of fair value.

Our audit procedures related to the estimated fair values of these non-marketable equity investments (collectively, the investees) included the following, among others:

- We evaluated the relevance and reliability of the underlying business-related data used by management by comparing it to the investees' historical financial results.
- We utilized valuation specialists to assist in the following procedures, among others:
    - Assessing the appropriateness of management's valuation methodologies
    - Corroborating guideline public company market multiples used in the Company's fair value calculations by comparing them to publicly available market data.
- We evaluated the comparability of the guideline public companies identified by management to the operations of the investees.
- We recomputed the valuation models for mathematical accuracy.

/s/ RSM US LLP

We have served as the Company's auditor since 2006.

Charlotte, North Carolina
February 28, 2024

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Turning Point Brands, Inc.

Opinion on the Internal Control Over Financial Reporting

We have audited Turning Point Brands, Inc.'s (the Company) internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013. In our opinion, because of the effect of the material weakness described below on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2023, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets as of December 31, 2023 and 2022, the related consolidated statements of income, comprehensive income, changes in stockholders' equity and cash flows for each of the three years in the period ended December 31, 2023, and the related notes to the consolidated financial statements of the Company and our report dated February 28, 2024 expressed an unqualified opinion.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management's assessment:

There were deficiencies in the design and operation of information technology general controls (ITGCs) in the areas of user access and program change-management over certain information technology (IT) systems that support the Company's financial reporting processes. The business process controls (automated and manual) that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted.

This material weakness was considered in determining the nature, timing and extent of audit tests applied in our audit of the 2023 financial statements, and this report does not affect our report dated February 28, 2024 on those financial statements.

Basis for Opinion

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

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

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ RSM US LLP

Charlotte, North Carolina
February 28, 2024

Turning Point Brands, Inc. and Subsidiaries
Consolidated Balance Sheets
December 31, 2023 and 2022
(dollars in thousands except share data)

	December 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash	$ 117,886	$ 106,403
Accounts receivable, net of allowances of $78 in 2023 and $114 in 2022	9,989	8,377
Inventories, net	98,960	119,915
Other current assets	40,781	22,959
Total current assets	267,616	257,654
Property, plant, and equipment, net	25,300	22,788
Deferred income taxes	1,468	8,443
Right of use assets	11,480	12,465
Deferred financing costs, net	2,450	282
Goodwill	136,250	136,253
Other intangible assets, net	80,942	83,592
Master Settlement Agreement (MSA) escrow deposits	28,684	27,980
Other assets	15,166	22,649
Total assets	$ 569,356	$ 572,106
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 8,407	$ 8,355
Accrued liabilities	33,635	33,001
Current portion of long-term debt	58,294	–
Other current liabilities	–	20
Total current liabilities	100,336	41,376
Notes payable and long-term debt	307,064	406,757
Lease liabilities	9,950	10,593
Total liabilities	417,350	458,726
Commitments and contingencies		
Stockholders' equity:		
Preferred stock; $0.01 par value; authorized shares 40,000,000; issued and outstanding shares -0-	–	–
Common stock, voting, $0.01 par value; authorized shares, 190,000,000; 19,922,137 issued shares, 17,605,677 outstanding shares at December 31, 2023, and 19,801,623 issued shares, 17,485,163 outstanding shares at December 31, 2022	199	198
Common stock, nonvoting, $0.01 par value; authorized shares, 10,000,000; issued and outstanding shares -0-	–	–
Additional paid-in capital	119,075	113,242
Cost of repurchased common stock (2,316,460 shares at December 31, 2023 and 2022)	(78,093)	(78,093)
Accumulated other comprehensive loss	(2,648)	(2,393)
Accumulated earnings	112,443	78,691
Non-controlling interest	1,030	1,735
Total stockholders' equity	152,006	113,380
Total liabilities and stockholders' equity	$ 569,356	$ 572,106

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

Turning Point Brands, Inc. and Subsidiaries
Consolidated Statements of Income
for the years ended December 31, 2023, 2022, and 2021
(dollars in thousands except share data)

	For the year ended December 31,		
	2023	**2022**	**2021**
Net sales	$ 405,393	$ 415,013	$ 445,471
Cost of sales	202,152	209,475	227,637
Gross profit	203,241	205,538	217,834
Selling, general, and administrative expenses	125,009	130,024	127,513
Other operating income, net	(4,345)	–	–
Operating income	82,577	75,514	90,321
Interest expense, net	14,645	19,524	20,500
Investment loss	11,914	13,303	6,673
Other income	(4,000)	–	–
Goodwill and intangible impairment loss	–	27,566	–
Gain on extinguishment of debt	(1,664)	(885)	(2,154)
Income before income taxes	61,682	16,006	65,302
Income tax expense	23,901	4,849	14,040
Consolidated net income	37,781	11,157	51,262
Net loss attributable to non-controlling interest	(681)	(484)	(797)
Net income attributable to Turning Point Brands, Inc.	$ 38,462	$ 11,641	$ 52,059
Basic income per common share:			
Net income attributable to Turning Point Brands, Inc.	$ 2.19	$ 0.65	$ 2.75
Diluted income per common share:			
Net income attributable to Turning Point Brands, Inc.	$ 2.01	$ 0.64	$ 2.52
Weighted average common shares outstanding:			
Basic	17,578,270	17,899,794	18,917,570
Diluted	20,467,406	18,055,015	22,381,994

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

Turning Point Brands, Inc. and Subsidiaries
Consolidated Statements of Comprehensive Income
for the years ended December 31, 2023, 2022, and 2021
(dollars in thousands)

	For the year ended December 31,		
	2023	**2022**	**2021**
Consolidated net income	$ 37,781	$ 11,157	$ 51,262
Other comprehensive income (loss), net of tax			
Unrealized gain (loss) on MSA investments, net of tax of $161 in 2023 and $860 in 2022 and $81 in 2021	542	(2,879)	(272)
Foreign currency translation, net of tax of $0 in 2023, 2022 and 2021	(74)	(269)	260
Unrealized (loss) gain on derivative instruments, net of tax of $237 in 2023, $273 in 2022 and $813 in 2021	(747)	857	2,634
	(279)	(2,291)	2,622
Consolidated comprehensive income	37,502	8,866	53,884
Comprehensive loss attributable to non-controlling interest	(705)	(577)	(615)
Comprehensive income attributable to Turning Point Brands, Inc.	$ 38,207	$ 9,443	$ 54,499

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

Turning Point Brands, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
for the years ended December 31, 2023, 2022, and 2021
(dollars in thousands)

	For the year ended December 31,		
	2023	2022	2021
Cash flows from operating activities:			
Consolidated net income	$ 37,781	$ 11,157	$ 51,262
Adjustments to reconcile net income to net cash provided by operating activities:			
Gain on extinguishment of debt	(1,664)	(885)	(2,154)
Loss (gain) on sale of property, plant, and equipment	90	(9)	(54)
Loss on goodwill impairment	–	25,585	–
Loss on intangible asset impairment	–	1,981	–
Gain on insurance recovery of inventory loss	(15,181)	–	–
Loss on investments	12,177	13,570	7,100
Depreciation and other amortization expense	3,262	3,388	3,105
Amortization of other intangible assets	3,096	1,911	1,907
Amortization of deferred financing costs	2,445	2,576	2,541
Deferred income tax expense (benefit)	7,024	(6,506)	(1,485)
Stock compensation expense	6,561	5,273	7,557
Noncash lease income	(82)	(29)	(167)
Gain on MSA escrow deposits	–	(54)	(255)
Changes in operating assets and liabilities:			
Accounts receivable	(1,609)	(2,103)	3,317
Inventories	20,977	(32,653)	(9)
Other current assets	(3,533)	4,581	(134)
Other assets	(4,835)	420	996
Accounts payable	(14)	1,240	(2,367)
Accrued liabilities and other	386	830	(2,943)
Net cash provided by operating activities	$ 66,881	$ 30,273	$ 68,217
Cash flows from investing activities:			
Capital expenditures	$ (5,707)	$ (7,685)	$ (6,156)
Acquisitions, net of cash acquired	–	–	(16,416)
Payments for investments	(202)	(1,000)	(16,657)
Restricted cash, MSA escrow deposits	–	(10,170)	(19,664)
Proceeds on sale of property, plant and equipment	3	62	54
Net cash used in investing activities	$ (5,906)	$ (18,793)	$ (58,839)

Turning Point Brands, Inc. and Subsidiaries
Consolidated Statements of Cash Flows (cont.)
for the years ended December 31, 2023, 2022, and 2021
(dollars in thousands)

	For the year ended December 31,		
	2023	2022	2021
Cash flows from financing activities:			
Proceeds from Senior Notes	$ –	$ –	$ 250,000
Payments of 2018 first lien term loan	–	–	(130,000)
Settlement of interest rate swaps	–	–	(3,573)
Convertible Senior Notes repurchased	(41,794)	(9,000)	–
Proceeds from call options	114	51	–
Payment of promissory note	–	–	(9,625)
Payment of dividends	(4,497)	(4,250)	(4,096)
Payments of financing costs	(2,437)	–	(6,921)
Exercise of options	450	504	2,071
Redemption of options	(346)	(155)	(2,111)
Redemption of restricted stock units	(995)	(1,229)	–
Common stock repurchased	–	(29,224)	(38,678)
Net cash (used in) provided by financing activities	$ (49,505)	$ (43,303)	$ 57,067
Net increase (decrease) in cash	$ 11,470	$ (31,823)	$ 66,445
Effect of foreign currency translation on cash	$ 13	$ (320)	$ 191
Cash, beginning of period:			
Unrestricted	$ 106,403	$ 128,320	$ 41,765
Restricted	4,929	15,155	35,074
Total cash at beginning of period	$ 111,332	$ 143,475	$ 76,839
Cash, end of period:			
Unrestricted	$ 117,886	$ 106,403	$ 128,320
Restricted	4,929	4,929	15,155
Total cash at end of period	$ 122,815	$ 111,332	$ 143,475
Supplemental disclosures of cash flow information:			
Cash paid during the period for interest	$ 18,047	$ 18,717	$ 12,539
Cash paid during the period for income taxes, net	$ 12,447	$ 13,369	$ 16,063
Supplemental schedule of noncash investing activities:			
Accrued capital expenditures	$ 8	$ 11	$ –
Accrued consideration for acquisition of investments	$ 248	$ –	$ –
Supplemental schedule of noncash financing activities:			
Dividends declared not paid	$ 1,489	$ 1,354	$ 1,261

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

Turning Point Brands, Inc. and Subsidiaries
Consolidated Statements of Changes in Stockholders' Equity
for the years ended December 31, 2023, 2022, and 2021
(dollars in thousands)

	Voting Shares	Common Stock, Voting	Additional Paid-In Capital	Cost of Repurchased Common Stock	Accumulated Other Comprehensive Income (Loss)	Accumulated Earnings (Deficit)	Non-Controlling Interest	Total
Beginning balance January 1, 2021	19,133,794	$ 195	$ 102,423	$ (10,191)	$ (2,635)	$ 23,645	$ 4,050	$ 117,487
Unrealized loss on MSA investments, net of tax of $81	–	$ –	$ –	$ –	$ (272)	$ –	$ –	$ (272)
Unrealized gain on derivative instruments, net of tax of $813	–	–	–	–	2,634	–	–	2,634
Foreign currency translation, net of tax of $0	–	–	–	–	78	–	182	260
Stock compensation expense	–	–	7,557	–	–	–	–	7,557
Exercise of options	158,420	2	2,069	–	–	–	–	2,071
Redemption of options	–	–	(2,111)	–	–	–	–	(2,111)
Cost of repurchased common stock	(896,738)	–	–	(38,678)	–	–	–	(38,678)
Acquisition of ReCreation Marketing interest	–	–	(1,127)	–	–	–	(1,123)	(2,250)
Dividends	–	–	–	–	–	(4,244)	–	(4,244)
Net income	–	–	–	–	–	52,059	(797)	51,262
Ending balance December 31, 2021	18,395,476	$ 197	$ 108,811	$ (48,869)	$ (195)	$ 71,460	$ 2,312	$ 133,716
Unrealized loss on MSA investments, net of tax of $860	–	$ –	$ –	$ –	$ (2,879)	$ –	$ –	$ (2,879)
Unrealized gain on derivative instruments, net of tax of $273	–	–	–	–	857	–	–	857
Foreign currency translation, net of tax of $0	–	–	–	–	(176)	–	(93)	(269)
Stock compensation expense	–	–	5,273	–	–	–	–	5,273
Exercise of options	35,394	1	503	–	–	–	–	504
Redemption of options	–	–	(155)	–	–	–	–	(155)
Issuance of performance based restricted stock units	69,756	–	–	–	–	–	–	–
Redemption of performance based restricted stock units	–	–	(1,141)	–	–	–	–	(1,141)
Issuance of restricted stock units	5,589	–	–	–	–	–	–	–
Redemption of restricted stock units	–	–	(88)	–	–	–	–	(88)
Cost of repurchased common stock	(1,021,052)	–	–	(29,224)	–	–	–	(29,224)
Settlement of call options, net of tax of $12	–	–	39	–	–	–	–	39
Dividends	–	–	–	–	–	(4,410)	–	(4,410)
Net income	–	–	–	–	–	11,641	(484)	11,157
Ending balance December 31, 2022	17,485,163	$ 198	$ 113,242	$ (78,093)	$ (2,393)	$ 78,691	$ 1,735	$ 113,380
Unrealized gain on MSA investments, net of tax of $161	–	$ –	$ –	$ –	$ 542	$ –	$ –	$ 542
Unrealized loss on derivative instruments, net of tax of $237	–	–	–	–	(747)	–	–	(747)
Foreign currency translation, net of tax of $0	–	–	–	–	(50)	–	(24)	(74)
Stock compensation expense	–	–	6,561	–	–	–	–	6,561
Exercise of options	33,851	–	450	–	–	–	–	450
Redemption of options	(15,985)	–	(346)	–	–	–	–	(346)
Issuance of performance based restricted stock units	105,032	1	75	–	–	–	–	76
Redemption of performance based restricted stock units	(34,704)	–	(800)	–	–	–	–	(800)
Issuance of restricted stock units	40,910	–	2	–	–	–	–	2
Redemption of restricted stock units	(8,590)	–	(195)	–	–	–	–	(195)
Settlement of call options, net of tax of $28	–	–	86	–	–	–	–	86
Dividends	–	–	–	–	–	(4,710)	–	(4,710)
Net income	–	–	–	–	–	38,462	(681)	37,781
Ending balance December 31, 2023	17,605,677	$ 199	$ 119,075	$ (78,093)	$ (2,648)	$ 112,443	$ 1,030	$ 152,006

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

Turning Point Brands, Inc. and Subsidiaries
Notes to Consolidated Financial Statements
(dollars in thousands, except where designated and per share data)

Note 1. Organizations and Basis of Presentation

Description of Business

Turning Point Brands, Inc. and its subsidiaries (collectively referred to herein as the "Company," "we," "our," or "us") is a leading manufacturer, marketer and distributor of branded consumer products. We sell a wide range of products to adult consumers consisting of staple products with our iconic brands *Zig-Zag*® and *Stoker's*® and its next generation products to fulfill evolving consumer preferences. Our segments are led by our core, proprietary brands: *Zig-Zag*® and CLIPPER® in the Zig-Zag Products segment and *Stoker's*® along with *Beech-Nut*® and *Trophy*® in the Stoker's Products segment. The Company's products are available in more than 217,000 retail outlets in North America. We operate in three segments: (i) Zig-Zag Products, (ii) Stoker's Products, and (iii) Creative Distribution Solutions, formerly known as NewGen.

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. ("U.S. GAAP") and Securities and Exchange Commission ("SEC") regulations.The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts of assets and liabilities, disclosure of contingent assets and liabilities as of the dates of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates. The Company's significant estimates include those affecting the valuation of goodwill and other intangible assets, deferred income tax valuation allowances, the valuation of investments and the valuation of inventory, including reserves.

Certain prior year amounts have been reclassified to conform to the current year's presentation. The changes did not have an impact on the Company's consolidated financial position, results of operations, or cash flows in any of the periods presented.

Note 2. Summary of Significant Accounting Policies

Consolidation

The consolidated financial statements include the accounts of the Company, its subsidiaries, all of which are wholly-owned, and variable interest entities ("VIEs") for which the Company is considered the primary beneficiary. All significant intercompany transactions have been eliminated.

U.S. GAAP requires the Company to identify entities for which control is achieved through means other than voting rights and to determine whether the Company is the primary beneficiary of VIEs. A VIE is broadly defined as an entity with one or more of the following characteristics: (a) the total equity investment at risk is insufficient to finance the entity's activities without additional subordinated financial support; (b) as a group, the holders of the equity investment at risk lack (i) the ability to make decisions about the entity's activities through voting or similar rights, (ii) the obligation to absorb the expected losses of the entity, or (iii) the right to receive the expected residual returns of the entity; and (c) the equity investors have voting rights that are not proportional to their economic interests, and substantially all of the entity's activities either involve, or are conducted on behalf of, an investor that has disproportionately few voting rights. The Company consolidates its investment in a VIE when it determines that it is the VIE's primary beneficiary. The Company may change its original assessment of a VIE upon subsequent events such as the modification of contractual arrangements that affects the characteristics or adequacy of the entity's equity investments at risk and the disposition of all or a portion of an interest held by the primary beneficiary.

The primary beneficiary of a VIE is the entity that has both: (i) the power to direct the activities of the VIE that most significantly impact the entity's economic performance; and (ii) the obligation to absorb losses or the right to receive benefits of the VIE that could be significant to the entity. The Company performs this analysis on an ongoing basis.

Management of the Company has determined that Turning Point Brands Canada (formerly ReCreation Marketing) is a VIE for which the Company is considered the primary beneficiary due to the power the Company has over the activities that most significantly impact the economic performance of Turning Point Brands Canada and the right to receive benefits and the obligation to absorb losses of Turning Point Brands Canada through the Company's 65% equity interest, additional subordinated financing provided by the Company to Turning Point Brands Canada and the distribution agreement with Turning Point Brands Canada for the sale of the Company's products that makes up a significant portion of Turning Point Brands Canada's business activities.

Revenue Recognition

The Company recognizes revenues in accordance with Accounting Standards Codification ("ASC") 606, Revenue from Contracts with Customers ("Topic 606"), which includes excise taxes and shipping and handling charges billed to customers, net of cash discounts for prompt payment, sales returns and sales incentives, upon delivery of goods to the customer—at which time the Company's performance obligation is satisfied—at an amount that the Company expects to be entitled to in exchange for those goods in accordance with the five-step analysis outlined in Topic 606: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations, and (v) recognize revenue when (or as) performance obligations are satisfied. The Company excludes from the transaction price, sales taxes and value-added taxes imposed at the time of sale (which do not include excise taxes on smokeless tobacco, cigars, or vaping products billed to customers).

The Company records an allowance for sales returns, based principally on historical volume and return rates, which is included in accrued liabilities on the consolidated balance sheets. The Company records sales incentives, which consist of consumer incentives and trade promotion activities, as a reduction in revenues (a portion of which is based on amounts estimated as being due to wholesalers, retailers and consumers at the end of the period) based principally on historical volume and utilization rates. Expected payments for sales incentives are included in accrued liabilities on the consolidated balance sheets.

A further requirement of ASC 606 is for entities to disaggregate revenue recognized from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. Company management views business performance through segments that closely resemble the performance of major product lines. Thus, the primary and most useful disaggregation of the Company's contract revenue for decision making purposes is the disaggregation by segment which can be found in Note 20, "Segment Information". An additional disaggregation of contract revenue by sales channel can be found within Note 20 as well.

Derivative Instruments

The Company enters into foreign currency contracts to hedge a portion of its exposure to changes in foreign currency exchange rates on inventory purchase commitments. The Company accounts for its foreign currency contracts under the provisions of ASC 815, Derivatives and Hedging. Under the Company's policy, the Company may hedge up to 100% of its anticipated purchases of inventory in the denominated invoice currency over a forward period not to exceed twelve months. The Company may also, from time to time, hedge up to 100% of its non-inventory purchases (e.g. production equipment) in the denominated invoice currency. Foreign currency contracts that qualify as hedges are adjusted to their fair value through other comprehensive income as determined by market prices on the measurement date, except any hedge ineffectiveness which is recognized currently in income. Gains and losses on these foreign currency contracts are transferred from other comprehensive income into inventory as the related inventories are received and are transferred to net income as inventory is sold. Changes in fair value of any contracts that do not qualify for hedge accounting or are not designated as hedges are recognized currently in income.

Shipping Costs

The Company records shipping costs incurred as a component of selling, general and administrative expenses. Shipping costs incurred were approximately $23.5 million, $24.2 million, and $27.6 million in 2023, 2022, and 2021, respectively.

Research and Development and Quality Assurance Costs

Research and development and quality assurance costs are expensed as incurred. These expenses, classified as selling, general and administrative expenses, were approximately $0.6 million, $0.6 million, and $1.1 million in 2023, 2022, and 2021, respectively.

Cash and Cash Equivalents

The Company considers any highly liquid investments with a maturity of three months or less from the date of purchase to be cash equivalents.

Inventories

Inventories are stated at the lower of cost or net realizable value using the first-in, first-out ("FIFO") method. Leaf tobacco is presented in current assets in accordance with standard industry practice, notwithstanding the fact that such tobaccos are carried longer than one year for the purpose of curing.

Property, Plant and Equipment

Property, plant and equipment is stated at cost less accumulated depreciation and impairment. Depreciation is provided using the straight-line method over the lesser of the estimated useful lives of the assets or the life of the leases for leasehold improvements (4 to 7 years for machinery, equipment and furniture, 10 to 15 years for leasehold improvements, and up to 15 years for buildings and building improvements). Expenditures for repairs and maintenance are charged to expense as incurred. The costs of major renewals and improvements are capitalized and depreciated over their estimated useful lives. Upon disposition of fixed assets, the costs and related accumulated depreciation amounts are relieved. Any resulting gain or loss is reflected in operations during the period of disposition. Long-lived assets are reviewed for impairment when changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

Goodwill and Other Intangible Assets

The Company follows the provisions of ASC 350, Intangibles – Goodwill and Other in accounting for goodwill and other intangible assets. Goodwill is tested for impairment annually on December 31, or more frequently if certain indicators are present.

When testing goodwill for impairment, the Company has the option to first perform qualitative testing to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value. If the Company chooses not to complete a qualitative assessment for a given reporting unit or if the initial assessment indicates that it is more likely than not that the carrying value of a reporting unit exceeds its estimated fair value, additional quantitative testing is required. If the carrying value of a reporting unit exceeds its fair value, an impairment loss is recognized in the amount by which the carrying value of the reporting unit exceeds its fair value, limited to the amount of goodwill at the reporting unit. The Company determines fair values for each of the reporting units using a combination of the income approach and/or market approach. Under the income approach, fair value is determined based on the present value of estimated future cash flows, discounted at an appropriate risk-adjusted rate. Under the market approach, the Company selects peer sets based on close competitors and reviews the revenue and EBITDA multiples to determine the fair value. See Note 10, “Goodwill and Other Intangible Assets” for further information on goodwill.

Indefinite-lived intangible assets are tested for impairment at least annually; however, these tests are performed more frequently when events or changes in circumstances indicate that the asset may be impaired. Impairment exists when carrying value exceeds fair value. The Company’s fair value methodology is primarily based on the relief from royalty approach.

Definite-lived intangible assets are amortized over their estimated useful lives, generally on a straight-line basis for periods ranging primarily from 3.5 to 15 years. The Company continually evaluates the reasonableness of the useful lives of these assets.

Fair Value

U.S. GAAP establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3).

The three levels of the fair value hierarchy under U.S. GAAP are described below:

- Level 1 – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets at the measurement date.
- Level 2 – Inputs to the valuation methodology include: quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in inactive markets; inputs other than quoted prices that are observable for the asset or liability; and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3 – Unobservable inputs that reflect management’s best estimate of what market participants would use in pricing the asset or liability at the measurement date.

Equity Investments

The Company's investments include equity securities, which are accounted for at cost and under the equity method of accounting.

For equity investments that do not qualify to be accounted for under the equity method of accounting and that do not have a readily determinable fair value, the Company has elected a practical expedient to record the investment at the original cost, as adjusted for impairment and observable price changes. Under the practical expedient, if a qualitative analysis indicates impairment exists, the fair value of the investment is required to be estimated and any excess of the carrying value over the estimated fair value is recognized as an impairment loss.

Equity investments accounted for under the equity method of accounting are assessed for impairment when events or circumstances suggest that any loss in value of the investment may be other than temporary. A loss in value of an investment is other than temporary when evidence of a loss in value indicates the absence of an ability to recover the carrying amount of the investment or inability of the investee to sustain an earnings capacity that would justify the carrying amount of the investment.

In the absence of observable data, the Company estimates the fair values of these investments using a market approach derived from applying market multiples of comparable public companies to the financial results of each investment. The valuation methodology and the significant assumptions used by management in estimating the fair values of each investment, involve a high degree of judgment and may involve the use of third-party valuation specialists.

Deferred Financing Costs

Deferred financing costs are amortized over the terms of the related debt obligations using the straight-line method. Unamortized amounts are expensed upon extinguishment of the related borrowings. Deferred financing costs are presented as a direct deduction from the carrying amount of that debt liability except for deferred financing costs relating to our revolving credit facility, which are presented as an asset.

Income Taxes

The Company records the effects of income taxes under the liability method in which deferred income tax assets and liabilities are recognized based on the difference between the financial and tax basis of assets and liabilities using the enacted tax rates in effect for the years in which the differences are expected to reverse. The Company assesses its ability to realize future benefits of deferred tax assets by determining if they meet the "more likely than not" criteria in ASC 740, Income Taxes. If the Company determines that future benefits do not meet the "more likely than not" criteria, a valuation allowance is recorded.

Advertising and Promotion

Advertising and promotion costs, including point of sale materials, are expensed as incurred and amounted to $9.2 million, $9.3 million, and $12.1 million for the years ended December 31, 2023, 2022, and 2021, respectively.

Stock-Based Compensation

The Company measures stock-based compensation costs related to its stock options on the fair value-based method under the provisions of ASC 718, Compensation – Stock Compensation. The fair value-based method requires compensation cost for stock options to be recognized over the requisite service period based on the fair value of stock options granted. The Company determined the fair value of these awards using the Black-Scholes option pricing model.

The Company grants performance-based restricted stock units ("PRSU") subject to both performance-based and service-based vesting conditions. The fair value of each PRSU is the Company's stock price on the date of grant. For purposes of recognizing compensation expense as services are rendered in accordance with ASC 718, the Company assumes all employees involved in the PRSU grant will provide service through the end of the performance period. Stock compensation expense is recorded based on the probability of achievement of the performance conditions specified in the PRSU grant.

The Company grants restricted stock units ("RSU") subject to service-based vesting conditions. The fair value of each RSU is the Company's stock price on the date of grant. The Company recognizes compensation expense as services are rendered in accordance with ASC 718. Stock compensation expense is recorded over the service period in the RSU grant.

Risks and Uncertainties

Manufacturers and sellers of tobacco products are subject to regulation at the federal, state, and local levels. Such regulations include, among others, labeling requirements, limitations on advertising, and prohibition of sales to minors. The tobacco industry is likely to continue to be heavily regulated. There can be no assurance as to the ultimate content, timing, or effect of any regulation of tobacco products by any federal, state, or local legislative or regulatory body, nor can there be any assurance that any such legislation or regulation would not have a material adverse effect on the Company's financial position, results of operations, or cash flows. In a number of states targeted flavor bans have been proposed or enacted legislatively or by the administrative process. Depending on the number and location of such bans, that legislation or regulation could have a material adverse effect on the Company's financial position, results of operations or cash flows. The U.S. Food and Drug Administration ("FDA") continues to consider various restrictive regulations around our products, including targeted flavor bans; however, the details, timing, and ultimate implementation of such measures remain unclear.

The tobacco industry has experienced, and is experiencing, significant product liability litigation. Most tobacco liability lawsuits have been brought against manufacturers and sellers of cigarettes for injuries allegedly caused by smoking or exposure to smoke. However, several lawsuits have been brought against manufacturers and sellers of smokeless products for injuries to health allegedly caused by use of smokeless products. Typically, such claims assert that use of smokeless products is addictive and causes oral cancer. Additionally, several lawsuits have been brought against manufacturers and distributors of Creative Distribution Solutions products due to malfunctioning devices. There can be no assurance the Company will not sustain losses in connection with such lawsuits and that such losses will not have a material adverse effect on the Company's financial position, results of operations, or cash flows.

Master Settlement Agreement (MSA): Forty-six states, certain U.S. territories, and the District of Columbia are parties to the Master Settlement Agreement ("MSA") and the Smokeless Tobacco Master Settlement Agreement ("STMSA"). To the Company's knowledge, signatories to the MSA include 49 cigarette manufacturers and/or distributors. The only signatory to the STMSA is US Smokeless Tobacco Company. In the Company's opinion, the fundamental basis for each agreement is the states' consents to withdraw all claims for monetary, equitable, and injunctive relief against certain tobacco products manufacturers and others and, in return, the signatories have agreed to certain marketing restrictions and regulations as well as certain payment obligations.

Pursuant to the MSA and subsequent states' statutes, a "cigarette manufacturer" (which is defined to also include MYO cigarette tobacco) has the option of either becoming a signatory to the MSA or opening, funding, and maintaining an escrow account, with sub-accounts on behalf of each settling state. The STMSA has no similar provisions. The MSA escrow accounts are governed by states' statutes that expressly give the manufacturers the option of opening, funding, and maintaining an escrow account in lieu of becoming a signatory to the MSA. The statutes require companies who are not signatories to the MSA to deposit, on an annual basis, into qualified banks, escrow funds based on the number of cigarettes or cigarette equivalents, i.e., the pounds of MYO tobacco, sold. The purpose of these statutes is expressly stated to be to eliminate the cost disadvantage the settling manufacturers have as a result of entering into the MSA. Such companies are entitled to direct the investment of the escrowed funds and withdraw any appreciation, but cannot withdraw the principal for twenty-five years from the year of each annual deposit, except to withdraw funds deposited pursuant to an individual state's escrow statute to pay a final judgment to that state's plaintiffs in the event of such a final judgment against the company. Either option – becoming an MSA signatory or establishing an escrow account – is permissible.

The Company chose to open and fund an MSA escrow account as its means of compliance. It is management's opinion, due to the possibility of future federal or state regulations, though none have to date been enacted, that entering into one or both of the settlement agreements or establishing and maintaining an escrow account would not necessarily prevent future regulations from having a material adverse effect on the results of operations, financial position, and cash flows of the Company.

Various states have enacted or proposed complementary legislation intended to curb the activity of certain manufacturers and importers of cigarettes that are selling into MSA states without signing the MSA or who have failed to properly establish and fund a qualifying escrow account. To the best of the Company's knowledge, no such statute has been enacted which could inadvertently and negatively impact the Company, which has been, and is currently, fully compliant with all applicable laws, regulations, and statutes. However, there can be no assurance that the enactment of any such complementary legislation in the future will not have a material adverse effect on the results of operations, financial position, or cash flows of the Company.

Pursuant to the MSA escrow account statutes, in order to be compliant with the MSA escrow requirements, companies selling products covered by the MSA are required to deposit such funds for each calendar year into a qualifying escrow account by April 15 of the following year. At December 31, 2023, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $28.7 million. At December 31, 2022, the Company had on deposit approximately $32.1 million, the fair value of which was approximately $28.0 million. The increase in fair value was due to decreasing maturities affecting the fair value of U.S. government securities held in the MSA escrow account. Inputs to the valuation methodology of the MSA escrow deposits when funds are invested include unadjusted quoted prices for identical assets or liabilities in active markets at the measurement date. During 2023, no monies were deposited into this qualifying escrow account. The investment vehicles available to the Company are specified in the state escrow agreements and are limited to low-risk government securities.

The Company discontinued its generic category of MYO in 2019 and its Zig-Zag branded MYO cigarette smoking tobacco in 2017. Thus, pending a change in MSA legislation, the Company has no remaining product lines covered by the MSA and will not be required to make future escrow deposits.

The Company has chosen to invest a portion of the MSA escrow, from time to time, in U.S. Government securities including TIPS, Treasury notes, and Treasury bonds. These investments are classified as available-for-sale and carried at fair value. Realized losses are prohibited under the MSA; thus, any investment with an unrealized loss position will be held until the value is recovered, or until maturity.

Fair values for the U.S. Governmental agency obligations are Level 2 in the fair value hierarchy. The following tables show cost and estimated fair value of the assets held in the MSA account, respectively, as well as the maturities of the U.S. Governmental agency obligations held in such account for the periods indicated.

	As of December 31, 2023				As of December 31, 2022			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash and cash equivalents	$ 1,929	$ –	$ –	$ 1,929	$ 1,929	$ –	$ –	$ 1,929
U.S. Governmental agency obligations (unrealized position < 12 months)	–	–	–	–	10,226	–	(1,251)	8,975
U.S. Governmental agency obligations (unrealized position > 12 months)	30,144	–	(3,389)	26,755	19,918	–	(2,842)	17,076
Total	$ 32,073	$ –	$ (3,389)	$ 28,684	$ 32,073	$ –	$ (4,093)	$ 27,980

	As of December 31, 2023
Less than one year	$ 4,200
One to five years	10,735
Five to ten years	13,254
Greater than ten years	1,955
Total	$ 30,144

The following shows the amount of deposits by sales year for the MSA escrow account:

Sales Year	Deposits as of December 31, 2023	Deposits as of December 31, 2022
1999	$ 211	$ 211
2000	1,017	1,017
2001	1,673	1,673
2002	2,271	2,271
2003	4,249	4,249
2004	3,714	3,714
2005	4,553	4,553
2006	3,847	3,847
2007	4,167	4,167
2008	3,364	3,364
2009	1,619	1,619
2010	406	406
2011	193	193
2012	199	199
2013	173	173
2014	143	143
2015	101	101
2016	91	91
2017	82	82
Total	$ 32,073	$ 32,073

Concentration of Credit Risk: At December 31, 2023 and 2022, the Company had bank deposits, including MSA escrow accounts, in excess of federally insured limits of approximately $119.0 million and $105.2 million, respectively. During 2023 and 2022, the Company invested a portion of the MSA escrow accounts in U.S. Government securities including TIPS, Treasury notes, and Treasury bonds.

The Company sells its products to distributors, retail establishments, and consumers throughout the U.S. and also sells *Zig-Zag*® premium cigarette papers in Canada and some smaller quantities in other countries. The Company had no customers that accounted for more than 10% of net sales for 2023, 2022, or 2021. The Company performs periodic credit evaluations of its customers and generally does not require collateral on trade receivables. Historically, the Company has not experienced significant credit losses.

Accounts Receivable

Accounts receivable are recognized at their net realizable value. All accounts receivable are trade related, recorded at the invoiced amount, and do not bear interest. The Company maintains allowances for credit losses for estimated uncollectible invoices resulting from a customer's inability to pay (bankruptcy, out of business, etc., i.e. "bad debt" which results in write-offs). The activity of allowance for credit losses during 2023 and 2022 is as follows:

	December 31, 2023	December 31, 2022
Balance at beginning of period	$ 114	$ 262
Additions to allowance account during period	38	191
Deductions of allowance account during period	(74)	(339)
Balance at end of period	$ 78	$ 114

Note 3. Acquisitions

Unitabac

In July 2021, the Company acquired certain assets of Unitabac, a marketer of mass-market cigars, for $10.7 million in total consideration, comprised of $9.6 million in cash and $1.1 million of capitalized transaction costs. The acquired assets are comprised of a portfolio of cigarillo products and all related intellectual property, including Cigarillo Non-Tip ("NT") Homogenized Tobacco Leaf ("HTL") products and Rolled Leaf and Natural Leaf Cigarillo Products. The transaction was accounted for as an asset purchase with $10.0 million assigned to intellectual property and $0.7 million assigned to inventory. The intellectual property asset is deductible for tax purposes.

Direct Value Wholesale

In April 2021, Turning Point Brands Canada, a VIE for which the Company is considered the primary beneficiary, purchased 100% of the equity interests of Westhem Ventures LTD d/b/a Direct Value Wholesale ("DVW") for $3.9 million, net of cash acquired, with $3.5 million paid in cash at closing and $0.5 million in accrued consideration paid during 2021. DVW is a Canadian distribution entity that operates in markets not primarily served by Turning Point Brands Canada. The acquisition expands Turning Point Brands Canada's markets in Canada. The Company recorded goodwill of $2.5 million related to its acquisition of DVW which consists of the synergies expected from combining the operations and is deductible for tax purposes. Goodwill is determined as the consideration transferred in excess of the acquisition price over the estimated fair value of the identifiable net assets acquired.

Turning Point Brands Canada

In July 2021, the Company invested an additional $2.3 million in Turning Point Brands Canada increasing its ownership interest to 65%. The Company received board seats aligned with its ownership position. The Company has determined that Turning Point Brands Canada continues to be a VIE due to its required subordinated financial support. The Company has determined it remains the primary beneficiary due to its 65% equity interest, additional subordinated financing and distribution agreement with Turning Point Brands Canada for the sale of the Company's products. As a result of the Company remaining the primary beneficiary, the increase in ownership interest resulted in a decrease in Non-controlling interest of $1.1 million and a decrease in Additional paid-in capital of $1.1 million.

Note 4. Derivative Instruments

Foreign Currency

The Company's policy is to manage the risks associated with foreign exchange rate movements. The policy allows hedging up to 100% of its anticipated purchases of inventory over a forward period that will not exceed 12 rolling and consecutive months. The Company may, from time to time, hedge currency for non-inventory purchases, e.g., production equipment, not to exceed 100% of the purchase price. During 2023, the Company executed various foreign exchange contracts which met hedge accounting requirements for the purchase of €20.1 million and sale of €15.2 million. During 2022, the Company executed various foreign exchange contract, which met hedge accounting requirements for the purchase of €28.9 million and sale of €28.9 million.

At December 31, 2023, the Company had foreign currency contracts outstanding for the purchase of €15.2 million and sale of €15.2 million. The foreign currency contract's fair value at December 31, 2023, resulted in an asset of $0.3 million included in Other current assets and a liability of $0.1 million included in Accrued liabilities. At December 31, 2022, the Company had foreign currency contracts for the purchase of €18.5 million and sale of €18.5 million. The foreign currency contracts' fair value at December 31, 2022, resulted in an asset of $1.2 million included in Other current assets and a liability of $0.0 million included in Accrued liabilities. A $0.9 million gain and $0.1 million loss were reclassified from Accumulated other comprehensive loss to Cost of sales for the years ended December 31, 2023 and 2022, respectively.

Interest Rate Swaps

The Company terminated its interest rate swap agreements in the first quarter of 2021 with an early termination payment made by the Company in the amount of $3.6 million which was reclassified out of accumulated other comprehensive loss into loss on extinguishment of debt. A loss of $0.1 million was reclassified into interest expense for the year ended December 31, 2021.

Note 5. Fair Value of Financial Instruments

The estimated fair value amounts have been determined by the Company using the methods and assumptions described below. However, considerable judgment is required to interpret market data to develop estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

Cash and Cash Equivalents

Cash and cash equivalents are, by definition, short-term. Thus, the carrying amount is a reasonable estimate of fair value.

Accounts Receivable

The fair value of accounts receivable approximates their carrying value due to their short-term nature.

Long-Term Debt

The Company's Senior Secured Notes bear interest at a rate of 5.625% per year. As of December 31, 2023, the fair value approximated $234.9 million, with a carrying value of $250 million. As of December 31, 2022, the fair value approximated $226.4 million with a carrying value of $250 million.

The Convertible Senior Notes bear interest at a rate of 2.50% per year. As of December 31, 2023, the fair value approximated $114.7 million, with a carrying value of $118.5 million. As of December 31, 2022, the fair value approximated $139.2 million, with a carrying value of $162.5 million.

See Note 13, "Notes Payable and Long-Term Debt", for further information regarding the Company's long-term debt.

Foreign Currency

The fair value of the Company's foreign currency contracts are based upon quoted market prices for similar instruments, thus leading to a Level 2 classification within the fair value hierarchy. See Note 4, "Derivative Instruments", for further information regarding the Company's foreign currency contracts.

Note 6. Inventories

The components of inventories are as follows:

	December 31, 2023	December 31, 2022
Raw materials and work in process	$ 5,201	$ 7,283
Leaf tobacco	34,894	43,468
Finished goods - Zig-Zag Products	41,783	42,279
Finished goods - Stoker's Products	8,090	9,667
Finished goods - Creative Distribution Solutions	7,281	15,431
Other	1,711	1,787
Inventories	$ 98,960	$ 119,915

The following represents the inventory valuation allowance roll-forward, for the years ended December 31:

	2023	2022
Balance at beginning of period	$ (4,533)	$ (7,668)
Charged to cost and expense	(17,275)	(987)
Deductions for inventory disposed	1,215	4,122
Balance at end of period	$ (20,593)	$ (4,533)

In December 2023, a third-party warehouse in Tennessee used to store some of the Company's leaf tobacco incurred significant tornado damage resulting in damage to the leaf tobacco. As a result, the Company recorded a $15.2 million inventory reserve related to its leaf tobacco inventory which is included in other operating income, net. The leaf tobacco inventory is covered by the Company's stock throughput insurance policy and the Company believes the inventory loss is probable of being fully recovered under the policy. As a result, the Company recorded a $15.2 million insurance recovery receivable which is included in other current assets in the consolidated balance sheet, and in other operating income, net offsetting the inventory reserve recorded in the consolidated statement of income for the year ended December 31, 2023. The Company does not expect to incur any delays in customer deliveries as a result of the damage.

In 2022, the Company determined that the incorrect weight had been used in calculating the amount of federal excise tax assessed and paid on its imported MYO cigar wraps during the years 2019 - 2021. As a result, the Company filed a refund claim for $4.3 million with the Alcohol and Tobacco Tax and Trade Bureau for the overpayment of federal excise taxes, which was approved and paid in the fourth quarter of 2023. This refund is presented in Other operating income, net on the Company's Consolidated Statements of Income for the year ended December 31, 2023.

Note 7. Other Current Assets

Other current assets consists of:

	December 31, 2023	December 31, 2022
Inventory deposits	$ 5,707	$ 6,395
Insurance deposit	3,000	3,000
Prepaid taxes	153	448
Settlement receivable	4,000	–
Insurance recovery receivable	15,181	–
Other	12,740	13,116
Total	$ 40,781	$ 22,959

Note 8. Property, Plant and Equipment, Net

Property, plant and equipment consists of:

	December 31, 2023	December 31, 2022
Land	$ 22	$ 22
Buildings and improvements	3,956	3,096
Leasehold improvements	5,440	5,404
Machinery and equipment	29,751	25,832
Furniture and fixtures	8,391	9,264
Gross property, plant and equipment	47,560	43,618
Accumulated depreciation	(22,260)	(20,830)
Net property, plant and equipment	$ 25,300	$ 22,788

Note 9. Deferred Financing Costs, Net

Deferred financing costs consist of:

	December 31, 2023	December 31, 2022
Deferred financing costs, net of accumulated amortization of $104 and $200, respectively	$ 2,450	$ 282

Note 10. Goodwill and Other Intangible Assets

The following table summarizes goodwill by segment:

	Zig-Zag	Stoker's	CDS	Total
Balance as of December 31, 2021	$ 104,158	$ 32,590	$ 25,585	$ 162,333
Impairment	–	–	(25,585)	(25,585)
Cumulative translation adjustment	(495)	–	–	(495)
Balance as of December 31, 2022	$ 103,663	$ 32,590	$ –	$ 136,253
Cumulative translation adjustment	(3)	–	–	(3)
Balance as of December 31, 2023	$ 103,660	$ 32,590	$ –	$ 136,250

The Company tests goodwill for impairment annually as of December 31, or more frequently when events or changes in circumstances indicate that the fair value is below its carrying value. The Company elected to perform a qualitative assessment in evaluating its Zig-Zag and Stoker's reporting units for impairment as of December 31, 2023. The Creative Distribution Solutions reporting unit goodwill was fully impaired as of December 31, 2022 as discussed below.

In evaluating the impairment indicators of its Zig-Zag and Stoker's reporting units for its 2023 qualitative assessments, the Company considered macro and micro-economic indicators, changes in costs, overall financial performance and other relevant entity-specific events and noted no indication of impairment. The Company also considered the significant excess of fair values over carrying values as determined in the prior year's quantitative assessment as discussed below. The underlying assumptions utilized during the prior year's quantitative assessment remain sufficiently similar in 2023 and in line with Company projections. Thus, such underlying assumptions on which the previous fair values are based have not sufficiently changed from the prior year to suggest a material difference in the 2023 fair value assessments to indicate that it is more likely than not that the fair values of the reporting units in 2023 are below their carrying amounts.

For 2022, the Company performed quantitative testing on its Zig-Zag and Stoker's reporting units as part of its annual impairment test and determined that no goodwill impairments existed. For the quantitative assessment, the Company used a combination of discounted cash flow models (income approach) utilizing Level 3 unobservable inputs and the Guideline Public Company Method (market approach). The Company's significant assumptions in these analyses include, but are not limited to, projected revenue, the weighted average cost of capital, the terminal growth rate, derived multiples from comparable market transactions and other market data.

The Company also performed quantitative testing on its Creative Distribution Solutions reporting unit as of December 31, 2022, using a combination of the income approach utilizing Level 3 unobservable inputs and the market approach. Based on the analysis performed the Company concluded that the carrying amount of the reporting unit exceeded its fair value resulting in a non-cash goodwill impairment charge of $25.6 million included in Goodwill and intangible impairment loss for the year ended December 31, 2022. The impairment resulted from continued regulatory uncertainty.

The Company's goodwill impairment analysis as of December 31, 2022 referenced above used the discounted cash flow model (income approach) utilizing Level 3 unobservable inputs. The Company's significant assumptions in this analysis included, but were not limited to, future cash flow projections, the weighted average cost of capital, the terminal growth rate, and the tax rate. The Company's estimates of future cash flows are based on current regulatory and economic climates, recent operating results, and planned business strategies. These estimates could be negatively affected by changes in federal, state, or local regulations or economic downturns. Future cash flow estimates are, by their nature, subjective and actual results may differ materially from the Company's estimates. If the Company's ongoing estimates of future cash flows are not met or if discount rates change, the Company may have to record additional impairment charges in future periods. The Company also used the Guideline Public Company Method (market approach). The significant assumptions used in this analysis include, but are not limited to, the derived multiples from comparable market transactions and other market data. The selection of comparable businesses is based on the markets in which the reporting unit operates giving consideration to risk profiles, size, geography, and diversity of products. The Company probability-weighted scenarios for both the income and market approaches and also applied an overall probability-weighting to the income and market approaches to determine the concluded fair value of the reporting unit given the uncertainty in the current economic environment to determine the concluded fair value of the reporting unit.

The following tables summarize information about the Company's other intangible assets. Gross carrying amounts of unamortized, indefinite-lived intangible assets are shown below:

	December 31, 2023				December 31, 2022			
	Zig-Zag	Stoker's	CDS	Total	Zig-Zag	Stoker's	CDS	Total
Unamortized, indefinite life intangible assets:								
Trade names	$ –	$ 8,500	$ –	$ 8,500	$ –	$ 8,500	$ 9,162	$ 17,662
Formulas	42,245	53	–	42,298	52,217	53	–	52,270
Total	$ 42,245	$ 8,553	$ –	$ 50,798	$ 52,217	$ 8,553	$ 9,162	$ 69,932

In 2023, the Company conducted a qualitative assessment of its indefinite life intangible assets and noted no indicators of impairment, consistent with the goodwill assessment as discussed above. In January 2023, the Company transferred certain of its formulas and trade names within the Zig-Zag and Creative Distribution Solutions segments to amortized intangible assets. The Company began to amortize the formula and trade name over their useful lives of 15 years.

In 2022, based on its annual impairment testing, the fair value of the trade name in the Creative Distribution Solutions segment was less than its carrying amount resulting in an impairment of $1.6 million included in Goodwill and intangible impairment loss for the year ended December 31, 2022. The circumstances giving rise to this impairment are consistent with those resulting in the Creative Distribution Solutions goodwill impairment discussed above.

Amortized intangible assets consists of:

	Zig-Zag				Stoker's				CDS			
	December 31, 2023		December 31, 2022		December 31, 2023		December 31, 2022		December 31, 2023		December 31, 2022	
	Gross Carrying	Accumulated Amortization	Gross Carrying	Accumulated Amortization	Gross Carrying	Accumulated Amortization	Gross Carrying	Accumulated Amortization	Gross Carrying	Accumulated Amortization	Gross Carrying	Accumulated Amortization
Amortized intangible assets:												
Customer relationships (useful life of 8-10 years)	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ –	$ 6,936	$ 5,596	$ 6,936	$ 4,768
Trade names (useful life of 15 years)	449	10	–	–	2,372	633	2,372	475	16,063	2,952	7,158	2,137
Formulas (useful life of 15 years)	9,972	665	–	–	–	–	–	–	–	–	–	–
Master distribution agreement (useful life of 15 years)	5,489	1,281	5,489	915	–	–	–	–	–	–	–	–
Franchise agreements (useful life of 8 years)	–	–	–	–	–	–	–	–	–	–	780	780
Non-compete agreements (useful life of 3.5 years)	–	–	–	–	–	–	–	–	–	–	100	100
Total	$ 15,910	$ 1,956	$ 5,489	$ 915	$ 2,372	$ 633	$ 2,372	$ 475	$ 22,999	$ 8,548	$ 14,974	$ 7,785

In 2023, the Company noted indicators of possible impairment triggers for its Creative Distribution Solutions reporting unit and, as a result, performed an undiscounted cash flows recoverability assessment which provided that the fair value of the asset group exceeded its carrying value, and thus no further impairment analysis was performed.

In 2022, the Company recorded an asset impairment charge of $0.3 million related to the franchise agreements intangible asset within the Creative Distribution Solutions segment included in Goodwill and intangible impairment loss for the year ended December 31, 2022. The Company exited the franchise business and determined that the intangible asset was fully impaired.

Annual amortization expense for the next five years is estimated to be approximately $3.0 million for 2024 and $2.4 million for 2025 through 2028, assuming no additional transactions occur that require the amortization of intangible assets.

Note 11. Other Assets

Other assets consists of:

	December 31, 2023	December 31, 2022
Equity investments	$ 2,405	$ 13,376
Debt security investment	6,750	7,820
Capitalized software	5,923	929
Other	88	524
Total	$ 15,166	$ 22,649

The Company records its equity investments without a readily determinable fair value, that are not accounted for under the equity method, at cost, with adjustments for impairment and observable price changes. The Company utilizes significant judgments in determining fair value of its equity and debt security investments that do not have an observable market price. Should assumptions underlying the determination of the fair values of the Company's equity and debt security investments change, it could result in material future impairment charges.

Equity Investments

In April 2021, the Company invested $8.7 million in Docklight Brands, Inc., a pioneering consumer products company with celebrated brands including Marley Natural® and Marley™. The Company has additional follow-on investment rights. As part of the investment, the Company has obtained exclusive U.S. distribution rights for Docklight's Marley™ CBD topical products. In 2023, based on Docklight's financial results and operating difficulties, a significant change in their business model and the decline in the revenue multiples for public companies comparable to Docklight, the Company deemed its investment in Docklight was fully impaired resulting in a loss of $8.7 million recorded in Investment loss on our Consolidated Statements of Income. Fair value for all periods presented was determined using a valuation derived from relevant revenue multiples (Level 3). Purchases of inventory from Docklight Brands, Inc. were $0.0 million and $0.1 million in 2023 and 2022, respectively. There were no amounts payable to Docklight Brands, Inc. at December 31, 2023 and 2022.

In October 2020, the Company invested $2.5 million to acquire a 20% stake in Wild Hempettes, LLC, a manufacturer of natural CBD cigarettes designed as the first cigarette-styled CBD pre-roll in the world. The Company has options to increase its stake to a 100% ownership position based on certain milestones. As part of the transaction, the Wild Hempettes joint venture was spun off from Crown Distributing LLC and formed as a vehicle for the Company to be the exclusive distributor of Hempettes™ to U.S. bricks and mortar retailers under a profit-sharing arrangement. Effective January 2023, the Company terminated its distribution agreement. The Company accounts for its 20% share of Wild Hempettes profit or loss using the equity method of accounting. In 2023, based on Wild Hempettes financial results, the Company deemed its investment in Wild Hempettes to be other-than-temporarily impaired resulting in a $2.2 million impairment charge included in investment loss for the year ending December 31, 2023. Fair value for the Company's share of investment in Wild Hempettes was determined using a valuation derived from relevant revenue multiples (Level 3). The Company recorded investment losses including impairment charges of $2.3 million and $0.1 million for years ended December 31, 2023 and 2022, respectively. Purchases of inventory from Wild Hempettes was $0.0 million and $0.4 million in 2023 and 2022, respectively. There were no amounts payable to Wild Hempettes at December 31, 2023 and 2022. The Company has a $0.2 million receivable from Wild Hemp at December 31, 2023 for the return of product previously purchased and paid for.

In October 2020, the Company invested $15.0 million in dosist™ ("Dosist"), a global cannabinoid company, with an option to invest an additional $15.0 million on pre-determined terms over the twelve month period ending October 2021. The Company received a warrant exercisable for preferred shares of Dosist that would automatically be exercised upon the changing of certain federal cannabis laws in the United States, rescheduling cannabis and/or permitting the general cultivation, distribution and possession of cannabis. In 2021, based on the financial results of Dosist and the overall cannabinoid market, the Company deemed its investment was impaired resulting in a loss of $7.1 million recorded in investment loss for the year ended December 31, 2021. In 2022, after a contemplated sale of the assets of Dosist did not occur, Dosist entered into an agreement with a new buyer receiving the assets of Dosist for the assumption of its liabilities. As such, the Company considered its remaining investment in Dosist to be fully impaired and recorded an additional loss of $7.9 million in investment loss for the year ended December 31, 2022. Fair value was determined using a valuation derived from the contemplated purchase price (Level 3). There were no purchases of inventory from Dosist in 2023 or 2022.

In October 2020, the Company invested $1.8 million in BOMANI Cold Buzz, LLC ("BOMANI"), a manufacturer of alcohol-infused cold brew coffee. The Company received rights to receive equity in BOMANI in the event of an equity financing. There were no purchases of inventory from BOMANI in 2023 or 2022. There were no amounts payable to BOMANI at December 31, 2023 and 2022.

The Company has a minority ownership position in Canadian American Standard Hemp ("CASH"). CASH is headquartered in Warwick, Rhode Island, and manufactures cannabidiol isolate ("CBD") developed through highly efficient and proprietary processes. In October 2020, CASH merged with Real Brands, Inc. ("Real Brands"), an over the counter traded shell company. CASH continued business under the Real Brands name. The Company maintained its ownership position in Real Brands subsequent to the merger. In 2022, as a result of a significant decline in the enterprise value, the Company determined that the fair value of the investment was $0.0 and fully impaired the investment. The impairment resulted in a loss of $4.3 million which is recorded in investment loss for the year ended December 31, 2022. There were no purchases of inventory from Real Brands in 2023 or 2022. There were no amounts payable to Real Brands at December 31, 2023 and 2022.

In December 2018, the Company acquired a minority ownership position in General Wireless Operations, Inc. (d/b/a RadioShack; "RadioShack") from 5G gaming LLC for $0.4 million. There were no amounts payable to General Wireless Operations, Inc. at December 31, 2023 and 2022.

Debt Security Investment

In July 2021, the Company invested $8.0 million in Old Pal Holding Company LLC ("Old Pal"). In July 2022, the Company invested an additional $1.0 million in Old Pal. The Company invested in the form of a convertible note which includes additional follow-on investment rights. The accrued interest of $0.2 million from July 2021 to July 2022 was rolled into the convertible note in July 2022 resulting in a total investment of $9.2 million. Old Pal is a leading brand in the cannabis lifestyle space that operates a non-plant touching licensing model. The convertible note bears an interest rate of 3.0% per year and matures July 31, 2026. Interest and principal not paid to date are receivable at maturity. Old Pal has the option to extend the maturity date in one-year increments. The interest rate is subject to change based on Old Pal reaching certain sales thresholds. The weighted average interest rate on the convertible note was 3.0% for the year ended December 31, 2023. Old Pal has the option to convert the note into shares once sales reach a certain threshold. The conditions required to allow Old Pal to convert the note were not met as of December 31, 2023. Additionally, the Company has the right to convert the note into shares at any time. The Company has classified the debt security with Old Pal as available for sale. The Company reports interest income on available for sale debt securities in interest income in our Consolidated Statements of Income. Quarterly, we perform a qualitative assessment to determine if the fair value of the investment could be less than the amortized cost basis. In 2022, the Company performed a quantitative assessment of the fair value of the investment. The fair value as of December 31, 2022 was determined to be $7.9 million based on a Monte Carlo simulation (Level 3). The Company determined that the impairment was a result of credit related factors and, as such, recorded an allowance for credit losses of $1.4 million which is included in investment loss for the year ended December 31, 2022. In 2023, based on a subsequent quantitative assessment of the fair value using a Monte Carlo simulation, the Company determined the fair value to be $6.9 million and recorded an additional allowance for credit losses of $1.3 million which is included in investment loss for the year ended December 31, 2023. The Company has recorded accrued interest receivable of $0.1 million and $0.1 million at December 31, 2023 and 2022, respectively, in other current assets on our Consolidated Balance Sheets.

Note 12. Accrued Liabilities

Accrued liabilities consists of:

	December 31, 2023	December 31, 2022
Accrued payroll and related items	$ 7,085	$ 7,685
Customer returns and allowances	5,239	7,291
Taxes payable	3,821	1,867
Lease liabilities	2,678	3,102
Accrued interest	6,682	7,277
Other	8,130	5,779
Total	$ 33,635	$ 33,001

Note 13. Notes Payable and Long-Term Debt

Notes payable and long-term debt consists of the following in order of preference:

	December 31, 2023	December 31, 2022
Senior Secured Notes	$ 250,000	$ 250,000
Convertible Senior Notes	118,541	162,500
Gross notes payable and long-term debt	368,541	412,500
Less deferred finance charges	(3,183)	(5,743)
Less current maturities	(58,294)	–
Notes payable and long-term debt	$ 307,064	$ 406,757

Senior Secured Notes

On February 11, 2021, the Company closed a private offering (the "Offering") of $250.0 million aggregate principal amount of its 5.625% senior secured notes due 2026 (the "Senior Secured Notes" or the "Notes"). The Senior Secured Notes bear interest at a rate of 5.625% and will mature on February 15, 2026. Interest on the Senior Secured Notes is payable semi-annually in arrears on February 15 and August 15 of each year, commencing on August 15, 2021. The Company used the proceeds from the Offering (i) to repay all obligations under and terminate the 2018 First Lien Credit Facility, (ii) to pay related fees, costs, and expenses and (iii) for general corporate purposes.

Obligations under the Senior Secured Notes are guaranteed by the Company's existing and future wholly-owned domestic subsidiaries (the "Guarantors") that guarantee any credit facility (as defined in the Indenture governing the Senior Secured Notes or the "Senior Secured Notes Indenture") or capital markets debt securities of the Company or Guarantors in excess of $15.0 million. The Senior Secured Notes and the related guarantees are secured by first-priority liens on substantially all of the assets of the Company and the Guarantors, subject to certain exceptions.

The Company may redeem the Senior Secured Notes, in whole or in part, at any time on or after February 15, 2023, at the redemption prices (expressed as a percentage of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, on the Senior Secured Notes to be redeemed to (but not including) the applicable redemption date if redeemed during the period indicated below:

On or after February 15, 2023	102.813%
On or after February 15, 2024	101.406%
On or after February 15, 2025 and thereafter	100.000%

If the Company experiences a change of control (as defined in the Senior Secured Notes Indenture), the Company must offer to repurchase the Senior Secured Notes at a repurchase price equal to 101% of the principal amount of the Notes to be repurchased, plus accrued and unpaid interest.

The Senior Secured Notes Indenture contains covenants that, among other things, restrict the ability of the Company and its restricted subsidiaries to: (i) grant or incur liens; (ii) incur, assume or guarantee additional indebtedness; (iii) sell or otherwise dispose of assets, including capital stock of subsidiaries; (iv) make certain investments; (v) pay dividends, make distributions or redeem or repurchase capital stock; (vi) engage in certain transactions with affiliates; and (vii) consolidate or merge with or into, or sell substantially all of our assets to another entity. These covenants are subject to a number of limitations and exceptions set forth in the Senior Secured Notes Indenture. The Senior Secured Notes Indenture provides for customary events of default. The Company was in compliance with all financial covenants as of December 31, 2023.

The Company incurred debt issuance costs attributable to the issuance of the Senior Secured Notes of $6.4 million which are amortized to interest expense using the straight-line method over the expected life of the Senior Secured Notes.

2021 Revolving Credit Facility

In connection with the Offering, the Company also entered into a $25.0 million senior secured revolving credit facility (the "2021 Revolving Credit Facility") with the lenders party thereto and Barclays Bank PLC, as administrative agent and collateral agent (in such capacity, the "Agent"). On May 10, 2023, the Company and certain of its subsidiaries, as guarantors, entered into an amendment (the "Amendment") to the 2021 Revolving Credit Facility (as amended, the "Amended Revolving Credit Facility"). The Amendment includes certain modifications to the 2021 Revolving Credit Facility relating to the replacement of the London Inter-Bank Offered Rate with a Secured Overnight Financing Rate ("SOFR") as the interest rate benchmark under the 2021 Revolving Credit Facility and adjusts certain other provisions to reflect current documentation standards and other agreed modifications.

On November 7, 2023, in connection with the entry by a subsidiary of the Company in a new asset-backed revolving credit facility, the Company terminated the Amended Revolving Credit Agreement. See "2023 ABL Facility" below.

The Company had letters of credit outstanding under the Amended Revolving Credit Facility of approximately $1.4 million that were terminated with the facility.

The Company incurred debt issuance costs attributable to the issuance of the Amended Revolving Credit Facility of $0.5 million, with a remaining $0.2 million written off to gain on debt extinguishment upon termination of the facility.

2023 ABL Facility

On November 7, 2023, TPB Specialty Finance, LLC, a wholly-owned subsidiary of the Company (the "ABL Borrower"), entered into a new $75.0 million asset-backed revolving credit facility (the "2023 ABL Facility"), with the several lenders thereunder, and Barclays Bank Plc, as administrative agent (the "Administrative Agent") and as collateral agent (the "Collateral Agent") and First-Citizens Bank & Trust Company as additional collateral agent (the "Additional Collateral Agent"). Under the 2023 ABL Facility, the ABL Borrower may draw up to $75.0 million under Revolving Credit Loans and Last In Last Out ("LILO") Loans. The 2023 ABL Facility includes a $40.0 million accordion feature. In connection with the 2023 ABL Facility, Turning Point Brands contributed certain existing inventory to the ABL Borrower. The 2023 ABL Facility is secured on a first priority basis (subject to customary exceptions) by all assets of the ABL Borrower.

The 2023 ABL Facility contains customary borrowing conditions including a borrowing base equal to the sum of (a) the lesser of (1) 85% of the lower of (A) the market value (on a first in first out basis) of the sum of eligible inventory, plus eligible in-transit inventory of the ABL Borrower and (B) 85% of the cost of the sum of eligible inventory, plus eligible in-transit inventory of the ABL Borrower and (2) 85% of the net orderly liquidation value ("NOLV") percentage of the lower of (1)(A) or (1)(B); plus (b) 85% of the face value of all eligible accounts of the ABL Borrower minus (c) the amount of all eligible reserves. The 2023 ABL Facility also includes a LILO borrowing base equal to the sum of (a) the lesser of: (1) 10% of the lower of (A) the market value (on a first in first out basis) of the sum of eligible inventory, plus eligible in-transit inventory of the ABL Borrower and (B) the cost of the sum of eligible inventory, plus eligible in-transit inventory and (2) 10% of the NOLV percentage of the lower of (1)(A) or (1)(B); plus (b) 10% of the face amount of eligible account; minus (c) the amount of all eligible reserves.

Amounts borrowed under the 2023 ABL Facility are subject to an interest rate margin per annum equal to (a) from and after the closing date until the last day of the first full fiscal quarter ended after the closing date, (i) 1.25% per annum, in the case base rate loans, and (ii) 2.25% per annum, in the case of revolving credit loans that are SOFR Loans, (b)(i) 2.25% per annum, in the case of LILO loans that are base rate loans, and (ii) 3.25% per annum, in the case of LILO loans that are SOFR loans, (c) on the first day of each fiscal quarter, the applicable interest rate margins will be determined from the pricing grid below based upon the historical excess availability for the most recent fiscal quarter ended immediately prior to the relevant date, as calculated by the Administrative Agent.

Level	Historical Excess Availability	Applicable Margin for SOFR Loans	Applicable Margin for Base Rate Loans
I	Greater than or equal to 66.66%	1.75%	0.75%
II	Less than 66.66%, but greater than or equal to 33.33%	2.00%	1.00%
III	Less than 33.33%	2.25%	1.25%

The 2023 ABL Facility also requires the Company and its restricted subsidiaries to maintain a fixed charge coverage ratio of at least 1.00 to 1.00 as of the end of any four consecutive fiscal quarters if excess availability shall be less than the greater of (a) 12.5% of the line cap and (b) $9.4 million, at any time and continuing until excess availability is equal to or exceeds the greater of (i) 12.5% of the line and (ii) $9.4 million for thirty (30) consecutive calendar days; provided that such $9.4 million level shall automatically increase in proportion to the amount of any increase in the aggregate revolving credit commitments thereunder in connection with any incremental facility.

The 2023 ABL Facility shall mature on the earlier of (x) November 7, 2027 and (y) the date that is 91 days prior to the maturity date of any material debt of the ABL Borrower or the Company or any of its restricted subsidiaries (subject to customary extensions agreed by the lenders thereunder); provided that clause (y) shall not apply to the extent that on any applicable date of determination (on any date prior to the date set forth in clause (y)), (A) the sum of (x) cash that is held in escrow for the repayment of such material debt pursuant to arrangements satisfactory to the Administrative Agent, (y) cash that is held in accounts with the Administrative Agent and/or the Additional Collateral Agent, plus (z) excess availability, is sufficient to repay such material debt and (B) the ABL Borrower has excess availability of at least $15.0 million after giving effect to such repayment of material debt, including any borrowings under the commitments in connection therewith.

The Company has not drawn any borrowings under the 2023 ABL Facility but has letters of credit of approximately $1.4 million outstanding under the facility and has an available balance of $60.0 million as of December 31, 2023.

The Company incurred debt issuance costs attributable to the 2023 ABL Facility of $2.6 million which are amortized to interest expense using the straight-line method over the expected life of the 2023 ABL Facility.

Convertible Senior Notes

In July 2019, the Company closed an offering of $172.5 million in aggregate principal amount of its 2.50% Convertible Senior Notes due July 15, 2024 (the "Convertible Senior Notes"). The Convertible Senior Notes bear interest at a rate of 2.50% per year, payable semiannually in arrears on January 15 and July 15 of each year, beginning on January 15, 2020. The Convertible Senior Notes are senior unsecured obligations of the Company.

In the fourth quarter of 2022, a wholly owned subsidiary of the Company repurchased $10.0 million in aggregate principal amount of the Convertible Senior Notes on the open market resulting in a $0.9 million gain on extinguishment of debt. Subsequent principal repurchases occurred in 2023 for an aggregate principal amount of $44.0 million resulting in a gain on extinguishment of debt of $1.9 million. The repurchased notes continue to be held by our subsidiary and may be resold subject to compliance with applicable securities law. As of December 31, 2023, $118.5 million aggregate principal remains outstanding and held by third parties.

The Convertible Senior Notes held by third parties are convertible into approximately 2,217,807 shares of TPB Common Stock under certain circumstances prior to maturity at a conversion rate of 18.7092 shares per $1,000 principal amount of the Convertible Senior Notes, which represents a conversion price of approximately $53.45 per share, subject to adjustment under certain conditions, but will not be adjusted for any accrued and unpaid interest. The conversion price is adjusted periodically as a result of dividends paid by the Company in excess of pre-determined thresholds of $0.04 per share. Upon conversion, the Company may pay cash, shares of common stock or a combination of cash and stock, as determined by the Company at its discretion. The conditions required to allow the holders to convert their Convertible Senior Notes were not met as of December 31, 2023.

As discussed above, on November 7, 2023, a wholly-owned subsidiary of the Company entered into the new 2023 ABL Facility to refinance up to $75.0 million of the Convertible Senior notes at maturity. As a result, the Company classified $60.0 million related to the Convertible Senior Notes in Notes payable and long-term debt on the Company's December 31, 2023 Balance Sheet. Based on current liquidity, free cash flow generation and availability under the 2023 ABL Facility, the Company believes it will have sufficient liquidity to address the maturity of the remaining Convertible Senior Notes.

The Company incurred debt issuance costs attributable to the Convertible Senior Notes of $5.9 million which are amortized to interest expense using the straight-line method over the expected life of the Convertible Senior Notes.

In connection with the Convertible Senior Notes offering, the Company entered into privately negotiated capped call transactions with certain financial institutions. The capped call transactions have a strike price of $53.45 per share and a cap price of $82.86 per share, and are exercisable when, and if, the Convertible Senior Notes are converted. The Company paid $20.53 million for these capped calls at the time they were entered into and charged that amount to additional paid-in capital.

Note 14. Income Taxes

Income tax expense (benefit) for the years ended December 31 consists of the following components:

	2023			2022			2021		
	Current	Deferred	Total	Current	Deferred	Total	Current	Deferred	Total
Federal	$ 13,291	$ 4,091	$ 17,382	$ 8,457	$ (4,713)	$ 3,744	$ 11,315	$ (583)	$ 10,732
State and Local	3,602	2,166	5,768	2,815	(1,291)	1,524	4,210	(637)	3,573
Foreign	(16)	767	751	83	(502)	(419)	–	(265)	(265)
Total	$ 16,877	$ 7,024	$ 23,901	$ 11,355	$ (6,506)	$ 4,849	$ 15,525	$ (1,485)	$ 14,040

Deferred tax assets and liabilities consists of:

	December 31, 2023		December 31, 2022	
	Assets	Liabilities	Assets	Liabilities
Inventory	$ 5,310	$ –	$ 1,384	$ –
Property, plant, and equipment	–	3,120	–	2,856
Goodwill and other intangible assets	–	3,182	–	2,812
Foreign NOL carryforward	1,495	–	561	–
State NOL carryforward	2,398	–	2,483	–
Unrealized loss on investments	7,203	–	5,168	–
Leases	3,278	2,978	3,544	3,222
Original issue discount	426	–	1,604	–
Stock compensation	4,879	–	4,333	–
Insurance receivable	–	3,764	–	–
Other	4,536	3,567	4,281	2,963
Gross deferred income taxes	29,525	16,611	23,358	11,853
Valuation allowance	(11,446)	–	(3,062)	–
Net deferred income taxes	$ 18,079	$ 16,611	$ 20,296	$ 11,853

At December 31, 2023, the Company had state net operating loss ("NOL") carryforwards for income tax purposes of approximately $27.4 million, which expire between 2034 and 2042, $25.7 million of which has an indefinite carryforward period. The Company has determined that, at December 31, 2023 and 2022 its ability to realize future benefits of its state NOL carryforwards does not meet the "more likely than not" criteria in ASC 740, Income Taxes. Therefore, a valuation allowance for state NOL carryforwards of $2.9 million and $2.4 million has been recorded at December 2023 and 2022, respectively. The Company has determined that, at December 31, 2023 its ability to realize future benefits of its unrealized loss on investments and foreign NOL carryforwards do not meet the "more likely than not" criteria in ASC 740, Income Taxes. Therefore a valuation allowance for unrealized loss on investments of $6.4 million and foreign NOL carryforwards of $1.7 million has been recorded at December 31, 2023.

ASC 740-10-25 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more-likely-than-not to be sustained upon examination by taxing authorities. The amount recognized is measured as the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. The Company has determined that they did not have any uncertain tax positions requiring recognition as a result of the provisions of ASC 740-10-25. The Company's policy is to recognize interest and penalties accrued on uncertain tax positions as part of interest expense. For the years ended December 31, 2023, 2022, and 2021, no estimated interest or penalties were recognized for the uncertainty of tax positions taken. The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. In general, the Company is no longer subject to U.S. federal and state tax examinations for years prior to 2020.

Reconciliation of the federal statutory rate and the effective income tax rate for the years ended December 31 is as follows:

	2023	2022	2021
Federal statutory rate	21.0%	21.0%	21.0%
Foreign rate differential	(0.1)%	(0.5)%	(0.1)%
State taxes	4.3%	5.7%	3.4%
Permanent differences	(0.1)%	(0.2)%	(4.1)%
Other	-	1.7%	0.7%
Valuation allowance	13.6%	2.6%	0.6%
Effective income tax rate	38.7%	30.3%	21.5%

The permanent differences for the years ended December 31, 2023 and 2022 are not significant in the aggregate. The permanent difference for the year December 31, 2021 are primarily related to income tax benefits of $7.5 million ($1.6 million tax effected) as a result of the forgiveness of the $7.5 million unsecured loan and $7.2 million ($1.5 million tax effected) as a result of stock option exercises.

Note 15. 401(k) Retirement Savings Plan

The Company sponsors a voluntary 401(k) retirement savings plan. Eligible employees may elect to contribute up to 15% of their annual earnings subject to certain limitations. For the 2023, 2022 and 2021 plan years, the Company contributed 4% to those employees contributing 4% or greater. For those employees contributing less than 4%, the Company matched the contribution by 100%. Additionally, for all years presented, the Company made discretionary contributions of 1% to all employees, regardless of an employee's contribution level. Company contributions to this plan were approximately $1.4 million for 2023, $1.5 million for 2022 and $1.6 million for 2021.

Note 16. Lease Commitments

The Company's leases consist primarily of leased property for manufacturing, warehouse, corporate offices and retail space, as well as vehicle leases. At lease inception, the Company recognizes a lease right of use asset and lease liability calculated as the present value of future minimum lease payments. In general, the Company does not recognize any renewal periods within the lease terms as there are no significant barriers to ending the lease at the initial term. Lease and non-lease components are accounted for as a single lease component.

Leases with an initial term of 12 months or less are not recorded on the balance sheet. Lease expense for these leases is recognized on a straight-line basis over the lease term.

The components of lease expense consist of the following:

	For the year ended December 31,		
	2023	2022	2021
Operating lease cost			
Cost of sales	$ 507	$ 940	$ 907
Selling, general and administrative	1,991	1,622	1,907
Variable lease cost (1)	1,183	765	1,182
Short-term lease cost	24	37	48
Sublease income	–	–	(60)
Total	$ 3,705	$ 3,364	$ 3,984

(1) Variable lease cost includes elements of a contract that do not represent a good or service but for which the lessee is responsible for paying.

	For the year ended December 31,		
	2023	2022	2021
Financing lease cost			
Selling, general and administrative	$ 1,164	$ 1,138	$ 1,094
Total	$ 1,164	$ 1,138	$ 1,094

The Company's lease balances consist of the following:

	December 31, 2023	December 31, 2022
Assets:		
Right of use assets - Operating	$ 8,950	$ 10,967
Right of use assets - Financing	2,530	1,498
Total lease assets	$ 11,480	$ 12,465
Liabilities:		
Current lease liabilities - Operating (2)	$ 1,991	$ 2,007
Current lease liabilities - Financing (2)	687	1,095
Long-term lease liabilities - Operating	8,374	10,243
Long-term lease liabilities - Financing	1,576	350
Total lease liabilities	$ 12,628	$ 13,695

(2) Reported within accrued liabilities on the balance sheet

Other information related to the Company's leases consists of the following:

	December 31, 2023	December 31, 2022
Right of use assets obtained in exchange for lease obligations:		
Operating leases	$ 143	$ –
Finance leases	$ 2,169	$ 494

	As of December 31,	
	2023	2022
Weighted-average remaining lease term - operating leases	5.7 years	6.5 years
Weighted-average discount rate - operating leases	5.17%	5.19%
Weighted-average remaining lease term - financing leases	3.4 years	1.8 years
Weighted-average discount rate - financing leases	6.48%	3.42%

Nearly all the lease contracts for the Company do not provide a readily determinable implicit rate. For these contracts, the Company uses a discount rate that approximates its incremental borrowing rate at the time of the lease commencement.

The following table illustrates the Company's future minimum rental payments for non-cancelable leases as of December 31, 2023:

Year	Operating	Finance
2024	$ 2,471	$ 813
2025	2,174	741
2026	2,084	644
2027	2,035	327
2028	1,046	–
Years thereafter	2,263	–
Total lease payments	12,073	2,525
Less: Imputed interest	1,708	262
Present value of lease liabilities	$ 10,365	$ 2,263

Note 17. Share Incentive Plans

On March 22, 2021, the Company's Board of Directors adopted the Turning Point Brands, Inc. 2021 Equity Incentive Plan (the "2021 Plan"), pursuant to which awards may be granted to employees, non-employee directors, and consultants. In addition, the 2021 Plan provides for the granting of nonqualified stock options to employees of the Company or any subsidiary of the Company. Pursuant to the 2021 Plan, 1,290,000 shares, plus 100,052 shares remaining available for issuance under the 2015 Equity Incentive Plan (the "2015 Plan"), of TPB Common Stock are reserved for issuance as awards to employees, non-employee directors, and consultants as compensation for past or future services or the attainment of certain performance goals. The 2021 Plan is scheduled to terminate on March 21, 2031. The 2021 Plan is administered by the compensation committee (the "Committee") of the Company's Board of Directors. The Committee determines the vesting criteria for the awards, with such criteria to be specified in the award agreement. As of December 31, 2023, net of forfeitures, there were 271,662 Restricted Stock Units ("RSUs"), 113,801 options and 23,315 Performance Based Restricted Stock Units ("PRSUs") granted under the 2021 Plan. There are 981,274 shares available for future grant under the 2021 Plan.

On April 28, 2016, the Board of Directors of the Company adopted the 2015 Plan, pursuant to which awards could have been granted to employees, non-employee directors, and consultants. In addition, the 2015 Plan provided for the granting of nonqualified stock options to employees of the Company or any subsidiary of the Company. Upon adoption of the 2021 Plan, the 2015 Plan was terminated, and the Company determined no additional grants would be made under the 2015 Plan. However, all awards issued under the 2015 Plan that have not been previously terminated or forfeited remain outstanding and continue unaffected. There are no shares available for grant under the 2015 Plan.

On February 8, 2006, the Board of Directors of the Company adopted the 2006 Equity Incentive Plan (the "2006 Plan") of North Atlantic Holding Company, Inc., pursuant to which nonqualified stock options and restricted stock awards may be granted to employees. Upon the adoption of the Company's 2015 Equity Incentive Plan in connection with its IPO, the Company determined no additional grants would be made under the 2006 Plan. However, all awards issued under the 2006 Plan that have not been previously terminated or forfeited remain outstanding and continue unaffected. There are no shares available for grant under the 2006 Plan.

Stock option activity for the 2006, 2015 and 2021 Plans is summarized below:

	Stock Option Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Outstanding, December 31, 2021	619,835	$ 28.51	$ 8.70
Granted	114,827	30.58	10.34
Exercised	(40,331)	12.49	4.08
Forfeited	(11,117)	32.60	9.35
Outstanding, December 31, 2022	683,214	$ 29.74	$ 9.24
Granted	77,519	20.71	6.45
Exercised	(33,851)	13.30	4.24
Forfeited	(69,931)	27.51	9.11
Outstanding, December 31, 2023	656,951	$ 29.79	$ 9.18

Under the 2006, 2015 and 2021 Plans, the total intrinsic value of options exercised during the years ended December 31, 2023, 2022, and 2021, was $0.3 million, $0.7 million, and $7.9 million, respectively.

At December 31, 2023, under the 2006 Plan, the exercise price for the 43,693 outstanding options is $3.83 per share, all of which are exercisable. The weighted average of the remaining lives of the outstanding stock options with an exercise price of $3.83 is approximately 0.60 years. The Company estimates the expected life of these stock options is ten years from the date of grant. For the $3.83 per share options, the weighted average fair value of options at the date of grant was determined using the Black-Scholes model with the following assumptions: a ten-year life from grant date, a current share price and exercise price of $3.83, a risk-free interest rate of 3.57%, volatility of 40%, and no assumed dividend yield. Based on these assumptions, the fair value of these options is approximately $2.17 per share option granted.

At December 31, 2023, under the 2015 and 2021 Plans, the risk-free interest rate is based on the U.S. Treasury rate for the expected life at the time of grant. The expected volatility is based on the average long-term historical volatilities of peer companies. We intend to continue to consistently use the same group of publicly traded peer companies to determine expected volatility until sufficient information regarding volatility of our share price becomes available or until the selected companies are no longer suitable for this purpose. Due to our limited trading history, we are using the simplified method presented by SEC Staff Accounting Bulletin No. 107 to calculate expected holding periods, which represent the periods of time for which options granted are expected to be outstanding. We will continue to use this method until we have sufficient historical exercise experience to give us confidence in the reliability of our calculations. The fair values of these options were determined using the Black-Scholes option pricing model.

The following table outlines the assumptions for options granted under the 2015 Plan.

	February 10, 2017	May 17, 2017	March 7, 2018	March 20, 2019	October 24, 2019	March 18, 2020	February 18, 2021	May 3, 2021
Number of options granted	40,000	93,819	98,100	155,780	25,000	155,000	100,000	12,000
Options outstanding at December 31, 2023	20,000	39,183	51,567	125,514	25,000	79,675	89,021	12,000
Number exercisable at December 31, 2023	20,000	39,183	51,567	125,514	25,000	79,675	63,394	8,040
Exercise price	$ 13.00	$ 15.41	$ 21.21	$ 47.58	$ 20.89	$ 14.85	$ 51.75	$ 47.76
Remaining lives	3.12	3.38	4.19	5.22	5.82	6.22	7.14	7.34
Risk free interest rate	1.89%	1.76%	2.65%	2.34%	1.58%	0.79%	0.56%	0.84%
Expected volatility	27.44%	26.92%	28.76%	30.95%	31.93%	35.72%	28.69%	29.03%
Expected life	6.000	6.000	6.000	6.000	6.000	6.000	6.000	6.000
Dividend yield	–	–	0.83%	0.42%	0.95%	1.49%	0.55%	0.59%
Fair value at grant date	$ 3.98	$ 4.60	$ 6.37	$ 15.63	$ 6.27	$ 4.41	$ 13.77	$ 13.06

The following table outlines the assumptions for options granted under the 2021 Plan.

	May 17, 2021	March 14, 2022	April 29, 2022	May 12, 2023
Number of options granted	7,500	100,000	14,827	77,519
Options outstanding at December 31, 2023	7,500	71,451	14,827	77,519
Number exercisable at December 31, 2023	5,100	24,741	5,042	58,139
Exercise price	$ 45.05	$ 30.46	$ 31.39	$ 20.71
Remaining lives	7.38	8.21	8.33	9.37
Risk free interest rate	0.84%	2.10%	2.92%	3.41%
Expected volatility	31.50%	35.33%	35.33%	34.51%
Expected life	6.000	6.000	6.000	5.186
Dividend yield	0.63%	1.01%	0.98%	1.61%
Fair value at grant date	$ 13.23	$ 10.23	$ 11.07	$ 6.45

The Company has recorded compensation expense related to the options based on the provisions of ASC 718 under which the fixed portion of such expense is determined as the fair value of the options on the date of grant and amortized over the vesting period. The Company recorded compensation expense related to the options of approximately $0.7 million, $1.1 million and $2.3 million for the years ended December 31, 2023, 2022 and 2021, respectively. Total unrecognized compensation expense related to options at December 31, 2023, is $0.1 million, which will be expensed over 1.0 year.

PRSUs are restricted stock units subject to both performance-based and service-based vesting conditions. The number of shares of TPB Common Stock a recipient will receive upon vesting of a PRSU will be calculated by reference to certain performance metrics related to the Company's performance over a five-year period. PRSUs will vest on the measurement date, which is no more than 65 days after the performance period provided the applicable service and performance conditions are satisfied. At December 31, 2023, there are 449,790 PRSUs outstanding.

The following table outlines the PRSUs granted and outstanding as of December 31, 2023.

	March 20, 2019	March 18, 2020	December 28, 2020	February 18, 2021	March 14, 2022	May 4, 2023
Number of PRSUs granted	92,500	94,000	88,169	100,000	49,996	133,578
PRSUs outstanding at December 31, 2023	76,430	83,560	31,040	84,690	41,550	132,520
Fair value as of grant date	$ 47.58	$ 14.85	$ 46.42	$ 51.75	$ 30.46	$ 22.25
Remaining lives	–	1.00	–	2.00	3.00	2.00

The Company recorded compensation expense related to the PRSUs of approximately $3.0 million, $2.9 million and $5.0 million in the consolidated statements of income for the years ended December 31, 2023, 2022 and 2021, respectively, based on the probability of achieving the performance condition. Total unrecognized compensation expense related to these awards at December 31, 2023, is $4.1 million, which will be expensed over the service period based on the probability of achieving the performance condition.

RSUs are stock units subject to service-based vesting conditions over one to five years. At December 31, 2023, there are 218,200 RSUs outstanding.

The following table outlines the RSUs granted and outstanding as of December 31, 2023.

	March 14, 2022	March 14, 2022	April 29, 2022	May 5, 2023	May 5, 2023	May 8, 2023
Number of RSUs granted	50,004	28,726	4,522	130,873	22,472	20,101
RSUs outstanding at December 31, 2023	40,592	18,961	4,522	128,406	5,618	20,101
Fair value as of grant date	$ 30.46	$ 30.46	$ 31.39	$ 22.25	$ 22.25	$ 21.77
Remaining lives	3.00	1.00	3.00	2.25	–	0.35

The Company has recorded compensation expense related to the RSUs based on the provisions of ASC 718 under which the fixed portion of such expense is determined as the fair value of the RSUs on the date of grant and amortized over the vesting period. The Company recorded compensation expense related to the RSUs of approximately $2.9 million, $1.3 million and $0.3 million for the years ended December 31, 2023, 2022 and 2021, respectively. Total unrecognized compensation expense related to RSUs at December 31, 2023, is $2.5 million, which will be expensed over 2.3 years.

Note 18. Contingencies

On October 9, 2020, a purported stockholder of Turning Point Brands, Inc., Paul-Emile Berteau, filed a complaint in the Delaware Court of Chancery relating to the merger of SDI with a TPB subsidiary pursuant to the Agreement and Plan of Merger and Reorganization, dated as of April 7, 2020, by and among TPB, SDI and Merger Sub. The parties attended a mediation in late November 2022 where a settlement was reached. On December 12, 2023, the Court approved the settlement and dismissed the action with prejudice. As of December 31, 2023, the Company recorded a $4.0 million receivable in other current assets, and a corresponding gain on settlement in other income on its Consolidated Statement of Income for the year ended December 31, 2023. These funds were received in January 2024.

Other major tobacco companies are defendants in product liability claims. In a number of these cases, the amounts of punitive and compensatory damages sought are significant and, if such a claim were brought against the Company, could have a material adverse effect on our business and results of operations. The Company is subject to several lawsuits alleging personal injuries resulting from malfunctioning vaporizer devices or batteries and may be subject to claims in the future relating to our other Creative Distribution Solutions products. The Company is still evaluating these claims and the potential defenses to them. For example, the Company did not design or manufacture the products at issue; rather, the Company was merely the distributor. Nonetheless, there can be no assurance that the Company will prevail in these cases, and they could have a material adverse effect on the financial position, results of operations or cash flows of the Company.

We have several subsidiaries engaged in making, distributing, and selling liquid nicotine products. As a result of the overall publicity and controversy surrounding the industry generally, many companies have received informational subpoenas from various regulatory bodies and in some jurisdictions regulatory lawsuits have been filed regarding marketing practices and possible underage sales. We expect that our subsidiaries will be subject to some such cases and investigative requests. To the extent that litigation becomes necessary, we believe that the subsidiaries have strong factual and legal defenses against claims that they unfairly marketed products.

We have two franchisor subsidiaries. Like many franchise businesses, in the ordinary course of their business, these subsidiaries are from time-to-time responding parties to arbitration demands brought by franchisees. We recently won a dispositive motion in an arbitration brought by a former franchisee. We have one remaining former franchisee arbitration with breach of contract and negligence allegations, among others. We believe we have good and valid substantive defenses against these claims and intend on vigorously defending our interests in this matter.

Note 19. Earnings Per Share

The following is a reconciliation of the numerators and denominators of the basic and diluted EPS computations of net income:

	December 31, 2023			December 31, 2022			December 31, 2021		
	Income	Shares	Per Share	Income	Shares	Per Share	Income	Shares	Per Share
Basic EPS:									
Numerator									
Net income attributable to Turning Point Brands, Inc.	$ 38,462			$ 11,641			$ 52,059		
Denominator									
Weighted average		17,578,270	$ 2.19		17,899,794	$ 0.65		18,917,570	$ 2.75
Diluted EPS:									
Numerator									
Net income attributable to Turning Point Brands, Inc.	$ 38,462			$ 11,641			$ 52,059		
Interest expense related to Convertible Senior Notes, net of tax	2,667			–			4,317		
Diluted consolidated net income	$ 41,129			$ 11,641			$ 56,376		
Denominator									
Basic weighted average		17,578,270			17,899,794			18,917,570	
Convertible Senior Notes (1)		2,533,201			–			3,208,172	
Stock options and restricted stock units		355,935			155,221			256,252	
		20,467,406	$ 2.01		18,055,015	$ 0.64		22,381,994	$ 2.52

(1) For 2022, the effect of 3,208,172 shares issuable upon conversion of the Convertible Senior Notes were excluded from the diluted net income per share calculation because the effect would have been antidilutive.

Note 20. Segment Information

In accordance with ASC 280, Segment Reporting, the Company has three reportable segments, (1) Zig-Zag Products; (2) Stoker's Products; and (3) Creative Distribution Solutions. The Zig-Zag Products segment markets and distributes (a) rolling papers, tubes, and related products; (b) finished cigars and MYO cigar wraps and (c) CLIPPER reusable lighters and other accessories. The Stoker's Products segment (a) manufactures and markets moist snuff and (b) contracts for and markets loose-leaf chewing tobacco products. The Creative Distribution Solutions segment (a) markets and distributes liquid nicotine products and certain other products without tobacco and/or nicotine; (b) distributes a wide assortment of products to non-traditional retail outlets via Vapor Beast; and (c) markets and distributes a wide assortment of products to individual consumers via the VaporFi B2C online platform. Products in the Zig-Zag Products and Stoker's Products segments are distributed primarily through wholesale distributors in the U.S. and Canada while products in the Creative Distribution Solutions segment are distributed primarily through e-commerce to non-traditional retail outlets and direct to consumers in the U.S. Corporate unallocated includes the costs and assets of the Company not assigned to one of the three reportable segments such as intercompany transfers, deferred taxes, deferred financing fees, and investments in subsidiaries. The Company had no customer that accounted for more than 10% of net sales in 2023, 2022, or 2021.

The accounting policies of these segments are the same as those of the Company. Corporate costs are not directly charged to the three reportable segments in the ordinary course of operations. The Company evaluates the performance of its segments and allocates resources to them based on operating income.

The tables below present financial information about reportable segments:

	For the year ended December 31,		
	2023	2022	2021
Net sales			
Zig-Zag products	$ 180,455	$ 190,403	$ 176,491
Stoker's products	144,609	130,826	124,280
Total Zig-Zag and Stoker's products	325,064	321,229	300,771
Creative Distribution Solutions	80,329	93,784	144,700
Total	$ 405,393	$ 415,013	$ 445,471
Gross profit			
Zig-Zag products	$ 101,055	$ 106,576	$ 102,739
Stoker's products	81,887	71,254	68,084
Total Zig-Zag and Stoker's products	182,942	177,830	170,823
Creative Distribution Solutions	20,299	27,708	47,011
Total	$ 203,241	$ 205,538	$ 217,834
Operating income (loss)			
Zig-Zag products	$ 68,280	$ 73,342	$ 77,109
Stoker's products	62,208	53,331	52,073
Corporate unallocated (1)(2)	(47,528)	(52,665)	(41,124)
Total Zig-Zag and Stoker's products	82,960	74,008	88,058
Creative Distribution Solutions	(383)	1,506	2,263
Total	$ 82,577	$ 75,514	$ 90,321
Interest expense, net	14,645	19,524	20,500
Investment loss	11,914	13,303	6,673
Other income	(4,000)	–	–
Goodwill and intangible impairment loss	–	27,566	–
Gain on extinguishment of debt	(1,664)	(885)	(2,154)
Income before income taxes	$ 61,682	$ 16,006	$ 65,302
Capital expenditures			
Zig-Zag products	$ 1,112	$ 4,641	$ 141
Stoker's products	4,595	3,044	5,960
Total Zig-Zag and Stoker's products	5,707	7,685	6,101
Creative Distribution Solutions	–	–	55
Total	$ 5,707	$ 7,685	$ 6,156
Depreciation and amortization			
Zig-Zag products	$ 1,077	$ 412	$ 388
Stoker's products	3,041	2,972	2,565
Total Zig-Zag and Stoker's products	4,118	3,384	2,953
Creative Distribution Solutions	2,240	1,915	2,059
Total	$ 6,358	$ 5,299	$ 5,012

(1) Includes corporate costs that are not allocated to any of the three reportable segments.
(2) Includes costs related to PMTA of $2.1 million, $4.6 million and $2.6 million in 2023, 2022, and 2021, respectively.

	December 31, 2023	December 31, 2022
Assets		
Zig-Zag products	$ 177,135	$ 225,893
Stoker's products	174,994	151,241
Corporate unallocated [1]	190,223	155,348
Total Zig-Zag and Stoker's products	542,352	532,482
Creative Distribution Solutions	27,004	39,624
Total	$ 569,356	$ 572,106

(1) Includes assets not assigned to the three reportable segments. All goodwill has been allocated to the reportable segments.

Revenue Disaggregation—Sales Channel

Revenues of the Zig-Zag Products and Stoker's Products segments are primarily comprised of sales made to wholesalers while Creative Distribution Solutions sales are made business to business and business to consumer, both online and through our corporate retail stores. Creative Distribution Solutions net sales are broken out by sales channel below.

	Creative Distribution Solutions		
	For the year ended December 31,		
	2023	2022	2021
Business to Business	$ 71,104	$ 76,462	$ 107,235
Business to Consumer - Online	8,761	16,836	37,069
Other	464	486	396
Total	$ 80,329	$ 93,784	$ 144,700

Net Sales: Domestic and Foreign

The following table shows a breakdown of consolidated net sales between domestic and foreign.

	For the year ended December 31,		
	2023	2022	2021
Domestic	$ 374,352	$ 381,723	$ 415,514
Foreign	31,041	33,290	29,957
Total	$ 405,393	$ 415,013	$ 445,471

Note 21. Selected Quarterly Financial Information (Unaudited)

The following table presents the quarterly operating results:

	1st	2nd	3rd	4th
2023				
Net sales	$ 100,956	$ 105,595	$ 101,722	$ 97,120
Gross profit	48,617	52,478	51,622	50,524
Net income attributable to Turning Point Brands, Inc.	7,597	9,925	10,831	10,109
Basic net income attributable to Turning Point Brands, Inc. per share	0.43	0.56	0.62	0.57
Diluted net income attributable to Turning Point Brands, Inc. per share	$ 0.41	$ 0.53	$ 0.58	$ 0.53
2022				
Net sales	$ 100,894	$ 102,925	$ 107,802	$ 103,392
Gross profit	51,794	51,469	52,712	49,563
Net income attributable to Turning Point Brands, Inc.	10,998	5,424	11,536	(16,317)
Basic net income attributable to Turning Point Brands, Inc. per share	0.60	0.30	0.65	(0.93)
Diluted net income attributable to Turning Point Brands, Inc. per share	$ 0.55	$ 0.30	$ 0.60	$ (0.93)[1]

(1) The effect of 3,213,796 shares issuable upon conversion of the Convertible Senior Notes were excluded from the diluted net income per share calculation because the effect would have been antidilutive.

The amounts presented in the table above are computed independently for each quarter. As a result, their sum may not equal the total year amounts.

Note 22. Additional Information with Respect to Unrestricted Subsidiary

Under the terms of the Senior Secured Notes Indenture and Senior Secured Notes, the Company has designated its subsidiaries, South Beach Brands LLC, TPB Beast LLC and Intrepid Brands, LLC as "Unrestricted Subsidiaries". South Beach Brands LLC is a holding company under which our TPB Beast LLC business operating as Creative Distribution Solutions sits. The Company is required under the terms of the Senior Secured Notes Indenture and the Senior Secured Notes to present additional information that reflects the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Company's Unrestricted Subsidiaries as of and for the periods presented. This additional information is below.

Income Statement for the years ended December 31, 2023, 2022 and 2021:

	Years Ended December 31,					
	2023			2022		
	Company and Restricted Subsidiaries	Unrestricted Subsidiaries	Consolidated	Company and Restricted Subsidiaries	Unrestricted Subsidiaries	Consolidated
Net sales	$ 325,063	$ 80,330	$ 405,393	$ 321,229	$ 93,784	$ 415,013
Cost of sales	142,121	60,031	202,152	143,399	66,076	209,475
Gross profit	182,942	20,299	203,241	177,830	27,708	205,538
Selling, general, and administrative expenses	104,327	20,682	125,009	129,900	124	130,024
Other operating income, net	(4,345)	–	(4,345)	–	–	–
Operating income (loss)	82,960	(383)	82,577	47,930	27,584	75,514
Interest expense, net	14,645	–	14,645	19,524	–	19,524
Investment loss	11,914	–	11,914	13,303	–	13,303
Other income	(4,000)	–	(4,000)	–	–	–
Goodwill and intangible impairment loss	–		–	1,488	26,078	27,566
Gain on extinguishment of debt	(1,664)	–	(1,664)	(885)	–	(885)
Income (loss) before income taxes	62,065	(383)	61,682	14,500	1,506	16,006
Income tax expense	24,049	(148)	23,901	4,393	456	4,849
Consolidated net income (loss)	38,016	(235)	37,781	10,107	1,050	11,157
Net loss attributable to non-controlling interest	(681)	–	(681)	(484)	–	(484)
Net income (loss) attributable to Turning Point Brands, Inc.	$ 38,697	$ (235)	$ 38,462	$ 10,591	$ 1,050	$ 11,641

	Year Ended December 31,		
	2021		
	Company and Restricted Subsidiaries	Unrestricted Subsidiaries	Consolidated
Net sales	$ 300,771	$ 144,700	$ 445,471
Cost of sales	129,948	97,689	227,637
Gross profit	170,823	47,011	217,834
Selling, general, and administrative expenses	82,765	44,748	127,513
Operating income	88,058	2,263	90,321
Interest expense, net	20,500	–	20,500
Investment loss	6,673	–	6,673
Gain on extinguishment of debt	(2,154)	–	(2,154)
Income before income taxes	63,039	2,263	65,302
Income tax expense	13,553	487	14,040
Consolidated net income	49,486	1,776	51,262
Net loss attributable to non-controlling interest	(797)	–	(797)
Net income attributable to Turning Point Brands, Inc.	$ 50,283	$ 1,776	$ 52,059

Balance Sheet as of December 31, 2023:

ASSETS	Company and Restricted Subsidiaries	Unrestricted Subsidiaries	Eliminations	Consolidated
Current assets:				
Cash	$ 116,725	$ 1,161	$ –	$ 117,886
Accounts receivable, net	9,989	–	–	9,989
Inventories, net	91,679	7,281	–	98,960
Other current assets	36,937	3,844	–	40,781
Total current assets	255,330	12,286	–	267,616
Property, plant, and equipment, net	25,142	158	–	25,300
Deferred income taxes	1,468	–	–	1,468
Right of use assets	11,359	121	–	11,480
Deferred financing costs, net	2,450	–	–	2,450
Goodwill	136,250	–	–	136,250
Other intangible assets, net	66,490	14,452	–	80,942
Master Settlement Agreement (MSA) escrow deposits	28,684	–	–	28,684
Other assets	15,166	–	–	15,166
Investment in unrestricted subsidiaries	48,229	–	(48,229)	–
Total assets	$ 590,568	$ 27,017	$ (48,229)	$ 569,356
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable	$ 7,781	$ 626	$ –	$ 8,407
Accrued liabilities	32,052	1,583	–	33,635
Current portion of long-term debt	58,294	–	–	58,294
Total current liabilities	98,127	2,209	–	100,336
Notes payable and long-term debt	307,064	–	–	307,064
Lease liabilities	9,898	52	–	9,950
Total liabilities	415,089	2,261	–	417,350
Commitments and contingencies				
Stockholders' equity:				
Total Turning Point Brands Inc. Stockholders' Equity/Net parent investment in unrestricted subsidiaries	174,449	24,756	(48,229)	150,976
Non-controlling interest	1,030	–	–	1,030
Total stockholders' equity	175,479	24,756	(48,229)	152,006
Total liabilities and stockholders' equity	$ 590,568	$ 27,017	$ (48,229)	$ 569,356

Balance Sheet as of December 31, 2022:

ASSETS	Company and Restricted Subsidiaries	Unrestricted Subsidiaries	Eliminations	Consolidated
Current assets:				
Cash	$ 103,990	$ 2,413	$ –	$ 106,403
Accounts receivable, net	7,374	1,003	–	8,377
Inventories, net	104,883	15,032	–	119,915
Other current assets	18,828	4,131	–	22,959
Total current assets	235,075	22,579	–	257,654
Property, plant, and equipment, net	22,261	527	–	22,788
Deferred income taxes	8,443	–	–	8,443
Right of use assets	12,328	137	–	12,465
Deferred financing costs, net	282	–	–	282
Goodwill	136,253	–	–	136,253
Other intangible assets, net	67,241	16,351	–	83,592
Master Settlement Agreement (MSA) escrow deposits	27,980	–	–	27,980
Other assets	22,619	30	–	22,649
Investment in unrestricted subsidiaries	60,120	–	(60,120)	–
Total assets	$ 592,602	$ 39,624	$ (60,120)	$ 572,106
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable	$ 7,628	$ 727	$ –	$ 8,355
Accrued liabilities	31,118	1,883	–	33,001
Other current liabilities	20	–	–	20
Total current liabilities	38,766	2,610	–	41,376
Notes payable and long-term debt	406,757	–	–	406,757
Lease liabilities	10,593	–	–	10,593
Total liabilities	456,116	2,610	–	458,726
Commitments and contingencies				
Stockholders' equity:				
Total Turning Point Brands Inc. Stockholders' Equity/Net parent investment in unrestricted subsidiaries	134,751	37,014	(60,120)	111,645
Non-controlling interest	1,735	–	–	1,735
Total stockholders' equity	136,486	37,014	(60,120)	113,380
Total liabilities and stockholders' equity	$ 592,602	$ 39,624	$ (60,120)	$ 572,106

Note 23. Dividends and Share Repurchase

The Company currently pays a quarterly cash dividend. Dividends are considered restricted payments under the Senior Secured Notes Indenture. The Company is generally permitted to make restricted payments provided that, at the time of payment, or as a result of payment, the Company is not in default on its debt covenants. Additional earning and market capitalization restrictions limit the aggregate amount of restricted, quarterly dividends during a fiscal year. During the year ended December 31, 2023, the Company paid cash dividends of $0.26 per common share for $4.5 million.

On February 25, 2020, the Company's Board of Directors approved a $50.0 million share repurchase program, which is intended for opportunistic execution based upon a variety of factors including market dynamics. The program is subject to the ongoing discretion of the Board of Directors. On October 25, 2021, the Board of Directors increased the approved share repurchase program by $30.7 million and by an additional $24.6 million on February 24, 2022, in each case bringing the aggregate approval back to $50.0 million. As of December 31, 2023, $27.2 million remains available for share repurchases under the program. There were no shares repurchased for the year ended December 31, 2023.

Item 9. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

As of December 31, 2023, the Company's management, with participation of the Company's President and Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), evaluated the effectiveness of the Company's disclosure controls and procedures as defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based on that evaluation, the CEO and CFO concluded that the Company's disclosure controls and procedures were not effective as of December 31, 2023, solely due to the material weaknesses in internal control over financial reporting described below.

Internal Control

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, we have included a report that provides management's assessment of our internal control over financial reporting as part of this Annual Report on Form 10-K for the year ended December 31, 2023. Management's report is included below under the caption entitled "Management's Report on Internal Control Over Financial Reporting," and is incorporated herein by reference.

Management's Report on Internal Control over Financial Reporting

The consolidated financial statements appearing in this Annual Report have been prepared by the management that is responsible for their preparation, integrity, and fair presentation. The statements have been prepared in accordance with U.S. generally accepted accounting principles, which requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934, as amended). Our internal control system was designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Further, because of changes in conditions, the effectiveness of an internal control system may vary over time.

Under the supervision and with the participation of our management, including our CEO, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2023, based on the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) ("COSO ICIF").

A material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

Based on our evaluation under the framework in COSO ICIF, our management concluded that our internal control over financial reporting was not effective as of December 31, 2023, solely due to the following material weakness:

> We did not design and maintain effective internal controls related to our information technology general controls ("ITGCs") in the areas of user access and program change-management over certain information technology ("IT") systems that support the Company's financial reporting processes. Our business process controls (automated and manual) that are dependent on the affected ITGCs were also deemed ineffective because they could have been adversely impacted. We believe that these control deficiencies were a result of: IT control processes lacking sufficient documentation such that the successful operation of ITGCs was overly dependent upon knowledge and actions of certain individuals with IT expertise and inherent system limitations. The material weakness did not result in any identified misstatements to the financial statements, and there were no changes to previously released financial results.

Our independent registered public accounting firm has audited the consolidated financial statements appearing in this Annual Report and the effectiveness of our internal controls over financial reporting and has issued their reports, included herein.

Notwithstanding the above identified material weakness, management believes the financial statements as included in Part II of this Annual Report on Form 10-K fairly represent in all material respects the Company's financial condition, results of operations and cash flows as of and for the periods presented in accordance with generally accepted accounting principles in the U.S.

Remediation Plan

While our remediation plan may evolve and expand, management has been implementing and continues to implement measures designed to ensure that control deficiencies contributing to the material weakness are remediated, such that these controls are designed, implemented, and operating effectively. The remediation actions include: (i) implementation of a new ERP system in 2024; (ii) developing and maintaining documentation underlying ITGCs; (iii) implementing an IT management review and testing plan to monitor ITGCs with a specific focus on systems supporting our financial reporting processes; and (iv) enhanced quarterly reporting on the remediation measures to the Audit Committee of the Board of Directors.

We believe that these actions will remediate the material weakness. The material weakness will not be considered remediated, however, until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

Changes in Internal Controls over Financial Reporting

Other than in connection with aspects of our remediation plan, there were no changes in the Company's internal controls over financial reporting during the fiscal quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Management has redesigned its control environment around risk assessment to remediate the material weakness identified in 2022. The improvements included: the hiring of two positions dedicated to SOX Compliance and SEC Reporting; a risk and control design review with third party consultants; implementation of new and improved controls around fraud risk assessments, ERM reporting, and the internal control process; and additional training provided around risk and controls. These remediation actions have strengthened the design and operating effectiveness of controls relating to the risk assessment process.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required for this Item is incorporated by reference from our Proxy Statement to be filed in connection with our 2024 Annual Meeting of Stockholders within 120 days after the end of the fiscal year ended December 31, 2023.

Item 11. Executive Compensation

The information required for this Item is incorporated by reference from our Proxy Statement to be filed in connection with our 2024 Annual Meeting of Stockholders within 120 days after the end of the fiscal year ended December 31, 2023.

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

The information required for this Item is incorporated by reference from our Proxy Statement to be filed in connection with our 2024 Annual Meeting of Stockholders within 120 days after the end of the fiscal year ended December 31, 2023.

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

The information required for this Item is incorporated by reference from our Proxy Statement to be filed in connection with our 2024 Annual Meeting of Stockholders within 120 days after the end of the fiscal year ended December 31, 2023.

Item 14. Principal Accountant Fees and Services

The information required for this Item is incorporated by reference from our Proxy Statement to be filed in connection with our 2024 Annual Meeting of Stockholders within 120 days after the end of the fiscal year ended December 31, 2023.

PART IV

Item 15. Exhibits and Financial Statement Schedules

a) Financial Information

(1) Financial Statements: See "Index to Consolidated Financial Statements" in Part II, Item 8 of this Annual Report on Form 10-K.

(2) Financial Statement Schedule: Information required by this item is included within the consolidated financial statements or notes in Item 8 of this Annual Report on Form 10-K.

(3) Exhibits – See (b) below

b) Exhibits Index to Exhibits

Index to Exhibits

Exhibit No.	Description
2	International Vapor Group Stock Purchase Agreement dated as of September 5, 2018, between Turning Point Brands, Inc. and International Vapor Group, LLC (incorporated by reference to Exhibit 2.1 to the Registrant's Quarterly Report on Form 10-Q filed on November 7, 2018).
3.1	Second Amended and Restated Certificate of Incorporation of Turning Point Brands, Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on May 16, 2016).
3.2	Second Amended and Restated By-laws (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed on October 27, 2020).
4.1	Registration Rights Agreement of Turning Point Brands, Inc. dated May 10, 2016, between Turning Point Brands, Inc. and the Stockholders named therein (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on May 16, 2016).
4.2	Description of Securities. (incorporated by reference to Exhibit 4.2 to the Registrant's Annual Report on Form 10-K filed on March 12, 2020).
4.3	Indenture dated as of July 30, 2019, between Turning Point Brands, Inc. and GLAS Trust Company LLC (including the form of Note as Exhibit A thereto) (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed on July 31, 2019).
4.4	Indenture dated as of February 11, 2021, between Turning Point Brands, Inc. and GLAS Trust Company LLC, (including the form of Note as Exhibit A thereto) (incorporated by reference to Exhibit 4.1 to the Registrant's Quarterly Report on Form 10-Q filed on May 5, 2021).
10.1	Turning Point Brands, Inc. 2021 Equity Incentive Plan (the "2021 Plan") dated as of March 22, 2021. †
10.2	Turning Point Brands, Inc. 2015 Equity Incentive Plan (the "2015 Plan") (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1/A (File No. 333-207816) filed on November 5, 2015). †
10.3	Form of Stock Option Award Agreement under the 2015 Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Annual Report on Form 10-K filed on March 13, 2017). †
10.4	Form of Performance-Based Restricted Stock Unit Award Agreement under the Turning Point Brands, Inc. 2015 Equity Incentive Plan (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed on May 11, 2017). †

10.5	2006 Equity Incentive Plan of Turning Point Brands, Inc. (incorporated by reference to Exhibit 10.3 to the Registrant's Registration Statement on Form S-1/A (File No. 333-207816) filed on November 5, 2015). †
10.6	Amendment No. 1 to the 2006 Equity Incentive Plan of North Atlantic Holding Company, Inc. (incorporated by reference to Exhibit 10.4 to the Registrant's Annual Report on Form 10-K filed on March 13, 2017). †
10.7	Amendment No. 2 to the 2006 Equity Incentive Plan of North Atlantic Holding Company, Inc. (incorporated by reference to Exhibit 10.5 to the Registrant's Annual Report on Form 10-K filed on March 13, 2017). †
10.8	Amendment No. 3 to the 2006 Equity Incentive Plan of North Atlantic Holding Company, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on February 7, 2017). †
10.9	Amendment No. 4 to the 2006 Equity Incentive Plan of North Atlantic Holding Company, Inc. (incorporated by reference to Exhibit 10.54 to the Registrant's Annual Report on Form 10-K filed on March 13, 2017). †
10.10	Form of Award Agreement under the 2006 Plan (incorporated by reference to Exhibit 10.4 to the Registrant's Registration Statement on Form S-1/A (File No. 333-207816) filed on November 5, 2015). †
10.11	Form of Cash-Out Agreement under the 2006 Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on February 7, 2017). †
10.12	Form of Indemnification Agreement between Turning Point Brands, Inc. and certain directors and officers (incorporated by reference to Exhibit 10.10 to the Registrant's Registration Statement on Form S-1/A (File No. 333-207816) filed on November 24, 2015).
10.13	Contract Manufacturing, Packaging and Distribution Agreement dated as of September 4, 2008, between National Tobacco Company, L.P. and Swedish Match North America, Inc. (incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form S-1/A (File No. 333-207816) filed on November 24, 2015).
10.14	Amended and Restated Distribution and License Agreement dated as of November 30, 1992, between Bolloré Technologies, S.A. and North Atlantic Trading Company, Inc., as predecessor to North Atlantic Operating Company, Inc. (U.S.) (incorporated by reference to Exhibit 10.2 to Amendment No. 2 to the Registrant's Registration Statement (Reg. No. 333-31931) on Form S-4/A filed with the Commission on September 17, 1997).
10.15	Amended and Restated Distribution and License Agreement dated as of November 30, 1992, between Bolloré Technologies, S.A. and North Atlantic Trading Company, Inc., as predecessor to North Atlantic Operating Company, Inc. (Canada) (incorporated by reference to Exhibit 10.4 to Amendment No. 2 to the Registrant's Registration Statement (Reg. No. 333-31931) on Form S-4/A filed with the Commission on September 17, 1997).
10.16	Amendment to the Amended and Restated Distribution and License Agreement dated March 31, 1993 between Bolloré Technologies, S.A. and North Atlantic Trading Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.22 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.17	Amendment to the Amended and Restated Distribution and License Agreements dated June 10, 1996, between Bolloré Technologies, S.A. and North Atlantic Trading Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.23 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.18	Amendment to the Amended and Restated Distribution and License Agreement dated September 1996, between Bolloré Technologies, S.A. and North Atlantic Trading Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.24 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.19	Restated Amendment to the Amended and Restated Distribution and License Agreement between Bolloré Technologies, S.A. and North Atlantic Operating Company, Inc. dated June 25, 1997 (U.S. & Canada) (incorporated by reference to Exhibit 10.5 to Amendment No. 2 to the Registrant's Registration Statement (Reg. No. 333-31931) on Form S-4/A filed with the Commission on September 17, 1997).
10.20	Amendment to the Amended and Restated Distribution and License Agreement dated October 22, 1997, between Bolloré Technologies, S.A. and North Atlantic Operating Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.31 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1997).

10.21	Amendment to the Amended and Restated Distribution and License Agreement dated June 19, 2002, between Bolloré S.A. and North Atlantic Operating Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.31 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.22	Trademark Consent Agreement, dated March 26, 1997, between Bolloré Technologies, S.A. and North Atlantic Trading Company, Inc. (incorporated by reference to Exhibit 10.25 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.23	Amendment to the Amended and Restated Distribution and License Agreement dated February 28, 2005, between Bolloré S.A. and North Atlantic Operating Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.33 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.24	Amendment to the Amended and Restated Distribution and License Agreement dated April 20, 2006, between Bolloré S.A. and North Atlantic Operating Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2006).
10.25	Amendment to the Amended and Restated Distribution and License Agreement dated March 10, 2010, between Bolloré S.A. and North Atlantic Operating Company, Inc. (U.S. & Canada) (incorporated by reference to Exhibit 10.35 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.26	Consent Agreement dated as of April 4, 1997, between Bolloré Technologies, S.A. and North Atlantic Trading Company, Inc. (incorporated by reference to Exhibit 10.26 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.27	Amendment No. 1 to Consent Agreement dated as of April 9, 1997, between Bolloré Technologies, S.A. and North Atlantic Operating Company, Inc. (incorporated by reference to Exhibit 10.27 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.28	Amendment No. 2 to Consent Agreement dated as of June 25, 1997, between Bolloré Technologies, S.A. and North Atlantic Operating Company, Inc. (incorporated by reference to Exhibit 10.28 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.29	Trademark Consent Agreement dated July 31, 2003, among Bolloré Technologies, S.A., North Atlantic Trading Company, Inc. and North Atlantic Operating Company, Inc. (incorporated by reference to Exhibit 10.32 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.30	Amendment No. 2 to Trademark Consent Agreement dated December 17, 2012, between Bolloré S.A. and North Atlantic Operating Company, Inc. (incorporated by reference to Exhibit 10.36 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.31	License and Distribution Agreement dated March 19, 2013 between Bolloré S.A. and North Atlantic Operating Company, Inc. (incorporated by reference to Exhibit 10.37 to the Registrant's Registration Statement on Form S-1 (File No. 333-207816) filed on November 5, 2015).
10.32	Distributors Supply Agreement dated as of April 1, 2013, between National Tobacco Company, L.P. and JJA Distributors, LLC (incorporated by reference to Exhibit 10.38 to the Registrant's Registration Statement on Form S-1/A (File No. 333-207816) filed on November 24, 2015).
10.33	Form of Capped Call Agreement (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 31, 2019).
10.34	Employment Agreement by and between the Company and David Glazek, dated as of November 2, 2022. †
10.35	Employment Agreement by and between the Company and Graham A. Purdy, dated as of January 30, 2023. †
10.36	Employment Agreement by and between the Company and Luis Reformina, dated as of March 23, 2021 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 24, 2021) †

10.37	ABL Credit Agreement dated as of November 7, 2023, between TPB Specialty Finance LLC, as the borrower, the lenders and L/C issuers party thereto, Barclays Bank PLC, as administrative agent and collateral agent, and First-Citizens Bank & Trust Company, as additional collateral agent and Barclays Bank PLC and First-Citizens Bank & Trust Company as joint lead arrangers and joint bookrunners. *
10.38	Pledge and Security Agreement dated as of November 7, 2023 by and among TPB Specialty Finance LLC, as the grantor, and Barclays Bank PLC, in its capacity as collateral agent for the Lenders and L/C Issuers, Barclays Bank PLC, as administrative agent and collateral agent, and First-Citizens Bank & Trust Company. *
21	Subsidiaries of Turning Point Brands, Inc.*
23	Consent of RSM US LLP.*
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
31.3	Certification of Principal Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.*
32.1	Certifications of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*
97	Clawback policy of Turning Point Brands, Inc. *
101	XBRL (eXtensible Business Reporting Language). The following materials from Turning Point Brands, Inc.'s Annual Report on Form 10-K for the years ended December 31, 2023, 2022, and 2021, formatted in Inline XBRL: (i) consolidated balance sheets, (ii) consolidated statements of income, (iii) consolidated statements of comprehensive income, (iv) consolidated statements of changes in stockholder's equity (deficit), (v) consolidated statements of cash flows, and (vi) notes to the consolidated financial statements.*
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).*

* Filed herewith
† Compensatory plan or arrangement

Item 16. Form 10-K Summary

Not applicable.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized, on February 28, 2024.

TURNING POINT BRANDS, INC.

By: /s/ Graham Purdy
Name: Graham Purdy
Title: Chief Executive Officer

By: /s/ Luis Reformina
Name: Luis Reformina
Title: Chief Financial Officer

By: /s/ Brian Wigginton
Name: Brian Wigginton
Title: Chief Accounting Officer

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

	Signature	Title	Date
By:	/s/ Graham Purdy Graham Purdy	Director, Chief Executive Officer	February 28, 2024
By:	/s/ Luis Reformina Luis Reformina	Chief Financial Officer	February 28, 2024
By:	/s/ Brian Wigginton Brian Wigginton	Chief Accounting Officer	February 28, 2024
By:	/s/ David Glazek David Glazek	Executive Chair of the Board	February 28, 2024
By:	/s/ Gregory H. A. Baxter Gregory H. A. Baxter	Director	February 28, 2024
By:	/s/ H. C. Charles Diao H. C. Charles Diao	Director	February 28, 2024
By:	/s/ Rohith Reddy Rohith Reddy	Director	February 28, 2024
By:	/s/ Arnold Zimmerman Arnold Zimmerman	Director	February 28, 2024
By:	/s/ Ashley Davis Frushone Ashley Davis Frushone	Director	February 28, 2024
By:	/s/ Stephen Usher Stephen Usher	Director	February 28, 2024
By:	/s/ Lawrence S. Wexler Lawrence S. Wexler	Director	February 28, 2024

Exhibit 10.37

Execution Version

ABL CREDIT AGREEMENT

dated as of

November 7, 2023,

among

TPB SPECIALTY FINANCE LLC,
as the Borrower,

THE LENDERS AND L/C ISSUERS PARTY HERETO

and

BARCLAYS BANK PLC,
as Administrative Agent and Collateral Agent

and

FIRST-CITIZENS BANK & TRUST COMPANY,
as Additional Collateral Agent

BARCLAYS BANK PLC,
and
FIRST-CITIZENS BANK & TRUST COMPANY,
as Joint Lead Arrangers and Joint Bookrunners

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K	Customs Broker Agreement

ABL CREDIT AGREEMENT

ABL CREDIT AGREEMENT, dated as of November 7, 2023 (this "Agreement"), among TPB Specialty Finance LLC, a Delaware limited liability company (the "Borrower"), the several banks and other financial institutions from time to time parties to this Agreement as Lenders, the L/C Issuers from time to time parties to this Agreement and Barclays Bank Plc, as administrative agent (together with its successors and permitted assigns in such capacity, the "Administrative Agent") and as collateral agent (together with its successors and permitted assigns in such capacity, the "Collateral Agent") and First-Citizens Bank & Trust Company as additional collateral agent (together with its successors and permitted assigns in such capacity, the "Additional Collateral Agent," and together with the Administrative Agent and the Collateral Agent, the "Agents").

PRELIMINARY STATEMENTS

WHEREAS, the Borrower is a newly formed special purpose vehicle that is a wholly-owned indirect subsidiary of Turning Point Brands, Inc., a Delaware corporation (the "Company");

WHEREAS, the Borrower has been formed to purchase all inventory used in the Company's business, including, on the Closing Date, all inventory currently owned by the Company or its Subsidiaries;

WHEREAS, in connection with the formation of the Borrower, the Borrower and the Operating Companies (as hereinafter defined) will enter into that certain Inventory Services Agreement, dated as of November 7, 2023 (the "Inventory Services Agreement"), pursuant to which, among other things, the Operating Companies will provide certain services related to inventory management and manufacturing services;

WHEREAS, in connection with the foregoing, the Borrower has requested that the Lenders extend credit in the form of an asset-based credit facility established hereunder with commitments of $75,000,000; and

WHEREAS, the Lenders are willing to make available to the Borrower Revolving Credit Loans, LILO Loans and issue Letters of Credit upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows:

SECTION I DEFINITIONS

Section 1.1 Defined Terms

As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"Account(s)": means "accounts" as defined in the Uniform Commercial Code and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of or (b) for services rendered or to be rendered. The term "Account" does not include (a) rights to payment evidenced by chattel paper or an instrument, (b) commercial tort claims, (c) deposit accounts, (d) investment property, or (e) letter-of-credit rights or letters of credit, except to the extent they evidence or arise from an Account or constitute proceeds of an Account.

"Account Debtor": means a Person who is obligated under an Account, Chattel Paper or General Intangible.

"Additional Collateral Agent": as defined in the preamble hereto.

"Additional Lender": at any time, any bank, other financial institution or institutional investor that, in any case, is an Eligible Assignee and is not an existing Lender and that agrees to provide any portion of any Incremental Loan in accordance with Section 2.24; provided that each Additional Lender (other than any Person that is a Lender, an Affiliate or branch of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent and any L/C Issuer (each such approval not to be unreasonably withheld, conditioned or delayed), in each case to the extent any such consent would be required from the Administrative Agent under Section 9.4(b)(i)(B) for an assignment of Loans to such Additional Lender.

"Adjustment Date": as defined in clause (c) of the definition of "Applicable Margin"

"Administrative Agent": as defined in the preamble hereto and as further defined in Section 8.9(a).

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

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

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

"Agent Advance": as defined in Section 2.1(c).

"Agent Advance Period": as defined in Section 2.1(c).

"Agent Deposit Account": as defined in Section 2.21(c).

"Agent Indemnitee": as defined in Section 8.7.

"Agent-Related Persons": the Agents, together with their respective Related Parties.

"Agents"; as defined in the preamble hereto.

"Aggregate Exposure": with respect to any Lender, as of any date of determination, the aggregate principal amount of all Revolving Credit Loans of such Lender as of such date.

"Aggregate Exposure Percentage": with respect to any Lender as of any date of determination, the ratio (expressed as a percentage) of such Lender's Aggregate Exposure (including its share of unfunded Agent Advances) as of such date to the Aggregate Exposure of all Lenders as of such date.

"Agreement": as defined in the preamble hereto.

"Anti-Corruption Laws": the United States Foreign Corrupt Practices Act of 1977; the UK Bribery Act 2010; and all laws, rules, and regulations of any jurisdiction applicable to the Company or its Restricted Subsidiaries from time to time concerning or relating to bribery or corruption.

"Anti-Money Laundering Laws": the U.S. Bank Secrecy Act, as amended by the PATRIOT Act; and all laws, rules or regulations of any jurisdiction applicable to the Company or its Restricted Subsidiaries from time to time concerning or relating to money laundering or terrorism financing.

"Applicable Accounting Principles": for any period, the accounting principles applied as provided in Section 1.4.

"Applicable Lender Percentage": with respect to any (a) Revolving Lender, the percentage of the Total Revolving Credit Commitments represented by such Lender's Revolving Credit Commitment, (b) LILO Lender, the percentage of the LILO Commitments represented by such LILO Lender's LILO Commitment and (c) Lender, the percentage of the Total Credit Commitments represented by such Lender's Total Revolving Credit Commitment and/or LILO Commitment, as applicable. If the Revolving Credit Commitments and/or LILO Commitments have terminated or expired, the Applicable Lender Percentages shall be determined based upon the Revolving Credit Commitments and/or LILO Commitments most recently in effect, giving effect to any assignments. The Applicable Lender Percentage shall be adjusted appropriately, as determined by the Administrative Agent, in accordance with Section 2.19(c) to disregard the Revolving Credit Commitments and LILO Commitments of Defaulting Lenders.

"Applicable Margin":

(a) from and after the Closing Date until the last day of the first full Fiscal Quarter ended after the Closing Date, (i) 1.25% per annum, in the case of Revolving Credit Loans that are Base Rate Loans, and (ii) 2.25% per annum, in the case of Revolving Credit Loans that are SOFR Loans,

(b)(i) 2.25% per annum, in the case of LILO Loans that are Base Rate Loans, and (ii) 3.25% per annum, in the case of LILO Loans that are SOFR Loans,

(c) on the first day of each Fiscal Quarter thereafter (each, an "Adjustment Date"), the Applicable Margins for such Type of Revolving Credit Loans shall be determined from the pricing grid below based upon the Historical Excess Availability for the most recent Fiscal Quarter ended immediately prior to the relevant Adjustment Date, as calculated by the Administrative Agent.

Level	Historical Excess Availability as a percentage of the Line Cap	Applicable Margin for SOFR Loans	Applicable Margin for Base Rate Loans
I	Greater than or equal to 66.66%	1.75%	0.75%
II	Less than 66.66%, but greater than or equal to 33.33%	2.00%	1.00%
III	Less than 33.33%	2.25%	1.25%

Notwithstanding anything to the contrary contained above in this definition, from and after any Extension, with respect to any Extended Revolving Credit Commitments, the Applicable Margins specified for such Extended Revolving Credit Commitments shall be those specified in the applicable definitive documentation thereof.

"Applicable SOFR Adjustment": for any calculation with respect to a Term Benchmark Loan or a Daily Simple SOFR Loan, 0.10% per annum.

"Approved Bank": as defined in clause (c) of the definition of "Cash and Cash Equivalents".

"Approved Fund": any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in revolving loans and similar extensions of credit as its primary activity and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender; provided that in no event shall a Disqualified Lender be an Approved Fund.

"Assignment and Assumption": an assignment and assumption entered into by a Lender and an assignee (with the consent of each party whose consent is required by Section 9.4), and accepted by the Administrative Agent, in the form of Exhibit C or any other form approved by the Administrative Agent and the Borrower.

"Attributable Indebtedness": on any date, in respect of any Capitalized Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP.

"Auto-Renewal Letter of Credit": as defined in Section 2.4(b)(iii).

"Availability Period": (a) with respect to the Revolving Credit Facility, the period after and including the Availability Start Date to but excluding the earlier of (i) the Maturity Date and (ii) the date of termination of the Revolving Credit Commitments, and (b) with respect to Extended Revolving Credit Commitments, the period from and including the effective date of the Extension Amendment applicable to such Extended Revolving Credit Commitments to but excluding the earlier of (i) the final maturity date thereof as specified in the applicable Extension Offer accepted by the respective Lender or Lenders and (ii) the date of termination of such Extended Revolving Credit Commitments.

"Availability Start Date": February 6, 2024.

"Available Tenor": as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y)otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.19(d).

"Average Facility Balance": for any period for any Facility, the amount obtained by dividing the sum of the Aggregate Exposure for all Lenders under such Facility at the end of each day for the period in question by the number of days in such period.

"Bail-In Action": the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

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

"Bank Product Obligations": obligations of the Borrower to any Qualified Counterparty in respect of or in connection with Bank Product Services to.

"Bank Product Services": (a) any treasury, depositary, disbursement, lockbox, funds transfer, pooling, netting, overdraft, cash management and similar services, any automated clearing house transfer of funds, (b) commercial credit card and merchant card services and (c) Hedging Agreements.

"Bankruptcy Code": Title 11 of the United States Code (11 U.S.C. § 101, et seq.), as amended, modified or supplement from time to time.

"Bankruptcy Event": with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding or a corporate statutory arrangement proceeding having similar effect, is subject to, or any Person that directly or indirectly controls such Person is subject to, a forced liquidation, or has had a receiver, interim receiver, receiver and manager, conservator, trustee, administrator, custodian, monitor, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it or any substantial part of its assets, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided, that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, so long as such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Barclays": Barclays Bank PLC.

"Base Rate": for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective Rate (which, if negative, shall be deemed to be 0%) on such day plus 1/2 of 1%, (b) the Prime Rate on such day and (c) Term SOFR published on such day (or if such day is not a business day the next previous business day) for an Interest Period of one month (taking into account any "floor" under the definition of "Term SOFR") plus 1.00%. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, the Base Rate shall be determined without regard to clause (a) above until the circumstances giving rise to such inability no longer exist.

"Base Rate Borrowing": as to any Borrowing, the Base Rate Loans comprising such Borrowing.

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

"Base Rate Term SOFR Determination Day": as defined in the definition of "Term SOFR".

"Benchmark": initially, Term SOFR; provided that if a Benchmark Transition Event has occurred with respect to Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.19.

"Benchmark Replacement": with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) with respect to Term SOFR Loans, Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment;

provided that if the Benchmark Replacement would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment": with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero), that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities.

"Benchmark Replacement Date": the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and(ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event": the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period": the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.19 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.19.

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

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

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

"BHC Act Affiliate": as defined in Section 9.19(b).

"Board of Directors": with respect to any Person, (a) in the case of any corporation, the board of directors of such Person, (b) in the case of any limited liability company, the board of managers of such person or, if there is none, the Board of Directors of the managing member of such Person, (c) in the case of any partnership, the Board of Directors of the general partner of such Person, (d) in any other case, the functional equivalent of the foregoing and (e) in the case of any Person organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia, the foreign equivalent of any of the foregoing.

"Borrower": as defined in the preamble hereto.

"Borrower Materials": as defined in Section 9.1(d).

"Borrowing": (a) Revolving Credit Loans or LILO Loans, as the case may be, of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect or (b) Agent Advances.

"Borrowing Base": at any time, an amount equal to:

(a) the lesser of (1) 85% of the lower of (A) the market value (on a first in first out basis) of the sum of Eligible Inventory, plus Eligible In-Transit Inventory of the Borrower and (B) 85% of the Cost of the sum of Eligible Inventory, *plus* Eligible In-Transit Inventory of the Borrower and (2) 85% of the NOLV Percentage of the lower of 1(A) or (B); plus

(b) 85% of the face value of all Eligible Accounts of the Borrower

minus

(c) the amount of all Eligible Reserves in effect as of such date of determination, as the same may at any time and from time to time be established in accordance with the definition thereof.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.1(c) and Reserves established pursuant to the definition thereof. Notwithstanding anything to the foregoing, work-in-progress Inventory constituting Eligible Inventory shall not be included in the Borrowing Base and only be included in the LILO Borrowing Base.

"Borrowing Base Certificate": as defined in Section 5.1(c).

"Borrowing Request": a request by the Borrower for a Borrowing substantially in the form of Exhibit G or any other form acceptable to the Administrative Agent and the Borrower.

"Business Day": any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Capital Expenditures": for any period, the aggregate amount of all expenditures of the Company and its Restricted Subsidiaries during such period determined on a consolidated basis that, in accordance with GAAP, are or should be included as additions to property, plant and equipment in the consolidated statement of cash flows of the Company and its Restricted Subsidiaries. Notwithstanding the foregoing, Capital Expenditures shall not include:

(a) expenditures made with tenant allowances received by the Company or any of its Restricted Subsidiaries from landlords in the ordinary course of business and subsequently capitalized;

(b) expenditures financed with the proceeds of an issuance of Capital Stock of the Company or any direct or indirect parent thereof, or a capital contribution to the Company;

(c) expenditures that are accounted for as capital expenditures by the Company or any of its Restricted Subsidiaries and that actually are paid for by a Person other than the Company or any of its Restricted Subsidiaries to the extent neither the Company nor any of its Restricted Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person (whether before, during or after such period);

(d) any expenditures which are contractually required to be, and are, advanced or reimbursed to the Company or any of its Restricted Subsidiaries in cash by a third party (including landlords) during such period of calculation;

(e) the book value of any asset owned by the Company or any of its Restricted Subsidiaries prior to or during such period to the extent that such book value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; provided that (i) any expenditure necessary in order to permit such asset to be reused shall be included as a capital expenditure during the period in which such expenditure actually is made and (ii) such book value shall have been included in capital expenditures when such asset was originally acquired;

(f) that portion of interest on Indebtedness incurred for capital expenditures which is paid in cash and capitalized in accordance with GAAP;

(g) expenditures made in connection with the replacement, substitution, restoration, upgrade, development or repair of assets to the extent financed with (x) insurance or settlement proceeds paid on account of the loss of or damage to the assets being replaced, substituted, restored, upgraded, developed or repaired or (y) awards of compensation arising from the taking by eminent domain or condemnation of the assets being replaced;

(h) in the event that any equipment is purchased substantially simultaneously with the trade-in of existing equipment, the gross amount of the credit granted by the seller of such equipment for the equipment being traded in at such time; or

(i) expenditures relating to the construction, acquisition, replacement, reconstruction, development, refurbishment, renovation or improvement of any property which has been transferred to a Person other than the Company or any of its Restricted Subsidiaries during the same Fiscal Year in which such expenditures were made pursuant to a sale and leaseback transaction to the extent of the cash proceeds received by the Company or any of its Restricted Subsidiaries pursuant to such sale and leaseback transaction that are not required to prepay funded Indebtedness.

"Capital Stock": any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, including convertible securities but excluding debt securities convertible or exchangeable into any of the foregoing.

"Capitalized Leases": all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

"Cash and Cash Equivalents":

(a) U.S. Dollars or any other readily tradable currency to the extent utilized in connection with the conduct of the business of the Borrower;

(b) obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States having average maturities of not more than 24 months from the date of acquisition thereof; provided that the full faith and credit of the United States is pledged in support thereof;

(c) time deposits or time deposits with, certificates of deposit, bankers' acceptances or overnight bank deposits of, or letters of credit issued by, any commercial bank that (i) is a Lender hereunder or (ii) (A) is organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development or is the principal banking Subsidiary of a bank holding company organized under the Laws of the United States, any state thereof, the District of Columbia or any member nation of the Organization for Economic Cooperation and Development and is a member of the Federal Reserve System, and (B) has combined capital and surplus of at least $250,000,000 or $100,000,000 in the case of any non-U.S. bank (any such bank in the foregoing clauses (i) or (ii) being an "Approved Bank"), in each case with maturities not exceeding 24 months from the date of acquisition thereof;

(d) commercial paper and variable or fixed rate notes issued by an Approved Bank (or by the parent company thereof) or any variable or fixed rate note issued by, or guaranteed by, a corporation (other than structured investment vehicles and other than corporations used in structured financing transactions) rated A-2 (or the equivalent thereof) or better by S&P or P-2 (or the equivalent thereof) or better by Moody's, in each case with average maturities of not more than 24 months from the date of acquisition thereof;

(e) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower);

(f) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (e) above entered into with any Approved Bank;

(g) securities with average maturities of 24 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government having an investment grade rating from either S&P or Moody's (or the equivalent thereof);

(h) Investments (other than in structured investment vehicles and structured financing transactions) with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(i) securities with maturities of 12 months or less from the date of acquisition backed by standby letters of credit issued by any Approved Bank;

(j) instruments analogous to those referred to in clauses (a) through (i) above denominated in Euros or any other foreign currency comparable in credit quality and tenor to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by any Restricted Subsidiary organized in such jurisdiction;

(k) Investments, classified in accordance with GAAP as Current Assets of the Borrower, in money market investment programs which are registered under the Investment Company Act of 1940 or which are administered by financial institutions having capital of at least $250,000,000, and, in either case, the portfolios of which are limited such that substantially all of such Investments are of the character, quality and maturity described in clauses (a) through (i) above; and

(l) investment funds investing at least 95% of their assets in securities of the types described in clauses (a) through (k) above.

Notwithstanding the foregoing, Cash and Cash Equivalents shall include amounts denominated in currencies other than those set forth in clauses (a) and (j) above; provided that such amounts are converted into any currency listed in clause (a) or (j) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"Cash Collateralize": to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent or any L/C Issuer (as applicable) and the Lenders, as collateral for L/C Obligations, or obligations of Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances or, if the applicable L/C Issuer benefitting from such collateral agrees in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent (and the Collateral Agent as applicable) and (b) the applicable L/C Issuer (which documents are hereby consented to by the Lenders). "Cash Collateralized" shall have a correlative meaning and "Cash Collateral" shall have a meaning analogous to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Management Control Agreement": a "control agreement" in form and substance reasonably acceptable to the Administrative Agent and the Borrower and containing terms regarding the treatment of all cash and other amounts on deposit in the respective deposit account governed by such Cash Management Control Agreement consistent with the requirements of Section 2.21.

"CERCLA": the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and any rules or regulations promulgated thereunder.

"Change in Law": the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (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 Law," regardless of the date enacted, adopted or issued.

"Change of Control": shall be deemed to occur if:

(a) the sale, lease or transfer (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all the assets of either (x) the Borrower, or (y) the Company or its Subsidiaries, taken as a whole, in each case, to any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) other than to the Borrower or the Company or its Subsidiaries; or

(b) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act other than a Permitted Holder, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), in a single transaction or in a related series of transactions, by way of merger, consolidation, amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the Voting Stock of the Company, in each case, other than an acquisition where the holders of the Voting Stock of the Company as of immediately prior to such acquisition hold 50% or more of the Voting Stock of the ultimate parent of the Company or successor thereto immediately after such acquisition (provided that no holder of the Voting Stock of the Company as of immediately prior to such acquisition owns, directly or indirectly, more than 50% of the voting power of the Voting Stock of the Company immediately after such acquisition);

(c) the Company shall cease to own, directly or indirectly, 100% of the Capital Stock of the Borrower; or

(d) during any period of twelve consecutive months, a majority of the members of the Board of Directors of the Company cease to be composed of individuals (i) who were members of that Board of Directors on the first day of such period, (ii) whose election or nomination to that Board of Directors was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that Board of Directors or (iii) whose election or nomination to that Board of Directors was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that Board of Directors.

Notwithstanding the preceding or any provision of Rule 13(d)(3) of the Exchange Act (or any successor provision), (i) a Person or group shall not be deemed to beneficially own Voting Stock subject to an equity or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement, (ii) a Person or group will not be deemed to beneficially own the Voting Stock of another Person (the "Subject Person") held by a parent of such Subject Person unless it owns more than 50% of the total voting power of the Voting Stock of such parent and (iii) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Voting Stock of the Company owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as beneficially owned by such group or any other member of such group for purposes of determining whether a Change of Control has occurred.

"Closing Date": the date on which the conditions precedent set forth in Section 4.1 shall have been satisfied or waived in accordance with Section 9.2. For the avoidance of doubt, the Closing Date is November 7, 2023.

"Code": the Internal Revenue Code of 1986, as amended.

"Collateral": all Property of the Borrower, now owned or hereafter acquired, upon which a Lien is created or purported to be created by any Security Document and shall include the Designated Deposit Accounts and all Inventory.

"Collateral Access Agreement": a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

"Collateral Account": as defined in Section 2.4(k).

"Collateral Agent": as defined in the preamble hereto and as further defined in Section 8.9(a).

"Collateral Management Agents": the Administrative Agent and/or the Additional Collateral Agent, as the context requires.

"Collateral Requirement": at any time, the requirement that:

(a) the Agents shall have received each Security Document required to be delivered (i) on the Closing Date, pursuant to Section 4.1 and (ii) at such time as may be designated therein, pursuant to the Security Documents or Section 2.21, 5.9 or 5.11, subject, in each case, to the limitations and exceptions of this Agreement, in each case, duly executed by the Borrower; and

(b) except to the extent otherwise provided hereunder or under any Security Document, all Obligations shall have been secured by a perfected first-priority security interest in favor of the Collateral Agent for the benefit of the Secured Parties (to the extent such security interest may be perfected by filing financing statements under the Uniform Commercial Code, filing with the United States Copyright Office or the United States Patent and Trademark Office, obtaining a Cash Management Control Agreement, or delivery of the certificates and instruments constituting Collateral in suitable form for transfer by delivery or accompanied by instruments of transfer or assignment duly executed in blank) in the Collateral (including the Designated Deposit Accounts and all Inventory);

provided, however, that the Liens required to be granted from time to time pursuant to the Collateral Requirement shall be subject to exceptions and limitations set forth in this Agreement and the Security Documents.

The Administrative Agent may grant extensions of time for the perfection of security interests in particular assets and the delivery of assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Borrower on such date) or any other compliance with the requirements of this definition where it reasonably determines, in consultation with the Borrower, that perfection or compliance cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement, the Security Documents or the other Loan Documents.

Notwithstanding anything contained in this Agreement to the contrary, no mortgage, trust, trust deed, deed to secure debt shall be executed and delivered with respect to any real property. No actions in any non-U.S. jurisdiction or required by requirements of Law of any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside of the U.S. or to perfect such security interests (it being understood that there shall be no security agreements or pledge agreements governed by requirements of Law of any non-U.S. jurisdiction).

"Collection Banks": as defined in Section 2.21(a)(i).

"Commitment Fee": fees payable on the undrawn portion of the Revolving Credit Commitments pursuant to Section 2.10(a).

"Commitment Fee Rate": in respect of the Revolving Credit Loans, (A) from and after the Closing Date until the Availability Start Date, 0.1875%, (B) after and including the Availability Start Date until the first Adjustment Date, 0.375% per annum and (C) on each Adjustment Date thereafter, the Commitment Fee Rate shall be determined by reference to the pricing grid below based upon the Historical Average Utilization for the most recent Fiscal Quarter ended immediately prior to the relevant Adjustment Date, as calculated by the Administrative Agent.

Historical Average Utilization (% of commitments)	**Commitment Fee %**
< 50%	0.375%
> 50%	0.250%

Notwithstanding anything to the contrary contained above in this definition, from and after any Extension, with respect to any Extended Revolving Credit Commitments, the Commitment Fee specified for such Extended Revolving Credit Commitments shall be those specified in the applicable definitive documentation thereof.

"Commitments": the LILO Commitments, Revolving Credit Commitments and Extended Revolving Credit Commitments.

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

"Company": as defined in the recitals hereto.

"Compliance Certificate": a certificate duly executed by a Responsible Officer of the Borrower, substantially in the form of Exhibit B.

"Conforming Changes": with respect to either the use or administration of any Term Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate", the definition of "Business Day", the definition of "U.S. Government Securities Business Day", the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.15 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Consolidated EBITDA": with respect to the Company and its Restricted Subsidiaries on a consolidated basis for any period, the Consolidated Net Income of the Company and its Restricted Subsidiaries for such period, plus

(a) the sum of, without duplication, in each case, to the extent deducted in or otherwise reducing Consolidated Net Income for such period:

(i) Taxes paid and the provision for any type of taxes, of the Company and its Restricted Subsidiaries for such period deducted in computing Consolidated Net Income; plus

(ii) Consolidated Interest Expense of the Company and its Restricted Subsidiaries for such period and (y) all cash dividend payments (excluding items eliminated in consolidation) on any Disqualified Capital Stock of the Company and its Restricted Subsidiaries; plus

(iii) depreciation, amortization (including amortization of intangibles, deferred financing fees and actuarial gains and losses related to pensions and other post-employment benefits, but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses or charges and any unrealized losses of the TMSA Account (excluding any such non-cash charges or expenses to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of the Company and its Restricted Subsidiaries for such period; plus

(iv) any extraordinary, unusual, infrequently occurring or nonrecurring loss, charge, payments or expense or any losses, expenses, payments or charges incurred in connection with any securities offering, financing, acquisition, disposition, or recapitalization and the amount of any restructuring charges, accruals or reserves (which, for the avoidance of doubt, shall include retention, severance, systems establishment cost, excess pension charges, contract termination costs, future lease commitments, integration and business optimization costs and costs to close or consolidate facilities and relocate employees); plus

(v) any costs or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Company or net cash proceeds of an issuance of Capital Stock of the Company (other than Disqualified Capital Stock); plus

(vi) any other noncash charges, expenses, write-down or losses (including any impairment charges and the impact of purchase accounting, including, but not limited to, the amortization of inventory step-up and loss of profit on the acquired inventory and unrealized losses of the TMSA Account) or deferred cash charges, expenses or losses reducing Consolidated Net Income for such period (excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period, other than straight-line rent expense determined in accordance with GAAP to the extent such accruals exceed the related rent payments for the applicable period; provided, however, that the EBITDA for any period shall be reduced to the extent rent payments exceed rent accruals for such period irrespective of the accounting treatment of such rent payments) less all non-cash items of income of the Company and its Restricted Subsidiaries; plus

(vii) (a) costs incurred or otherwise associated with the launch of new products or product lines and (b) costs associated with applications related to Food and Drug Administration Pre-market Tobacco Applications and similar costs incurred in connection with the receipt of regulatory approval for products; plus

(viii) any non-cash losses related to non-operational hedging, including, without limitation, resulting from hedging transactions for interest rate or currency exchange risks associated with this Agreement; minus

(b) the sum of, without duplication, in each case, to the extent added back in or otherwise increasing Consolidated Net Income for such period:

(i) non-cash items increasing such Consolidated Net Income for such period or any non-cash items which represent the reversal of any accrual of, or reserve for, anticipated cash charges in any prior period and any items for which cash was received in any prior period; plus

(ii) any non-cash gains related to non-operational hedging, including, without limitation, resulting from hedging transactions for interest rate or currency exchange risks associated with this Agreement; in each case, on a consolidated basis and determined in accordance with Applicable Accounting Principles.

in each case, on a consolidated basis and determined in accordance with Applicable Accounting Principles

Notwithstanding the preceding, the provision for taxes based on the income or profits of, the Consolidated Interest Expense of, the depreciation and amortization and other non-cash expenses or non- cash items of and the restructuring charges or expenses of, a Restricted Subsidiary (other than any Wholly Owned Subsidiary) of the Company will be added to (or subtracted from, in the case of non-cash items described in clause (b) above) Consolidated Net Income to compute Consolidated EBITDA, (A) in the same proportion that the Net Income of such Restricted Subsidiary was added to compute such Consolidated Net Income of the Company, and (B) only to the extent that a corresponding amount of the Net Income of such Restricted Subsidiary would be permitted at the date of determination to be dividended or distributed to the Company by such Restricted Subsidiary without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

"Consolidated Fixed Charge Coverage Ratio": for any period, the ratio of (A)(i) Consolidated EBITDA for the Test Period ended as of such date or, as applicable, most recently ended prior to such date, minus (ii) the aggregate amount of federal, state, local and foreign income taxes paid or payable in cash by the Company and its Restricted Subsidiaries for the Test Period ended as of such date or, as applicable, most recently ended prior to such date, minus (iii) Non-Financed Capital Expenditures of the Company and its Restricted Subsidiaries for the Test Period that were paid in cash during such Test Period; to (B) Consolidated Fixed Charges for such period.

"Consolidated Fixed Charges": with respect to any Person for any period, the sum, without duplication, of: (a) Consolidated Interest Expense of the Company and its Restricted Subsidiaries plus (b) scheduled payments of principal on long-term Indebtedness for borrowed money of the Company and its Restricted Subsidiaries (including principal payments in respect of Capitalized Leases to the extent allocated to principal, but excluding payments in respect of any intercompany debt and any payments in respect of purchase price adjustments and earnouts) of the Company and its Restricted Subsidiaries plus (c) any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of the Company, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of any return of capital to the Company's stockholders, partners or members (or the equivalent Persons thereof).

"Consolidated Interest Expense": with respect to the Company and its Restricted Subsidiaries for any period, and without duplication, total cash interest expense for such period (net of any cash interest income for such period) with respect to all outstanding Indebtedness, calculated on a consolidated basis in accordance with GAAP, plus consolidated capitalized interest for such period, whether paid or accrued, plus net payments (positive or negative) under interest rate swap agreements (other than in connection with the early termination thereof), but in any event excludes (A) the agency fee described in the Fee Letter, (B) costs associated with obtaining or breakage costs in respect of Hedging Agreements, (C) fees and expenses associated with any asset sales, acquisitions, Investments, equity issuances or debt issuances (in each case, whether or not consummated) and (D) amortization of deferred financing costs.

"Consolidated Net Income": with respect to any person for any period, the aggregate Net Income of such person and its Restricted Subsidiaries for such period, on a consolidated basis, in accordance with Applicable Accounting Principles; provided, however, that, without duplication:

(a) any net after-tax extraordinary, nonrecurring or unusual gains or losses (less all fees and expenses relating thereto) or expenses or charges, any severance expenses, relocation expenses, curtailments or modifications to pension and postretirement employee benefit plans, excess pension charges, any expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternate uses and fees, expenses or charges relating to new product lines, facilities closing or consolidation costs, acquisition integration costs, facilities opening costs, project start-up costs, business optimization costs, (including inventory optimization programs), systems establishment costs, contract termination costs, future lease commitments, other restructuring charges, reserves or expenses, signing, retention or completion bonuses, expenses or charges related to any issuance of Capital Stock, Investment, acquisition, disposition, recapitalization or issuance, repayment, refinancing, amendment or modification of Indebtedness (in each case, whether or not successful), and any fees, expenses or charges related to the Transaction, in each case, shall be excluded;

(b) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such person and such Restricted Subsidiaries) in amounts required or permitted by Applicable Accounting Principles, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded;

(c) the cumulative effect of a change in accounting principles (which shall in no case include any change in the comprehensive basis of accounting) during such period shall be excluded;

(d) (i) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations, (ii) any net after-tax gain or loss on disposal of disposed, abandoned, transferred, closed or discontinued operations and (iii) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the Company) shall be excluded;

(e) any net after-tax gains or losses, or any subsequent charges or expenses (less all fees and expenses or charges relating thereto), attributable to the early extinguishment of Indebtedness, hedging obligations or other derivative instruments shall be excluded;

(f) the Net Income for such period of any person that is not a Subsidiary of such person or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting (other than a guarantor), shall be included only to the extent of the amount of dividends or distributions or other payments actually paid in cash or cash equivalents (or to the extent converted into cash or cash equivalents) to the referent person or a Restricted Subsidiary thereof in respect of such period;

(g) any impairment charge or asset write-off and amortization of intangibles, in each case pursuant to Applicable Accounting Principles, shall be excluded;

(h) any non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded;

(i) any (i) non-cash compensation charges or (ii) costs or expenses realized in connection with or resulting from stock appreciation or similar rights, stock options or other rights existing on the Closing Date of officers, directors and employees, in each case of such person or any of its Subsidiaries, shall be excluded;

(j) accruals and reserves that are established or adjusted within 12 months after the Closing Date (excluding any such accruals or reserves to the extent that they represent an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) and that are so required to be established or adjusted in accordance with Applicable Accounting Principles or as a result of adoption or modification of accounting policies shall be excluded;

(k) the Net Income of any person and its Subsidiaries shall be calculated by deducting the income attributable to, or adding the losses attributable to, the minority equity interests of third parties in any non-Wholly Owned Subsidiary;

(l) any unrealized gains and losses related to currency remeasurements of Indebtedness, and any unrealized net loss or gain resulting from hedging transactions for interest rates, commodities or currency exchange risk, shall be excluded;

(m) to the extent covered by insurance and actually reimbursed, or, so long as such person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (i) not denied by the applicable carrier in writing within 180 days and (ii) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption shall be excluded; and

(n) non-cash charges for deferred tax asset valuation allowances shall be excluded (except to the extent reversing a previously recognized increase to Consolidated Net Income).

Consolidated Net Income presented in a currency other than U.S. Dollars will be converted to U.S. Dollars based on the average exchange rate for such currency during, and applied to, each fiscal quarter in the period for which Consolidated Net Income is being calculated.

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

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

"Controlled Account": each deposit account maintained by the Borrower at a Collection Bank and subject to a Cash Management Control Agreement.

"Convertible Notes": the Company's 2.50% Convertible Senior Notes due 2024.

"Cost": the cost of the Borrower's Inventory as determined in accordance with the Borrower's accounting policy in effect as of the Closing Date and furnished to the Administrative Agent as reported on the Borrower's perpetual inventory report, as such policy may be modified with the consent of the Administrative Agent, whose consent will not be unreasonably withheld.

"Covenant Trigger Event": any date on which Excess Availability shall be less than the greater of (a) 12.5% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) and (b) $9,375,000, at any time and continuing until Excess Availability is equal to or exceeds the greater of (a) 12.5% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) and (b) $9,375,000 for thirty (30) consecutive calendar days; provided that such $9,375,000 level shall automatically increase in proportion to the amount of any increase in the aggregate Revolving Credit Commitments hereunder in connection with any Incremental Facility.

"Covered Entity": as defined in Section 9.19(b).

"Covered Party": as defined in Section 9.19(a).

"Credit Extension": (a) a Borrowing or (b) an L/C Credit Extension.

"Credit Party": the Agents or any Lender.

"Current Assets": with respect to the Company and its Subsidiaries on a consolidated basis at any date of determination, the sum of all assets (other than cash) that would, in accordance with Applicable Accounting Principles, be classified on a consolidated balance sheet of the Company and its Subsidiaries as current assets at such date of determination, other than amounts related to current or deferred Taxes based on income or profits.

"Customs Broker Agreement": an agreement in substantially the form attached hereto as Exhibit K among the Borrower, a customs broker or other carrier, and the Administrative Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory or other property for the benefit of the Administrative Agent, and agrees, upon notice from the Administrative Agent (which notice shall be delivered only upon the occurrence and during the continuance of an Event of Default), to hold and dispose of the subject Inventory and other property solely as directed by the Administrative Agent.

"Daily Simple SOFR": for any day (a "SOFR Rate Day"), a rate per annum equal to the greater of

(a) (i) SOFR for the day (such day "*i*") that is five U.S. Government Securities Business Days prior to (A) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (B) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website plus (ii) the Applicable SOFR Adjustment; and

(b) the Floor.

If by 5:00 pm (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any day "*i*", the SOFR in respect of such day "*i*" has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then the SOFR for such day "*i*" will be the SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"Daily Simple SOFR Loan": a Loan that bears interest at a rate based on Daily Simple SOFR.

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

"Default": any of the events specified in Section VII, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Default Rate": the rate described in Section 2.12(b).

"Default Right": as defined in Section 9.19(b).

"Defaulting Lender": subject to Section 2.23(b), any Lender whose act or failure to act, whether directly or indirectly, causes it to meet any part of the definition of "Lender Default."

"Designated Deposit Account": the deposit accounts of the Borrower listed on Schedule 1.1(a), as may be updated from time to time by notice to the Administrative Agent.

"Designated Letters of Credit": means those letters of credit listed on Schedule 1.1(b).

"Disposition": with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof (excluding Liens); and the terms "Dispose" and "Disposed" shall have correlative meanings.

"Disqualified Capital Stock": any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock 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 (i) solely for Qualified Capital Stock and cash in lieu of fractional shares or (ii) solely at the discretion of the issuer), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than (i) solely for Qualified Capital Stock and cash in lieu of fractional shares or (ii) as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), 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 Indebtedness or any other Capital Stock that would constitute Disqualified Capital Stock, in each case, prior to the date that is 91 days after the Latest Maturity Date at the time of issuance of such Capital Stock; provided that if such Capital Stock is issued pursuant to a plan for the benefit of employees of the Company or any other applicable issuer or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because such Capital Stock may be required to be repurchased by the Company or any other applicable issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

"Disqualified Lender": (a) those financial institutions, lenders and other Persons previously specified in writing by the Borrower and agreed to by the Administrative Agent prior to the date hereof, (b) competitors of the Borrower or the Manager as identified by the Borrower by written notice to the Administrative Agent from time to time and (c) in the cases of clause (a) or (b), Affiliates thereof (other than any bona fide debt funds) that are either (i) identified by the Borrower by written notice to Administrative Agent or (ii) clearly identifiable on the basis of such Affiliates' names, it being understood and agreed that the identification of any Person as a Disqualified Lender after the Closing Date shall not apply to retroactively disqualify any Person that has previously acquired an assignment or participation interest in any Loan, or Commitment so long as such Person was not a Disqualified Lender at the time of such assignment or participation. The list of Disqualified Lenders shall be posted to the Platform, it being understood that the Borrower may update such list from time to time with respect to Disqualified Lenders to the extent provided for above in clause (b) or (c)(i), and the Administrative Agent shall post such updated schedule to the Platform promptly following its receipt thereof, with such updates effective one (1) Business Day after delivery to the Administrative Agent (or, if posted to the Platform sooner, upon posting to the Platform).

"Distressed Person": as defined in the definition of "Lender-Related Distress Event".

"Dominion Period": (a) each period beginning on the occurrence of an Event of Default until such Event of Default has been cured or waived and (b) each period beginning on the date that Excess Availability shall have been less than the greater of (x) 12.5% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) and (y) $9,375,000 ending on the date that Excess Availability shall have been at least the greater of (x) 12.5% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) and (y) $9,375,000 for 30 consecutive calendar days (this clause (b), a "Liquidity Condition").

"EEA Financial Institution": (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country": any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"EEA Resolution Authority": any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Accounts": means, as of any date of determination, each Account owing to the Borrower that arises in the ordinary course of business (consistent with past practices and undertaken in good faith) from the sale of goods and is payable in Dollars, and is deemed by the Collateral Management Agents, in their respective Permitted Discretion, to be an Eligible Account. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, finance charges, service charges, discounts, credits, allowances, and rebates. Without limiting the foregoing, no account shall be an Eligible Account if:

(a) it is unpaid within 60 days following its due date or 90 days following the original invoice date;

(b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause (a);

(c) when aggregated with other Accounts owing by the Account Debtor, it exceeds 15% of the aggregate Eligible Accounts (or such higher percentage as either Collateral Management Agent may establish for the Account Debtor from time to time (but only to the extent of such excess));

(d) it does not conform in all material respects, with the representations, warranties or covenants contained in this Agreement or any other Loan Document;

(e) it is owing by a creditor or supplier, or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility, including in the case of a creditor or supplier, shall be limited to the amount of such offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance);

(f) an Insolvency Proceeding has been commenced by or against the Account Debtor, or the Account Debtor is not Solvent or has gone out of business, or as to which the Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor;

(g) the Account Debtor is not organized (or have its principal offices or assets) in the United States, unless (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to each Collateral Management Agents (as to form, substance, and issuer or domestic confirming bank) over which the Collateral Agent has "control" of the related letter-of-credit rights (as contemplated in Article 9 of the Uniform Commercial Code) and, if requested by either Collateral Management Agent, is directly drawable by the Administrative Agent, or (B) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to each Collateral Management Agent;

(h) it is owing by a Governmental Authority, unless the Account Debtor is (i) a United States military base, (ii) otherwise the United States or any department, agency or instrumentality thereof and, solely with respect to this clause (ii), the Account has been assigned to the Collateral Agent in compliance with the Assignment of Claims Act (unless each Collateral Management Agent, in its sole discretion, has agreed to the contrary in writing), or (iii) any state government in the United States unless any steps necessary (if any) with respect to the perfection, enforcement, or realization of the Lien of the Collateral Agent in such Account have been complied with to each Collateral Management Agent's satisfaction;

(i) it is not subject to a duly perfected, first priority Lien in favor of the Collateral Agent (subject to Permitted Liens having priority by operation of applicable Law), or is subject to any other Lien (other than Permitted Liens);

(j) the goods giving rise to it have not been delivered to and accepted by the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale;

(k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment;

(l) its payment has been extended, compromised, settled or otherwise modified or discounted, except discounts or modifications granted by the Borrower in the ordinary course of business and that are reflected in the calculation of the Borrowing Base, or it arises from a sale on a cash on delivery basis;

(m) it arises from a sale to an Affiliate, or from a sale on a bill and hold, guaranteed sale, "sale or return", sale on approval, consignment, or other repurchase or return basis;

(n) it represents a progress billing or retainage;

(o) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof; or

(p) it arises from an unbilled sale.

Any Accounts that are not Eligible Accounts shall nevertheless be part of the Collateral to the extent provided in the Loan Documents.

"Eligible Assignee": (i) any Lender, any Affiliate or branch of a Lender and any Approved Fund and (ii) any commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends revolving credit or buys revolving loans in the ordinary course; provided that "Eligible Assignee" shall not include (w) any Disqualified Lender, (x) any Lender that is, as of the date of the applicable assignment, a Defaulting Lender, (y) any natural person or (z) the Borrower or any Affiliate of the Borrower.

"Eligible In-Transit Inventory": as of any date of determination without duplication of other Eligible Inventory, Inventory (a) which has been shipped from any location inside the United States for receipt by the Borrower within the United States within 30 days of the date of determination but which has not yet been received the Borrower, (b) for which the purchase order is in the name of the Borrower and title has passed to the Borrower, (c) for which the document of title, to the extent applicable, reflects the Borrower as consignee (along with delivery to the Borrower of the documents of title, to the extent applicable, with respect thereto), (d) as to which the Administrative Agent has control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement if the documents of title are negotiable), and (e) which otherwise is not excluded from the definition of " Eligible Inventory". Eligible In-Transit Inventory shall not include Inventory accounted for as "in transit" by the Borrower by virtue of such Inventory's being in storage trailers at the Borrower's locations; rather such Inventory shall be treated as "Eligible Inventory," if it satisfies the conditions therefor.

Any Inventory that is not Eligible In-Transit Inventory shall nevertheless be part of the Collateral to the extent provided in the Security Documents.

"Eligible Inventory": as of any date of determination, without duplication, (i) items of Inventory owned by the Borrower that are (a) finished goods, merchantable and readily saleable to the public in the ordinary course, (b) work-in-progress or (c) raw materials, (ii) as to which the Administrative Agent has received a satisfactory appraisal with respect thereto and (iii) that are not excluded as ineligible by virtue of one or more of the criteria set forth below. None of the following shall be deemed to be Eligible Inventory:

(a) Inventory with respect to which the Borrower does not have good, valid and marketable title thereto;

(b) Inventory that (i) is not located in the United States of America, or (ii) at a location that is not owned or leased by the Borrower, except to the extent that (A) the Borrower has furnished the Administrative Agent with any Uniform Commercial Code financing statements or other filings that the Administrative Agent may reasonably determine to be necessary to perfect its security interest in such Inventory at such location and (B) either reserves equal to two months' rent or such other Reserves reasonably satisfactory to each Collateral Management Agent have been established with respect thereto; provided that, no rent reserve shall be required to the extent the lessor has delivered a Collateral Access Agreement to the Administrative Agent as to such location;

(c) Inventory that represents goods which are (i) are damaged, defective, slow moving, obsolete, "seconds," or otherwise unfit for sale or unmerchantable and goods that have been returned or repossessed, (ii) to be returned to the vendor and which is no longer reflected in the Borrower's stock ledger, or (iii) are bill and hold goods;

(d) Inventory that represents goods that do not conform in all material respects to the representations, warranties and covenants contained in this Agreement or any of the other Loan Documents;

(e) Inventory that is not subject to a perfected first priority security interest in favor of the Collateral Agent (subject only to First Priority Priming Liens, or is subject to any other Lien (other than Permitted Liens)), or is leased by or is on consignment to the Borrower or is subject to a deposit or down payment, or that is not solely owned by the Borrower;

(f) Inventory which consists of samples, marketing material, labels, point of sales material, shrink, bags, packaging or shipping materials, vendor or other display items, replacement or spare parts or manufacturing supplies and other similar non-merchandise categories;

(g) Inventory as to which casualty insurance in compliance with the provisions of Section 5.5 hereof is not in effect;

(h) (i) Inventory which has been sold but not yet delivered, unless such sale is evidenced by a valid purchase order, or (ii) Inventory to the extent that the Borrower has accepted a deposit therefor and which is no longer reflected in the Borrower's stock ledger;

(i) [reserved];

(j) Inventory that does not meet all standards imposed by any Governmental Authority in any material respect;

(k) Inventory that is subject to any license or other arrangement that restricts the Borrower's or the Administrative Agent's right to dispose of such Inventory, unless the Administrative Agent has received an appropriate lien or similar waiver;

(l) Inventory which is not Eligible In-Transit Inventory; provided that the amount of Eligible in-Transit Inventory included in the Borrowing Base or the LILO Borrowing Base may not exceed $3,000,000 at any time;

(m) Inventory that consists of work-in-progress; provided that the amount of work-in- progress included in the LILO Borrowing Base may not exceed $10,000,000 at any time;

(n) Inventory which gives rise to any obligation of the Company or its Restricted Subsidiaries to pay royalties thereon, unless the accrued and unpaid amounts with respect thereto are included as Reserves; and

(o) Inventory which either Collateral Management Agents determine in its Permitted Discretion shall be ineligible.

Any Inventory that is not Eligible Inventory shall nevertheless be part of the Collateral to the extent provided in the Security Documents. In determining whether any Tobacco Inventory is Eligible Inventory, such determination shall be made as if such Tobacco Inventory has had affixed to it any requisite Tax Stamps.

"Eligible Reserves": Reserves against the Borrowing Base and the LILO Borrowing Base established or modified in the Permitted Discretion of either Collateral Management Agent subject to the following: (a) the amount of any Eligible Reserves shall have a reasonable relationship to the event, condition or other matter that is the basis for the establishment of such Reserve or such modification thereto, (b) no Reserves shall be established or modified to the extent they are duplicative of Reserves or modifications already accounted for through eligibility or other criteria (including collection/advance rates), (c) no Reserve may be taken after the Closing Date based on circumstances known to any Agent as of the Closing Date for which no Reserve was imposed on the Closing Date, and no Reserve taken on the Closing Date may be increased, unless, in each case, such circumstances, conditions, events or contingencies shall have change in any material adverse respect since the Closing Date and (d) any Reserve taken with respect to any Bank Product Obligation (i) shall be in an amount no greater than the maximum amount of the Bank Product Obligations (which shall be notified to each Agent in writing by the Qualified Counterparty and the Borrower from time) to time and (ii) may only be taken or increased if, on a pro forma basis for such new or increased Reserve, under this clause (d) Excess Availability shall be no less than $15,000,000.

Subject to the limitations above, either Collateral Management Agent shall have the right, upon at least five (5) Business Days' prior written notice to the Borrower (which notice shall include a reasonably detailed description of such Reserve being established, modified or eliminated), to establish, modify or eliminate Reserves against the Borrowing Base or the LILO Borrowing Base, but without duplication, from time to time in its Permitted Discretion, except that any such Reserves shall not be duplicative of adjustments, including by way of eligibility criteria, of amounts included in the Borrowing Base or the LILO Borrowing Base; provided that no such prior written notice shall be required for changes to any Eligible Reserves resulting solely by virtue of mathematical calculations of the amount of the Eligible Reserves in accordance with the methodology of calculation previously utilized (such as, but not limited to, tax rates). During such notice period, each Agent shall, if requested, discuss any such Reserve or change with the Borrower and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change, in each case, in a manner and to the extent reasonably satisfactory to each Agent; provided that during such five (5) Business Day period, no Borrowings are permitted that would cause the Revolving Credit Exposure to exceed the Line Cap (after giving effect to any such Eligible Reserve).

It is understood and agreed that, as of the Closing Date, other than as agreed on or prior to such date between the Administrative Agent and the Borrower and set forth in the Borrowing Base Certificate initially delivered to the Administrative Agent, the Administrative Agent does not know of any other circumstance or condition with respect to Eligible Accounts, Eligible Inventory, Eligible In-Transit Inventory, work-in-progress Inventory, the Borrowing Base or the LILO Borrowing Base that would require the imposition of a Reserve which has not been imposed as of such date.

"Environment": air, surface water, groundwater, drinking water, land surface, subsurface strata, and natural resources such as wetlands, flora and fauna.

"Environmental Claim": any written notice, claim, demand, action, litigation, toxic tort, complaint, citation, summons, notice of non-compliance or violation, cause of action, consent order, consent decree, or other proceeding by any Governmental Authority or any other Person arising out of, based on or pursuant to any Environmental Law or related in any way to any actual, alleged or threatened Environmental Liability.

"Environmental Laws": any applicable Law relating to the prevention of pollution or the protection of the Environment or natural resources, or the protection of human health and safety as it relates to the exposure to Hazardous Materials, including any applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Resource Conservation and Recovery Act, 42 U.S.C.§§ 6901 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq. (as it relates to exposure to Hazardous Materials), and the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq., and all analogous state or local statutes, and the regulations promulgated pursuant thereto.

"Environmental Liability": any liability, contingent or otherwise (including any liability for damages, costs of investigation and remediation, fines, penalties or indemnities), of the Borrower resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any legally binding contract, agreement or other consensual arrangement to the extent liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permits": any permit, approval, identification number, license or other authorization required under any Environmental Law.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate": any trade or business (whether or not incorporated) that is under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code or Section 4001 of ERISA (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event": (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA) or in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (e) the filing of a notice of intent to terminate, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (f) the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 or 430 of the Code or Section 302 or 303 of ERISA, whether or not waived; or (h) a failure by the Borrower or any ERISA Affiliate to make a required contribution to a Multiemployer Plan.

"EU Bail-In Legislation Schedule": the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Event of Default": any of the events specified in Section VII; provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Excess Availability": as of any date of determination, the amount by which (a) the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) as of such date exceeds (b) the Total Credit Exposure as of such date.

"Excess Revolving Credit Availability": as of any date of determination, the amount by which (a) the lesser of (i) 100% of the Borrowing Base as of such date and (ii) the Revolving Credit Commitments as of such date exceeds (b) the Revolving Credit Exposure as of such date.

"Exchange Act": the Securities Exchange Act of 1934, as amended.

"Excluded Asset": as defined in the Security Agreement.

"Excluded Participant": (i) any Disqualified Lender, (ii) any natural person, (iii) any Defaulting Lender or (iv) the Borrower or any of its Affiliates or any of their respective Subsidiaries.

"Excluded Taxes": any of the following Taxes imposed on or with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, or required to be withheld or deducted from any payment to any such 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 (ii) that are Other Connection Taxes, (b) in the case of a Lender, US federal withholding Taxes that are 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 Laws in effect on the date on which (i) such Lender acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires the applicable interest in such Loan (other than pursuant to an assignment request by the Borrower under Section 2.18) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such recipient's failure to comply with Section 2.16(e) and (d) any Taxes imposed under FATCA.

"Existing Revolving Credit Agreement": that certain Credit Agreement, dated as of February 11, 2021, among the Company, the guarantors party thereto, the lenders party thereto and Barclays Bank PLC, as administrative agent.

"Extended LILO Commitment": as defined in Section 2.22(b).

"Extended Revolving Credit Commitment": as defined in Section 2.22(a)(i).

"Extension": as defined in Section 2.22(a).

"Extension Amendment": as defined in Section 2.22(d).

"Extension Offer": as defined in Section 2.22(a).

"Facility": the Revolving Credit Facility or the LILO Credit Facility, as the context may require.

"FATCA": 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 thereunder or official interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements, treaty or convention among Governmental Authorities (and related Laws, regulations, or other published administrative guidance) implementing the foregoing.

"Federal Funds Effective Rate": for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as set forth on the Federal Reserve Bank of New York's Website from time to time) and published on the next succeeding business day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the applicable rate described above shall be less than the Floor, it shall be deemed to be the Floor for purposes of this Agreement.

"Federal Reserve Bank of New York's Website": the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"Federal Reserve Board": the Board of Governors of the Federal Reserve System of the United States.

"Fee Letter": the Fee Letter, dated as of June 12, 2023, among the Company and the Administrative Agent.

"Financial Covenant": the covenants set forth in Section 6.1.

"First Priority Priming Liens": any Liens applicable to such Collateral which as a matter of law have priority over the respective Liens on such Collateral created in favor of the Administrative Agent for the benefit of the Secured Parties pursuant to the relevant Security Document.

"Fiscal Month": any fiscal month of any Fiscal Year, in accordance with the fiscal accounting calendar of the Company.

"Fiscal Quarter": any fiscal quarter of any Fiscal Year, in accordance with the fiscal accounting calendar of the Company.

"Fiscal Year": any fiscal year of the Company, in accordance with the fiscal accounting calendar of the Company.

"Floor": 0.00%.

"Foreign Government Scheme or Arrangement": as defined in Section 3.8(c).

"Foreign Lender": any Lender that is not a US Person.

"Foreign Plan": as defined in Section 3.8(c).

"Fronting Exposure": at any time there is a Defaulting Lender, with respect to any L/C Issuer, such Defaulting Lender's outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof.

"Fully Funded": as defined in Section 3.8(c)(ii).

"GAAP": generally accepted accounting principles in effect from time to time in the United States of America, applied on a consistent basis, subject to the provisions of Section 1.4.

"Governmental Authority": any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including supra-national bodies such as the European Union or the European Central Bank).

"Guarantee Obligation": with respect to any Person (the "guaranteeing person"), any obligation of the guaranteeing person guaranteeing or having the economic effect of guaranteeing any Indebtedness (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security for such primary obligation, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, in each case, so as to enable the primary obligor to pay such primary obligation, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation (or portion thereof) in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Hazardous Materials": all hazardous or taxic materials, substances or wastes or pollutants, contaminants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, or toxic mold that are regulated pursuant to, or which could give rise to liability under, applicable Environmental Law based on their dangerous or deleterious properties.

"Hedging Agreement": any agreement with respect to any swap, forward, future or derivative transaction, or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or credit spread transaction, repurchase transaction, reserve repurchase transaction, securities lending transaction, weather index transaction, spot contracts, fixed price physical delivery contracts, or any similar transaction or any combination of these transactions, in the case of each of the foregoing, whether or not exchange traded; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company, the Borrower or any of their Subsidiaries shall be a Hedging Agreement.

"Historical Average Utilization": for the purposes of the definition of "Commitment Fee Rate", in the case of each Adjustment Date, an amount equal to (x) the sum of each day's utilization of the Total Revolving Credit Commitments, as determined by the amount of the Total Revolving Credit Exposure at such time, during the most recently ended Fiscal Quarter divided by (y) the number of days in such Fiscal Quarter, expressed as a percentage of the Total Revolving Credit Commitments.

"Historical Excess Availability": for the purposes of the definition of "Applicable Margin", in the case of each Adjustment Date, an amount equal to (x) the sum of each day's Excess Availability during the most recently ended Fiscal Quarter divided by (y) the number of days in such Fiscal Quarter.

"Incremental Amendment": as defined in Section 2.24(e).

"Incremental Amount": $40,000,000.

"Incremental Facility": as defined in Section 2.24(a).

"Incremental Loans": as defined in Section 2.24(a).

"Incremental Revolving Facilities": as defined in Section 2.24(a).

"Indebtedness": as to any Person at a particular time, without duplication, all of the following:

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

(b) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed and any cash collateralization) of all outstanding letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(c) net obligations of such Person under any Hedging Agreement or Swap Obligation;

(d) all obligations of such Person to pay the deferred purchase price of property or services;

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

(f) all Attributable Indebtedness;

(g) all obligations of such Person in respect of Disqualified Capital Stock if and to the extent that the foregoing would constitute indebtedness or a liability in accordance with GAAP; and

(h) to the extent not otherwise included above, all Guarantee Obligations of such Person in respect of Indebtedness described in clauses (a) through (g).

For all purposes hereof, the Indebtedness of any Person shall exclude (i) trade accounts and accrued expenses payable in the ordinary course of business, (ii) any earn-out obligation until such obligation is not paid after becoming due and payable, (iii) accruals for payroll and other liabilities accrued in the ordinary course of business and (iv) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller. The amount of any net obligation under any Swap Obligation on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (x) the aggregate unpaid amount of the indebtedness secured by such Lien and (y) the fair market value of the property encumbered by such Lien as determined by such Person in good faith.

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

"Indemnitee": as defined in Section 9.3(b).

"Independent Manager" as defined in Section 5.15(c)(i).

"Independent Parties": as defined in Section 5.15(c)(i).

"Information": as defined in Section 9.12.

"Initial Borrowing Date": the date of the initial Credit Extension under this Agreement.

"Insolvency Proceeding": means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under Debtor Relief Laws, or the initiation by any Person of any proceeding or filing under any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, interim receiver, receiver-manager, trustee, liquidator, administrator, monitor, conservator or other custodian for such Person or any part of its property; or (c) an assignment or trust mortgage for the benefit of creditors.

"Interest Election Request": a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.6, which, shall be substantially in the form of Exhibit D (or such other form as the Administrative Agent may approve).

"Interest Payment Date":

(a) with respect to any Base Rate Loan, the last Business Day of each March, June, September and December,

(b) with respect to any Term Benchmark Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period, and

(c) with respect to any Daily Simple SOFR Loan, each date that is on the numerically corresponding day in each calendar month that is three months after the date of the Borrowing of which such Loan is a part.

"Interest Period": with respect to any Term Benchmark Loan, the period beginning on the date of such Borrowing specified in the applicable Borrowing Request or on the date specified in the applicable Interest Election Request and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (or such other period as all of the relevant Lenders may agree), as the Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period.

"Inventory": any "inventory" as such term is defined in Article 9 of the Uniform Commercial Code.

"Inventory Reserves": such reserves as may be established from time to time by either Collateral Management Agent in its Permitted Discretion, with respect to changes in the determination of the salability of the Eligible Inventory (or Eligible In-Transit Inventory, as the case may be) or which reflect such other factors as negatively affect the market value of the Eligible Inventory (or Eligible In-Transit Inventory as the case may be), including reserves relating to unpaid freight charges, warehousing or storage charges, taxes, duties, and other similar unpaid costs and associated with the acquisition of such Eligible In-Transit Inventory and owing to Persons not affiliated with the Company or its Subsidiaries, and including reserves for slow moving inventory or inventory shrinkage (provided that, if such costs related to amounts owed pursuant to the Inventory Services Agreement or under any lease (but not any sublease), in each case, that are owing to Persons that are affiliated with the Company or its Subsidiaries, such Inventory Reserves shall only be taken to the extent such costs are past due).

"Inventory Services Agreement": as defined in the recitals hereto.

"Inventory Transfer": the transfer of all inventory owned by the Company and its Subsidiaries by distribution pursuant to the Transfer and Contribution Agreement.

"Investments": as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock or debt or other securities of another Person, (b) a loan, advance or other extension of credit, or capital contribution to, guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person or (c) the purchase or other acquisition (in one transaction or a series of transactions, including by way of merger) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of such Person.

"IP Rights" has the meaning specified in Section 3.16.

"IRS": United States Internal Revenue Service.

"L/C Advance": as to any Revolving Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Lender Percentage.

"L/C Application": an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer, together with a request for L/C Credit Extension substantially in the form of Exhibit J (or such other form as the Administrative Agent and the applicable L/C Issuer may approve).

"L/C Borrowing": an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed by the Borrower on the date when made or refinanced as a Borrowing.

"L/C Commitment": as to any L/C Issuer, its commitment to issue Letters of Credit, and to amend, renew or extend Letters of Credit previously issued by it, pursuant to Section 2.4, in an aggregate face amount at any time outstanding not to exceed (a) in the case of any L/C Issuer party hereto as of the Closing Date, the amount set forth opposite such L/C Issuer's name on Schedule 2.1 under the heading "L/C Commitments" and (b) in the case of any Revolving Lender that becomes an L/C Issuer hereunder thereafter, that amount which shall be set forth in the written agreement by which such Lender shall become an L/C Issuer, in each case as the maximum outstanding face amount of Letters of Credit to be issued by such L/C Issuer, as such commitment may be changed from time to time pursuant to the terms hereof or with the agreement in writing of such Lender, the Borrower and the Administrative Agent.

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

"L/C Documents": as to any Letter of Credit, each L/C Application and any other document, agreement and instrument entered into by the applicable L/C Issuer and the Borrower or in favor of such L/C Issuer and relating to such Letter of Credit.

"L/C Expiration Date": the day that is five (5) Business Days prior to the scheduled Maturity Date of the Revolving Credit Facility then in effect (or, if such day is not a Business Day, the immediately preceding Business Day), provided that, notwithstanding anything to the contrary herein, the L/C Expiration Date as to any L/C Issuer and the Letters of Credit issued by it shall not be modified by any Extension Amendment unless as agreed to by such L/C Issuer in such Extension Amendment.

"L/C Fee": as defined in Section 2.10(c).

"L/C Issuer": (a) Barclays, (b) First-Citizens Bank & Trust Company and (c) each other Revolving Lender as the Borrower may from time to time select as an L/C Issuer hereunder (provided that such Lender shall be reasonably acceptable to the Administrative Agent and has agreed to be an L/C Issuer hereunder in a writing satisfactory to the Administrative Agent, executed by such Lender, the Borrower and the Administrative Agent), each in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. An L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term "L/C Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"L/C Obligations": as of any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit at such time, including any automatic or scheduled increases provided for by the terms of such Letters of Credit, determined without regard to whether any conditions to drawing could be met at that time, plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the UCP or Rule 3.13 or Rule 3.14 of the ISP or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the L/C Issuers and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

"L/C Sublimit": an amount equal to the lesser of (a) $5,000,000 and (b) the Total Revolving Credit Commitments. The L/C Sublimit is part of, and not in addition to, the Revolving Credit Facility.

"Latest Maturity Date": as of any date of determination, the latest Maturity Date applicable to any Loan, Revolving Credit Commitment or LILO Commitment hereunder as of such date, including the latest maturity date of any Extended Revolving Credit Commitments, as extended in accordance with this Agreement from time to time.

"Laws": collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Leases": the Leases as defined in the Inventory Services Agreement, pursuant to which the Borrower has leased all warehouses and other storage facilities necessary for the operations of its business.

"Lender Default": (i) the refusal or failure of any Lender to make available its portion of any incurrence of Loans (unless such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding expressly set forth in Section IV (specifically identified and including the particular default, if any) has not been satisfied), which refusal or failure is not cured within one (1) Business Day after the date of such refusal or failure; (ii) the failure of any Lender to pay over to the Administrative Agent, any L/C Issuer or any Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within one (1) Business Day of the date when due, unless the subject of a good faith dispute; (iii)the notification by a Lender to the Borrower, the Administrative Agent or any L/C Issuer that such Lender does not intend or expect to comply with any of its funding obligations hereunder or a public statement by a Lender to that effect with respect to such Lender's funding obligations hereunder (unless such notification or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent to funding expressly set forth in Section IV (specifically identified and including the particular default, if any) has not been satisfied); (iv) the failure by a Lender to confirm in a manner reasonably satisfactory to the Administrative Agent that such Lender will comply with such Lender's obligations hereunder (provided that such Lender shall cease being subject to a Lender Default pursuant to this clause (iv) upon receipt of such certifications); (v) the admission in writing by a Distressed Person that it is insolvent; or (vi) such Distressed Person becoming subject to a Lender-Related Distress Event.

"Lender Parties": as defined in Section 9.16.

"Lender-Related Distress Event": with respect to any Lender, that such Lender or any Person that directly or indirectly controls such Lender (each, a "Distressed Person"), as the case may be, is or becomes subject to a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person's assets, or such Distressed Person, or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or such Distressed Person becomes the subject of a Bail-In Action; provided that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Capital Stock in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof, so long as such ownership or acquisition does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Lender-Related Person": as defined in Section 9.3(c).

"Lenders": the LILO Lenders, Revolving Lenders and, as the context may require, includes the L/C Issuers.

"Letter of Credit": any standby letter of credit issued hereunder.

"Lien": any mortgage, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any Capitalized Lease Obligation having substantially the same economic effect as any of the foregoing). For the avoidance of doubt, "Lien" shall not be deemed to include any license or other contractual obligation relating to any intellectual property rights.

"LILO Availability Period": from and after the date on which Revolving Credit Loans have been funded in full (and remain so) until the Maturity Date.

"LILO Borrowing Base": at any time, an amount equal to:

(a) the lesser of: (1) 10% of the lower of (A) the market value (on a first in first out basis) of the sum of Eligible Inventory (other than work-in-progress Inventory), plus Eligible In- Transit Inventory of the Borrower and (B) the Cost of the sum of Eligible Inventory (other than work-in-progress Inventory), plus Eligible In-Transit Inventory and (2) 10% of the NOLV Percentage of the lower of (1)(A) or (1)(B);

plus

(b) 10% of the face amount of Eligible Accounts

minus

(c) the amount of all Eligible Reserves in effect as of such date of determination, as the same may at any time and from time to time be established in accordance with the definition thereof.

In addition, the LILO Borrowing Base will include work-in-progress Inventory that is Eligible Inventory in an amount equal to: 50% of the lower of (A) the market value (on a first in first out basis) of such work-in-progress and (B) the Cost of such work-in-progress, *minus* (in each case), all Eligible Reserves with respect to such work-in-progress. The foregoing paragraph will cease to apply when the initial appraisal for work-in-progress after the Closing Date is completed and an updated Borrowing Base Certificate is provided to the Agents.

The LILO Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Agents pursuant to Section 5.1(c) and Reserves established pursuant to the definition thereof.

"LILO Commitment": with respect to each LILO Lender, the obligation of such LILO Lender to make LILO Loans from time to time during the LILO Availability Period in the aggregate principal amount set forth opposite such LILO Lender's name under the heading "LILO Commitment" on Schedule 2.1. The aggregate amount of the LILO Lenders' LILO Commitments as of the Closing Date is $7,500,000.

"LILO Commitment Fee Rate": (A) from the Closing Date until the Availability Start Date, 0.25% per annum and (B) on and after the Availability Start Date, 0.50% per annum.

"LILO Credit Facility": each of LILO Commitments and the extensions of credit made thereunder.

"LILO Extension": as defined in Section 2.22(b).

"LILO Extension Offer": as defined in Section 2.22(b).

"LILO Lenders": at any time, any Lender that has a LILO Commitment or an outstanding LILO Loan.

"LILO Loans": Loans made by the LILO Lenders pursuant to Section 2.1(a).

"LILO Obligations": any Obligations owing in respect of LILO Loans.

"Line Cap": at any time, the lesser of (i) 100% (or, during an Agent Advance Period, 105%) of the (A) Borrowing Base plus (B) LILO Borrowing Base at such time and (ii) the Total Credit Commitments in effect at such time.

"Liquidity Condition": as defined in the definition of "Dominion Period".

"Loan": any Revolving Credit Loan or LILO Loans made by any Lender pursuant to this Agreement.

"Loan Documents": this Agreement, the Security Documents, any Notes, any Extension Amendment, the L/C Documents and any other document executed and delivered in conjunction with this Agreement from time to time and designated as a "Loan Document."

"Management Group": a group comprised solely of some or all of the officers or directors of the TPB Group (or any heir thereof, or any beneficiary of their respective estates, or any trust, or similar arrangement for the benefit of such person) as of the date hereof.

"Manager": Donald Puglisi.

"Mandatory Borrowing": as defined in Section 2.1(d).

"Margin Stock": as defined in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"Material Adverse Effect": any event, change or condition that, individually or in the aggregate, has had, or would reasonably be expected to have a material adverse effect on (i) the business, financial condition or results of operations of the Borrower or the Company and its Restricted Subsidiaries, as applicable, (ii) the ability of the Borrower to perform its payment obligations under any Loan Document; or (iii) the material rights and remedies of the Administrative Agent and the Lenders under the Loan Documents, including the legality, validity, binding effect or enforceability of the Loan Documents.

"Material Debt": any Indebtedness (other than Indebtedness constituting Obligations) of the Borrower or the Company and its Restricted Subsidiaries (a) in the case of Indebtedness of the Borrower, $100,000 and (b) in the case of the Company and its other Restricted Subsidiaries, (x) $1,000,000 for purposes of the definition of "Maturity Date" and (y) for all other purposes, $40,000,000 or (c) consisting of the Senior Secured Notes or the Convertible Notes.

"Maturity Date": (i) the earlier of (x) November 7, 2027, and (y) the date that is 91 days prior to the maturity date of any Material Debt of the Borrower or the Company or any of its Restricted Subsidiaries, and (ii) with respect to any Extended Revolving Credit Commitments created pursuant to Section 2.22, the date specified in the applicable Extension Amendment; provided that clause (i)(y) shall not apply to the extent that on any applicable date of determination (on any date prior to the date set forth in clause (i)(y) of this definition), (A) the sum of (x) cash that is held in escrow for the repayment of such Material Debt pursuant to arrangements satisfactory to the Administrative Agent, (y) cash that is held in accounts with the Administrative Agent and/or the Additional Collateral Agent, plus (z) Excess Availability, is sufficient to repay such Material Debt and (B) the Borrower has Excess Availability of at least $15,000,000 after giving effect to such repayment of Material Debt, including any borrowings under the Commitments in connection therewith.

"Maximum Rate": as defined in Section 9.17.

"Minimum Collateral Amount": at any time, (a) as to Cash Collateral consisting of cash or deposit account balances, an amount equal to 105% of the Fronting Exposure of all L/C Issuers with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the L/C Issuers in their sole discretion.

"Moody's": Moody's Investor Services, Inc.

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

"Net Income": with respect to any person, the net income (loss) of such person, determined in accordance with Applicable Accounting Principles and before any reduction in respect of preferred stock dividends.

"NOLV Percentage": with respect to Inventory, the net appraised recovery value of the Borrower's Inventory as set forth in the Borrower's stock ledger (expressed as a percentage of the Cost of such Inventory) as reasonably determined from time to time by reference to the most recent inventory appraisal received by the Administrative Agent and conducted by an independent appraiser reasonably satisfactory to the Administrative Agent.

"Non-Consenting Lender": as defined Section 2.18(c).

"Non-Defaulting Lender": a Lender that is not a Defaulting Lender.

"Non-Financed Capital Expenditures": Capital Expenditures that (a) are not financed with the proceeds of any Indebtedness, or the proceeds of any sale or issuance of equity interests of, or equity contributions to, the Company or the Borrower, or the proceeds of any Disposition (including any substantially contemporaneous trade-in of assets) and (b) are not reimbursed by a third person (excluding the Company or any of its Restricted Subsidiaries).

"Nonrenewal Notice Date": as defined in Section 2.4(b)(iii).

"Note": any promissory note evidencing any Loan substantially in the form of Exhibit E.

"Obligations": the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed or allowable in such proceeding) the Loans, the Letters of Credit and all other obligations and liabilities of the Borrower to the Administrative Agent or to any Lender, L/C Issuer or any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs or expenses (including all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrower pursuant hereto and all fees, costs or expenses accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition fees, costs or expenses are allowed or allowable in such proceedings) and any Bank Product Obligations; provided that (i) obligations of the Borrower under any Bank Product Obligations shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed (except as otherwise contemplated by Section 6.4 of the Security Agreement) and (ii) any release of Collateral effected in the manner permitted by this Agreement or any Security Document shall not require the consent of holders of any Bank Product Obligations.

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

"Operating Companies": the Company and its Subsidiaries, other than the Borrower.

"Organization Documents": (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non- U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Connection Taxes": with respect to the Administrative Agent or any Lender, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than a connection arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes": all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to this Agreement or any other Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.18).

"Outstanding Amount": with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit (including any refinancing of outstanding unpaid drawings under Letters of Credit or L/C Credit Extensions as a Borrowing) or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"Pari Bank Product Obligations": Bank Product Obligations designated by the applicable Qualified Counterparty and the Borrower in writing to the Administrative Agent as a "Pari Bank Product Obligations" up to the amount of the Reserve established and maintained for such Pari Bank Product Obligations.

"Participant": as defined in Section 9.4(c)(i).

"Participant Register": as defined in Section 9.4(c)(i).

"PATRIOT Act": Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act of 2001).

"Payment": as defined in Section 8.10(a).

"Payment Notice": as defined in Section 8.10(b).

"Payment Recipient": as defined in Section 8.10(a).

"PBGC": the Pension Benefit Guaranty Corporation.

"Pension Plan": any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

"Periodic Term SOFR Determination Day": as defined in the definition of "Term SOFR".

"Permitted Discretion": reasonable (from the perspective of a secured asset-based lender) credit judgment exercised in good faith in accordance with customary business practices for comparable asset- based lending transactions.

"Permitted Holder": Standard General L.P. and its Affiliates; provided that upon the repayment, satisfaction or discharge of the Senior Secured Notes and the Convertible Notes, "Permitted Holder" shall mean: (i) each member of the Management Group and (ii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that, in the case of such group and without giving effect to the existence of such group or any other group, such Permitted Holders and members of management, collectively, have beneficial ownership of more than 50% of the total voting power of the Capital Stock of the Company or any of its direct or indirect parent companies.

"Permitted Liens": the collective reference to Liens permitted by Section 6.3.

"Permitted Payment": as defined in Section 6.6.

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

"Platform": Debt Domain, Intralinks, SyndTrak, DebtX or a substantially similar electronic transmission system.

"Prime Rate": the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or in any similar release by the Federal Reserve Board (as determined by the Administrative Agent).

"Pro Forma Availability": as of any date of determination, the sum of (A) Excess Availability as of such date of determination, plus (B) 85% of the amount which would be calculated (1) under clause (a) of the definition of Borrowing Base with respect to Eligible Inventory purchased by the Borrower plus (2) 85% of Eligible Accounts created by the Borrower, in each case, from (but excluding) the applicable date of determination set forth in the Borrowing Base Certificate most recently delivered to the Administrative Agent in accordance with Section 5.1(c) through (and including) such date of determination, less (C) cash collections in respect of Eligible Inventory and Eligible Accounts included in clauses (A) and (B) above on or prior to such date of determination (in each case of (A), (B) and (C), as determined in good faith by the Borrower based on internally generated information available to the Borrower or its Affiliates in a manner consistent with past practice); provided that the amounts in (B), less the amounts in (C), shall not exceed 20% of the Borrowing Base, unless a field exam or appraisal, as applicable, satisfactory to the Agents has been performed.

"Pro Rata Share": with respect to each (A) Revolving Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Credit Commitment of such Lender and the denominator of which is the amount of the Total Revolving Credit Commitments and (B) LILO Lender, at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the LILO Commitment of such Lender and the denominator of which is the amount of the Total LILO Commitments; provided that, in the case of the (x) Revolving Credit Facility, if the Revolving Credit Commitments have been terminated, then the Pro Rata Share of each Revolving Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof (y) LILO Credit Facility, if the LILO Commitments have been terminated, then the Pro Rata Share of each LILO Lender shall be determined based on the Pro Rata Share of such Lender immediately prior to such termination and after giving effect to any subsequent assignments made pursuant to the terms hereof.

"Property": any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including Capital Stock.

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

"QFC": as defined in Section 9.19(b).

"QFC Credit Support": as defined in Section 9.19.

"Qualified Capital Stock": Capital Stock that is not Disqualified Capital Stock.

"Qualified Counterparty": with respect to any Bank Product Obligations, any counterparty thereto that, at the time such Bank Product Obligations were entered into or, in the case of Bank Product Obligations existing on the Closing Date, on the Closing Date, was the Administrative Agent, a Lender or an Affiliate of any of the foregoing, regardless of whether any such Person shall thereafter cease to be the Administrative Agent, a Lender or an Affiliate of any of the foregoing.

"Qualified Professional Asset Manager": as defined in Section 8.12(a)(iii).

"Real Property": collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned or leased by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures thereto.

"Refinancing": the refinancing or repayment of all existing indebtedness for borrowed money of the Company and its subsidiaries under the Existing Revolving Credit Agreement, the termination and release, as applicable, of all commitments thereunder and all guarantees and liens securing such obligations.

"Register": as defined in Section 9.4(b)(iv).

"Related Parties": with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, partners, members, trustees, managers, controlling persons, agents, advisors and other representatives of such Person and such Person's Affiliates and the respective successors and permitted assigns of each of the foregoing.

"Release": any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migrating in, into, onto or through the Environment or from or through any facility, property or equipment to the Environment.

"Relevant Governmental Body": the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the otherwise applicable notice period has been waived by regulation or otherwise by the PBGC.

"Required Lenders": at any time, Lenders having Loans and unused Commitments representing more than 50% of the sum of the total Loans and such unused Commitments at such time; provided that the LILO Commitment and Revolving Credit Commitment of any Defaulting Lender shall be disregarded in making any determination under this definition. In the event that there are less than three (3) unaffiliated Lenders party to the Loan Documents, the Required Lenders shall be all Lenders.

"Required LILO Lenders" at any time, the holders of more than 50.0% of the LILO Commitments then in effect or, if the LILO Commitments have been terminated, the LILO Loans; provided that the LILO Commitment of any Defaulting Lender shall be disregarded in making any determination under this definition. In the event that there are less than three (3) unaffiliated LILO Lenders party to the Loan Documents, the Required LILO Lenders shall be all LILO Lenders.

"Required Revolving Lenders" at any time, the holders of more than 50.0% of the Total Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Credit Exposure (with the aggregate amount of each Revolving Lender's participations (including funded participations) in L/C Obligations being deemed "held" by such Lender for purposes of this definition); provided that the Revolving Credit Exposure and Revolving Credit Commitment of any Defaulting Lender shall be disregarded in making any determination under this definition. In the event that there are less than three (3) unaffiliated Revolving Lenders party to the Loan Documents, the Required Revolving Lenders shall be all Revolving Lenders.

"Reserves": reserves, if any, established against the Borrowing Base and LILO Borrowing Base, as applicable, as either Collateral Management Agent from time to time hereunder determines is necessary in its Permitted Discretion and relays to the Administrative Agent, including (but without duplication and without limitation), (i) sums that the Borrower is or will be required to pay (such as taxes, assessments and insurance premiums) and has not yet paid, including any sums that the Borrower is required to pay under this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, rent of other amounts payable under any lease or the Inventory Services Agreement) that the Borrower has failed to pay, (ii) amounts owing by the Borrower to any Person to the extent secured by a Lien on, or trust over, any Collateral, (iii) the full amount of any liabilities or amounts which rank or are capable of ranking in priority to the Collateral Agent's Liens and/or for amounts which may represent costs relating to the enforcement of such Liens including, (a) the expenses and liabilities incurred by any administrator (or other insolvency officer) and any remuneration of such administrator (or other insolvency officer) and (b) amounts subject to First Priority Priming Liens, (iv) Inventory Reserves, (v) Tax Stamp Reserves, (vi) relating to rebates, discounts, warranty claims and returns, and (vii) such other events, conditions or contingencies as to which either Collateral Management Agent, in its Permitted Discretion, determines reserves should be established (without duplication of any reserves established pursuant to foregoing clauses (i) through (v)) from time to time hereunder. For avoidance of doubt, in no event shall any Agent have any obligation to any LILO Lender to impose any Reserve against the Borrowing Base.

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

"Responsible Officer": the chief executive officer, president, vice president, chief financial officer, chief administrative officer, secretary or assistant secretary, treasurer or assistant treasurer, controller or other similar officer of any Person or any other Responsible Officer or employee of such Person designated in or pursuant to an agreement between such Person and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

"Restricted Cash": Cash and Cash Equivalents held by the Borrower that are contractually restricted from being distributed to the Company, other than pursuant to any Loan Document.

"Restricted Payments": (a) any dividend or other distribution (whether in cash, securities or other property) with respect to any Capital Stock of the Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Capital Stock, or on account of any return of capital to the Borrower's stockholders, partners or members (or the equivalent Persons thereof) and (b) any other payment, whether on account of an intercompany receivable or otherwise, from the Borrower to the TPB Group.

"Restricted Subsidiary": any Subsidiary of the Company which, has not been designated as unrestricted pursuant to the terms of any Material Debt instrument.

"Revolving Credit Commitments": as to any Lender, the obligation of such Lender, if any, to (a) make Revolving Credit Loans pursuant to Section 2.1(a) and (b) purchase participations in L/C Obligations, in each case, expressed as an amount representing the maximum aggregate permitted amount of such Lender's Revolving Credit Exposure hereunder, in an aggregate principal and/or face amount not to exceed the amount set forth under the heading "Revolving Credit Commitment" opposite such Lender's name on Schedule 2.1 or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, in each case as the same may be changed from time to time pursuant to the terms hereof. The Total Revolving Credit Commitments on the Closing Date are $67,500,000.

"Revolving Credit Exposure": with respect to any Lender as of any date of determination, shall be the sum of such Lender's Revolving Credit Loans and such Lender's participation in L/C Obligations as of such date.

"Revolving Credit Facility" or "Facility": each of (i) the Revolving Credit Commitments and the extensions of credit made thereunder and (ii) any Extended Revolving Credit Commitment.

"Revolving Credit Loan": a Loan made by a Lender pursuant to Section 2.1(a) and any Loan made pursuant to an Extended Revolving Credit Commitment. Each Revolving Credit Loan shall be a Term Benchmark Loan or a Base Rate Loan.

"Revolving Lender": at any time, any Person that holds (a) a Revolving Credit Commitment (including any Extended Revolving Credit Commitment) or a participation in a Letter of Credit or (b) a Revolving Credit Loan, and any other Person that shall have become a party hereto as a Revolving Lender pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto as a Revolving Lender pursuant to an Assignment and Assumption. The Revolving Lenders on the Closing Date shall be set forth on Schedule 2.1.

"S&P": Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc., or any successor by merger or consolidation to its business.

"Sanctioned Country": at any time, a country, region or territory which is itself the target of any comprehensive Sanctions (at the time of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called People's Republic of Donetsk and the so-called People's Republic of Luhansk).

"Sanctioned Person": at any time, any Person : (a) listed on any Sanctions-related list of designated persons maintained by any Sanctions Authority; (b) organized or resident in a Sanctioned Country; or (c) 50% or more owned or controlled by any such Person or Persons described in the foregoing clause (a) or (b).

"Sanctions": economic or financial sanctions imposed, administered or enforced from time to time by any Sanctions Authority.

"Sanctions Authority": (a) the United States, including OFAC and the U.S. Department of State; (b) His Majesty's Treasury of the United Kingdom; (c) the European Union; (d) the United Nations Security Council; and (e) any other Governmental Authority of any jurisdiction applicable to the Company or its Restricted Subsidiaries that imposes, administers or enforces Sanctions.

"Secured Parties": as defined in the Security Agreement.

"Securities Act": the Securities Act of 1933.

"Security Agreement": that certain Security Agreement, dated as of the date hereof, among the Borrower and the Collateral Agent, substantially in the form of Exhibit A.

"Security Documents": the collective reference to (a) the Security Agreement, (b) any Cash Management Control Agreements and (c) all other security documents entered into pursuant to this Agreement or any other Loan Document hereafter delivered to the Agents granting (or purporting to grant) a Lien on any Property of the Borrower to secure any Obligations.

"Senior Secured Notes": the Company's 5.625% Senior Secured Notes due 2026.

"SOFR": with respect to any U.S. Government Securities Business Day, a rate per annum equal to the secured overnight financing rate for such U.S. Government Securities Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding U.S. Government Securities Business Day.

"SOFR Administrator": the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website": the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Loan": a Loan that bears interest at a rate based on Daily Simple SOFR or Term SOFR, other than pursuant to clause (c) of the definition of "Base Rate".

"SOFR Rate Day": as defined in the definition of "Daily Simple SOFR".

"Solvent" and "Solvency": with respect to a Person on the Closing Date, after giving effect to the Transactions hereunder and the incurrence of the indebtedness and obligations being incurred in connection therewith means that on such date (i) the sum of the debt (including contingent liabilities) of such Person and its Subsidiaries, taken as a whole, does not exceed the present fair saleable value (on a going concern basis) of the assets of such Person and its Subsidiaries, taken as a whole; (ii) the capital of such Person and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of such Person and its Subsidiaries, taken as a whole, contemplated as of the Closing Date; and (iii) such Person and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Subsidiary": of a Person means, with respect to any specified Person: (1) any corporation, association or other business entity, of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and (2) any partnership, joint venture, limited liability company or similar entity of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person.

"Supermajority Required Lenders": at any time, the holders (other than Defaulting Lenders) of more than 66.67% of the (i) total LILO Commitments then in effect or, if the LILO Commitments have been terminated, the total LILO Loans outstanding at such time and (ii) Total Revolving Credit Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Credit Exposure. In the event that there are less than three (3) unaffiliated Lenders party to the Loan Documents, the Supermajority Required Lenders shall be all Lenders.

"Supermajority Required LILO Lenders": at any time, the LILO Lenders (other than Defaulting Lenders) having LILO Loans outstanding representing 66.67% or more of the sum of the total LILO Commitments then in effect or, if the LILO Commitments have been terminated, the total LILO Loans outstanding at such time. In the event that there are less than three (3) unaffiliated LILO Lenders party to the Loan Documents, the Supermajority Required LILO Lenders shall be all LILO Lenders.

"Supported QFC": as defined in Section 9.19.

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

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

"Tax Stamp": any tax stamp, excise tax stamp, adhesive stamp, meter stamp and similar stamp, regardless of whether fixed or unaffixed, which in each case evidence the valid and effective payment of taxes with respect to Tobacco Inventory to applicable Governmental Authorities.

"Tax Stamp Reserves": as of any date of determination, such amounts as either Collateral Management Agent may from time to time establish and revise in its Permitted Discretion, with respect to the sum of the "net stamp tax obligations" in each jurisdiction in which the Borrower purchases Tax Stamps, wherein the "net stamp tax obligations" for such jurisdiction are equal to the aggregate obligations and liabilities owing to any Governmental Authority in such jurisdiction for purchases of Tax Stamps (including any checks or instruments of payment issued by or on behalf of the Borrower which are held by such Governmental Authorities and not yet submitted for presentment and collection and the aggregate obligations and liabilities owing to any Governmental Authority in such jurisdiction based on an audit of the Borrower's monthly Tax Stamp report delivered to any Governmental Authority in such jurisdiction, but excluding all such obligations and liabilities owing to any Governmental Authority in such jurisdictions as determined by Administrative Agent in its commercially reasonable discretion, exercised in good faith); provided that, to the extent that any surety bonds have been issued to or for the benefit of any Governmental Authority in a jurisdiction with respect to which Administrative Agent has implemented a Tax Stamp Reserve, the Tax Stamp Reserve with respect to such Governmental Authority in such jurisdiction shall be equal to the greater of (a) the aggregate obligations and liabilities owing to such Governmental Authority in such jurisdiction and (b) the face amount of the surety bonds issued to or for the benefit of such Governmental Authority in such jurisdiction.

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

"Term Benchmark": when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to Term SOFR.

"Term SOFR":

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator, plus the Applicable SOFR Adjustment; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator, plus the Applicable SOFR Adjustment; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided further that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

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

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

"Term SOFR Reference Rate": the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR.

"Test Period": on any date of determination, the period of four consecutive Fiscal Quarters (or, during a Dominion Period, twelve consecutive Fiscal Months) of the Company then most recently ended for which financial statements have been delivered or were required to be delivered, taken as one accounting period.

"Tested Restricted Payments": as defined in Section 6.6(c).

"TMSA Account": that escrow account of the Company the balance of which consists exclusively of (and is established as an account solely for the purposes of holding), amounts required to comply with the Master Settlement Agreement entered into on November 23, 1998, by and among the respective officials of each Settling State (as defined therein), Brown & Williamson Tobacco Corporation, Lorillard Tobacco Borrower, Philip Morris Incorporated, R.J. Reynolds Tobacco Borrower, Liggett Group Inc., and Commonwealth Brands, Inc.

"Tobacco Inventory": Inventory consisting of tobacco based products (such as cigars, pipe tobacco, chewing tobacco, and snuff) and any Tax Stamps permanently affixed thereto (with it being acknowledged and agreed that smoking and tobacco related inventory which is not tobacco based (such as e-cigarettes, vape pens, vape liquid, etc.) constitutes Inventory but does not constitute Tobacco Inventory).

"Total Credit Commitments": the Total Revolving Credit Commitments and the LILO Commitments. The Total Credit Commitments on the Closing Date are $75,000,000.

"Total Credit Exposure": as of any date of determination, the (i) Total Revolving Credit Exposure and (ii) each LILO Lender's LILO Loans outstanding as of such date.

"Total LILO Commitments": as of any date of determination, the aggregate amount of each LILO Lender's LILO Commitments.

"Total Revolving Credit Commitments": as of any date of determination, the aggregate amount of the Revolving Credit Commitments then in effect.

"Total Revolving Credit Exposure": as of any date of determination, the aggregate amount of the Revolving Credit Exposure of all Revolving Lenders outstanding as of such date.

"TPB Designated Accounts": means each Inventory Proceeds Bank Account, as defined in the Inventory Services Agreement, into which all proceeds of sales of Inventory shall be initially deposited in accordance with the terms thereof.

"TPB Group" the Company and each of its Restricted Subsidiaries (other than the Borrower).

"Trading with the Enemy Act": the Trading with the Enemy Act of the United States, codified at 12 U.S.C. §§ 95a-95b and 50 U.S.C. App. §§ 1-44.

"Transactions": collectively, (a) the Inventory Transfer as contemplated by that certain Transfer and Contribution Agreement, the entering into of the Inventory Services Agreement, the entering into of the Leases, and the execution delivery of this Agreement and the other Loan Documents and the extensions of credit contemplated hereunder and (b) the payment of fees and expenses in connection therewith.

"Transfer and Contribution Agreement": that certain Transfer and Contribution Agreement, dated as of November 7, 2023, by and between the Company and the Borrower, which effectuates the Inventory Transfer.

"Type": when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to any Term Benchmark or Base Rate.

"UCC" or "Uniform Commercial Code": the Uniform Commercial Code as the same may from time to time be in effect in the State of New York, or the Uniform Commercial Code (or similar code or statute) of another United States jurisdiction to the extent it may be required to apply to any item or items of Collateral.

"UK Financial Institution": any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority": the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement": the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" and "US": the United States of America.

"Unreimbursed Amount": as defined in Section 2.4(c)(i).

"Unrestricted Cash": Cash and Cash Equivalents that do not constitute Restricted Cash.

"Unrestricted Subsidiary": any Subsidiary of the Company that has been designated as 'unrestricted' in accordance with any documentation governing Material Debt of the Company.

"U.S. Dollars" and "$": lawful currency of the United States.

"U.S. Government Securities Business Day": any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"US Person": any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regimes": as defined in Section 9.19.

"U.S. Tax Compliance Certificate": as defined in Section 2.16(e)(ii)(B)(3).

"Voting Stock": with respect to any Person, the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Wholly Owned Subsidiary": of any person shall mean a subsidiary of such person, all of the Capital Stock of which (other than directors' qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such person or another Wholly Owned Subsidiary of such person. Unless the context otherwise requires, "Wholly Owned Subsidiary" shall mean a Subsidiary of the Company that is a Wholly Owned Subsidiary of the Company.

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

Section 1.2 Other Definitional Provisions

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, unless otherwise specified herein or in such other Loan Document:

(i) the words “hereof,” “herein” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision of thereof;

(ii) Section, Schedule and Exhibit references refer (A) to the appropriate Section, Schedule or Exhibit in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears;

(iii) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;

(iv) the word “will” shall be construed to have the same meaning and effect as the word “shall”;

(v) the word “incur” shall be construed to mean incur, create, issue, assume or become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings);

(vi) unless the context requires otherwise, the word “or” shall be construed to mean “and/or”;

(vii) unless the context requires otherwise, (A) any reference to any Person shall be construed to include such Person’s legal successors and permitted assigns, (B) any reference to any law or regulation shall refer to such law or regulation as amended, modified or supplemented from time to time, and any successor law or regulation, (C) the words “asset” and “property” shall be construed to have the same meaning and effect and (D) references to agreements (including this Agreement) or other Contractual Obligations shall be deemed to refer to such agreements or Contractual Obligations as amended, restated, amended and restated, supplemented, refinanced or otherwise modified from time to time (in each case, to the extent not otherwise prohibited hereunder); and

(viii) capitalized terms not otherwise defined herein and that are defined in the UCC shall have the meanings therein described.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) The expressions “payment in full,” “paid in full” and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all of the Obligations (excluding Obligations in respect of any Bank Product Obligations and contingent reimbursement and indemnification obligations, in each case, that are not then due and payable).

(f) The expression “refinancing” and any other similar terms or phrases when used herein shall include any exchange, refunding, renewal, replacement, defeasance, discharge or extension.

(g) Unless otherwise specified, all times specified in this Agreement or any other Loan Document shall be New York City time.

Section 1.3 Classification of Loans and Borrowings

For purposes of this Agreement, Loans and Borrowings may be classified and referred to by Type (e.g., a "Term Benchmark Loan").

Section 1.4 Accounting Terms; GAAP

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Company notifies the Administrative Agent that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Company that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision is amended in accordance herewith. 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 (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any Subsidiary at "fair value," as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

Section 1.5 Rounding

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

Section 1.6 Certifications

All certifications to be made hereunder by an officer or representative of the Borrower shall be made by such person in his or her capacity solely as an officer or a representative of the Borrower, on the Borrower's behalf and not in such Person's individual capacity.

Section 1.7 Letter of Credit Amounts

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any L/C Document related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

SECTION II AMOUNT AND TERMS OF COMMITMENTS

Section 2.1 Credit Commitments

(a) Subject to the terms and conditions set forth herein, including Section 2.1(b) and Section 2.1(c) below, each (1) Lender severally agrees to make revolving credit loans (each, a "Revolving Credit Loan") to the Borrower from time to time during the Availability Period in U.S. Dollars in an aggregate principal amount at any one time outstanding that will not result in (i) such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Credit Commitment or (ii) the Total Revolving Credit Exposure exceeding the Total Revolving Credit Commitments and (2) LILO Lender severally agrees to make a LILO Loan in U.S. Dollars to the Borrower during the LILO Availability Period in an aggregate principal amount not to exceed such LILO Lender's LILO Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may (1) borrow, repay, prepay and reborrow Revolving Credit Loans during the Availability Period and (2) (i) borrow LILO Loans during the LILO Availability Period, (ii) repay and prepay LILO Loans solely to the extent no Revolving Credit Loans are outstanding at the time and (iii) reborrow LILO Loans during any LILO Availability Period.

(b) Notwithstanding anything herein to the contrary, subject to Section 2.1(c), Revolving Credit Loans and LILO Loans shall not be made (and shall not be required to be made) by any Lender in any instance where the incurrence thereof (after giving effect to the use of the proceeds thereof on the date of the incurrence thereof to repay any amounts theretofore outstanding pursuant to this Agreement) would cause the Total Credit Exposure to exceed the Line Cap at such time.

(c) In the event that (i) the Borrower is unable to comply with the limitation set forth in Section 2.1(b) or (ii) the Borrower is unable to satisfy the conditions precedent to the making of Revolving Credit Loans set forth in Section 4.2, in either case, the Lenders, subject to the immediately succeeding proviso, hereby authorize the Administrative Agent, for the account of the applicable Lenders, to make Revolving Credit Loans to the Borrower, in either case solely in the event that either Collateral Management Agent in its Permitted Discretion deems the making of such Loans necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of repayment of the Obligations or (C) to pay any other amount chargeable to the Borrower pursuant to the terms of this Agreement, including expenses and fees, which Revolving Credit Loans may only be made as Base Rate Loans (each, an "Agent Advance") for a period commencing on the date the Administrative Agent first receives a Borrowing Request requesting an Agent Advance or otherwise makes an Agent Advance until the earlier of (x) the date the Borrower is again able to comply with the Borrowing Base limitations and the conditions precedent to the making of Revolving Credit Loans, or obtain an amendment or waiver with respect thereto, (y) the date that is thirty (30) days after the funding of the initial Agent Advances and (z) the date the Required Revolving Lenders instruct the Administrative Agent to cease making Agent Advances (in each case, the "Agent Advance Period"); provided that the Administrative Agent shall not make any Agent Advance to the extent that at the time of the making of such Agent Advance, the amount of such Agent Advance (I) when added to the aggregate outstanding amount of all other Agent Advances made to the Borrower at such time, would exceed 5.0% of the Borrowing Base at such time or (II) when added to the Total Revolving Credit Exposure as then in effect (immediately prior to the incurrence of such Agent Advance), would exceed the Total Revolving Credit Commitments at such time. Agent Advances may be made by the Administrative Agent in its sole discretion and the Borrower shall have no right whatsoever to require that any Agent Advances be made. All Agent Advances and any Mandatory Borrowing resulting therefrom shall be allocated to (and deemed to constitute a Loan under) (A) to the extent Excess Revolving Credit Availability is greater than zero, the Revolving Credit Facility and (B) to the extent Excess Revolving Credit Availability is less than or equal to zero, the LILO Credit Facility. No funding or sufferance of an Agent Advance or a Mandatory Borrowing shall constitute a waiver by the Administrative Agent or the Lenders of any Event of Default otherwise existing. For the avoidance of doubt, an Agent Advance or Mandatory Borrowing shall not cause an Event of Default.

(d) On any Business Day (but in any event no less frequently than once per week), the Administrative Agent may, in its sole discretion give notice to the Lenders that the Administrative Agent's outstanding Agent Advances shall be funded with one or more Borrowings of Revolving Credit Loans (provided that such notice shall be deemed to have been automatically given upon the occurrence of an Event of Default under Section 7.1(f) or upon the exercise of any of the remedies provided in the last paragraph of Section 7.1), in which case one or more Borrowings of Revolving Credit Loans constituting Base Rate Loans (each such Borrowing, a "Mandatory Borrowing") shall be made on the immediately succeeding Business Day by all applicable Lenders pro rata based on each such Lender's Applicable Lender Percentage (determined before giving effect to any termination of the Revolving Credit Commitments pursuant to the last paragraph of Section 7.1) and the proceeds thereof shall be applied directly by the Administrative Agent to repay the Administrative Agent for such outstanding Agent Advances. Each Lender hereby irrevocably agrees to make Revolving Credit Loans upon one (1) Business Day's notice pursuant to each Mandatory Borrowing in the amount and in the manner specified in the preceding sentence and on the date specified in writing by the Administrative Agent notwithstanding (i) the amount of the Mandatory Borrowing may not comply with the minimum Borrowing amounts otherwise required hereunder, (ii) whether any conditions specified in Section 4.2 are then satisfied, (iii) whether a Default or an Event of Default then exists, (iv) the date of such Mandatory Borrowing, (v) the amount of the Borrowing Base at such time and (vi) whether such Lender's Revolving Credit Commitment has been terminated at such time. In the event that any Mandatory Borrowing cannot for any reason be made on the date otherwise required above (including, as a result of the commencement of a proceeding under any Debtor Relief Law with respect to the Borrower), then each Lender hereby agrees that it shall forthwith purchase (as of the date the Mandatory Borrowing would otherwise have occurred, but adjusted for any payments received from the Borrower on or after such date and prior to such purchase) from the Administrative Agent such participations in the outstanding Agent Advances as shall be necessary to cause the applicable Lenders to share in such Agent Advances ratably based upon their respective Revolving Credit Commitments (determined before giving effect to any termination of the Revolving Credit Commitments pursuant to the last paragraph of Section 7.1); provided that (x) all interest payable on the Agent Advances shall be for the account of the Administrative Agent until the date as of which the respective participation is required to be purchased and, to the extent attributable to the purchased participation, shall be payable to the participant from and after the time any purchase of participations is actually made and (y) at the time any purchase of participations pursuant to this sentence is actually made, the purchasing Lender shall be required to pay the Administrative Agent interest on the principal amount of the participation purchased for each day from and including the day upon which the Mandatory Borrowing would otherwise have occurred to but excluding the date of payment for such participation, at the overnight Federal Funds Effective Rate for the first three (3) days and at the interest rate otherwise applicable to Revolving Credit Loans maintained as Base Rate Loans hereunder for each day thereafter.

Section 2.2 Loans and Borrowings

(a) Each Revolving Credit Loan shall be made as part of a Borrowing consisting of Revolving Credit Loans of the same Type made by the Lenders ratably in accordance with their respective Revolving Credit Commitments. The LILO Loans shall be made as part of a Borrowing consisting of LILO Loans of the same Type made by the LILO Lenders ratably in accordance with their respective LILO Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder. Any Agent Advance shall be made in accordance with the procedures set forth in Section 2.1. For the avoidance of doubt, all Borrowings shall be made on a pro rata basis as among all then- outstanding tranches of Revolving Credit Commitments or LILO Commitments, as applicable, except that within the time periods proscribed by Section 2.3, the Borrower may request Borrowings of Revolving Credit Loans solely from Lenders having later-maturing Revolving Credit Commitments under extended tranches (on a pro forma basis) in order to pay interest and principal on outstanding Revolving Credit Loans under an earlier-maturing tranche on the applicable Maturity Date thereof.

(b) Subject to Section 2.19, each Borrowing shall be comprised entirely of Base Rate Loans or Term Benchmark Loans, as the Borrower may request in accordance herewith. Each Lender at its option may make any Term Benchmark Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Each Term Benchmark Borrowing shall be in an aggregate amount of $5,000,000 or a larger multiple of $100,000. Each Base Rate Borrowing shall be in an aggregate amount equal to $1,000,000 or a larger multiple of $100,000; provided that a Base Rate Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Revolving Credit Commitments. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not, at any time, be more than a total of ten (10) Term Benchmark Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date for such Borrowing.

Section 2.3 Requests for Borrowings

Each Borrowing shall be made upon the Borrower's irrevocable notice to the Administrative Agent. Each such notice shall be in the form of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower and must be received by the Administrative Agent not later than 11:00 a.m. (New York City time) (i) in the case of a Term Benchmark Borrowing, three U.S. Government Securities Business Days prior to the date of the requested Borrowing or (ii) in the case of a Base Rate Borrowing, one Business Day prior to the date of the requested Borrowing. Each such Borrowing Request shall specify the following information in compliance with Section 2.2:

(i) whether such Borrowing will be comprised of Revolving Credit Loans or LILO Loans;

(ii) the aggregate amount of the requested Borrowing;

(iii) the date of such Borrowing, which shall be a Business Day;

(iv) whether such Borrowing is to be a Base Rate Borrowing or Term Benchmark Borrowing;

(v) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(vi) the location and number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.5;

(vii) the Borrowing Base or the LILO Borrowing Base, as applicable, at such time; and

(viii) in the case of a Base Rate Borrowing, whether the Revolving Credit Loans or the LILO Loan, as applicable, made pursuant to such Borrowing constitute Agent Advances (it being understood that the Administrative Agent shall be under no obligation to make such Agent Advance).

If no election as to the Type of a Borrowing is specified, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

For the avoidance of doubt, the Borrower may only request Borrowings with respect to the LILO Borrowing Base when Excess Revolving Credit Availability is zero.

Promptly following receipt of a Borrowing Request in accordance with this Section 2.3, the Administrative Agent shall advise each applicable Lender under the relevant Facility of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. The Administrative Agent may act without liability upon the basis of communications submitted electronically of such Borrowing or prepayment, as the case may be, believed by the Administrative Agent in good faith to be from a Responsible Officer of the Borrower.

Section 2.4 Letters of Credit

(a) L/C Commitment.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 2.4, (1) from time to time on any Business Day during the Availability Period, to issue Letters of Credit, for the account of the Borrower, the Company or any Affiliate of the Borrower that is a Wholly Owned Subsidiary of the Company (provided that the Borrower hereby irrevocably agrees to be bound to reimburse the applicable L/C Issuer for amounts drawn on any Letter of Credit issued for the account of any such Affiliate) and to amend, renew or extend Letters of Credit previously issued by it, in accordance with paragraph (b) of this Section 2.4, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in such Letters of Credit and any drawings thereunder; provided that no L/C Issuer shall be obligated to make any L/C Credit Extension, and no Revolving Lender shall be obligated to participate in any Letter of Credit, if, as of the date of such L/C Credit Extension, (1) the Total Revolving Credit Exposure would exceed the Total Revolving Credit Commitments, (2) the aggregate Revolving Credit Exposure of any Revolving Lender, would exceed such Lender's Revolving Credit Commitment, (3) the Outstanding Amount of all L/C Obligations would exceed the L/C Sublimit, (4) the Outstanding Amount of the L/C Obligations with respect to Letters of Credit issued by such L/C Issuer would exceed its L/C Commitment. Letters of Credit shall constitute utilization of the Revolving Credit Commitments or (5) the Revolving Credit Exposure would exceed the lesser of (x) 100% of the Borrowing Base and (y) the Revolving Credit Commitments. Notwithstanding the foregoing, the L/C Issuers have agreed to issue Letters of Credit to backstop the Designated Letters of Credit on the Closing Date and issue replacement Letters of Credit (for such Designated Letters of Credit), in each case, before the Availability Start Date and such Letters of Credit shall be Letters of Credit hereunder for all purposes.

(ii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

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

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

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, such Letter of Credit is in an initial stated amount less than $10,000;

(D) such Letter of Credit is to be denominated in a currency other than U.S. Dollars;

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

(F) any Revolving Lender is at such time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including reallocation of such Lender's Applicable Lender Percentage of the outstanding L/C Obligations pursuant to Section 2.23(a)(iv) or the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.23(a)(iv)) with respect to such Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

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

(iv) Each Letter of Credit shall expire at or prior to the close of business on the earlier of (A) the date twelve months after the date of issuance of such Letter of Credit (or, in the case of any Auto-Renewal Letter of Credit, twelve months after the then-current expiration date of such Letter of Credit) and (B) the L/C Expiration Date.

(v) Notwithstanding the foregoing, no L/C Issuer shall be under any obligation to issue any Letter of Credit unless no Event of Default has occurred and is continuing (it being understood that the making of a Letter of Credit shall constitute a representation and warranty by the Borrower as of the date of such Letter of Credit that the conditions set forth in this Section 2.4(a)(v) were satisfied as of the date of such Letter of Credit).

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Renewal Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of an L/C Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such L/C Application must be received by the applicable L/C Issuer and the Administrative Agent not later than 1:00 p.m. (New York City time) at least five Business Days (or such shorter period as such L/C Issuer and the Administrative Agent may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such L/C Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the applicable L/C Issuer may reasonably request. In the case of a request for an amendment of any outstanding Letter of Credit, such L/C Application shall specify in form and detail reasonably satisfactory to the applicable L/C Issuer: (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); and (3) the nature of the proposed amendment. Additionally, the Borrower shall furnish to the applicable L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Documents, as such L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any L/C Application, the applicable L/C Issuer will confirm with the Administrative Agent that the Administrative Agent has received a copy of such L/C Application from the Borrower and, if not, such L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by such L/C Issuer of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions set forth herein, such L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable L/C Issuer a participation in such Letter of Credit in an amount equal to such Lender's Applicable Lender Percentage of the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable L/C Application, the applicable L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto- Renewal Letter of Credit shall permit such L/C Issuer to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the renewal of such Letter of Credit at any time to an expiry date not later than the L/C Expiration Date; provided, however, that such L/C Issuer shall not (x)permit any such renewal if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.4(a) or otherwise) or (B)it has received notice (which may be in writing or by telephone (if immediately confirmed in writing)) on or before the day that is seven (7) Business Days before the Nonrenewal Notice Date from the Administrative Agent that the Required Revolving Lenders have elected not to permit such renewal or (y) be obligated to permit such renewal if it has received notice (which may be in writing or by telephone (if immediately confirmed in writing)) on or before the day that is seven Business Days before the Nonrenewal Notice Date from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions set forth in Section 4.2 is not then satisfied, and in each such case directing such L/C Issuer not to permit such renewal.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursement; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof, and such L/C Issuer shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. If such L/C Issuer notifies the Borrower of any payment by such L/C Issuer under a Letter of Credit prior to 11:00 a.m. (New York City time) on the date of such payment, the Borrower shall reimburse such L/C Issuer through the Administrative Agent not later than 3:00 p.m. (New York City time) on the next succeeding Business Day in an amount equal to the amount of such drawing; provided that if such notice is not provided to the Borrower prior to 11:00 a.m. (New York City time) on such payment date, then the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing not later than 3:00 p.m. (New York City time) on the second succeeding Business Day, and such extension of time shall be reflected in computing fees in respect of such Letter of Credit. If the Borrower fails to so reimburse such L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Lender of such payment date, the amount of the unreimbursed drawing (the "Unreimbursed Amount") and the amount of such Lender's Applicable Lender Percentage thereof. In such event, the Borrower shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on such payment date in an amount equal to such Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.2 for the principal amount of Base Rate Loans, but subject to the aggregate unused Revolving Credit Commitments and the conditions set forth in Section 4.2 (other than delivery of a Borrowing Request). Any notice given by an L/C Issuer or the Administrative Agent pursuant to this clause (i) may be given by telephone if immediately confirmed in writing; provided that the lack of such confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Lender (including each Revolving Lender acting as an L/C Issuer) shall upon any notice pursuant to paragraph (c)(i) of this Section 2.4 make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable L/C Issuer at the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to its Applicable Lender Percentage of the relevant Unreimbursed Amount not later than 3:00 p.m. (New York City time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of paragraph (c)(iii) of this Section 2.4, each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the applicable L/C Issuer in accordance with the instructions provided to the Administrative Agent by such L/C Issuer (which instructions may include standing payment instructions, which may be updated from time to time by such L/C Issuer, provided that, unless the Administrative Agent shall otherwise agree, any such update shall not take effect until the Business Day immediately following the date on which such update is provided to the Administrative Agent).

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans because the conditions set forth in Section 4.2 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate then applicable to Base Rate Loans under the Revolving Credit Facility. In such event, each Revolving Lender's payment to the Administrative Agent for the account of the applicable L/C Issuer pursuant to paragraph (c)(i) of this Section 2.4 shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.4.

(iv) Until each Revolving Lender funds its Revolving Credit Loan or L/C Advance to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Lender Percentage of such amount shall be solely for the account of such L/C Issuer.

(v) Each Revolving Lender's obligations to make Revolving Credit Loans or L/C Advances to reimburse the applicable L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this paragraph (c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Lender's obligation to make Revolving Credit Loans pursuant to this paragraph (c) is subject to the conditions set forth in Section 4.2. No such funding of a participation in any Letter of Credit shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by such L/C Issuer under such Letter of Credit, together with interest as provided herein.

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

(d) Repayment of Participations.

(i) If, at any time after an L/C Issuer has made payment in respect of any drawing under any Letter of Credit issued by it and has received from any Revolving Lender its L/C Advance in respect of such payment in accordance with Section 2.4(c), if the Administrative Agent receives for the account of such L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Lender Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in like funds as received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of an L/C Issuer pursuant to Section 2.4(c)(i) is required to be returned under any of the circumstances described in Section 9.15 (including pursuant to any settlement entered into by such L/C Issuer in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Applicable Lender Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Revolving Lenders under this clause (ii) shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit or any term or provision thereof, any Loan Document, or any other agreement or instrument relating thereto;

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

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the applicable L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not comply strictly with the terms of such Letter of Credit; or any payment made by the applicable L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including arising in connection with any proceeding under any Debtor Relief Law;

(v) any exchange, release or nonperfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the Obligations of the Borrower in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

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

(f) Role of L/C Issuer. Each Revolving Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any document or the authority of the Person executing or delivering any document. None of the applicable L/C Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of such L/C Issuer shall be liable to any Revolving Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the requisite Revolving Lenders; (ii) any action taken or omitted in the absence of gross negligence or wilful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Application. The Borrower hereby assumes all risks of the acts of omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the applicable L/C Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of such L/C Issuer shall be liable or responsible for any of the matters described in Section 2.4(e); provided that, notwithstanding anything in such clauses to the contrary, the Borrower may have a claim against such L/C Issuer, and such L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct (as opposed to indirect, special, punitive, consequential or exemplary) damages suffered by the Borrower which a court of competent jurisdiction determines in a final nonappealable judgment were caused by such L/C Issuer's gross negligence or wilful misconduct or such L/C Issuer's wilful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP98. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Letter of Credit.

(h) Conflict with L/C Application. In the event of any conflict between the terms of this Agreement and the terms of any L/C Application, the terms hereof shall control.

(i) Reporting. Not later than the third (3rd) Business Day following the last day of each week (or at such other intervals as the Administrative Agent and the applicable L/C Issuer shall agree), each L/C Issuer shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month, and showing the aggregate amount (if any) payable by the Borrower to such L/C Issuer during such month.

(j) Replacement of an L/C Issuer. Any L/C Issuer may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer pursuant to Section 2.10(c). From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to include such successor or any previous L/C Issuer, or such successor and all previous L/C Issuers, as the context shall require. After the replacement of an L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit or to extend, reinstate, or otherwise amend any then-existing Letter of Credit.

Any L/C Issuer may resign at any time by giving 30 days' prior notice to the Administrative Agent, the Revolving Lenders and the Borrower. After the resignation of an L/C Issuer hereunder, the retiring L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, reinstate, or otherwise amend any then-existing Letter of Credit.

(k) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Revolving Lenders (or, if the maturity of the Revolving Credit Loans has been accelerated, Revolving Lenders with L/C Obligations representing at least 66-2/3% of the total L/C Obligations) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall immediately deposit into an account or accounts established and maintained on the books and records of the Administrative Agent (the "Collateral Account") an amount in cash equal to 105% of the total L/C Obligations as of such date plus any accrued and unpaid interest thereon, provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 7.1(f). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower in respect of the Revolving Credit Facility under this Agreement. In addition, and without limiting the foregoing or paragraph (d) of this Section 2.4, if any L/C Obligations remain outstanding after the expiration date specified in said paragraph (d), the Borrower shall immediately deposit into the Collateral Account an amount in cash equal to 105% of such L/C Obligations as of such date, plus any accrued and unpaid interest thereon.

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

(l) Letters of Credit Issued for account of Affiliates. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, an Affiliate of the Borrower that is the Company or a Wholly Owned Subsidiary of the Company, the Borrower shall be obligated as a primary obligor to reimburse the applicable L/C Issuer hereunder for any and all drawings under such Letter of Credit and irrevocably waives any defenses that might otherwise be available to it as a guarantor or surety of obligations of such Affiliate. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Affiliates of the Borrower that is the Company or are Wholly Owned Subsidiaries of the Company inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Affiliates. To the extent that any Letter of Credit is issued for the account of any Affiliate of the Borrower that is the Company or a Wholly Owned Subsidiary of the Company, the Borrower agrees that (i) such Affiliate shall have no rights against the L/C Issuer, the Administrative Agent or any Lender, (ii) the Borrower shall be responsible for the obligations in respect of such Letter of Credit under this Agreement and any application or reimbursement agreement, (iii) the Borrower shall have the sole right to give instructions and make agreements with respect to this Agreement and the Letter of Credit, and the disposition of documents related thereto, and (iv) the Borrower shall have all powers and rights in respect of any security arising in connection with the Letter of Credit and the transaction related thereto. The Borrower shall, at the request of the L/C Issuer, cause such Affiliate to execute and deliver an agreement confirming the terms specified in the immediately preceding sentence and acknowledging that it is bound thereby.

Section 2.5 Funding of Borrowings

(a) Except for Borrowings to be made as an Agent Advance, each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to the account designated by the Borrower in the applicable Borrowing Request; provided that if on the date of such Borrowing there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any L/C Borrowings, and second, to the Borrower as provided above.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section 2.5 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate reasonably determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Base Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

Section 2.6 Interest Elections

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request; provided that, if the Borrower fails to specify a Type of Loan in the Borrowing Request, then the Loans shall be made as Base Rate Loans and if the Borrower requests a Borrowing of Term Benchmark Loans, but fails to specify an Interest Period, it will be deemed to have requested an Interest Period of one month's duration. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.6. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section 2.6, the Borrower shall notify the Administrative Agent of such election electronically by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request submitted electronically shall be irrevocable.

(c) Each Interest Election Request submitted electronically shall specify the following information in compliance with Section 2.2:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein at the end of such Interest Period, such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (x) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (y) unless repaid, each Term Benchmark Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto.

Section 2.7 Termination or Reduction or Reallocation of Commitments

(a) Unless previously terminated, the Revolving Credit Commitments and the LILO Commitments shall terminate on the applicable Maturity Date.

(b) The Borrower may, at any time and from time to time without premium or penalty, terminate or reduce, the Revolving Credit Commitments under any Revolving Credit Facility or the L/C Sublimit; provided that (i) each reduction of the Revolving Credit Commitments shall be in an amount that is an integral multiple of $500,000 and not less than $1,000,000 (or the remainder of such Revolving Credit Commitments); (ii) the Revolving Credit Commitments shall not be terminated or reduced if, after giving effect to any concurrent prepayment of the Revolving Credit Loans in accordance with Section 2.9, the Total Revolving Credit Exposure would exceed the Line Cap at such time; (iii) the L/C Sublimit shall not be terminated or reduced if, after giving effect thereto, the Outstanding Amount of all L/C Obligations would exceed the L/C Sublimit; and (iv) any termination or permanent reduction of any Revolving Credit Commitments pursuant to this Section 2.7 shall be applied ratably as set forth in paragraph (c) of this Section 2.7; provided further that, upon any such partial reduction of the L/C Sublimit, unless the Borrower, the Administrative Agent and the applicable L/C Issuers otherwise agree, the amount of the L/C Commitments of the L/C Issuers will be reduced proportionately by the amount of such reduction. For avoidance of doubt, upon termination of the Revolving Credit Commitments, the L/C Commitments shall automatically terminate.

(c) To the extent the LILO Commitment is undrawn, the Borrower may, at any time and from time to time without premium or penalty, terminate or reduce the LILO Commitments; provided that (i)each reduction of the LILO Commitments shall be in an amount that is an integral multiple of $500,000 and not less than $1,000,000 (or the remainder of such LILO Commitments).

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Credit Commitments and/or LILO Commitments, as applicable, under any Revolving Credit Facility or the L/C Sublimit pursuant to paragraphs (b) and (c) of this Section 2.7 at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.7 shall be irrevocable; provided that a notice of termination of the Revolving Credit Commitments, the LILO Commitments or the L/C Sublimit delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or any other financing, Disposition, sale or other transaction and such notice may be extended or rescinded. Any termination or reduction of the Revolving Credit Commitments, the LILO Commitments or the L/C Sublimit shall be permanent. Each reduction of the Revolving Credit Commitments under any Revolving Credit Facility (other than any such reduction resulting from the termination of the Revolving Credit Commitment of any Lender as provided in Section 2.18) shall be made ratably among the Lenders holding Revolving Credit Commitments under such Revolving Credit Facility. Each reduction of the LILO Commitments (other than any such reduction resulting from the termination of the LILO Commitment of any LILO Lender as provided in Section 2.18) shall be made ratably among the Lenders holding LILO Commitments.

Section 2.8 Repayment of Loans; Evidence of Debt

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Credit Loan and LILO Loan of such Lenders on the applicable Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and if applicable, the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section 2.8 shall be conclusive, absent manifest error, of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement. In the event of any conflict between the accounts maintained by the Administrative Agent pursuant to paragraph (c) and the accounts of any Lender pursuant to paragraph (b) in respect of such matters, the accounts of the Administrative Agent shall control in the absence of manifest error.

(e) Any Lender may request in writing through the Administrative Agent that the Loans made by it hereunder be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender or its registered assigns. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.4) be represented by one or more Note in such form payable to the payee named therein (or its registered assigns).

Section 2.9 Prepayment of Loans

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing made by it in whole or in part, without premium or penalty (but subject to Section 2.15), subject to prior notice in accordance with paragraph (c) of this Section 2.9.

(b) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (c) of this Section 2.9; provided that optional prepayments shall be applied (i) first, to accrued interest on the amount of Revolving Credit Loans prepaid, (ii) second, to the outstanding principal amount of Revolving Credit Loans, (iii) third, to accrued interest on the amount of LILO Loans prepaid and (iv) fourth, to the outstanding principal amount of LILO Loans.

(c) The Borrower shall notify the Administrative Agent electronically of any prepayment hereunder (i) in the case of prepayment of a Term Benchmark Borrowing, not later than 11:00 a.m., New York City time, three (3) U.S. Government Securities Business Days before the date of prepayment (or such later time and/or date as may be agreed by the Administrative Agent in its reasonable discretion) or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day prior to the date of prepayment (or such later time and/or date as may be agreed by the Administrative Agent in its reasonable discretion). Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that any notice of prepayment may be conditioned upon the effectiveness of other credit facilities or any other financing, Disposition, sale or other transaction and any such notice may be extended or rescinded. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12. Each repayment of a Borrowing shall be applied to the Loans included in the repaid Borrowing such that each Lender holding Loans included in such repaid Borrowing receives its ratable share of such repayment based upon the respective (x) Revolving Credit Exposures or (y) outstanding LILO Loans, as applicable, of the Lenders holding Loans included in such repaid Borrowing at the time of such repayment. Notwithstanding anything to the contrary in this Agreement, after any Extension, the Borrower may voluntarily prepay any Borrowing of non-extended Revolving Credit Loans (and terminate the related Revolving Credit Commitment) pursuant to which the related Extension Offer was made without any obligation to prepay the corresponding Revolving Credit Loans subject to such Extension Offer or may voluntarily prepay any Borrowing of any such Revolving Credit Loans (and terminate the related Extended Revolving Credit Commitment) pursuant to which the related Extension Offer was made without any obligation to voluntarily prepay the corresponding nonextended Revolving Credit Loan.

Section 2.10 Fees

(a) Commitment Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender (other than any Defaulting Lenders) in accordance with its Applicable Lender Percentage, a commitment fee for the period from the Closing Date to but excluding the Maturity Date (or such earlier date on which the Revolving Credit Commitments shall have expired or terminated) equal to the Commitment Fee Rate multiplied by a fraction, the numerator of which is the number of days to the applicable fiscal quarter and the denominator of which is 360, and then multiplied by the amount, if any, by which the Average Facility Balance with respect to the Revolving Credit Facility for such Fiscal Quarter (or portion thereof that the Revolving Credit Commitments are in effect) is less than the aggregate amount of the Revolving Credit Commitments; provided that if the Revolving Credit Commitments are terminated on a day other than the first day of a Fiscal Quarter, then any such fee payable for the Fiscal Quarter in which termination shall occur shall be paid on the effective date of such termination and shall be based upon the number of days that have elapsed during such period. Accrued Commitment Fees shall be payable in arrears on the first day of each January, April, July and October of each year and on the date on which the Revolving Credit Commitments terminate, commencing on January 1, 2023. All Commitment Fees shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent for its own account, the fees with respect to the Revolving Credit Facility described in the Fee Letter.

(c) L/C Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a Letter of Credit fee with respect to its participations in each outstanding Letter of Credit (the "L/C Fee") which shall accrue at a rate per annum equal to the Applicable Margin then applicable to Revolving Credit Loans that are Term Benchmark Loans on the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit), during the period from and including the Closing Date to but excluding the later of the Maturity Date of the Revolving Credit Facility and the date on which such Lender ceases to have any L/C Obligations; provided that any L/C Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable L/C Issuer shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Lenders in accordance with the upward adjustments in their respective Applicable Lender Percentage allocable to such Letter of Credit pursuant to Section 2.23(a)(iv), with the balance of such fee, if any, payable to the applicable L/C Issuer for its own account. Accrued L/C Fees shall be payable in arrears on the last Business Day of each March, June, September and December, commencing on the first such date to occur after the Closing Date, and on the Maturity Date of the Revolving Credit Facility; provided that any such fees accruing after such Maturity Date shall be payable on demand. Notwithstanding anything herein to the contrary, while any Event of Default exists, all L/C Fees shall accrue at the applicable Default Rate.

(d) L/C Fronting Fees. The Borrower agrees to pay to each L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued by such L/C Issuer at a rate per annum equal to the percentage separately agreed upon between the Borrower and such L/C Issuer on the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit), during the period from and including the Closing Date to but excluding the later of the Maturity Date of the Revolving Credit Facility and the date on which such L/C Issuer ceases to have any L/C Obligations. Fronting fees accrued through and including the last day of each March, June, September and December shall be payable on the fifth (5th) Business Day following such last day, commencing on the first such date to occur after the Closing Date, and on the Maturity Date of the Revolving Credit Facility; provided that any such fees accruing after such Maturity Date shall be payable on demand. In addition, the Borrower agrees to pay to each L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect, which fees, costs and charges shall be payable to such L/C Issuer within three (3) Business Days after its demand therefor and are nonrefundable.

(e) LILO Commitment Fees. The Borrower agrees to pay to the Administrative Agent for the account of each LILO Lender (other than any Defaulting Lender), in accordance with its Applicable Lender Percentage, a commitment fee for the period from the Closing Date to but excluding the Maturity Date (or such earlier date on which the LILO Commitments shall have expired or terminated) equal to the LILO Commitment Fee Rate multiplied by a fraction, the numerator of which is the number of days to the applicable fiscal quarter and the denominator of which is 360, and then multiplied by the amount, if any, by which the Average Facility Balance with respect to the LILO Credit Facility for such Fiscal Quarter (or portion thereof that the LILO Commitments are in effect) is less than the aggregate amount of the LILO Commitments; provided that if the LILO Commitments are terminated on a day other than the first day of a Fiscal Quarter, then any such fee payable for the Fiscal Quarter in which termination shall occur shall be paid on the effective date of such termination and shall be based upon the number of days that have elapsed during such period. Accrued Commitment Fees shall be payable in arrears on the first day of each January, April, July and October of each year and on the date on which the LILO Commitments terminate, commencing on January 1, 2023. All Commitment Fees shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(f) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, in the case of Commitment Fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances (except as otherwise expressly agreed).

Section 2.11 Mandatory Prepayments

(a) Subject to Section 2.1(c), if for any reason, at any time the Total Credit Exposure exceeds the Line Cap, the Borrower shall within two (2) Business Days after receipt of written notice thereof from the Administrative Agent prepay, (i) first, the Revolving Credit Loans (or otherwise reduce Revolving Credit Exposure in an aggregate amount equal to the amount that Total Revolving Credit Exposure exceeds the Line Cap) and (ii) second, the LILO Loans.

(b) Amounts to be applied pursuant to this Section 2.11 shall be applied to reduce Total Credit Exposure; provided that such amounts shall be applied (A) first, to prepay outstanding Revolving Credit Loans consisting of Base Rate Loans and thereafter, to prepay outstanding Revolving Credit Loans that are Term Benchmark Loans (in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.15) and (B) second, to prepay outstanding LILO Loans consisting of Base Rate Loans and thereafter, to prepay outstanding LILO Loans that are Term Benchmark Loans (in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.15). No permanent reduction of Revolving Credit Commitments or the LILO Commitments will be required in connection with any prepayment pursuant to this Section 2.11.

Section 2.12 Interest

(a) Subject to Section 9.17, each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin for Base Rate Loans, and each Term SOFR Loan shall bear interest at a rate per annum equal to Term SOFR plus the Applicable Margin for Term SOFR Loans.

(b) The Borrower shall pay interest on overdue amounts hereunder at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in paragraph (a) of this Section 2.12, (ii) in the case of any other overdue amount, 2.00% plus the rate applicable to Base Rate Loans as provided in paragraph (a) of this Section 2.12 or (iii) in the case of L/C Fees, a rate equal to the rate otherwise payable pursuant to Section 2.10(c) plus 2.00% per annum.

(c) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Revolving Credit Commitments and/or the LILO Commitments, as applicable; provided that (i) interest accrued pursuant to paragraph (b) of this Section 2.12 shall be payable on written demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Borrowing that is not made in connection with the termination or permanent reduction of Revolving Credit Commitments or the LILO Commitments, as applicable), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(d) All interest hereunder shall be computed on the basis of a year of 360 days (or a 365- or 366-day year, as the case may be, in the case of Base Rate Loans bearing interest based on the Prime Rate).

(e) Notwithstanding anything to the contrary in the foregoing clauses (a) and (b), and to the extent in compliance with Section 2.22, as applicable, Loans extended in connection with an Extension Offer shall bear interest at the rate set forth in the applicable Extension Amendment to the extent a different interest rate is specified therein.

Section 2.13 [Reserved]

Section 2.14 Increased Costs

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject the Administrative Agent or any Lender to any Taxes (other than (A)Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (C) Other Connection Taxes that are imposed on or measured by net income (however denominated) or are franchise Taxes or branch profits Taxes) with respect to its loans, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender, and

(iv) the result of any of the foregoing shall be to increase the cost to such Lender or Administrative Agent of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to, or to reduce the amount of any sum received or receivable by, such Lender or Administrative Agent hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or Administrative Agent, the Borrower will pay to such Lender or Administrative Agent, as the case may be, such additional amount or amounts as will compensate such Lender or Administrative Agent, as the case may be, for such additional costs incurred or reduction suffered.

For purposes of this Section 2.14, the term "Lender" includes any L/C Issuer.

(b) Capital and Liquidity Requirements. If any Lender or L/C Issuer determines that any Change in Law affecting such Lender, any of its applicable lending offices or its holding company or such L/C Issuer or its holding company, as the case may be, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on capital for such Lender or its holding company or such L/C Issuer or its holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by any L/C Issuer, to a level below that which such Lender or its holding company or such L/C Issuer or its holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender's or its holding company's policies or such L/C Issuer's or its holding company's policies, as applicable, with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or its holding company or such L/C Issuer or its holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.14 and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate promptly (but in any event within ten days) after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to this Section 2.14 shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or L/C Issuer pursuant to this Section 2.14 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.15 Compensation for Losses

In the event of (a) the payment of any principal of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (c) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.15 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 2.16 Taxes

(a) All payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable withholding agent shall be required (as determined by such applicable withholding agent in its good faith discretion) by applicable Law to deduct or withhold any Taxes in respect of any such payments, then (i) in the case of deduction or withholding for Indemnified Taxes, the sum payable shall be increased by the Borrower as necessary so that after making all such required deductions or withholdings (including such deductions and withholdings applicable to additional sums payable under this Section 2.16(a)) each Lender (or, in the case of a payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent shall make or cause to be made such deductions or withholdings and (iii) the applicable withholding agent shall pay or cause to be paid the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

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

(c) The Borrower shall indemnify the Administrative Agent and each Lender, within ten (10) days after written 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 2.16) payable or paid by the Administrative Agent or such Lender or required to be withheld or deducted from a payment to the Administrative Agent or Lender, as the case may be, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the basis for such claim and the calculation of the amount of any such payment or liability shall be delivered to the Borrower by a Lender (with a copy to the Administrative Agent) or by the Administrative Agent on its own behalf or on behalf of a Lender, and shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.16, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e)

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.16(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a US Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of IRS Form W-9 certifying that such Lender is exempt from US federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two of whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income Tax treaty to which the United States is a party, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, US federal withholding Tax pursuant to such Tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code and that no payments under any Loan Documents are effectively connected with such Lender's conduct of a US trade or business (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner (for example, where such Lender is a partnership or a participating Lender), executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W- 8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and not a participating Lender, and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner(s);

(C) any Foreign Lender shall, to the extent it is legally eligible to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of any other documentation prescribed by applicable Law as a basis for claiming exemption from or a reduction in US federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction, if any, required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to US federal withholding Tax imposed pursuant to FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by any applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has or has not complied with such Lender's obligations under FATCA and to determine the amount (if any) to deduct and withhold from such payment. Solely for purposes of this Section 2.16(e)(ii)(D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) The Administrative Agent and any successor thereto shall deliver to the Borrower on or prior to the date on which it becomes the Administrative Agent under this Agreement (and from time to time thereafter upon reasonable request of the Borrower) (i) if the Administrative Agent (or such successor to the Administrative Agent) is a US Person, one executed copy of IRS Form W-9 certifying that it is exempt from US federal backup withholding, or (ii) if the Administrative Agent (or such successor to the Administrative Agent) is not a US Person, (A) one executed copy of IRS Form W-8ECI with respect to any amounts payable under any Loan Document to the Administrative Agent for its own account, and (B) one executed copy of IRS Form W-8IMY with respect to any amounts payable under any Loan Document to the Administrative Agent for the account of any Lender, certifying that it is a "U.S. branch" and may be treated as a US Person for purposes of applicable U.S. federal withholding Tax.

(iv) Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such documentation or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so.

(v) Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 2.16(e).

(vi) Notwithstanding any other provision of this Section 2.16(e), neither the Administrative Agent nor any Lender shall be required to deliver any documentation that the Administrative Agent or such Lender, as applicable, is not legally eligible to deliver.

(f) [Reserved].

(g) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower pursuant to this Section 2.16 or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.16, it shall pay over an amount equal to such refund to the Borrower within a reasonable period (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.16 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, shall promptly repay the amount paid over to the Borrower pursuant to this Section 2.16(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.16(g), in no event will the Administrative Agent or such Lender be required to pay any amount to the Borrower pursuant to this Section 2.16(g) the payment of which would place the Administrative Agent or such Lender in a less favorable net after-Tax position than the Administrative Agent or such Lender 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 Section 2.16(g) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(h) Each party's obligations under this Section 2.16 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Credit Commitments and the LILO Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) For purposes of this Section 2.16, the term "applicable Law" includes FATCA and the term "Lender" includes any L/C Issuer.

Section 2.17 Payments Generally; Pro Rata Treatment; Sharing of Set-offs

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of amounts payable under Section 2.14, 2.15 or 2.16, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment or if no such time is expressly required, prior to 1:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices as specified from time to time to the Borrower, except that payments pursuant to Section 2.14, 2.15, 2.16 or 9.3 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient recorded in the Register promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in U.S. Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowing, interest and fees then due hereunder, in each case, other than in respect of LILO Loans, such funds shall be applied (i) first, to pay such interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, (ii) second, to pay principal or unreimbursed L/C Borrowings then due hereunder, in each case, other than in respect of LILO Loans, ratably among the parties entitled thereto in accordance with the amounts of such principal and/or unreimbursed L/C Borrowings, as applicable, then due to such parties, (iii) third, towards payment of interest and fees in respect of LILO Loans then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of such interest and fees then due to such parties and (iv) fourth, towards the payment of principal of LILO Loans then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or its participations in Letters of Credit resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans or Letters of Credit and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and/or subparticipations in the participations in Letters of Credit, as the case may be, of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including Sections 2.18(b) or (c) and 2.22 or pursuant to the terms of any Extension Amendment) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted under this Agreement; provided further that (i) no Lender obtaining any payment on account of its Revolving Credit Exposure that would otherwise be subject to this clause (c) shall be obligated to purchase any participation in any LILO Loan pursuant to this clause (c) and (ii) if any Lender obtains any payment on account of its LILO Obligations that would otherwise be subject to this clause(c) at any time that any Revolving Credit Exposure is outstanding, in lieu of purchasing participation, such Lender shall turn such amount over to the Administrative Agent for application in the same order as provided in Section 2.21. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. For purposes of clause (b)(i) of the definition of "Excluded Taxes," a participation acquired pursuant to this Section 2.17(c) shall be treated as having been acquired on the earlier date(s) on which the applicable Lender acquired the applicable interest in the Revolving Credit Commitment(s), LILO Commitment(s) or Loan(s) to which such participation relates.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuers hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders or the applicable L/C Issuers, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.5(b), 2.17(d) or 8.7, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender or such L/C Issuer to satisfy such Lender's or such L/C Issuer's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.18 Mitigation Obligations; Replacement of Lenders

(a) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 2.16, then such Lender or L/C Issuer, as applicable, shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender or L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender or L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise cause economic, legal or regulatory disadvantage to such Lender or L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable and documented out-of- pocket costs and expenses incurred by any Lender or L/C Issuer in connection with any such designation or assignment.

(b) If (x) any Lender (or any Participant in the Loans held by such Lender) requests compensation under Section 2.14, or if the Borrower is required to pay any Indemnified Taxes or additional amounts (in each case other than in respect of Other Taxes) to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, and in each case such Lender has declined or is unable to designate a different lending office in accordance with Section 2.18(a), (y) any Lender ceases to make any Term Benchmark Loans as a result of any condition described in Section 2.20(b) or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, either (i) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4), all its interests, rights and obligations under this Agreement (other than surviving rights to payments pursuant to Section 2.14 or 2.16) and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (A) the Borrower shall have received the prior written consent of the Administrative Agent, to the extent consent for an Assignment and Assumption would be required by the Administrative Agent pursuant to Section 9.4, which consent, in each case, shall not be unreasonably withheld, conditioned or delayed, (B) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (C) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments or (ii) so long as no Event of Default shall have occurred and be continuing, (1) terminate the Revolving Credit Commitments of such Lender and repay all obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date, provided that, no such termination and reduction shall be permitted unless the Fronting Exposure of each L/C Issuer with respect to such Lender's participations in Letters of Credit is Cash Collateralized to the satisfaction of such L/C Issuer or (2) terminate the LILO Commitments of such Lender and repay all obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date, as applicable. A Lender shall not be required to make any such assignment and delegation, or to have its Revolving Credit Commitments or LILO Commitments terminated and its obligations hereunder repaid, if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation, or to terminate such Revolving Credit Commitments or LILO Commitments and repay such obligations, cease to apply.

(c) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.2 requires the consent of all of the Lenders or all affected Lenders and with respect to which the Required Lenders (or Required Revolving Lenders or Required LILO Lenders, as applicable) shall have granted their consent, then the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) to either (i) replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign all or the affected portion of its Loans and its Revolving Credit Commitments or LILO Commitments, as applicable, hereunder to one or more Eligible Assignees reasonably acceptable to the Administrative Agent; provided that (A) all Obligations (other than Obligations in respect of any Bank Product Obligations, contingent reimbursement and indemnification obligations, in each case, which are not due and payable) of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non- Consenting Lender concurrently with such assignment, (B) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon, (C) in connection with any such assignment the Borrower, such Non- Consenting Lender and the replacement Lender shall otherwise comply with Section 9.4 (including obtaining the consent of the Administrative Agent if so required thereunder); provided that, if the required Assignment and Assumption is not executed and delivered by such Non-Consenting Lender, such Non- Consenting Lender will be unconditionally and irrevocably deemed to have executed and delivered such Assignment and Assumption as of the date such Non-Consenting Lender receives payment in full of the Obligations (other than Obligations in respect of any Bank Product Obligations, contingent reimbursement and indemnification obligations, in each case, which are not due and payable) of the Borrower owing to such Non-Consenting Lender, (D) the Borrower shall pay any processing and recordation fee referred to in Section 9.4(b)(ii)(C), if applicable, in accordance with the terms of such Section and (E) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination or (ii) so long as no Event of Default shall have occurred and be continuing, terminate the Revolving Credit Commitments or LILO Commitments, as applicable, of such Non-Consenting Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans and Revolving Credit Commitments or LILO Commitments, as applicable, held by such Non-Consenting Lender as of such termination date; provided that such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable waiver or amendment of the applicable Loan Document or Loan Documents.

(d) Each Lender agrees that if it is replaced pursuant to this Section 2.18, it shall execute and deliver to the Administrative Agent an Assignment and Assumption to evidence such sale and purchase and shall deliver to the Administrative Agent any Note (if the assigning Lender's Loans are evidenced by Notes) subject to such Assignment and Assumption; provided that the failure of any Lender replaced pursuant to this Section 2.18 to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed cancelled upon such failure. Each Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Lender's attorney-in-fact, with full authority in the place and stead of such Lender and in the name of such Lender, from time to time in the Administrative Agent's discretion, with prior written notice to such Lender, to take any action and to execute any such Assignment and Assumption or other instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of clause (b) or (c) of this Section 2.18.

(e) Notwithstanding anything in this Section 2.18 to the contrary, any Revolving Lender that acts as an L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to such outstanding Letter of Credit.

Section 2.19 Benchmark Replacement Setting

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders.

(b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.19(d). Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.19, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.19.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including any Term Benchmark) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that any tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

Section 2.20 Inability to Determine Rates; Illegality

(a) Subject to Section 2.19, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined in accordance with the terms of this Agreement on or prior to the first day of any Interest Period, the Administrative Agent will promptly so notify the Borrower and each Lender. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make or continue Term Benchmark Loans or to convert Base Rate Loans to Term Benchmark Loans shall be suspended (to the extent of the affected Term Benchmark Loans or, in the case of a Term Benchmark Borrowing, the affected Interest Periods) until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term Benchmark Loans (to the extent of the affected Term Benchmark Loans or, in the case of a Term Benchmark Borrowing, the affected Interest Periods) or, failing that, in the case of any request for an affected Term Benchmark Borrowing, then such request shall be ineffective and (ii) any outstanding affected Term Benchmark Loans will be deemed to have been converted into Base Rate Loans. Upon any such conversion, the Borrower shall also pay any additional amounts required pursuant to Section 2.15. If the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined in accordance with the terms of this Agreement on any given day, the interest rate on Base Rate Loans shall be determined by the Administrative Agent without reference to clause (c) of the definition of "Base Rate" until the Administrative Agent revokes such determination.

(b) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to Term SOFR, or to determine or charge interest rates based upon Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make or continue Term Benchmark Loans or to convert Base Rate Loans to Term Benchmark Loans shall be suspended, and (b) the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Base Rate", in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term Benchmark Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause(c) of the definition of "Base Rate"), on the Interest Payment Date therefor, if such Lender may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Loans and (ii) if necessary to avoid such illegality, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to clause (c) of the definition of "Base Rate" until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay any additional amounts required pursuant to Section 2.15.

Section 2.21 Cash Management

(a)

(i) Within 10 days after the Closing Date (subject to any extension as may be agreed by the Administrative Agent), the Borrower shall establish Designated Deposit Accounts in the Borrower's name with (x) with the Additional Collateral Agent or (y) with the prior written consent of each Collateral Management Agent, one or more financial institutions selected by the Borrower, reasonably satisfactory to the Administrative Agent and, in each case, located in the United States (the "Collection Banks").

(ii) Within 90 days after the Closing Date (subject to any extension as may be agreed by the Administrative Agent), the Borrower, the Collateral Agent and the Collection Banks will enter into Cash Management Control Agreements with respect to all Designated Deposit Accounts then in existence, and thereafter will maintain, separate Cash Management Control Agreements with respect to all Designated Deposit Accounts and any other deposit account from time to time owned by the Borrower; provided that if such Cash Management Control Agreements are not obtained within 90 days after the Closing Date (subject to any extension as may be agreed by the Administrative Agent), the Borrower shall be required to move such Designated Deposit Accounts to the Administrative Agent or such other Collection Bank that has executed such Cash Management Control Agreements. Additionally, within 60 days after the Closing Date (subject to any extension as may be agreed by the Administrative Agent) the Borrower shall cause the TPB Group to enter into Cash Management Control Agreements in favor of the Borrower with respect to the TPB Designated Accounts.

(iii) The Borrower shall cause all receipts from the sale of Inventory to be deposited initially into the TPB Designated Accounts. On a monthly basis (or if a Dominion Period exists, on no less frequently than once per Business Day) such receipts, net of the Service Charge (as defined in the Inventory Services Agreement) if such Service Charge is then permitted to be paid pursuant to Section 6.6(c) shall be deposited into a Designated Deposit Account. All amounts received by the Borrower and any Collection Bank, in respect of any account, in addition to all other cash received from any other source, shall promptly upon receipt be deposited or swept into a Designated Deposit Account. The Borrower may close deposit accounts at any Collection Bank and/or open new deposit accounts at any Collection Bank, subject (in the case of opening any new deposit account) to the contemporaneous (or such longer period as the Administrative Agent may reasonably agree) execution and delivery to the Agents of a Cash Management Control Agreement consistent with the provisions of this Section 2.21 and otherwise reasonably satisfactory to the Administrative Agent. Subject to Section 5.11, the Borrower shall ensure that the TPB Designated Accounts are subject to a control agreement between itself (as the secured party) and the Company, which account control agreement shall provide that the Borrower shall be entitled to sweep such account daily into a Designated Deposit Account at any time during a Dominion Period.

(b) So long as no Dominion Period then exists in respect of which the Administrative Agent has delivered notice thereof as contemplated by the definition thereof, the Borrower shall be permitted to withdraw Cash and Cash Equivalents from Controlled Accounts to be used for working capital and general corporate purposes. If a Dominion Period exists and the Administrative Agent has delivered notice thereof as contemplated by the definition thereof, all collected amounts held in the Controlled Accounts shall be applied as provided in Section 2.21(c).

(c) Each Cash Management Control Agreement relating to a Controlled Account shall include provisions that allow, during any Dominion Period, for all collected amounts held in such Controlled Account from and after the date requested by the Administrative Agent to be sent by ACH or wire transfer or similar electronic transfer no less frequently than once per Business Day to one or more accounts maintained with the Administrative Agent (each, an "Agent Deposit Account"). Subject to the terms of the respective Security Document, during any Dominion Period, all amounts received in an Agent Deposit Account shall be applied (and allocated) by the Administrative Agent on a daily basis in the following order:

(i) *first*, (A) to the payment of any fees, indemnities, costs, expenses and other amounts due and payable to the Administrative Agent, in its capacity as such, under any of the Loan Documents and (B) to repay or prepay outstanding Revolving Credit Loans advanced by the Administrative Agent on behalf of the Revolving Lenders pursuant to Section 2.1(c);

(ii) *second*, to the extent all amounts referred to in preceding clause (i) have been paid in full, on a ratable basis, (A) to pay all accrued and unpaid interest due and payable on the Revolving Credit Loans and (B) to pay any fees, indemnities, costs, expenses and other amounts (other than principal) due and payable to the Revolving Lenders in their respective capacities as such, under any of the Loan Documents with respect to the Revolving Credit Loans;

(iii) *third*, to the extent all amounts referred to in preceding clauses (i) and (ii) have been paid in full, on a ratable basis, (A) to repay the outstanding principal of Revolving Credit Loans (whether or not then due and payable), (B) to Cash Collateralize the L/C Obligations and solely to the extent there are applicable Reserves contained in the Borrowing Base, (C) to Pari Bank Product Obligations (including cash collateralization thereof);

(iv) *fourth*, to the extent all amounts referred to in preceding clauses (i) through (iii), inclusive, have been paid in full, to repay or prepay outstanding LILO Loans advanced by the Administrative Agent on behalf of the LILO Lenders pursuant to Section 2.1(c);

(v) *fifth*, to the extent all amounts referred to in preceding clauses (i) through (iv), inclusive, have been paid in full, on a ratable basis, (A) to pay all accrued and unpaid interest due and payable on the LILO Loans and (B) to pay any fees, indemnities, costs, expenses and other amounts (other than principal) due and payable to the LILO Lenders in their respective capacities as such, under any of the Loan Documents with respect to the LILO Loans;

(vi) *sixth*, to the extent all amounts referred to in preceding clauses (i) through (v), inclusive, have been paid in full, to repay (on a ratable basis) the outstanding principal of LILO Loans (whether or not then due and payable);

(vii) *seventh*, to the extent all amounts referred to in preceding clauses (i) through (vi), have been paid in full, to pay other Bank Product Obligations that are not Pari Bank Product Obligations;

(viii) *eighth*, to the extent all amounts referred to in preceding clauses (i) through (vii), inclusive, have been paid in full, to pay (on a ratable basis) all other outstanding Obligations then due and payable to the Secured Parties under any of the Loan Documents;

(ix) *ninth*, to the extent all amounts referred to in preceding clauses (i) through (viii) inclusive, have been paid in full and so long as no Event of Default then exists, to be returned to the Borrower for the Borrower's own account. Notwithstanding the foregoing, it is understood and agreed that (I) all Controlled Accounts may be subject to Liens permitted by Section 6.3(f) (it being understood that the Administrative Agent may establish a Reserve with respect to any such Lien if such Lien constitutes a First Priority Priming Lien) and (II) (x) if any fees are expressly permitted to be charged by the applicable bank or credit card or other merchant processor to the Borrower pursuant to the terms of any applicable agreement in connection therewith or (y) if any sales draft or sales transaction (or similar item) previously credited to a Controlled Account are returned to the applicable bank or processor, as applicable, such bank or processor may, in each case, to the fullest extent permitted by the applicable agreement or law, withdraw funds from such Controlled Account in the full amount of such fees or such returned item.

Notwithstanding the foregoing, the Administrative Agent may exclude Bank Product Obligations from the application described above if the Administrative Agent has not received a notice (including the type and amount of such Bank Product Obligations, together with such supporting documentation as the Administrative Agent may reasonably request) from the applicable Qualified Counterparty with respect to such Bank Product Obligations.

(d) Subject to the terms and conditions of Section 9.3, all costs and expenses to effect the foregoing (including reasonable legal fees and disbursements of counsel) shall be paid by the Borrower.

(e) Upon the termination of any Dominion Period, (i) the Administrative Agent agrees to promptly stop transferring amounts from the Controlled Accounts to accounts maintained with the Administrative Agent pursuant to this Section 2.21 and (ii) the Collection Banks shall promptly permit the Borrower to withdraw Cash and Cash Equivalents from Controlled Accounts to be used for Permitted Payments.

Section 2.22 Extensions of Revolving Credit Commitments

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by the Borrower to all Lenders of any Revolving Credit Facility with Revolving Credit Commitments with a like maturity date on a pro rata basis (based on the aggregate outstanding principal amount of the Revolving Credit Commitments under such Revolving Credit Facility with a like maturity date) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date of each such Lender's Revolving Credit Commitments of such Revolving Credit Facility and otherwise modify the terms of such Revolving Credit Commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate or fees payable in respect of such Revolving Credit Commitments (and related outstandings)) (each, an "Extension", and each group of Revolving Credit Commitments, as so extended, as well as the original Revolving Credit Commitments of such Revolving Credit Facility (not so extended), being a "tranche"; any Extended Revolving Credit Commitments shall constitute a separate tranche of Revolving Credit Commitments from the tranche of Revolving Credit Commitments of such Revolving Credit Facility from which they were extended), so long as the following terms are satisfied with respect to each applicable Revolving Credit Facility: (i) except as to pricing (including interest rates, fees and funding discounts), conditions precedent and maturity (which shall be set forth in the relevant Extension Offer), the Revolving Credit Commitment of any Lender that agrees to an Extension with respect to such Revolving Credit Commitment extended pursuant to an Extension (an "Extended Revolving Credit Commitment"), and the related outstandings, shall be a Revolving Credit Commitment (or related outstandings, as the case may be) with the same terms as the original Revolving Credit Commitments (and related outstandings) (provided that (1) assignments and participations of Extended Revolving Credit Commitments and extended Revolving Credit Loans shall be governed by the same assignment and participation provisions applicable to Revolving Credit Commitments and Revolving Credit Loans of such Revolving Credit Facility and (2) at no time shall there be Revolving Credit Commitments hereunder (including Extended Revolving Credit Commitments and any original Revolving Credit Commitments) which have more than two different maturity dates), (ii) if the aggregate principal amount of Revolving Credit Commitments in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Revolving Credit Commitments offered to be extended by the Borrower pursuant to such Extension Offer, then the Revolving Credit Loans of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer and (iii) all documentation in respect of such Extension shall be consistent with the foregoing.

(b) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "LILO Extension Offer") made from time to time by the Borrower to all Lenders of any LILO Credit Facility with LILO Commitments with a like maturity date on a pro rata basis (based on the aggregate outstanding principal amount of the LILO Commitments under such LILO Credit Facility with a like maturity date) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate from time to time transactions with individual Lenders that accept the terms contained in such LILO Extension Offers to extend the maturity date of each such Lender's LILO Commitments of such LILO Credit Facility and otherwise modify the terms of such LILO Commitments pursuant to the terms of the relevant LILO Extension Offer (including by increasing the interest rate or fees payable in respect of such LILO Commitments (and related outstandings)) (each, an "LILO Extension", and each group of LILO Commitments, as so extended, as well as the original LILO Commitments of such LILO Credit Facility (not so extended), being a "tranche"; any Extended LILO Commitments shall constitute a separate tranche of LILO Commitments from the tranche of LILO Commitments of such LILO Credit Facility from which they were extended), so long as the following terms are satisfied with respect to each applicable LILO Credit Facility: (i) except as to pricing (including interest rates, fees and funding discounts), conditions precedent and maturity (which shall be set forth in the relevant LILO Extension Offer), the LILO Commitment of any Lender that agrees to a LILO Extension with respect to such LILO Commitment extended pursuant to an Extension (an "Extended LILO Commitment"), and the related outstandings, shall be a LILO Commitment (or related outstandings, as the case may be) with the same terms as the original LILO Commitments (and related outstandings) (provided that (1) assignments and participations of Extended LILO Commitments and extended LILO Loans shall be governed by the same assignment and participation provisions applicable to LILO Commitments and LILO Loans of such LILO Credit Facility and (2) at no time shall there be LILO Commitments hereunder (including Extended LILO Commitments and any original LILO Commitments) which have more than two different maturity dates), (ii) if the aggregate principal amount of LILO Commitments in respect of which Lenders shall have accepted the relevant LILO Extension Offer shall exceed the maximum aggregate principal amount of LILO Commitments offered to be extended by the Borrower pursuant to such LILO Extension Offer, then the LILO Loans of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such LILO Extension Offer, (iii) all documentation in respect of such LILO Extension shall be consistent with the foregoing and (iv) under no circumstance shall the Extended LILO Commitments and corresponding loans have a maturity date later than the Latest Maturity Date of the Revolving Credit Loans.

(c) With respect to all Extensions and LILO Extensions consummated by the Borrower pursuant to this Section 2.22, (i) such Extensions and LILO Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of this Agreement and (ii) each Extension Offer and LILO Extension Offer shall specify the minimum amount of (x) Revolving Credit Commitments of each Revolving Credit Facility to be tendered and (y) LILO Commitments of each LILO Credit Facility to be tendered. The transactions contemplated by this Section 2.22 (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Revolving Credit Commitments or Extended LILO Commitments on such terms as may be set forth in the relevant Extension Offer or LILO Extension Offer, as applicable) shall not require the consent of any Lender or any other Person (other than as set forth in clause (d) below), and the requirements of any provision of this Agreement (including Sections 2.2(c), 2.9 and 2.17) or any other Loan Document that may otherwise prohibit any such Extension or LILO Extension or any other transaction contemplated by this Section 2.22 shall not apply to any of the transactions effected pursuant to this Section 2.22.

(d) No consent of any Lender or any other Person shall be required to effectuate any Extension or LILO Extension, other than the consent of the Borrower and each Lender agreeing to such Extension or LILO Extension with respect to one or more of its Revolving Credit Commitments or LILO Commitments (or a portion thereof), as applicable. All Extended Revolving Credit Commitments, Extended LILO Commitments and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents that are secured by the Collateral on a *pari passu* basis with the other Facilities. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (an "Extension Amendment") with the Borrower as may be necessary in order to establish new tranches or sub-tranches in respect of (x) Revolving Credit Commitments of each Revolving Credit Facility or (y) LILO Commitments of each LILO Credit Facility, as applicable, so extended and such technical amendments as may be necessary or appropriate in the opinion of the Administrative Agent and the Borrower to effect the provisions of this Section 2.22.

(e) In connection with any Extension or LILO Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension or LILO Extension, as applicable), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably, to accomplish the purposes of this Section 2.22.

(f) Notwithstanding anything to the contrary above, at any time and from time to time following the establishment of Extended Revolving Credit Commitments, the Borrower may offer any Lender of a Revolving Credit Facility that had been subject to an Extension Amendment (without being required to make the same offer to any or all other Lenders) who had not elected to participate in such Extension Amendment the right to convert all or any portion of its Revolving Credit Commitments into such Extended Revolving Credit Commitments of such Revolving Credit Facility; provided that (i) such offer and any related acceptance shall be in accordance with such procedures, if any, as may be reasonably requested by, or acceptable to, the Administrative Agent, (ii) such additional Extended Revolving Credit Commitments shall be on identical terms (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other fees payable in connection therewith that are not generally shared with the relevant Lenders) with the existing Extended Revolving Credit Commitments, (iii) any Lender which elects to participate in a LILO Extension Facility pursuant to this clause (f) shall enter into a joinder agreement to the respective Extension Amendment, in form and substance reasonably satisfactory to the Administrative Agent and executed by such Lender, the Administrative Agent and the Borrower and (iv) any such additional Extended Revolving Credit Commitments shall be in an aggregate principal amount that is not less than $1,000,000, unless each of the Borrower and the Administrative Agent otherwise consents.

(g) Notwithstanding anything to the contrary above, at any time and from time to time following the establishment of Extended LILO Commitments, the Borrower may offer any Lender of a LILO Credit Facility that had been subject to an Extension Amendment (without being required to make the same offer to any or all other Lenders) who had not elected to participate in such Extension Amendment the right to convert all or any portion of its LILO Commitments into such Extended LILO Commitments of such LILO Credit Facility; provided that (i) such offer and any related acceptance shall be in accordance with such procedures, if any, as may be reasonably requested by, or acceptable to, the Administrative Agent, (ii) such additional Extended LILO Commitments shall be on identical terms (including as to the proposed interest rates and fees payable, but excluding any arrangement, structuring or other fees payable in connection therewith that are not generally shared with the relevant Lenders) with the existing Extended LILO Commitments, (iii) any Lender which elects to participate in a LILO Extension Facility pursuant to this clause (g) shall enter into a joinder agreement to the respective Extension Amendment, in form and substance reasonably satisfactory to the Administrative Agent and executed by such Lender, the Administrative Agent and the Borrower and (iv) any such additional Extended LILO Commitments shall be in an aggregate principal amount that is not less than $1,000,000, unless each of the Borrower and the Administrative Agent otherwise consents.

Section 2.23 Defaulting Lenders

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable requirements of Law:

(i) That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.2.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section VII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender (that is a Revolving Lender) to the applicable L/C Issuer(s); *third*, to Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender (that is a Revolving Lender) in accordance with Section 2.25; *fourth*, as the Borrower may request (so long as no Default or Event of Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as reasonably determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to (x) satisfy obligations of such Defaulting Lender to fund Loans under this Agreement and (y) to the extent such Defaulting Lender is a Revolving Lender, Cash Collateralize the L/C Issuers' future Fronting Exposure with respect to such Defaulting Lender respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.25; *sixth*, to the payment of any amounts owing to the Lenders or the applicable L/C Issuers as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the applicable L/C Issuers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and the L/C Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis (first to the Revolving Lenders and second to the LILO Lenders), prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this clause (ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto. For avoidance of doubt, any Defaulting Lender that is a LILO Lender shall not have any obligations to the L/C Issuers.

(iii) Certain Fees; Default Interest. That Defaulting Lender (x) shall not be entitled to receive any Commitment Fee pursuant to Section 2.10 for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such Commitment Fee that otherwise would have been required to have been paid to that Defaulting Lender), (y) shall be limited in its right to receive L/C Fees as provided in Section 2.10(c) and (z) shall not be entitled to receive any interest at the Default Rate pursuant to Section 2.12(b) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such interest that otherwise would have been required to have been paid to that Defaulting Lender).

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Revolving Lenders that are Non-Defaulting Lenders in accordance with their respective Applicable Lender Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.2 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the sum of the aggregate Outstanding Amount of the Revolving Credit Loans of any Non-Defaulting Lender, plus such Lender's Applicable Lender Percentage of the Outstanding Amount of all L/C Obligations at such time, to exceed such Lender's Revolving Credit Commitment. Subject to Section 9.18, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from such Lender having become a Defaulting Lender, including any claim of a Non- Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) If the Borrower, the Administrative Agent and each L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their Pro Rata Share, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees, or interest at the Default Rate pursuant to Section 2.12(b), accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided further that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) So long as any Revolving Lender is a Defaulting Lender, no L/C Issuer shall be required to issue, extend or amend any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.24 Increases in Revolving Credit Commitments

(a) Notice. At any time and from time to time, on one or more occasions, the Borrower may (on behalf of itself), by notice to the Administrative Agent, increase the aggregate principal amount of Revolving Credit Commitments with the then Latest Maturity Date (the "Incremental Revolving Facilities", each such increase, an "Incremental Facility" and the loans or other extensions of credit made thereunder, the "Incremental Loans").

(b) Ranking. Incremental Facilities will rank *pari passu* in right of payment with the Revolving Credit Commitments and will be secured by the Collateral by Liens on a *pari passu* basis to the Liens that secure the Revolving Credit Commitments.

(c) Size and Currency. The aggregate principal amount of Incremental Facilities on any date commitments with respect thereto are first received, assuming such commitments are fully drawn on the date of receipt thereof, will not exceed the Incremental Amount. Each Incremental Facility will be in an integral multiple of $1,000,000 and in an aggregate principal amount that is not less than $5,000,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); provided that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the Incremental Amount at such time. Any Incremental Facility shall be denominated in Dollars.

(d) Incremental Lenders. Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender shall have an obligation to make, or provide commitments with respect to, an Incremental Loan) or by any Additional Lender. While existing Lenders may (but are not obligated to) participate in any syndication of an Incremental Facility and may (but are not obligated to) become lenders with respect thereto, the existing Lenders will not have any right to participate in any syndication of, and will not have any right of first refusal or other right to provide all or any portion of, any Incremental Facility or Incremental Loan except to the extent the Borrower and the arrangers thereof, if any, in their discretion, choose to invite or include any such existing Lender (which may or may not apply to all existing Lenders and may or may not be pro rata among existing Lenders). Final allocations in respect of Incremental Facilities will be made by the Borrower together with the arrangers thereof, if any, in their discretion, on the terms permitted by this Section 2.24; provided that the lenders providing the Incremental Facilities will be reasonably acceptable to (i) the Borrower and (ii) the Administrative Agent (except that, in the case of clause (ii), only to the extent the Administrative Agent otherwise would have a consent right to an assignment of such loans or commitments to such lender, such consent not to be unreasonably withheld, conditioned or delayed).

(e) Incremental Facility Amendments; Use of Proceeds. Each Incremental Facility will become effective pursuant to an amendment (each, an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower and each Person providing such Incremental Facility and the Administrative Agent. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Amendment. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary, advisable or appropriate, in the reasonable opinion of the Borrower and the Administrative Agent, to effect the provisions of this Section 2.24. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Facility and the Incremental Loans evidenced thereby. This Section 2.24 shall supersede any provisions in Section 9.2 to the contrary. The Borrower may use the proceeds of the Incremental Loans for any purpose not prohibited by this Agreement.

(f) Conditions. The effectiveness of Incremental Facilities under this Agreement will be subject to the following conditions and any other conditions required by the Lenders providing such Incremental Facility, and measured on the date of the receipt of commitments under (assuming such commitments are fully drawn only on the date of receipt) such Incremental Facility:

(i) no Event of Default shall have occurred and be continuing or would result therefrom; and

(ii) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and after giving effect to, the receipt of commitments in respect of such Incremental Facility.

(g) Terms. Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Facility. Each Incremental Facility will be documented as an increase to the applicable Revolving Credit Commitments and shall be on terms identical to those applicable to such Revolving Credit Facility except with respect to any arrangement, upfront or similar fees that may be agreed to among the Borrower and the lenders providing such Incremental Revolving Facility.

(h) Adjustments to Revolving Credit Loans. On the effective date of each Incremental Facility, (i) if there are Revolving Credit Loans then outstanding, the Borrower shall prepay such Revolving Credit Loans (and pay any additional amounts required pursuant to Section 2.15 in connection therewith), and borrow Revolving Credit Loans from the Lender(s) providing such Incremental Revolving Facility, as shall be necessary in order that, after giving effect to such prepayments and borrowings, all Revolving Credit Loans will be held ratably by the Revolving Lenders (including the Lender(s) providing such Incremental Revolving Facility) in accordance with their respective Revolving Credit Commitments after giving effect to the applicable Incremental Revolving Facility and (ii) if there are Letters of Credit then outstanding, the participations of the Revolving Lenders in such Letters of Credit will be automatically adjusted to reflect the Applicable Lender Percentages of all the Revolving Lenders (including the Lender(s) providing such Incremental Revolving Facility) after giving effect to the applicable Incremental Revolving Facility.

Section 2.25 Cash Collateral

(a) Obligation to Cash Collateralize. Upon the request of the Administrative Agent or the applicable L/C Issuer (i) if the applicable L/C Issuer has honored any full or partial drawing under any Letter of Credit and such drawing has resulted in an L/C Borrowing or (ii) if, as of the L/C Expiration Date, any L/C Obligation for any reason remains outstanding, or upon request of the Administrative Agent or as otherwise required pursuant to Section 7.1, the Borrower shall, in each case, immediately Cash Collateralize the then-Outstanding Amount of all L/C Obligations in an amount not less than the Minimum Collateral Amount. At any time that there shall exist a Defaulting Lender, immediately upon the written request of the Administrative Agent or any applicable L/C Issuer (in each case, with a copy to the Administrative Agent), the Borrower shall Cash Collateralize all Fronting Exposure of such L/C Issuer with respect to such Defaulting Lender (determined after giving effect to Section 2.23(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at the Administrative Agent. The Borrower and, to the extent provided by any Lender, such Lender, hereby grants to (and subject to the control of) the Collateral Agent, for the benefit of the Agents, the applicable L/C Issuers and the applicable Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and all proceeds of the foregoing, as security for the obligations to which such Cash Collateral may be applied pursuant to paragraph (c) of this Section 2.25. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount or, if applicable, the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything herein to the contrary, Cash Collateral provided under this Section 2.25 or Section 2.23 or Section 7.1 or otherwise in respect of Letters of Credit shall be applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligations) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 9.4(b)(vi))), or (ii) the determination by the Administrative Agent that there exists excess Cash Collateral; provided that (A) Cash Collateral furnished by or on behalf of the Borrower shall not be released during the continuance of a Default under Section 7.1(a) or (f) or an Event of Default and (B) the Person providing Cash Collateral and the applicable L/C Issuer(s) may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations hereunder.

SECTION III REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders on the Closing Date and at the time of each Credit Extension that:

Section 3.1 No Material Adverse Effect

Since December 31, 2022, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

Section 3.2 Existence, Qualification and Power; Compliance with Laws

The Borrower (a) is a Person duly incorporated, organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation to the extent such concept exists in such jurisdiction, (b) has all requisite organizational power and authority to execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (where relevant) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs and injunctions and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except in each case referred to in clauses (c), (d) or (e), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. The Borrower has no Subsidiaries.

Section 3.3 Authorization; No Contravention

The execution, delivery and performance the Borrower of each Loan Document to which the Borrower is a party and the execution, delivery and performance of the Inventory Services Agreement (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not (i) contravene the terms of any of the Borrower's Organization Documents, (ii) conflict with or result in any breach or contravention of, trigger the creation of any Lien (other than any Permitted Lien), or require any payment to be made under (x) any Contractual Obligation to which the Borrower is a party or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which the Borrower or its property is subject; or (iii) violate any Law; except with respect to any violation, conflict, breach or contravention or payment (but not creation of Liens) referred to in clauses (ii) and (iii), to the extent that such violation, conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect.

Section 3.4 Governmental Authorization

No material approval, consent, exemption, authorization, or other action by, notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Borrower of this Agreement, the Inventory Services Agreement or any other Loan Document, the grant by the Borrower of the Liens granted by it pursuant to the Security Documents, the perfection (if and to the extent required by the Collateral Requirement) or maintenance of the Liens created under the Security Documents (including the priority thereof) or the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents, except for (i) approval, consent, exemption, authorization, or other action by, or notice to, or filing necessary to perfect the Liens on the Collateral granted by the Borrower in favor of the Secured Parties (or release existing Liens) under applicable U.S. law, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in be in full force and effect pursuant to the Collateral Requirement) or (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

Section 3.5 Litigation

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or against any of its properties or revenues that have a reasonable likelihood of adverse determination and such determination either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

Section 3.6 Binding Effect

This Agreement, the Inventory Services Agreement and each other Loan Document to which the Borrower is a party has been duly executed and delivered by the Borrower. This Agreement, the Inventory Services Agreement and each other Loan Document to which the Borrower is a party constitutes, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by (i) Debtor Relief Laws and by general principles of equity or (ii) the need for filings and registrations necessary to create or perfect the Liens on the Collateral granted by the Borrower in favor of the Secured Parties.

Section 3.7 Taxes

Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower has (i) paid any and all federal excise tax to the Alcohol and Tobacco Tax and Trade Bureau, as applicable and (ii) timely filed all tax returns required to have been filed, and has paid all Taxes levied or imposed upon it or its properties, income, profits or assets, that are due and payable, in each case including in its capacity as a withholding agent, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. To the knowledge of the Borrower, there is no proposed Tax deficiency or assessment against the Borrower that, if made would, individually or in the aggregate, have a Material Adverse Effect. For US federal income tax purposes, the Borrower is a wholly-owned direct subsidiary of a US Person that is a corporation and is treated as a “disregarded entity” within the meaning of US Treasury Regulations § 301.7701-3 for US federal income tax purposes.

Section 3.8 ERISA Compliance; Labor Matters

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each Pension Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws and (ii) each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination or opinion/advisory letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service.

(b) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect (i) there are no strikes, or other labor disputes pending or, to the Borrower's knowledge, threatened against the Borrower or the TPB Group, and (ii) the hours worked and payments made to employees of the Borrower or the TPB Group have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters and all payments due from the Borrower or the TPB Group or for which any claim may be made against the Borrower or the TPB Group on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or the TPB Group, as applicable, to the extent required by GAAP. The consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Borrower or the TPB Group (or any predecessor) is a party or by which the Borrower or the TPB Group (or any predecessor) is bound.

(c) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, with respect to each scheme or arrangement mandated by a government other than the United States (a "Foreign Government Scheme or Arrangement") and with respect to each employee benefit plan maintained, contributed to or required to be contributed to by the Borrower or the TPB Group primarily for the benefit of any employees located outside of the United States (a "Foreign Plan"):

(i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;

(ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the Closing Date, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles ("Fully Funded"); and

(iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

Section 3.9 Margin Regulations; Investment Company Act

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation T, U or X of the Board of Governors of the United States Federal Reserve System.

(b) The Borrower is not required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 3.10 Use of Proceeds

The proceeds of the Revolving Credit Loans and the LILO Loans shall be used for general corporate and working capital purposes, including the purchase of Inventory and making Restricted Payments.

Section 3.11 Environmental Matters

Except as would not, individually or in the aggregate, result in a Material Adverse Effect:

(a) The Borrower and the TPB Group are compliance with all Environmental Laws and have received and maintained in full force and effect all Environmental Permits required for their current operations.

(b) No Hazardous Materials are present, or have been released by the Borrower or the TPB Group in, on, within, above, under, affecting or emanating from any real property currently or, to the Borrower's knowledge, previously, owned, leased or operated by the TPB Group in a quantity, location, manner or state that would reasonably be expected to require any cleanup, investigation or remedial action by the Borrower or the TPB Group pursuant to any Environmental Laws.

(c) No Environmental Claim is pending or, to the Borrower's knowledge, threatened , with respect to or in connection with the Borrower or the TPB Group or any real properties now or previously owned, leased or operated by the Borrower or the TPB Group.

(d) No properties now or, to the Borrower's knowledge, previously owned, leased or operated by the Borrower or the TPB Group nor, to the Borrower's knowledge, any property to which the Borrower or the TPB Group has transported or arranged for the transportation of any Hazardous Material is listed or, to the Borrower's knowledge, proposed for listing on the National Priorities List promulgated pursuant to CERCLA, on CERCLIS (as defined in CERCLA) or on any similar federal, state or foreign list of sites requiring investigation or cleanup, nor to the knowledge of the Borrower, is any such property anticipated or to the Borrower's knowledge, threatened to be placed on any such list.

(e) Neither the Borrower nor any member of the TPB Group have assumed or retained any Environmental Liability of any other Person.

Section 3.12 Disclosure

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of the Borrower concerning the Borrower or the TPB Group, to any Agent or any Lender in connection with the transactions contemplated hereby or delivered hereunder or under any other Loan Document (in each case, taken as a whole and as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time made, it being recognized by the Agents and the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 3.13 Security Documents

Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Security Documents, together with such filings and other actions required to be taken hereby or by the applicable Security Documents, are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, a legal, valid, enforceable and perfected Lien on all right, title and interest of the Borrower in the Collateral described therein (to the extent that a Lien may be perfected by such filings and other actions).

Section 3.14 Solvency

On the date hereof after giving effect to the Transactions, and on the date of each Borrowing hereunder (after giving effect to such Borrowing), the Borrower is Solvent.

Section 3.15 Sanctions; Anti-Corruption

(a) Each of the Borrower, and each member of the TPB Group is in compliance (i) in all material respects with applicable Anti-Corruption Laws and Anti-Money Laundering Laws, and (ii) with applicable Sanctions.

(b) The Borrower and the TPB Group have implemented and maintains in effect policies and procedures designed to promote and achieve compliance in all material respects by the Borrower and each member of the TPB Group, and to the Borrower's knowledge, their respective officers, directors, officers and employees with applicable Anti-Corruption Laws and Sanctions.

(c) Neither the Borrower, nor any member of the TPB Group or any of their respective directors, officers or, to the Borrower's knowledge, employees or agents that will act in any capacity in connection with the credit facility established hereby is a Sanctioned Person. None of the Borrower, nor any member of the TPB Group or any of their respective directors, officers or, to the Company's knowledge, employees or agents will use the proceeds of the Revolving Credit Loans, LILO Loans or Letters of Credit in violation of applicable Anti-Corruption Laws or Sanctions. None of the Borrower or any member of the TPB Group is owned or controlled, directly or indirectly, by a Sanctioned Person, is located, organized or resident in a Sanctioned Country.

Section 3.16 Intellectual Property; Licenses, Etc.

Except as would not, individually or in the aggregate, result in a Material Adverse Effect:

(a) The Borrower owns or possesses the right to use all of the trademarks, service marks, trade names, trade dress, logos, domain names and all good will associated therewith, copyrights, patents, patent rights, trade secrets, know-how, franchises, licenses, and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of its business as currently conducted, without conflict with the rights of any other Person.

(b) The Borrower holds all right, title and interest in and to such owned IP Rights free and clear of any Lien (other than Permitted Liens).

(c) No slogan or other advertising device, product, process, method, substance, part or other material or activity now employed, or now contemplated to be employed, by the Borrower infringes upon, misappropriates or otherwise violates any rights held by any other Person.

Section 3.17 Inventory

Without limiting the statements contained in any Borrowing Base Certificate, the statements in each Borrowing Base Certificate are or will be (when such Borrowing Base Certificate is delivered) true and correct in all material respects. The Administrative Agent may rely, in determining which Inventory are Eligible Inventory, on all statements and representations made by the Borrower with respect thereto.

Section 3.18 Borrowing Base Calculation.

The calculation by the Borrower of each Borrowing Base and LILO Borrowing Base in any Borrowing Base Certificate delivered to the Administrative Agent and the valuation thereunder is complete and accurate in all material respects as of the date of such delivery.

Section 3.19 Deposit Accounts

Subject to Section 2.21, all deposit accounts owned by the Borrower shall be Controlled Accounts.

Section 3.20 Real Property

The Borrower owns no Real Property.

Section 3.21 Insurance. The property of the Borrower is insured with financially sound insurance companies (which may be Affiliates of the Borrower), in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower operates.

Section 3.22 Financial Statements.

(a) The annual financial statements of the Company and its Subsidiaries dated as of December 31, 2022 previously delivered to the Lenders and any annual financial statements of the Company and its Subsidiaries delivered hereunder: (A) were (or will be when delivered) prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (B) fairly present, in all material respects, the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (C) show all material indebtedness and other liabilities, direct or contingent, of the Company and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness to the extent required by GAAP and (D) were (or will be when delivered) accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Company and its Subsidiaries, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand.

(b) The quarterly financial statements of the Company and its Subsidiaries for the period ended June 30, 2023 previously delivered to the Lenders and any quarterly financial Statements of the Company and its Subsidiaries delivered hereunder: (A) were (or will be when delivered) each prepared in accordance with GAAP consistently applied throughout the period covered thereby, subject only to normal year-end audit adjustments and the absence of footnotes, except as otherwise expressly noted therein, (B) fairly present, in all material respects, the financial condition of the Company and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby and (C) were (or will be when delivered) accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Company and its Subsidiaries, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand.

Section 3.23 Certain Licenses. To the knowledge of the Borrower, the Company and each member of the TPB Group (in each case, to the extent that its business activities would require it to do so under applicable law) is a licensed distributor of Tobacco Inventory in each jurisdiction in which the conduct or nature of its business activities requires that it be a licensed distributor of Tobacco Inventory, and there is no licensing deficiency in any jurisdiction that would have a Material Adverse Effect.

SECTION IV CONDITIONS PRECEDENT

Section 4.1 Conditions to Closing Date and Initial Borrowing Date

The agreement of each Lender (including each L/C Issuer) to make the initial extension of credit requested to be made by it hereunder is subject to the satisfaction (or waiver in accordance with Section 9.2) of the following conditions precedent:

(a) The Administrative Agent shall have received this Agreement, the Security Agreement, the Inventory Services Agreement, the Transfer and Contribution Agreement and the other Security Documents required to be executed on the Closing Date, in each case, executed and delivered by each party thereto.

(b) The Inventory Services Agreement and the Leases shall have become effective, it being understood that the Administrative Agent shall have the benefit of all deliverables thereunder.

(c) All fees and expenses in connection with the Revolving Credit Facility (including reasonable out-of-pocket legal fees and expenses) payable by the Borrower to the Lenders and the Agents on or before the Closing Date shall have been paid to the extent then due; provided that all such amounts shall be required to be paid, as a condition precedent to the Closing Date, only to the extent invoiced at least three (3) Business Days prior to the Closing Date.

(d) The Administrative Agent shall have received a solvency certificate in the form of Exhibit H from the chief financial officer of the Company with respect to the solvency of the Borrower.

(e) The Administrative Agent shall have received the following:

(i) a copy of the charter or other similar Organization Document of the Borrower and each amendment thereto, certified (as of a date reasonably near the date of the initial extension of credit) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which the Borrower is organized or incorporated; and

(ii) a copy of a certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which the Borrower is organized, dated within thirty (30) days of the Closing Date, certifying that such Person is duly organized and in good standing under the laws of such jurisdiction; and

(iii) a certificate of the Secretary, Assistant Secretary or other appropriate Responsible Officer of the Borrower dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws, or operating or partnership agreement of the Borrower as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrower authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or formation, partnership agreement or other constitutive documents of the Borrower have not been amended since the date the documents furnished pursuant to clause (i) above were certified and (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of the Borrower.

(f) All UCC financing statements in the jurisdiction of organization of the Borrower and filings with the United States Copyright Office and the United States Patent and Trademark Office to be filed, registered or recorded to perfect the Liens intended to be created by any Security Document to the extent required by, and with the priority required by, such Security Document shall have been delivered to the Agents in appropriate form for filing, registration or recording and the Collateral Agent shall have received all certificated pledged Capital Stock and instruments, in each case, constituting Collateral in suitable form for transfer by delivery or accompanied by instruments of transfer or assignment duly executed in blank.

(g) (i) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects and (ii) at least three days prior to the Closing Date, to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall deliver a Beneficial Ownership Certification.

(h) The representations and warranties contained in (i) Section III hereof and (ii) Article VII of the Inventory Services Agreement shall be true and correct in all material respects (except to the extent qualified by materiality or Material Adverse Effect, in which case such representations shall be true and correct in all respects and except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date) (provided that, in each case such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality or Material Adverse Effect).

(i) The Agents shall have received, and be satisfied with, the final report in respect of the field exams conducted by Charter Diligence Group and appraisals conducted by Hilco Global.

(j) The Borrower shall have delivered to the Administrative Agent the Closing Date Borrowing Base Certificate and after giving effect to the Transactions and any extensions of credit on the Closing Date, the Total Revolving Credit Exposure would not exceed the Line Cap.

(k) The Administrative Agent shall have received an opinion from Milbank LLP, with respect to matters of New York law, certain aspects of Delaware law and the true sale nature of any transfers to the Borrower of Inventory from the Operating Companies on the Closing Date.

(l) The Company and its Restricted Subsidiaries shall have Unrestricted Cash in an aggregate amount greater than or equal to (x) $90,000,000 minus (y) the aggregate principal amount of the Convertible Notes repaid or redeemed by the Company on and after July 1, 2023 and prior to the Closing Date.

(m) The Borrower shall have delivered to the Administrative Agent an officer's certificate certifying as to the matters set forth in subclauses (b), (h) and (l) of this Section 4.1 and that no Default or Event of Default has occurred or will result from the consummation of the Transactions.

(n) The Refinancing shall have been consummated or substantially concurrently be consummated on the Closing Date.

(o) The Borrower shall have Excess Availability no less than $50,000,000.

(p) The Inventory Transfer shall have been consummated pursuant to the Transfer and Contribution Agreement.

Section 4.2 Conditions to Each Post-Closing Extension of Credit

The agreement of each Lender (including each L/C Issuer) to make any Credit Extension requested to be made by it hereunder on any date, excluding the Initial Borrowing Date, (other than (x) Agent Advances and (y) a conversion of Loans to the other Type, or a continuation of Term Benchmark Loans) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by the Borrower in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date (provided that, in each case such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified by materiality or Material Adverse Effect).

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or immediately after giving effect to the extensions of credit requested to be made on such date.

(c) Borrowing Notice; L/C Application. The Administrative Agent and, if applicable, the applicable L/C Issuer shall have received a written Borrowing Request or an L/C Application, as applicable, in accordance with the requirements hereof.

(d) Borrowing Base Limitations. After giving effect thereto (and the use of the proceeds thereof) the Total Credit Exposure would not exceed the Line Cap at such time.

Each Borrowing of a Loan or issuance of a Letter of Credit (other than (x) Agent Advances and (y) a conversion of Loans to the other Type, or a continuation of Term Benchmark Loans) shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 4.2 have been satisfied.

Notwithstanding anything in this Section 4.2 to the contrary, the effectiveness of any Extension Amendment shall be subject only to the conditions precedent set forth in Section 2.22 and to such conditions as are mutually agreed between the Borrower and the Lenders party to the Extension Amendment.

SECTION V AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitments hereunder, any Loan or other Obligation (other than contingent obligations not yet due and owing) hereunder which is accrued and payable shall remain unpaid or unsatisfied or any Letters of Credit have not expired or been canceled (without any pending drawings), the Borrower shall:

Section 5.1 Financial Statements, Certificates and Other Information

(a) Deliver, or cause the Company to deliver, to the Administrative Agent for prompt further distribution to each Lender:

(i) within 90 days after the end of each Fiscal Year of the Company (commencing with the Fiscal Year ending December 31, 2023) (or such later date as maybe be permitted for the filing of the Company's Annual report on Form 10-K for the applicable fiscal year, but in no event later than 120 days after the end of each Fiscal Year of the Company), a consolidated balance sheet of the Company and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations for such Fiscal Year, together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Company, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of RSM US LLP or any other independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" qualification, "going concern" exception or "going concern" explanatory paragraph (other than a "going concern" qualification, exception or explanatory paragraph resulting solely from an upcoming maturity date under any Indebtedness occurring within one year from the time such opinion is delivered) or any qualification or exception paragraph as to the scope of such audit; provided that the foregoing financial statements are accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Company and its Subsidiaries, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand and are accompanied by consolidating financial statements that segregate out the Borrower; and

(ii) in connection with each of the first three fiscal quarters of each Fiscal Year of the Company (commencing with the fiscal quarter ending September 30, 2023), within 45 days after the end of each such fiscal quarter (or such later date as maybe be permitted for the filing of the Company's Quarterly report on Form 10-Q for the applicable fiscal quarter, but in no event later than 75 days after the end of each such fiscal quarter of each Fiscal Year of the Company), a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Company's Fiscal Year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by the chief executive officer, chief financial officer, chief accounting officer, treasurer or controller of the Company as fairly presenting, in all material respects, the financial condition and results of operations, of the Company and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Company; provided that the foregoing financial statements are accompanied by a reconciliation that explains or otherwise shows in reasonable detail the differences between the information relating to the Company and its Subsidiaries, on the one hand, and the information relating to the Company and its Restricted Subsidiaries on a standalone basis, on the other hand and are accompanied by consolidating financial statements that segregate out the Borrower; and

(b) concurrently with the delivery of any financial statements pursuant to Sections 5.1(a)(i) and 5.1(a)(ii), a Compliance Certificate of a Responsible Officer of the Borrower that shall include, or have appended thereto, (x) a statement that such Responsible Officer of the Borrower has obtained no knowledge of any continuing Event of Default, or if any such Event of Default has occurred and is continuing, specifying the nature and extent thereof and any action taken or proposed to be taken with respect thereto and (y) which shall include calculations with respect to the Consolidated Fixed Charge Coverage Ratio to the extent (i) a Covenant Trigger Event exists or (ii) Excess Availability is less than 15% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) for purposes of "reporting" the Consolidated Fixed Charge Coverage Ratio.

(c) from and after the Closing Date, (i) unless clause (ii) below applies, not later than 5:00 p.m., New York City time on or before the twentieth (20th) day of each Fiscal Month (or, with respect to the first two Fiscal Months following the Closing Date, the thirtieth (30th) day of each such Fiscal Month) or more frequently as the Borrower may elect, so long as the frequency of delivery is maintained by the Borrower for the immediately following one hundred twenty (120) day period, and (ii) during any period in which a (A) Liquidity Condition is in effect and in respect of which the Administrative Agent has delivered notice thereof as contemplated by the definition thereof or (B) Event of Default has occurred, not later than 5:00 p.m., New York City time, on or before Wednesday of each week, in each case, a borrowing base certificate setting forth the Borrowing Base (in each case with supporting calculations in reasonable detail) substantially in the form of Exhibit I and including adjustments to reflect the LILO Borrowing Base to the extent any LILO Loans are outstanding hereunder at the time the applicable certificate is delivered and signed by a Responsible Officer of the Borrower or the Company (each, a "Borrowing Base Certificate"), which shall be prepared as of the last Business Day of the preceding Fiscal Month in the case of each subsequent Borrowing Base Certificate (or, if any such Borrowing Base Certificate is delivered more frequently than monthly, as of the last Business Day of the week or other applicable period preceding such delivery). Each such Borrowing Base Certificate shall include such supporting information as may be reasonably requested from time to time by the Administrative Agent;

(d) promptly after the written request by any Lender, customary documentation and other information that such Lender reasonably requests in writing in order to comply with its ongoing obligations under applicable "know your customer" and Anti-Money Laundering Laws, including the PATRIOT Act and the Beneficial Ownership Regulation; and

(e) promptly, such additional financial and other information regarding the business, legal, financial or corporate affairs of the Borrower or the Company and its other Restricted Subsidiaries or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request (including a list of jurisdictions in which the Borrower is a licensed distributor of Tobacco Inventory).

In no event shall the requirements set forth in Section 5.1(e) require the Borrower to provide any such information which (i) constitutes non-financial trade secrets or non-financial proprietary information of the Borrower, the Company or any of their Subsidiaries, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Law, fiduciary duty or Contractual Obligation (not created in contemplation thereof) or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product.

Section 5.2 Inventory Services Agreement

Promptly deliver to the Administrative Agent copies of all notices delivered to it under the Inventory Services Agreement and, if a Default or Event of Default has occurred, to exercise its rights under the Inventory Services Agreement as directed by the Administrative Agent.

Section 5.3 Payment of Taxes

Pay, discharge or otherwise satisfy as the same shall become due and payable, all its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax is being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with GAAP or (b) the failure to pay or discharge the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.4 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(b) take all reasonable action to maintain all rights, privileges (including its good standing where applicable in the relevant jurisdiction), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except, in the case of this Section 5.4(b), to the extent that failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.5 Insurance

(a) Maintain with financially sound insurance companies (which may Affiliates of the Borrower), insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons.

(b) The Borrower shall use commercially reasonable efforts to provide that each such policy of insurance held by (or for the benefit of) the Borrower (other than worker's compensation, directors and officers liability or other insurance where such endorsements or additions are not customarily available) shall (i) name the Administrative Agent, on behalf of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Administrative Agent, that names the Administrative Agent, on behalf of the Secured Parties, as the loss payee/mortgagee thereunder and provide for at least thirty days' prior written notice to the Administrative Agent of any modification or cancellation of such policy, in each case, to the extent acceptable to the insurer.

Section 5.6 Inspection Rights; Appraisals

(a) Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower, it being agreed that, while the provisions of this Section 5.6 are for the benefit of the Agents and the Lenders, only the Administrative Agent on behalf of the Lenders may exercise rights under this Section 5.6 in consultation with the Additional Collateral Agent; provided that the Administrative Agent shall not exercise such rights more often than one time during any calendar year and such time shall be at the Borrower's expense; provided further that during the continuation of an Event of Default, the Administrative Agent (or any of its representatives or independent contractors), in consultation with the Additional Collateral Agent on behalf of the Lenders, may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. Notwithstanding anything to the contrary in this Section 5.6, the Borrower will not be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Agents or any Lender (or their respective representatives or contractors) is prohibited by Law, fiduciary duty or any Contractual Obligation (not created in contemplation of avoiding such requirements) or (c) is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) In addition to the foregoing, from time to time upon the request of the Administrative Agent (in consultation with the Additional Collateral Agent), permit the Administrative Agent or professionals (including consultants, accountants, lawyers and appraisers) retained by the Agents, on reasonable prior notice and during normal business hours, to conduct appraisals and field examinations, including, without limitation, of (i) the Borrowers' practices in the computation of the Borrowing Base and the LILO Borrowing Base, and (ii) the assets subject to the Borrowing Base and the LILO Borrowing Base and related financial information. The Borrower shall pay the reasonable out-of- pocket fees and expenses of the Administrative Agent or such professionals with respect to such evaluations and appraisals performed by personnel employed by the Administrative Agent in consultation with the Additional Collateral Agent; provided that:

(i) the Administrative Agent may conduct no more than one field examination in any calendar year; provided further that the Administrative Agent, in its reasonable discretion, (A) if any Event of Default exists, may cause such additional field examinations to be made as the Administrative Agent, in consultation with the Additional Collateral Agent, reasonably determines (each, at the expense of the Borrower) and (B) at any time that Excess Availability is or has been less than the greater of (x) $16,875,000 and (y) 22.5% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) during any calendar year, the Administrative Agent may conduct up to two field examinations in such calendar year at the Borrower's expense (provided that, the Administrative Agent may, in consultation with the Additional Collateral Agent, undertake at its sole expense, one additional field examination per calendar year absent and Event of Default); and

(ii) the Administrative Agent may (including if requested by the Additional Collateral Agent) undertake no more than one appraisal of Inventory (including for each category) of the Borrower in any calendar year; provided further that the Administrative Agent, in its reasonable discretion, may (A) if any Event of Default exists, cause such additional appraisals to be taken as the Administrative Agent, in consultation with the Additional Collateral Agent, reasonably determines (each, at the expense of the Borrower) and (B) at any time that Excess Availability is or has been less than the greater of (a) 22.5% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) and (b) $16,875,000 at any time during any calendar year, cause such additional appraisals of Inventory (including for each category) as the Administrative Agent, in consultation with the Additional Collateral Agent, reasonably determine in such calendar year at the Borrower's expense (provided that the Administrative Agent may, in consultation with the Additional Collateral Agent, undertake at its sole expense, one additional appraisal per calendar year absent an Event of Default).

Section 5.7 Notices

Promptly after a Responsible Officer of the Borrower has obtained knowledge thereof, notify the Administrative Agent:

(a) of the occurrence of any Default or Event of Default hereunder or any default or Event of Default (each as defined in or pursuant to the Inventory Services Agreement);

(b) of the occurrence of an ERISA Event which could reasonably be expected to result in a Material Adverse Effect;

(c) of the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority against the Borrower that could reasonably be expected to result in a Material Adverse Effect;

(d) of the occurrence of a Covenant Trigger Event or a circumstance that, with or without the giving of notice, would commence a Dominion Period

(e) of the occurrence of any other matter or development that has had or could reasonably be expected to have a Material Adverse Effect; and

(f) if, at any time after the date set forth in clause (i)(y) of the definition of "Maturity Date", the sum of amounts set forth in clauses (A)(x), (y) and (z) are reduced below the amount required to repay such Material Debt.

Each notice pursuant to this Section 5.7 shall be accompanied by a written statement of a Responsible Officer of the Borrower (x) that such notice is being delivered pursuant to Section 5.7(a), (b), (c), (d) or (e) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 5.8 Compliance with Environmental Laws

Except, in each case, to the extent that the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) comply, and take all commercially reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; and (c) in each case to the extent the Borrower is required by Governmental Authorities or otherwise pursuant to Environmental Laws, conduct any investigation, remedial or other corrective action necessary to address Hazardous Materials at any property or facility in accordance with applicable Environmental Laws.

Section 5.9 Additional Collateral

At the Borrower's expense, subject to the terms, conditions and provisions of the Collateral Requirement and any applicable limitation in any Security Document, take all action necessary or reasonably requested by the Administrative Agent to ensure that the Collateral Requirement continues to be satisfied.

Section 5.10 Use of Proceeds

Use the proceeds of the Revolving Credit Loans, the LILO Loans and the Letters of Credit issued hereunder for general corporate and working capital purposes including the purchase of Inventory and the making of Restricted Payments to the Company.

Section 5.11 Further Assurances; Post-Closing Obligations

(a) Promptly upon reasonable request by the Administrative Agent (i) correct any mutually identified material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Security Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Security Documents, to the extent required pursuant to the Collateral Requirement and subject in all respects to the limitations therein.

(b) Execute and deliver the documents and complete the tasks set forth on Schedule 5.11, in each case within the time limits specified therein (or such longer period of time reasonably acceptable to the Administrative Agent).

(c) Upon the request of the Administrative Agent (which the Administrative Agent shall not request unless either negotiable documents of title are issued for any Inventory in transit or an Event of Default exists), use commercially reasonable efforts to cause each of its customs brokers to deliver an agreement (including, without limitation, a Customs Broker Agreement) to the Agents covering such matters and in such form as the Administrative Agent may reasonably require. In the event Inventory is in the possession or control of a customs broker that has not delivered an agreement as required by the preceding sentence, such Inventory shall not be considered Eligible In-Transit Inventory hereunder.

Section 5.12 Borrower's Tax Status

The Borrower will remain a wholly-owned direct subsidiary of a US Person that is a corporation for US federal income tax purposes. No action will be taken that would cause the Borrower to be treated other than as a "disregarded entity" within the meaning of US Treasury Regulations § 301.7701-3 for US federal income tax purposes.

Section 5.13 Compliance with Laws.

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.14 Books and Records

Maintain proper books of record and account, in which all entries shall be full, true and correct in all material respects and shall be in conformity with GAAP and which shall reflect all material financial transactions and matters involving the assets and business of the Borrower.

Maintain and implement administrative and operating procedures (including an ability to recreate records evidencing the Inventory and related contracts in the event of the destruction of the originals thereof), and keep and maintain all documents, books, records, computer tapes and disks and other information reasonably necessary or advisable for the collection of all Inventory (including records adequate to permit the daily identification of the Inventory).

Section 5.15 Separate Existence

The Borrower and the Administrative Agent and the Lenders hereby acknowledge that the Administrative Agent and the Lenders are entering into the transactions contemplated by this Agreement and the other Loan Documents in reliance upon the Borrower's identity as a legal entity separate from the Operating Companies and their respective Affiliates. Therefore, from and after the date hereof, each of the Borrower and each of the Operating Companies shall take all steps necessary to make it apparent to third Persons that the Borrower is an entity with assets and liabilities distinct from those of Operating Companies and any other Person, and is not a division of the Operating Companies, their respective Affiliates or any other Person. Without limiting the generality of the foregoing and in addition to and consistent with the other covenants set forth herein, the Borrower shall take such actions as shall be required in order that:

(a) The Borrower will be a limited liability company whose primary activities are restricted in its LLC Agreement to: (i) purchasing or acquiring Inventory on the Closing Date from the Company and otherwise acquiring Inventory after the Closing Date from third-party suppliers, (ii) entering into and performing its obligations in accordance with any agreement providing for the sale of inventory in the ordinary course of business, (iii) borrowing money, or otherwise financing, or receiving capital contributions, consistent with the provisions of the Loan Documents, (iv) pledging or otherwise granting a security interest in Collateral to secure such borrowing or other obligations of the Borrower, (v) entering into the Inventory Services Agreement and any amendments thereto that are permitted by the terms hereof, (vi) issuing limited liability company interests as provided for in its limited liability company agreement and any other securities deemed appropriate by its board of managers, (vii) taking any and all other actions necessary to maintain its existence as a limited liability company in good standing under the laws of the State of Delaware and to qualify the Borrower to do business as a foreign entity in any other state in which such qualification is required, (viii) paying the organizational, start-up and transaction expenses of the Borrower, and (ix) engaging in any lawful act or activity and exercising any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes (including the establishment of bank accounts);

(b) The Borrower shall not engage in any business or activity except as is consistent with the Loan Documents and permitted under its limited liability company agreement and shall not incur any Indebtedness other than as permitted by the Loan Documents;

(c) (i) Not less than one member of the Borrower's board of managers (the "Independent Manager") shall be a natural person who (A) shall not have been at the time of such Person's appointment or at any time during the preceding five years and shall not be as long as such person is a director or manager of the Borrower (1) a director, officer, employee, partner, shareholder, member, manager or Affiliate of any of the following Persons (collectively, the "Independent Parties"): the Company or any of their respective Subsidiaries or Affiliates (other than another special purpose entity which is a Subsidiary or Affiliate of the Company), (2) a supplier to any of the Independent Parties, (3) the beneficial owner (at the time of such individual's appointment as an Independent Manager or at any time thereafter while serving as an Independent Manager) of any of the outstanding membership or other equity interests of the Company or any of its respective Subsidiaries or Affiliates having general voting rights, (4) a Person Controlling or under common Control with any director, officer, employee, partner, shareholder, member, manager, affiliate or supplier of any of the Independent Parties, or (5) a member of the immediate family of any director, officer, employee, partner, shareholder, member, manager, affiliate or supplier of any of the Independent Parties, and (C) is otherwise reasonably acceptable to the Administrative Agent as evidenced in a writing signed by the Administrative Agent. Under this clause (c), the term "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests, and (ii) the operating agreement of the Borrower shall provide that: (A) the Borrower's board of managers or other governing body shall not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to the Borrower unless the Independent Manager shall approve the taking of such action in writing before the taking of such action, and (B) such provision and each other provision requiring an Independent Manager cannot be amended without the prior written consent of the Independent Manager.

(d) The Independent Manager shall not at any time serve as a trustee in bankruptcy for the Borrower, the Operating Companies or any of their respective Affiliates;

(e) The Borrower shall maintain its Organization Documents in conformity with this Agreement, such that it does not amend, restate, supplement or otherwise modify its ability to comply with the terms and provisions of any of the Loan Documents;

(f) The Borrower shall conduct its affairs strictly in accordance with its Organization Documents and observe all necessary, appropriate and customary company formalities, including, but not limited to, holding all regular and special members' and board of manager's meetings appropriate to authorize all limited liability company action, keeping separate and accurate minutes of its meetings, passing all resolutions or consents necessary to authorize actions taken or to be taken, and maintaining accurate and separate books, records and accounts, including, but not limited to, payroll and intercompany transaction accounts; provided that the Borrower's assets and liabilities may be included in a consolidated financial statement issued by an affiliate of the Borrower as set forth in clause (l);

(g) Any employee, consultant or agent of the Borrower will be compensated from the Borrower's funds for services provided to the Borrower, and to the extent that Borrower shares the same officers or other employees the Operating Companies (or any other Affiliate thereof), the salaries and expenses relating to providing benefits to such officers and other employees shall be fairly allocated among such entities, and each such entity shall bear its fair share of the salary and benefit costs associated with such common officers and employees;

(h) The Borrower will contract with the Manager to perform for the Borrower all operations required on a daily basis to service the Inventory as set forth in the Inventory Services Agreement. To the extent, if any, that the Borrower (or any Affiliate thereof) shares items of expenses, such as legal, auditing and other professional services, such expenses will be allocated to the extent practical on the basis of actual use or the value of services rendered, and otherwise on a basis reasonably related to the actual use or the value of services rendered; it being understood that the Operating Companies shall pay all expenses relating to the preparation, negotiation, execution and delivery of the Loan Documents, including legal, agency and other fees;

(i) The Borrower's operating expenses will not be paid by the Operating Companies or any Affiliate thereof (other than certain organizational expenses paid by the Operating Companies and other than in the performance by the Operating Companies of servicing activities pursuant to the Loan Documents);

(j) The Borrower will have its own separate stationery;

(k) The Borrower's books and records will be maintained separately from those of the Operating Companies and any other Affiliate thereof and in a manner such that it will not be difficult or costly to segregate, ascertain or otherwise identify the assets and liabilities of Borrower; provided that the Borrower's assets and liabilities may be included in a consolidated financial statement issued by an affiliate of the Borrower as set forth in clause (l);

(l) All financial statements of the Operating Companies or any of their Affiliates that are consolidated to include the Borrower will disclose (in such financial statements or in the notes thereto) that the assets of the Borrower are not available to pay creditors of the Operating Companies or any of their Affiliates;

(m) The Borrower's assets will be maintained in a manner that facilitates their identification and segregation from those of the Operating Companies or their Affiliates;

(n) The Borrower will strictly observe limited liability company formalities in its dealings with the Operating Companies or any of their Affiliates, and funds or other assets of the Borrower will not be commingled with those of the Operating Companies or any of their Affiliates except in the case of the Manager as permitted by this Agreement in connection with servicing the Inventory. The Borrower shall not maintain joint bank accounts or other depository accounts to which the Operating Companies or any of their Affiliates has independent access. The Borrower is not named, and has not entered into any agreement to be named, directly or indirectly, as a direct or contingent beneficiary or loss payee on any insurance policy with respect to any loss relating to the property of the Operating Companies or their Affiliates;

(o) The Borrower will maintain arm's-length relationships with the Operating Companies (and any of their Affiliates);

(p) To the extent that the Borrower and the Company (or any Subsidiary or Affiliate thereof) have offices in the same location, there shall be a fair and appropriate allocation of overhead costs between them, and each shall bear its fair share of such expense;

(q) The Borrower will correct any known misunderstanding regarding its separate existence and identity; and

(r) The Borrower will not guaranty or otherwise become liable with respect to indebtedness of the Company or any of its Subsidiaries nor permit guaranties or liability by the Company or any of its Subsidiaries of the indebtedness of the Borrower.

Section 5.16 Physical Inventories

Cause, at its own expense, not less than one physical count of Inventory to be undertaken in each 12-month period (or alternatively, periodic cycle counts) in conjunction with the preparation of its annual audited financial statements, conducted in a manner, at the times and following such methodology as is, in each case, consistent with historical practice in effect immediately prior to the Closing Date or as otherwise may be reasonably satisfactory to the Administrative Agent. Following the completion of such Inventory count, and in any event by the next date required for the delivery of a Borrowing Base Certificate hereunder, the Borrower shall deliver the results of such physical inventory to the Administrative Agent and shall post such results to the Borrower's stock ledgers and general ledgers, as applicable.

5. 17 Lender Meetings

If requested in writing by the Administrative Agent, participate in an annual meeting of the Administrative Agent and the Lenders to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent, including by telephonic or video conference calls) at such time as may be agreed to by the Borrower and the Administrative Agent.

SECTION VI NEGATIVE COVENANTS

The Borrower agrees that until the Obligations have been paid in full, all Commitments have been terminated and all Letters of Credit have expired or been canceled (without any pending drawings):

Section 6.1 Financial Covenant

It shall be an Event of Default if, upon the occurrence and during the continuance of a Covenant Trigger Event, (a) as of the last day of the most recently ended Test Period prior to the occurrence of such Covenant Trigger Event and (b) as of the last day of each Test Period ended thereafter during the continuance of such Covenant Trigger Event, the Consolidated Fixed Charge Coverage Ratio of the Company and its Restricted Subsidiaries is less than 1.00 to 1.00.

Section 6.2 Limitation on Indebtedness

The Borrower shall not, directly or indirectly, create, incur, assume, guaranty or suffer to exist any Indebtedness or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) Indebtedness pursuant to any Loan Document;

(b) to the extent constituting Indebtedness, Hedging Agreements incurred in the ordinary course of business, Bank Product Obligations and other Indebtedness in respect of Bank Product Services in the ordinary course of business and Indebtedness arising from the endorsement of instruments or other payment items for deposit and the honoring by a bank or other financial institution of instruments or other payment items drawn against insufficient funds; and

(c) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business or consistent with past practice.

To the extent otherwise constituting Indebtedness, the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall be deemed not to be Indebtedness for purposes of this Section 6.2. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the accreted amount thereof.

Section 6.3 Sales, Liens, etc.

Except as otherwise provided herein, the Borrower shall not sell, assign (by operation of law or otherwise) or otherwise Dispose of, or create or suffer to exist any Lien (other than a First Priority Priming Lien) upon (including, without limitation, the filing of any financing statement) or with respect to, any asset or property, or assign any right to receive income in respect thereof, except for:

(a) Liens for Taxes, or other statutory obligations, not at the time due and payable or that are being contested in good faith by appropriate proceedings (provided that adequate reserves with respect to such proceedings are maintained on the books of the Borrower in accordance with GAAP);

(b) Liens created pursuant to the Loan Documents;

(c) any interest or title of a lessor, sub-lessor, licensor or sub-licensor under leases, subleases, licenses or sublicenses entered into by the Borrower in the ordinary course of business;

(d) Liens in connection with attachments or judgments or orders in circumstances not constituting an Event of Default under Section 7.1(h);

(e) Liens on insurance policies and the proceeds thereof securing insurance premium financings permitted hereunder;

(f) (i) Liens of a collection bank arising under Section 4-208 of the Uniform Commercial Code on the items in the course of collection, (ii) customary Liens in favor of credit card or merchant processors as described in Section 2.21(c) and (iii) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to accounts and Cash and Cash Equivalents on deposit in accounts maintained by the Borrower (including any restriction on the use of such Cash and Cash Equivalents or investment property), in each case under this clause (iii) granted in the ordinary course of business or consistent with past practice in favor of the banks or other financial or depositary institutions with which such accounts are maintained, securing amounts owing to such Person with respect to Bank Product Services (including operating account arrangements and those involving pooled accounts and netting arrangements, but excluding amounts owed in respect of Hedging Agreements); provided that, in the case of this clause (iii), (x) unless such Liens arise by operation of applicable law, in no case shall any such Liens secure (either directly or indirectly) any Indebtedness for borrowed money and (y) Reserves may be established with respect to any such Liens to the extent such Liens constitute First Priority Priming Liens;

(g) Liens deemed to exist in connection with Investments in repurchase agreements that are Cash and Cash Equivalents under Section 6.7;

(h) Liens that are customary contractual rights of setoff relating to purchase orders and other agreements entered into with customers of the Borrower in the ordinary course of business or consistent with past practice;

(i) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating leases, reciprocal easement or similar agreements entered into in the ordinary course of business or consistent with past practice of the Borrower;

(j) Disposition, discount or compromise of accounts receivable in connection with the collection thereof in the ordinary course of business or consistent with past practice (and not for financing purposes); and

(k) sales of Inventory in the ordinary course of business.

Section 6.4 Limitation on Fundamental Changes

The Borrower shall not merge or consolidate with or into, or convey, transfer, lease or otherwise Dispose of (whether in one transaction or in a series of transactions) any of its Inventory (whether now owned or hereafter acquired) to, any Person other than sales in the ordinary course of business permitted under Section 6.3.

The Borrower shall provide the Administrative Agent with at least 10 days' prior written notice (or such shorter period as the Administrative Agent may agree in its discretion) before making any change in the Borrower's legal name, chief executive office, location of organization or the making of any other change in the Borrower's identity or corporate structure that could render any UCC financing statement filed in connection with this Agreement or any other Loan Document "seriously misleading" as such term (or similar term) is used in the applicable UCC; each notice to the Administrative Agent pursuant to this sentence shall set forth the applicable change and the proposed effective date thereof.

Section 6.5 Certain Agreements

The Borrower will not amend, modify, waive, revoke or terminate any provision of (a) any Loan Document to which it is a party (other than as permitted by Section 9.2), (b) the Borrower's Organization Documents (other than as permitted by the Required Lenders), or (c) the Inventory Services Agreement or the Leases in any manner that is adverse in any material respect to the interest of the Lenders (other than, in each case, as permitted by the Required Lenders).

The Borrower will not assign (nor permit the Company to assign) any of its rights or obligations under the Inventory Services Agreement without the written consent of the Required Lenders (and any attempted assignment without such consent shall be null and void).

Section 6.6 Limitation on Restricted Payments

The Borrower shall not declare or pay any Restricted Payment, except for the following (each a "Permitted Payment"):

(a) the Borrower may make Restricted Payments (including through the issuance or honoring of any Letter of Credit) pursuant to Section 5.05 of the Inventory Services Agreement;

(b) the Borrower may make Restricted Payments to a direct or indirect parent entity of the Company in amounts required for such Person to pay, without duplication:

(i) franchise taxes and other fees, taxes and expenses to the extent required to maintain its corporate existence;

(ii) so long as the Company is a member of a group filing a consolidated, combined or unitary income tax return for U.S. federal income tax purposes with such Person as the parent of such group, taxes imposed on or measured by income (however denominated) to the extent such taxes are attributable to the income of the Company and its Restricted Subsidiaries and, to the extent of the amount actually received in cash from the Unrestricted Subsidiaries, in amounts required to pay such taxes to the extent attributable to the income of the Unrestricted Subsidiaries, provided, however, that in each case the amount of such payments in any fiscal year does not exceed the amount of income taxes that each of the Company, the relevant Restricted Subsidiaries or its Unrestricted Subsidiaries (to the extent described above) would be required to pay for such fiscal year were each of the Company, its Restricted Subsidiaries or its Unrestricted Subsidiaries (to the extent described above) members of a consolidated, combined or unitary group with the Company as the parent;

(iii) customary salary, bonus, severance, indemnification obligations and other benefits payable to officers, directors, consultants, independent contractors, and employees of such direct or indirect parent entity of the Company to the extent such salaries, bonuses, severance, indemnification obligations and other benefits are attributable to the services provided by the Company and its Restricted Subsidiaries; and

(iv) general corporate overhead and operating expenses for such direct or indirect parent entity of the Company to the extent such expenses are attributable to the services provided by the Company and its Restricted Subsidiaries; and

(c) the Borrower may make additional Restricted Payments, provided that: (i) no Default or Event of Default has occurred and is continuing and (ii) either (A)(1) Pro Forma Availability, after giving effect to such Permitted Payment, as of the date of such of such Permitted Payment and for each of the thirty (30) consecutive calendar days ending immediately prior to such Permitted Payment, is equal to or greater than the greater of (x) 17.5% of the Line Cap and (y) $13,125,000, and (2) the Consolidated Fixed Charge Coverage Ratio of the Company and its Restricted Subsidiaries is at least 1.00:1.00, or (B) Pro Forma Availability, after giving effect to such Permitted Payment, as of the date of such of such Permitted Payment and for each of the thirty (30) consecutive calendar days ending immediately prior to such Permitted Payment, is equal to or greater than the greater of (x) 20.0% of the Line Cap and (y) $15,000,000 and (iii) with respect to any Restricted Payment (or series of related Restricted Payments) made pursuant to this Section 6.6(c), that is in excess of $20,000,000, the Borrower shall have delivered a certificate signed by a Responsible Officer of the Borrower as to compliance with this Section 6.6(c), provided that, in any case, the making of any such Permitted Payment shall constitute a representation and warranty by the Borrower as of the date of such Permitted Payment, but no such additional certification shall be required if Excess Availability is greater than 25% of the Line Cap (without giving effect to any increase thereof during an Agent Advance Period) after giving effect to such Tested Restricted Payments.

Section 6.7 Limitation on Investments

The Borrower shall not make any Investment, except:

(a) Investments in Cash and Cash Equivalents;

(b) Intercompany receivables owing to the Borrower from the Company or any of the Company's Restricted Subsidiaries under the Inventory Services Agreement;

(c) extensions of trade credit or the holding of receivables in the ordinary course of business or consistent with past practice and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business or consistent with past practice, in each case, with parties that are not Affiliates of the Borrower;

(d) deposits made in the ordinary course of business or consistent with past practice to secure the performance of leases; or

(e) Investments consisting of Liens permitted under Section 6.3.

Section 6.8 Borrower Subsidiaries.

The Borrower shall not create or acquire any Subsidiaries.

Section 6.9 Limitation on Transactions with Affiliates

The Borrower shall not enter into any transaction, including any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate except

(a) as expressly contemplated by the Inventory Services Agreement or the Lease, this Agreement or the other Loan Documents (including in order to comply with Section 5.15 hereof),

(b) any Restricted Payment or other payment contemplated by Section 6.6,

(c) other transactions (including the lease of office or warehouse space or computer equipment or licensing of software by the Borrower to or from an Affiliate) (i) in the ordinary course of business, (ii) pursuant to the reasonable requirements of the Borrower's business, or (iii) on terms (taken as a whole) substantially as favorable to the Borrower as would be obtainable by the Borrower at the time in a comparable arm's-length transaction with a Person other than an Affiliate or, if no such comparable transaction exists, on terms fair to the Borrower from a financial point of view; and

(d) any compensation arrangement for officers of the Borrower if such arrangement has been approved by the board of directors of the Borrower.

Section 6.10 Payments for Cash; Change in Payment Instructions

(a) The Borrower shall ensure that all sales of Inventory are not for terms greater than ninety (90) days and to the extent a Dominion Period exists, all sales must be for cash payment.

(b) The Borrower shall not add to, replace or terminate any of the Designated Deposit Accounts (or any related lock-box or post office box) or make any change in its instructions to its customers regarding payments to be made to the TPB Designated Accounts (or the Designated Deposit Accounts (or, in each case, any related lock-box or post office box)), unless the Administrative Agent shall have received (x) prior written notice of such addition, termination or change and (y) a signed and acknowledged Cash Management Control Agreement (or amendment thereto) with respect to such new TPB Designated Accounts or Designated Deposit Accounts (or, in each case, any related lock-box or post office box).

Section 6.11 Change in Business

After the Closing Date, the Borrower shall purchase all of its Inventory directly from entities that are not affiliates of the Borrower. The Borrower will not make any change in the character of its business that could reasonably be expected to have a Material Adverse Effect.

SECTION VII EVENTS OF DEFAULT

Section 7.1 Events of Default

If any of the following events shall occur and be continuing:

(a) (i) the Borrower shall fail to pay any principal of any Loan when due in accordance with the terms hereof; or (ii) the Borrower shall fail to pay any interest on any Loan or any L/C Obligation or the Borrower shall fail to pay any other amount payable hereunder or under any other Loan Document, within five (5) Business Days after any such interest or other amount becomes due in accordance with the terms hereof or thereof; or

(b) any representation or warranty made or deemed made by the (i) Borrower herein or in any other Loan Document or (ii) the Manager in the Inventory Services Agreement, or in each case, that is contained in any certificate, document or financial or other statement required to be furnished by the Borrower under this Agreement or any such other Loan Document or by the Manager pursuant to the Inventory Services Agreement, as applicable, shall prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished (provided that, in each case, such materiality qualifier shall not be applicable with respect to any representation or warranty that is qualified or modified by materiality or Material Adverse Effect); or

(c) the Borrower shall (i) fail to timely deliver a Borrowing Base Certificate pursuant to Section 5.1(c) and such failure shall continue unremedied for a period of five (5) Business Days (or three (3) Business Days if the Borrowing Base Certificate is required to be delivered weekly pursuant to Section 5.1(c)) or (ii) default in the observance or performance of any agreement contained in (A) Section 2.21(a), (B) Section 5.4(a), (C) Section 5.7(a), (D) Section 5.10 or (E) Section VI; or

(d) (i) the Borrower shall default in the observance or performance of any covenant or other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section 7.1), or (ii) the Manager or Borrower shall default in the observance or performance of any covenant or other agreement contained in the Inventory Services Agreement, and in each case, such default shall continue unremedied for a period of 30 days following delivery of written notice thereof to the Borrower by the Administrative Agent; or

(e) the Borrower, the Company or any of its Subsidiaries shall (i) default in making any payment of any principal of any Indebtedness (excluding the Loans and other Indebtedness under the Loan Documents) on the scheduled or original due date with respect thereto beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with or without the giving of notice, the lapse of time or both, such Indebtedness to become due prior to its stated maturity or to become subject to a mandatory offer to purchase by the obligor thereunder (provided that this clause (iii) shall not apply to any secured Indebtedness that becomes due or subject to a mandatory offer to purchase as a result of the sale, transfer or other Disposition of assets securing such Indebtedness, if such sale, transfer or other Disposition is permitted hereunder and under the documents providing for such Indebtedness (and, for the avoidance of doubt, the aggregate principal amount of such Indebtedness shall not be included in determining whether an Event of Default has occurred under this paragraph (e))); provided that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clause (i), (ii) or (iii) of this paragraph (e) shall have occurred and be continuing with respect to Indebtedness, the outstanding principal amount of which would in the aggregate constitute Material Debt; provided further that upon becoming an Event of Default, such Event of Default shall be deemed to have been remedied and shall no longer be continuing if any such defaults, events or conditions are remedied or waived prior to any termination of the Commitments or acceleration of the Loans or other exercise of remedies pursuant to the below provisions of this Section 7.1 by any of the holders or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holders or beneficiaries) and, after giving effect thereto, at such time, one or more defaults, events or conditions of the type described in clause (i), (ii) or (iii) of this paragraph (e) shall no longer be continuing with respect to any amount of Indebtedness that would in the aggregate constitute Material Debt; or

(f) (i) the Borrower, the Company or its Subsidiaries shall commence any case, proceeding or other action (A) under any existing or future Debtor Relief Laws, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower, the Company or its Subsidiaries shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against or with respect to the Borrower, the Company or its Subsidiaries any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or for any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against the Borrower, the Company or its Subsidiaries any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Borrower, the Company or its Subsidiaries shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Borrower, the Company or its Subsidiaries shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) an ERISA Event occurs which has resulted or could reasonably be expected to result in liability of the Borrower in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect; or

(h) one or more final judgments or decrees for the payment of money shall be entered against the Borrower, the Company or any of its Subsidiaries involving, taken as a whole, a liability (to the extent not covered by insurance as to which the relevant insurance company has not denied coverage in writing) of at least (x) in the case of the Borrower, $2,500,000 and (y) in the case of the Company and its Subsidiaries, at least $40,000,000, and all such judgments or decrees shall not have been satisfied, vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) any Security Document that creates a Lien with respect to a material portion of the Collateral shall cease, for any reason (other than by reason of the release thereof pursuant to the provisions of the Loan Documents), to be in full force and effect, or the Borrower (or any of its Affiliates that has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Borrower) shall so assert in writing, or any Lien with respect to any material portion of the Collateral created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby, except to the extent that any such perfection or priority is not required pursuant to the Collateral Requirement or results from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Security Documents or to take other required actions required to be taken by the Agents pursuant to the Loan Documents; or

(j) any Change of Control shall occur; or

(k) the Inventory Services Agreement or the Leases (i) shall cease to be in full force or effect, or (ii) any Operating Company or Person acting for or on behalf of such Operating Company shall deny or disaffirm in writing such Operating Company's obligations thereunder or (iii) shall be terminated;

then, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) above with respect to the Borrower, (i) the Revolving Credit Commitments (including the L/C Commitments) hereunder shall automatically and immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall immediately become due and payable and (ii) the Borrower shall be required to Cash Collateralize the L/C Obligations as provided in Section 2.25(a), and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Revolving Lenders, the Administrative Agent may, or upon the request of the Required Revolving Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Revolving Credit Commitments (including the L/C Commitments) to be terminated forthwith, whereupon the Revolving Credit Commitments shall immediately terminate; (ii) with the consent of the Required LILO Lenders, the Administrative Agent may, or upon the request of the Required LILO Lenders, the Administrative Agent shall, by notice to the Borrower, declare the LILO Commitments to be terminated forthwith, whereupon the LILO Commitments shall immediately terminate; and (iii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, (w) declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable, (x) require that the Borrower Cash Collateralize the L/C Obligations as provided in Section 2.25(a), (y) commence foreclosure actions with respect to the Collateral in accordance with the terms and procedures set forth in the Security Documents and (z) enforce all of the Borrower's rights under the Inventory Services Agreement, the Leases and the Loan Documents or at law or in equity.

SECTION VIII THE AGENTS

Section 8.1 Appointment

Each Lender hereby irrevocably designates and appoints Barclays Bank PLC as the administrative agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Each Lender hereby irrevocably designates and appoints Barclays Bank PLC as the collateral agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Collateral Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Each Lender hereby irrevocably designates and appoints First-Citizens Bank & Trust Company as the collateral management agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Additional Collateral Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Additional Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, each Lender hereby authorizes (a) the Collateral Agent to enter into each Security Document on behalf of and for the benefit of the Lenders and the other Secured Parties and agrees to be bound by the terms thereof and (b) the Collateral Management Agents to perform the duties contemplated herein. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agents.

Each L/C Issuer shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (a) provided to the Agents in this Section VIII with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and L/C Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in this Section VIII and the definition of "Agent-Related Person" included such L/C Issuer with respect to such acts or omissions, and (b) as additionally provided herein with respect to each L/C Issuer.

Section 8.2 Delegation of Duties

Each Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care.

Section 8.3 Exculpatory Provisions

No Agent nor any of its respective officers, directors, employees, agents, advisors, attorneys-in- fact or affiliates shall be (i) liable to any other Credit Party or the Manager or any of its Affiliates for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non- appealable decision of a court of competent jurisdiction to have resulted from its or such Person or the Manager or any of its Affiliates' own gross negligence or willful misconduct) or (ii) responsible in any manner to any other Credit Party or the Manager or any of its Affiliates for any recitals, statements, representations or warranties made by the Borrower or any representative thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by any Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of the Borrower to perform its obligations hereunder or thereunder or (iii) responsible for or have any duty to ascertain or inquire into the creation, perfection or priority of any Lien purported to be created by the Security Documents or the value or the sufficiency of any Collateral. No Agent shall be under any obligation to any other Credit Party or the Manager or any of its Affiliates to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of the Borrower.

Section 8.4 Reliance by the Agents

Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile or electronically submitted communication, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by such Agent. Each Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, such greater percentage or number of Lenders or in the case of the Collateral Agent, as directed by the Administrative Agent where applicable) as it deems appropriate or unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, such greater percentage or number of Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

Section 8.5 Notice of Default

No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received written notice from a Lender, an L/C Issuer or the Borrower (or in the case of the Collateral Agent, the Administrative Agent) referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, such greater percentage or number of Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders (including directing the Collateral Agent to take action or refrain from taking such action, where permitted under the Loan Documents).

Section 8.6 Non-Reliance on Agents and Other Lenders

Each Lender expressly acknowledges that neither Agent nor any of its respective officers, directors, employees, agents advisors, attorneys-in-fact or Affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of the Borrower or any Affiliate of the Borrower, shall be deemed to constitute any representation or warranty by such Agent to any Lender. Each Lender represents to each Agent that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Borrower and its Affiliates and such Lender has made its own decision to make its Loans hereunder and to enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Borrower and its Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent or Collateral Agent hereunder, the Agents shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of the Borrower or any Affiliate of the Borrower that may come into the possession of any Agent or any of its respective officers, directors, employees, agents, advisors, attorneys-in-fact or Affiliates.

Section 8.7 Indemnification

The Lenders agree to indemnify the Agents and each of its respective officers, directors, employees, Affiliates, agents, advisors and controlling persons (each, an "Agent Indemnitee") (to the extent not reimbursed by the Borrower and without limiting any obligation of the Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section 8.7 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs and expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee's gross negligence, bad faith or willful misconduct. The agreements in this Section 8.7 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 8.8 Agent in Its Individual Capacity

The Administrative Agent, Collateral Agent and their affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower as though such Agent were not an Agent hereunder. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent hereunder, and the terms "Lender" and "Lenders" shall include the Administrative Agent and the Collateral Agent in their individual capacity.

Section 8.9 Successor Administrative Agent

(a) The Administrative Agent may resign as Administrative Agent upon thirty (30) days' notice to the Lenders, the L/C Issuers and the Borrower. If the Administrative Agent shall resign as Administrative Agent, then the Required Lenders shall appoint a successor administrative agent for the Lenders, which successor administrative agent shall be subject to written approval by the Borrower (which approval shall not be unreasonably withheld or delayed and which approval shall not be required during the continuance of an Event of Default), whereupon such successor administrative agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor administrative agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor administrative agent has been appointed as Administrative Agent by the date that is 30 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders, subject to written approval by the Borrower (which approval shall not be unreasonably withheld or delayed, and which approval shall not be required during the continuation of an Event of Default), appoint a successor administrative agent as provided for above. Collateral Agent may resign as Collateral Agent upon thirty (30) days' notice to the Administrative Agent, the Lenders, the L/C Issuers and the Borrower. If the Collateral Agent shall resign as Collateral Agent, then the Required Lenders shall appoint a successor collateral agent for the Lenders, which successor administrative agent shall be subject to written approval by the Borrower (which approval shall not be unreasonably withheld or delayed and which approval shall not be required during the continuance of an Event of Default), whereupon such successor collateral agent shall succeed to the rights, powers and duties of the Collateral Agent, and the term "Collateral Agent" shall mean such successor collateral agent effective upon such appointment and approval, and the former Collateral Agent's rights, powers and duties as Collateral Agent shall be terminated, without any other or further act or deed on the part of such former Collateral Agent or any of the parties to this Agreement or any holders of the Loans. After any retiring Agent's resignation as Administrative Agent, the provisions of this Section VIII and of Section 9.5 shall continue to inure to its benefit.

(b) If the Administrative Agent or a controlling Affiliate meets any part of the definition of Lender Default (in its capacity as a Lender or otherwise), it may be removed by the Borrower or the Required Lenders. The Borrower shall appoint from among the Lenders a successor administrative agent for the Lenders, which successor administrative agent shall be subject to written approval by the Required Lenders (which approval shall not be unreasonably withheld or delayed), whereupon such successor administrative agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor administrative agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent (other than the provisions of this Section VIII and Section 9.5) shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Loans. If no successor administrative agent has been appointed as Administrative Agent by the date that is 10 days following the Administrative Agent's removal, the Administrative Agent's removal shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Borrower, subject to written approval by the Required Lenders (which approval shall not be unreasonably withheld or delayed), appoints a successor administrative agent as provided for above. After any Administrative Agent's replacement as Administrative Agent, the provisions of this Section VIII and of Section 9.5 shall continue to inure to its benefit.

Section 8.10 Erroneous Payment

(a) Each Lender and each L/C Issuer (and each Participant of any of the foregoing, by its acceptance of a participation) hereby acknowledges and agrees that if the Administrative Agent notifies such Lender or L/C Issuer that the Administrative Agent has determined in its sole discretion that any funds (or any portion thereof) received by such Lender or L/C Issuer (any of the foregoing, a "Payment Recipient") from the Administrative Agent (or any of its Affiliates) were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") and demands the return of such Payment, such Payment Recipient shall promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Payment as to which such a demand was made. A notice of the Administrative Agent to any Payment Recipient under this Section 8.10 shall be conclusive, absent manifest error.

(b) Without limitation of clause (a) above, each Payment Recipient further acknowledges and agrees that if such Payment Recipient receives a Payment from the Administrative Agent (or any of its Affiliates) (x) that is in an amount, or on a date different from the amount and/or date specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice"), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), in each case, it understands and agrees at the time of receipt of such Payment that an error has been made (and that it is deemed to have knowledge of such error) with respect to such Payment. Each Payment Recipient agrees that, in each such case, it shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made.

(c) Any Payment required to be returned by a Payment Recipient under this Section 8.10 shall be made in same-day funds in the currency so received, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. Each Payment Recipient hereby agrees that it shall not assert and, to the fullest extent permitted by applicable law, hereby waives, any right to retain such Payment, and any claim, counterclaim, defense or right of set-off or recoupment or similar right to any demand by the Administrative Agent for the return of any Payment received, including without limitation any defense based on "discharge for value" or any similar doctrine.

(d) The Borrower hereby agrees that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower except, in each case, to the extent such erroneous Payment is, and with respect to the amount of such erroneous Payment that is, comprised of funds of the Borrower.

(e) Each party's obligations, agreements and waivers under this Section 8.10 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or L/C Issuer, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Section 8.11 Withholding Tax

To the extent required by any applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within 10 days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 2.16 and without limiting or expanding the obligation of the Borrower to do so) from and against all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender, under this Agreement or any other Loan Document or from any other sources, against any amount due the Administrative Agent under this Section 8.11. The agreements in this Section 8.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 8.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or the Manager or any of its Affiliates, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or the Manager or any of its Affiliates, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION IX MISCELLANEOUS

Section 9.1 Notices

(a) Notices Generally. Except as otherwise expressly provided, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the applicable party hereto, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, to it at:

TPB Inventory Sub
5201 Interchange Way
Louisville, KY 40229
Attention: Robert Lavan, Chief Financial Officer
Email: rlavan@tpbi.com

with copies (which shall not constitute notice) to:

Milbank LLP
55 Hudson Yards
New York, NY 10001-2163
Attention: Michael Bellucci
Email: MBellucci@milbank.com

(ii) if to the Administrative Agent, to it at: Barclays Bank PLC

Bank Debt Management 400 Jefferson Park
Whippany, NJ 07981 Attention: Arup Ghosh Telephone: (201) 499-8490
Email: arup.ghosh@barclays.com

(iii) if to the Administrative Agent with respect to a Borrowing Request or Interest Election Request, to it at:

Barclays Bank PLC Bank Debt Management 400 Jefferson Park
Whippany, NJ 07981 Attention: Nyra Benjamin Telephone: (201) 499-6313
Email: nyra.benjamin@barclays.com/12145455230@tls.ldsprod.com

(iv) if to any Lender or any L/C Issuer, to it at its e-mail address, address (or facsimile number) set forth in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in paragraph (b) below shall be effective as provided therein.

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Section II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving, or is unwilling to receive, notices under Section II by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); 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 clause (i) above, of notification that such notice or communication is available and identifying the website address therefor; provided that, in the case of clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Change of Address, etc. The Borrower and the Administrative Agent may change its address, telecopier number, telephone number or electronic mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender or L/C Issuer may change its address, telecopier number, telephone number or electronic mail address for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender and each L/C Issuer agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire transfer instructions for such Lender and L/C Issuer.

(d) Platform. The Borrower hereby acknowledges that the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower (collectively, the "Borrower Materials") hereunder by posting such materials on IntraLinks or another similar electronic system (the "Platform").

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT-RELATED PERSONS DO NOT WARRANT THE ACCURACY OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT-RELATED PERSON IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall any Agent-Related Person have any liability to the Borrower, any Lender, any L/C Issuer or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Platform, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by an final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent-Related Person; provided that in no event shall any Agent-Related Person have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for indirect, special, incidental, consequential damages or punitive damages (as opposed to direct or actual damages). The Borrower acknowledges and agrees that the list of Disqualified Lenders shall be deemed suitable for posting and may be posted by the Administrative Agent on the Platform, including the portion of the Platform that is designated for "public side" Lenders.

(e) Reliance by the Agents, L/C Issuers and Lenders. The Agents, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent, each L/C Issuer, each Lender and the Related Parties of each of them for all losses, costs, expenses and liabilities resulting from the reliance of such Person on each notice purportedly given by or on behalf of the Borrower.

Section 9.2 Waivers; Amendments

(a) No failure or delay by the Agents, any L/C Issuer or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agents and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 9.2, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any L/C Issuer or any Lender may have had notice or knowledge of such Default at the time.

(b) None of this Agreement, any other Loan Document or any provision hereunder or thereunder may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Agents with the consent of the Required Lenders; provided that, notwithstanding the foregoing:

(i) solely with the written consent of each Lender directly and adversely affected thereby (but without the necessity of obtaining the consent of the Required Lenders, other than in the case of clause (1) below, which shall require the consent of the Required Lenders as well as each Lender increasing its Revolving Credit Commitments and/or LILO Commitment, as applicable, if such increase is effectuated other than pursuant to the provisions under this Agreement specifically permitting increases of commitments without the further approval of Required Lenders), any such agreement may:

(1) increase the (A) Revolving Credit Commitment of any Lender and (B) LILO Commitment of any Lender, it being understood, in each case, that (x) a waiver of any condition precedent set forth in Section 4.2, or (y) the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of Revolving Credit Commitments or LILO Commitments, as applicable, shall not constitute an increase of any Revolving Credit Commitments or LILO Commitments of any Lender;

(2) reduce or forgive the principal amount of any Loan or any L/C Borrowing or reduce the rate of interest thereon, or reduce any fees or premiums payable hereunder (except (x) in connection with the waiver of applicability of any post-Default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders), and (y) that any change in Historical Excess Availability, Historical Average Utilization or any other definition used in the calculation of such rate of interest or fees (or any component definition thereof) shall not constitute a reduction in any rate of interest or any fee for purposes of this clause (2));

(3) postpone the scheduled date of payment of the principal amount of any Loan, any L/C Borrowing or any interest thereon, or any fees or premiums payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Revolving Credit Commitment or LILO Commitment; it being understood that a waiver of any condition precedent set forth in Section 4.2 or the waiver of any Default, mandatory prepayment or mandatory reduction of Revolving Credit Commitments or the LILO Commitments shall not constitute a postponement of the scheduled date of payment of principal of any Loan or expiration of any Revolving Credit Commitment or LILO Commitment of any Lender;

(4) change Section 2.17(b) or (c) or Section 2.21(c) in a manner that would alter the pro rata sharing of payments required thereby, or change the application of proceeds provision in Section 6.4 of the Security Agreement; or

(5) (x) contractually subordinate the Obligations hereunder to any other Indebtedness or other obligations or (y) contractually subordinate the Liens securing the Obligations to Liens securing any other Indebtedness or other obligations;

(ii) solely with the written consent of the (A) Supermajority Required Revolving Lenders, any such agreement may increase advance rates or make other modifications to the Borrowing Base (or any constituent definitions to the extent used therein) that have the effect of increasing availability thereunder (including changes in eligibility criteria) and (B) Supermajority Required LILO Lenders, any such agreement may increase advance rates or make other modifications to the LILO Borrowing Base (or any constituent definitions to the extent used therein) that have the effect of increasing availability thereunder (including changes in eligibility criteria), in each case, it being understood that increases or decreases in Reserves imposed by the either Collateral Management Agent in its Permitted Discretion shall not require the consent of any other Person.

(iii) solely with the written consent of each Lender (other than a Defaulting Lender), any such agreement may:

(1) change any of the provisions of this Section 9.2 or the definition of “Required Lenders”, “Required Revolving Lenders”, “Required LILO Lenders”, “Supermajority Required Lenders”, “Supermajority Required LILO Lenders” or “Supermajority Required Revolving Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or grant any consent hereunder;

(2) except as otherwise expressly provided in Section 9.14 or in the Security Agreement, release all or substantially all of the Collateral; or

(3) amend, modify or waiver clause (i) of Section 9.4(a) or except as otherwise expressly permitted hereby, otherwise effect the assignment of the Borrower's Obligations under this Agreement;

(4) change Section 2.4(a)(iv) in a manner that would permit the expiration date of any Letter of Credit to occur after the L/C Expiration Date;

provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of (x) any Agent or any retired or removed Agent in a manner adverse to the such Agent without the prior written consent of such Agent or such retired or removed Agent, as the case may be, or (y) the L/C Issuers in a manner adverse to the L/C Issuers without the prior written consent of each L/C Issuer.

(c) Notwithstanding anything to the contrary contained in this Section 9.2, the Administrative Agent (and the Collateral Agent as applicable) and the Borrower, in their sole discretion and without the consent or approval of any other party, may amend, modify or supplement any provision of this Agreement or any other Loan Document to (i) amend, modify or supplement such provision or cure any ambiguity, omission, mistake, error, defect or inconsistency, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof (provided that, if the Required Lenders make such objection in writing, such amendment, modification or supplement shall not become effective without the consent of the Required Lenders) and (ii) permit affiliates of the Borrower to guarantee the Obligations and/or provide Collateral therefor. Such amendments shall become effective without any further action or consent of any other party to any Loan Document.

(d) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, only the consent of the parties to the Fee Letter shall be required to amend, modify or supplement the terms thereof.

(e) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrower may enter into Extension Amendments in accordance with Section 2.22 and joinder agreements with respect thereto in accordance with such sections, and such Extension Amendments and joinder agreements may effect such amendments to the Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to give effect to the existence and the terms of the Extension, as applicable, and will be effective to amend the terms of this Agreement and the other applicable Loan Documents (including to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other applicable Loan Documents with the other Revolving Credit Loans, and the accrued interest and fees in respect thereof and to include appropriately the Lenders holding such credit facilities in any determination of the Required Revolving Lenders and Supermajority Required Revolving Lenders), in each case, without any further action or consent of any other party to any Loan Document.

(f) Notwithstanding anything to the contrary contained in this Section 9.2 or any other Loan Document, guarantees, collateral security documents and related documents executed in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Agents at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local requirements of Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause such guarantee, collateral security document or other document to be consistent with this Agreement or any other Loan Documents.

(g) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Revolving Credit Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender, (2) the LILO Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (3) any waiver, amendment or modification requiring the consent of all Lenders or each directly and adversely affected Lender that by its terms materially and adversely affects any Defaulting Lender to a greater extent than other affected Lenders shall require the consent of such Defaulting Lender.

Section 9.3 Expenses; Indemnity; Damage Waiver

(a) The Borrower shall pay (i) all reasonable and documented out- of-pocket expenses incurred by the Agents and their Affiliates, including the reasonable fees, disbursements and other charges of legal counsel for the Agents in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof, the reasonable fees and expenses of consultants and appraisal firms in connection with field examinations required hereunder and the Administrative Agent's standard charges for examination activities and appraisal reviews, (ii) all reasonable out-of-pocket fees and expenses incurred by any L/C Issuer in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Agents, any Lender or any L/C Issuer, including the fees, charges and disbursements of legal counsel for the Agents, any Lender or any L/C Issuer, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section 9.3(a), including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of this Agreement and the other Loan Documents; provided that the Borrower's obligations under this Section 9.3(a) for fees and expenses of legal counsel shall be limited to fees and expenses of (x) one primary outside legal counsel for all Persons described in clauses (i) and (ii) above, taken as a whole, (y) in the case of any actual or perceived conflict of interest, one outside legal counsel for each group of affected Persons similarly situated, taken as a whole, in each appropriate jurisdiction and (z) if necessary, one local or foreign legal counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions).

(b) The Borrower shall indemnify the Agents, each Lender, each L/C Issuer and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, costs and related expenses (including the reasonable out-of-pocket fees, charges and disbursements of (i) one primary outside legal counsel to the Indemnitees, taken as a whole, (ii) in the case of any actual or perceived conflict of interest, one additional outside legal counsel for each group of affected Indemnitees similarly situated, taken as a whole, in each appropriate jurisdiction and (iii) if necessary, one local or foreign legal counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions)), which may at any time be imposed on, incurred by or asserted or awarded against any such Indemnitee arising out of, in connection with, or as a result of (w) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or any other transactions contemplated hereby, (x) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (y) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by the Borrower (including any predecessor entities), or any Environmental Liability relating to the Borrower (including any predecessor entities) or (z) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto and whether or not such claim, litigation, investigation or proceeding is brought by the Borrower or any of its respective Affiliates, their respective creditors or any other Person; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (1) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or its Related Parties, (2) arise out of any claim, litigation, investigation or proceeding that does not involve an act or omission by the Borrower and that is brought by an Indemnitee against any other Indemnitee (provided that in the event of such a claim, litigation, investigation or proceeding involving a claim or proceeding brought against the Administrative Agent or the Collateral Agent (in its capacity as such) by other Indemnitees, the Administrative Agent or the Collateral Agent (in its capacity as such), shall be entitled (subject to the other limitations and exceptions set forth above) to the benefit of the indemnities set forth above), (3) arise from any settlement entered into by any Indemnitee or any of its Related Parties in connection with the foregoing without the Borrower's prior written consent (such consent not to be unreasonably withheld or delayed) or (4) are in respect of indemnification payments made pursuant to Section 8.7, to the extent the Borrower would not have been or was not required to make such indemnification payments directly pursuant to the provisions of this Section 9.3(b). This Section 9.3(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) To the extent permitted by applicable law, none of the Borrower or the Administrative Agent, any Lender or any Related Party of the foregoing (each such Person being called a "Lender-Related Person") shall assert, and each of the Borrower and each Lender-Related Person hereby waives, any claim against the Borrower or any Lender-Related Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and, to the extent permitted by applicable law, the Borrower and each Lender- Related Person hereby waive, release and agree not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor; provided that nothing contained in this paragraph shall limit the obligations of the Borrower under Section 9.3(b) in respect of any such damages claimed against the Lender-Related Persons by Persons other than Lender-Related Persons. No Lender-Related Person referred to in Section 9.3(b) 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 Loan Documents or the transactions contemplated hereby or thereby.

(d) All amounts due under this Section 9.3 shall be payable not later than 30 days after written demand therefor.

(e) Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return any and all amounts paid by the Borrower to such Indemnitee for fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

Section 9.4 Successors and Assigns

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.4. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section 9.4) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b)

(i) Subject to the conditions set forth in paragraph (b)(ii) of this Section 9.4, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment or LILO Commitment, as applicable and the Loans (including, for purposes of this paragraph (b)(i), participations in L/C Obligations) at the time owing to it) with the prior written consent (each such consent not to be unreasonably withheld, delayed or conditioned) of:

(A) the Borrower; provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate or branch of a Lender or an Approved Fund or, if an Event of Default has occurred and is continuing, to any other Eligible Assignee; provided further that (x) the Borrower shall be deemed to have consented to any such assignment unless the Borrower shall have objected thereto by written notice to the Administrative Agent not later than the tenth (10th) Business Day following the date a written request for such consent is made and (y) the withholding of consent by the Borrower to any assignment to any Disqualified Lender shall be deemed reasonable (for the avoidance of doubt, it being understood and agreed that the Administrative Agent shall not have any responsibility or obligations to determine or notify the Borrower with respect to whether any Lender or potential Lender is a Disqualified Lender, and the Administrative Agent shall have no liability with respect to any assignment made to a Disqualified Lender);

(B) the Administrative Agent; and

(C) each L/C Issuer;

provided that with respect to foregoing clause (B), no consent of the Administrative Agent shall be required with respect to an assignment to any Person that satisfies clause (i) of the definition of Eligible Assignee; provided further that any assignment made to a Disqualified Lender shall not be null and void but shall instead be subject to Section 9.4(e).

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment, LILO Commitment or Loans or assignments to a Lender or an Affiliate or branch of a Lender, the amount of the Revolving Credit Commitment, LILO Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless (x) such assignee is existing Lender or (y) each of the Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with (unless waived by the Administrative Agent in its sole discretion) a processing and recordation fee of $3,500 (treating, for purposes of such fee, multiple, simultaneous assignments by or to two or more Approved Funds as a single assignment); and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Company and their Subsidiaries and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b) (iv) of this Section 9.4, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits, and subject to the obligations, of Sections 2.14, 2.15, 2.16 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.4 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section 9.4.

(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, the LILO Commitments and the Revolving Credit Commitment of, and principal amount of (and stated interest on) the Loans and L/C Obligations (specifying the Unreimbursed Amounts), L/C Borrowings and other amounts due under Section 2.4 owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender (with respect to its own Revolving Credit Commitments, LILO Commitments, Loans and L/C Obligations only), at any reasonable time and from time to time upon reasonable prior notice. No assignment will be effective unless and until the Assignment and Assumption is registered in such Register. This Section 9.4 is intended so that the Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related US Treasury Regulations (or any other relevant or successor provisions of the Code or of such US Treasury Regulations).

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless such assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section 9.4 and any written consent to such assignment required by paragraph (b) of this Section 9.4, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.5(b), 2.17(d) or 8.7, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable ratable share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each L/C Issuer and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full ratable share of all Loans and participations in Letters of Credit in accordance with its Applicable Lender Percentage; provided that, notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(c)

(i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities other than an Excluded Participant (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment or LILO Commitment, as applicable, and the Loans (including such Lender's participations, if any, in L/C Obligations) owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the L/C Issuers and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 9.2(b)(i) or (iii) that adversely affects the Participant; provided, however, that in no event shall an Excluded Participant be a Participant. The Borrower agrees that, subject to paragraph (c)(ii) and (c)(iii) of this Section 9.4, each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 subject to the requirements and limitations of such Sections including the requirements under Section 2.16(e) (it being understood that the documentation required under Section 2.16(e) shall be delivered by the Participant solely to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.4(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender; provided that such Participant shall be subject to Section 2.17(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Revolving Credit Commitments or LILO Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Revolving Credit Commitment, LILO Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the US Treasury Regulations or Section 1.163-5(b) of the proposed US Treasury Regulations (or, in each case, any amended or successor version). 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, including payments of interest and principal, notwithstanding any notice to the contrary. The portion of the Participant Register relating to any Participant requesting payment from the Borrower under the Loan Documents shall be made available to the Borrower upon reasonable request. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.14, 2.15 or 2.16 with respect to any participation sold to such Participant than its participating Lender would have been entitled to receive with respect to such participation, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the participation.

(iii) A Participant shall be subject to the provisions of Section 2.18 as if it were an assignee under paragraph (b) of this Section 9.4.

(d) 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, and this Section 9.4 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein:

(i) No assignment or participation shall be made to any Person that was a Disqualified Lender as of the date on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole discretion, in which case such Person will not be considered a Disqualified Lender for the purpose of such assignment or participation). Any assignment in violation of this Section 9.4(e)(i) shall not be void, but the other provisions of this Section 9.4(e) shall apply.

(ii) If any assignment or participation is made to any Disqualified Lender without the Borrower's prior written consent in violation of clause (i) above, the Borrower may, upon notice to the applicable Disqualified Lender and the Administrative Agent, (A) terminate any (i) Revolving Credit Commitment of such Disqualified Lender and repay all obligations of the Borrower owing to such Disqualified Lender in connection with such Revolving Credit Commitment or (ii) LILO Commitment of such Disqualified Lender and repay all obligations of the Borrower owing to such Disqualified Lender in connection with such LILO Commitment, as applicable, and/or (B) require such Disqualified Lender to assign (and the signature of such Disqualified Lender shall not be required on any such assignment), without recourse (in accordance with and subject to the restrictions contained in this Section 9.4), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Lender paid to acquire such interest, rights and obligations, in each case, plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder (it being understood and agreed that the Borrower shall not have any obligation to such Disqualified Lender or any other Person to find such a replacement Lender or accept or consent to any such assignment to any other Person if the Borrower would otherwise be entitled to consent to such assignment in accordance with Section 9.4).

(iii) Disqualified Lenders (A) will not (x) have the right to request any information, reports or other materials or receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings or inspections attended by the Lenders and the Administrative Agent or request such meetings or inspections, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisers of the Administrative Agent or the Lenders and (B) (x) shall not have any voting or approval rights under the Loan Documents and shall be excluded in determining whether all Lenders, all affected Lenders, or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.2); provided that (I) the Revolving Credit Commitment and LILO Commitment of any Disqualified Lender may not be increased or extended without the consent of such Lender and (II) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Disqualified Lender adversely and in a manner that is disproportionate to other affected Lenders shall require the consent of such Disqualified Lender, and (y) for purposes of voting on any bankruptcy plan, each Disqualified Lender party hereto hereby agrees (1) not to vote on such bankruptcy plan, (2) if such Disqualified Lender does vote on such bankruptcy plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such bankruptcy plan in accordance with Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Borrower and the Lenders acknowledge and agree that in no event shall the Administrative Agent or any of its Affiliates or Related Parties be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

(f) Notwithstanding anything herein to the contrary, if at any time any Revolving Lender that is also acting as an L/C Issuer assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to paragraph (b) of this Section 9.4, such Revolving Lender may, upon 30 days' notice to the Borrower and the Lenders, resign as an L/C Issuer. In the event of any such resignation as an L/C Issuer, the Borrower shall be entitled to appoint from among the Revolving Lenders a successor L/C Issuer hereunder; provided that no failure by the Borrower to appoint any such successor shall affect the resignation of such Revolving Lender as an L/C Issuer. If any such Revolving Lender resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund participations in unreimbursed L/C Borrowings pursuant to Section 2.4(c)). Upon the appointment of a successor L/C Issuer, (A) such successor shall become an L/C Issuer hereunder and succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer with respect to Letters of Credit issued by it, and (B) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to such Revolving Lender to effectively assume the obligations of such Revolving Lender with respect to such Letters of Credit.

Section 9.5 Survival

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Agent, any L/C Issuer or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit remains outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16 and 9.3 and Section VIII shall survive and remain in full force and effect regardless of the resignation or replacement of any Agent or any assignment of rights by, or the replacement of, a Lender, the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 9.6 Counterparts; Integration; Effectiveness

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to any Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission (e.g., "PDF" or "TIFF") shall be effective as delivery of a manually executed counterpart of this Agreement.

The words "execution," "signed," "signature," and words of like import in this Agreement, any Assignment and Assumption or in any other Loan Document or amendment or other modification hereof or thereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

Section 9.7 Severability

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.8 Right of Setoff

If an Event of Default shall have occurred and be continuing, each Lender and each L/C Issuer is hereby authorized at any time and from time to time with the prior written consent of the Administrative Agent (which consent shall not be required in connection with customary set-offs in connection with Bank Product Obligations), to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or such L/C Issuer to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement or the other Loan Documents held by such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or the other Loan Documents and although such obligations may be unmatured. The rights of each Lender and each L/C Issuer under this Section 9.8 are in addition to other rights and remedies (including other rights of setoff) which such Lender or such L/C Issuer may have. Each Lender and each L/C Issuer shall notify the Administrative Agent and the Borrower promptly after any such setoff. Notwithstanding anything to the contrary in the foregoing, no Lender shall exercise any right of set off in respect of any Controlled Account other than the Administrative Agent acting in its capacity as such.

Section 9.9 Governing Law; Jurisdiction; Consent to Service of Process

(a) This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Notwithstanding the foregoing, any party hereto may bring an action or proceeding in other jurisdictions in respect of its rights under any Security Document governed by a law other than the laws of the State of New York or, with respect to the Collateral, in a jurisdiction where such Collateral is located.

(c) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section 9.9. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10 WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, ADMINISTRATIVE AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10.

Section 9.11 Headings

Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12 Confidentiality

Each of the Agents, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' employees, legal counsel, independent auditors, professionals and other experts or agents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested or demanded by any regulatory authority claiming jurisdiction over it or its Affiliates (provided that such Agent, such Lender or such L/C Issuer, as applicable, shall, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent lawfully permitted to do so), (c) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable law or compulsory legal process based on the advice of counsel (provided that such Agent, such Lender or such L/C Issuer, as applicable, shall notify the Borrower promptly thereof prior to any such disclosure by such Person (except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority) to the extent practicable and not prohibited by applicable law, rule or regulation), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) to potential assignees, transferees or participants in connection with the contemplated assignment, transfer or participation of any Loans or Commitments or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to the Borrower and their obligations (provided that such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 9.12 or other provisions at least as restrictive as this Section 9.12), (g) to the extent that such information is independently developed by it, (h) with the prior written consent of the Borrower, (i) to the extent such Information (A) becomes available, other than as a result of a breach of this Section 9.12 to any Agent, any Lender or any L/C Issuer on a nonconfidential basis from a source other than the Borrower or any of its Affiliates or (B) becomes publicly available, other than by reason of improper disclosure by any Agent, any Lender or any L/C Issuer or any of their Affiliates or any related parties thereto in violation of any confidentiality obligations owing to the Borrower or any of its Affiliates, (j) on a confidential basis to any rating agency in connection with rating the Borrower or the Revolving Credit Facilities, or to market data collectors, similar services providers to the lending industry and service providers to the Administrative Agent in connection with the administration and management of this Agreement and the other Loan Documents, (k) to the extent necessary or customary for inclusion in league table measurement and (l) for purposes of establishing a "due diligence" defense. For the purposes of this Section 9.12, "Information" means all information received from the Borrower or any of its Affiliates relating to the Borrower or any of its businesses, other than any such information that is available, other than as a result of a breach of this Section 9.12, to any Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified on or before the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, which shall in no event be less than commercially reasonable care.

Section 9.13 PATRIOT Act

Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Agents, as applicable, to identify the Borrower in accordance with the PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall, promptly following a request by any Agent or any Lender, provide all documentation and other information that such Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and Anti-Money Laundering Laws, including the PATRIOT Act and the Beneficial Ownership Regulation.

Section 9.14 Release of Liens; Secured Parties

(a) In the event that the Borrower conveys, sells, leases, assigns, transfers or otherwise Disposes of all or any portion of the assets of the Borrower to a Person that is not (and is not required hereunder to become) the Borrower in a transaction permitted under this Agreement, the Liens created by the Loan Documents in respect of such assets shall automatically terminate and be released, without the requirement for any further action by any Person, and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent and Collateral Agent to) take such action and execute any such documents as may be reasonably requested by the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by any Loan Document in respect of such assets. In the event that any Collateral has become an Excluded Asset, then, at the request of the Borrower, the Administrative Agent agrees to (and the Lenders hereby authorize the Administrative Agent and the Collateral Agent to) promptly take such action and execute such documents as may be reasonably requested by the Borrower, and at the Borrower's expense, to terminate, discharge and release (or to further document and evidence the termination, discharge and release of) the Liens created by any Loan Document in respect of such assets.

(b) Upon the payment in full of the Obligations and the termination or expiration of the Total Credit Commitments, all Liens created by the Loan Documents shall automatically terminate and be released, without the requirement for any further action by any Person, and the Administrative Agent and Collateral Agent shall (and the Lenders hereby authorize the Administrative Agent and Collateral Agent to) promptly take such action and execute any such documents as may be reasonably requested by the Borrower and at the Borrower's expense to further document and evidence such termination and release of Liens created by the Loan Documents.

(c) Except with respect to the exercise of setoff rights of any Lender in accordance with Section 9.8 or with respect to a Lender's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents with respect to the Collateral and any guarantee may be exercised solely by the Agents on behalf of the Secured Parties in accordance with the terms thereof. In the event of a foreclosure by the Administrative Agent or Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, any Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as collateral agent for or Administrative Agent, as administrative agent and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and the Administrative Agent may apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent on behalf of the Secured Parties at such sale or other disposition. In furtherance of the foregoing, no agreements the obligations under which constitute Bank Product Obligations will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of the Borrower under this Agreement or any other Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such agreement in respect of Bank Product Services shall be deemed to have appointed the Administrative Agent to serve as administrative agent and the Collateral Agent to serve as collateral agent, as applicable, under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

Section 9.15 Payments Set Aside

To the extent that any payment by or on behalf of the Borrower is made to any Agent, any L/C Issuer or any Lender, or any Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 9.16 No Fiduciary Duty

The Agents, each Lender, each L/C Issuer and their respective Affiliates (collectively, the "Lender Parties") may have economic interests that conflict with those of the Borrower and/or its affiliates. The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Parties, on the one hand, and the Borrower, its equity holders or their respective affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lender Parties, on the one hand, and the Borrower, on the other and (ii) in connection therewith and with the process leading thereto, (x) no Lender Parties have assumed any advisory or fiduciary responsibility in favor of the Borrower, its equity holders or their respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender Parties have advised, are currently advising or will advise the Borrower, its equity holders or their respective affiliates on other matters) or have any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) the Lender Parties are acting solely as principals and not as the agents or fiduciaries of the Borrower, its management, its equity holders, its creditors or any other Person. The Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to the Transactions and any other transaction contemplated hereby and the process leading thereto. The Borrower agrees that it will not claim that the Lender Parties have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to the Borrower, in connection with the Transaction, such transactions contemplated hereby or the process leading thereto.

Section 9.17 Interest Rate Limitation

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent, any Lender or any L/C Issuer shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent, a Lender or an L/C Issuer exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 9.18 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 9.19 Acknowledgement Regarding Any Supported QFCs

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Obligations or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.19, the following terms have the following meanings:

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

"Covered Entity" means any of the following:

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

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

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

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

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

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

TPB SPECIALTY FINANCE LLC, as the Borrower

By: /s/ Britanni Cushman

Name: Britanni Cushman

Title: Senior Vice President, General Counsel and Secretary

Signature Page to
ABL Credit Agreement

BARCLAYS BANK PLC, as Administrative Agent,
Collateral Agent, an LI ssuer and a Lender

By: /s/ Christopher M. Aitkin
Name: Christopher M. Aitkin
Title: Vice President

Signature Page to
ABL Credit Agreement

FIRST-CITIZENS BANK & TRUST COMPANY, as
Additional Collateral Agent, an *UC* Issuer and a Lender

By: /s/ Robert L. Klein
Name: Robert L. Klein
Title: Managing Director

Signature Page to
ABL Credit Agreement

Exhibit 10.38

Execution Version

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (as it may be amended or modified from time to time, the "Security Agreement") is entered into as of November 7, 2023 by and among TPB Specialty Finance LLC, a Delaware limited liability company (the "Grantor"), and Barclays Bank PLC, in its capacity as collateral agent (the "Collateral Agent") for the Lenders and L/C Issuers party to the Credit Agreement referred to below.

PRELIMINARY STATEMENT

The Grantor, Barclays Bank PLC, in its capacity as the administrative agent (the "Administrative Agent"), the Collateral Agent, First-Citizens Bank & Trust Company, as Additional Collateral Agent (the "Additional Collateral Agent" and together with the Administrative Agent and the Collateral Agent, the "Agents"), the Lenders and the L/C Issuers are entering into a Credit Agreement dated as of November 7, 2023 (as it may be amended or modified from time to time, the "Credit Agreement"). The Grantor is entering into this Security Agreement in order to induce the Lenders and L/C Issuers to enter into and extend credit to the Grantor in its capacity as borrower under the Credit Agreement and to secure the Secured Obligations.

ACCORDINGLY, the Grantor and the Collateral Agent, on behalf of the Lenders and the L/C Issuers, hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1. Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

1.2. Terms Defined in UCC. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC (and if defined in more than one article of the UCC shall have the meaning specified in Article 9 thereof).

1.3. Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the first paragraph hereof and in the Preliminary Statement, the following terms shall have the following meanings:

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

"Assigned Contracts" means, collectively, all of the Grantor's rights and remedies under, and all moneys and claims for money due or to become due to the Grantor under all contracts and other agreements between the Grantor and any party other than the Collateral Agent or any Lender and all amendments, supplements, extensions, and renewals thereof including all rights and claims of such Grantor now or hereafter existing: (a) under any insurance, indemnities, warranties, and guarantees provided for or arising out of or in connection with any of the foregoing agreements; (b) for any damages arising out of or for breach or default under or in connection with any of the foregoing agreements; (c) to all other amounts from time to time paid or payable under or in connection with any of the foregoing agreements; or (d) to exercise or enforce any and all covenants, remedies, powers and privileges thereunder.

"Collateral" shall have the meaning set forth in Article II.

"Commercial Tort Claims" means "commercial tort claims" as defined in Article 9 of the UCC and shall include, without limitation, the existing commercial tort claims of the Grantor now or hereafter set forth in Exhibit C attached hereto, as amended or supplemented to reflect such additional Commercial Tort Claims.

"Control" shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9- 106 or 9-107 of Article 9 of the UCC.

"Copyrights" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all U.S. copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights in any of the foregoing throughout the world.

"Excluded Assets" means:

(a) (i) each fee-owned real property, (ii) any real property located outside of the United States of America and (iii) any ground leasehold or other commercial leasehold real property interests or improvements thereto or any interest therein;

(b) motor vehicles and other assets subject to certificates of title statutes (to the extent a lien thereon cannot be perfected solely by filing of a UCC financing statement);

(c) leasehold interests, letters of credit and letters of credit rights not constituting supporting obligations, in each case other than to the extent such interests, rights or obligations can be perfected by the filing of a UCC-1 financing statement or other comparable foreign filing, and Commercial Tort Claims (other than those where no additional action is required by the Grantor to grant or perfect a security interest in such Commercial Tort Claim);

(d) those pledges and assets over which the granting or perfecting of security interests in such assets would be prohibited by any Governmental Authority or contract existing on the Closing Date, requirement of law (or if any requirement of law creates a material risk of tax or other liability as reasonably determined by the Borrower) or regulation;

(e) equity interests in any Person to the extent not permitted by the terms of such Person's organizational or joint venture documents or to the extent the pledge thereof would be prohibited by any governmental authority;

(f) any lease, license or other agreement or any property subject to a lease, license or agreement or purchase money agreement, capital lease obligation or similar arrangements to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money agreement or create a right of termination in favor of any other party thereto (other than the Company or its Subsidiaries) after giving effect to the applicable anti- assignment provisions of the UCC or other applicable statute or regulation, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable statute or regulation notwithstanding such prohibition;

(g) any "intent-to-use" trademark or service mark applications filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(h) those assets that the cost or burden of obtaining or perfecting a security interest therein are excessive in relation to the value of the security to be afforded thereby as reasonably determined by the Borrower and the Administrative Agent; and

(i) Margin Stock;

provided that "Excluded Assets" shall not include (i) any proceeds, products, substitutions or replacements of Excluded Assets (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets) or (ii) any assets included in the Borrowing Base or the LILO Borrowing Base.

"Exhibit" refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced. References to any Exhibit shall mean such Exhibit as amended, supplemented or otherwise modified from time to time.

"Licenses" means, with respect to any Person, (a) any and all licensing agreements or arrangements granting rights in and to its Patents, Copyrights, or Trademarks, (b) all of such Person's right, title, and interest in and to all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

"Patents" means, with respect to any Person, all of such Person's right, title, and interest in and to:
(a) any and all U.S. patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisionals, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights in any of the foregoing throughout the world.

"Pledged Collateral" means all Instruments, Securities and other Investment Property of the Grantor, whether or not physically delivered to the Collateral Agent pursuant to this Security Agreement, but excluding any Excluded Assets.

"Receivables" means the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

"Section" means a numbered section of this Security Agreement, unless another document is specifically referenced.

"Secured Obligations" means the Obligations.

"Secured Parties" means collectively, the Agents, the Lenders, the Indemnitees (as defined in the Credit Agreement), the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the Security Documents and, with respect to any Cash Management Obligations, any Qualified Counterparty; provided that no Qualified Counterparty shall have any rights in connection with the management or release of any Collateral or the obligations of the Grantor under this Agreement.

"Securities" means any stock certificates, unit certificates, limited or unlimited liability membership certificates or other securities (to the extent certificated) now or hereafter owned by the Grantor.

"Stock Rights" means all dividends, instruments or other distributions and any other right or property which the Grantor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Capital Stock constituting Collateral, any right to receive Capital Stock and any right to receive earnings, in which the Grantor now has or hereafter acquire any right, issued by an issuer of such Capital Stock.

"Trademarks" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all U.S. trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights in any of the foregoing throughout the world.

"UCC" means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, Collateral Agent's or any Lender's Lien on any Collateral.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE II
GRANT OF SECURITY INTEREST

The Grantor hereby pledges, assigns and grants to the Collateral Agent, on behalf of and for the ratable benefit of the Secured Parties, a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and regardless of where located (all of which will be collectively referred to as the "Collateral"), including:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Copyrights, Patents, Trademarks and Licenses;

(iv) all Documents;

(v) all Equipment;

(vi) all Fixtures;

(vii) all General Intangibles;

(viii) all Goods;

(ix) all Instruments;

(x) all Inventory;

(xi) all Investment Property;

(xii) all cash or cash equivalents;

(xiii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;

(xiv) all Deposit Accounts with any bank or other financial institution;

(xv) all Commercial Tort Claims;

(xvi) all securities accounts with any financial institution or securities intermediary;

(xvii) all Assigned Contracts; and

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

to secure the prompt and complete payment and performance of the Secured Obligations.

Notwithstanding anything herein to the contrary, in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in, any Excluded Assets.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

The Grantor represents and warrants to the Collateral Agent and the Lenders that:

3.1. Title, Perfection and Priority. The Grantor has good and valid rights in or the power to transfer the Collateral and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Permitted Liens, and has full power and authority to grant to the Collateral Agent the security interest in the Collateral pursuant hereto. When financing statements have been filed in the appropriate offices against the Grantor in the locations listed on Exhibit E, the Collateral Agent will have a fully perfected first priority security interest in that Collateral of the Grantor in which a security interest may be perfected by filing, subject only to Permitted Liens.

3.2. Type and Jurisdiction of Organization, Organizational and Identification Numbers. The type of entity of the Grantor, its state or other jurisdiction of organization, the organizational number issued to it by its state or other jurisdiction of organization and its federal employer identification number are set forth on Exhibit A.

3.3. Principal Location. The Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A.

3.4. Exact Names. The Grantor's name in which it has executed this Security Agreement is the exact name as it appears in the Grantor's organizational documents, as amended, as filed with the Grantor's jurisdiction of organization.

3.5. [Reserved].

3.6. Deposit Accounts and Securities Accounts. All of the Grantor's Deposit Accounts and Securities Accounts are listed on Exhibit B.

3.7. Intellectual Property. The Grantor does not have any interest in, or title to, any Patent, Trademark or Copyright, except as set forth in Exhibit D.

3.8. Filing Requirements. As of the date hereof, none of the Collateral owned by it with a value exceeding $2,500,000 for any individual item of Collateral is of a type for which security interests or liens may be perfected by filing under any federal statute except for Patents, Trademarks and Copyrights held by the Grantor and described in Exhibit D.

3.9. No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated naming the Grantor as debtor has been filed or is of record in any jurisdiction except for financing statements or security agreements (a) naming the Collateral Agent on behalf of the Secured Parties and (b) as otherwise permitted under the Loan Documents.

3.10. Pledged Collateral. The Borrower has no Pledged Collateral other than certain uncertificated intercompany Investments. The Pledged Collateral is owned free and clear of any Liens, except for the security interest granted to the Collateral Agent for the benefit of the Secured Parties.

ARTICLE IV
COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, the Grantor agrees that:

4.1. General.

(a) Collateral Records. The Grantor shall maintain complete and accurate (in all material respects) books and records with respect to the Collateral owned by it, and furnish to the Collateral Agent, such reports relating to such Collateral as the Collateral Agent shall from time to time request.

(b) Authorization to File Financing Statements; Ratification. The Grantor hereby authorizes the Collateral Agent to file all financing statements and other documents as may from time to time be reasonably required by the Collateral Agent in order to maintain a perfected security interest in the Collateral owned by the Grantor with the priority required by the Credit Agreement. Any financing statement so authorized may be filed in any filing office in any UCC jurisdiction and may (i) indicate the Grantor's Collateral (1) as all assets of the Grantor or words of similar effect, or (2) by any other description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Grantor is an organization, the type of organization and any organization identification number issued to the Grantor. Such Grantor also agrees to furnish any such information described in the foregoing sentence to the Collateral Agent promptly upon request. The Grantor also ratifies its authorization for the Collateral Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Notwithstanding the foregoing authorizations, the Grantor agrees to prepare, record and file, at its own expense, financing statements (and amendments or continuation statements when applicable) with respect to Collateral now existing or hereafter created meeting the requirements of the applicable state law in such manner and in such jurisdictions are necessary to prefect and maintain a perfected Lien in the Collateral, and to timely deliver a file-stamped copy of each filed financing statement or other evidence of filing to the Collateral Agent. Notwithstanding anything herein to the contrary, the Collateral Agent shall have no responsibility for preparing, recording, filing, re-recording, or re-filing any financing statement, perfection statement, continuation statement or other instrument in any public office or for otherwise ensuring the perfection or maintenance of any security interest granted pursuant to this Security Agreement, the Credit Agreement or any Loan Document.

(c) Other Financing Statements. The Grantor shall not authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by it, except for financing statements (i) naming the Collateral Agent on behalf of the Secured Parties as the secured party, and (ii) in respect to Permitted Liens. The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed by the Collateral Agent without the prior written consent of the Collateral Agent, subject to the Grantor's rights under Section 9-509(d)(2) of the UCC.

4.2. Delivery of Instruments, Securities, Chattel Paper and Documents. The Grantor shall (a) deliver to the Collateral Agent immediately upon execution of this Security Agreement and from time-to- time as required herein the originals of all Securities and Instruments constituting Collateral owned by it (if any then exist) with a value in excess of $2,500,000 individually, (b) hold in trust for the Collateral Agent upon receipt and upon request deliver to the Collateral Agent any other Securities and Instruments constituting Collateral and (c) upon the Collateral Agent's request, deliver to the Collateral Agent (and thereafter hold in trust for the Collateral Agent upon receipt and immediately deliver to the Collateral Agent) any Document evidencing or constituting Collateral. The Grantor hereby authorizes the Collateral Agent to attach each Amendment to this Security Agreement and agrees that all additional Collateral owned by it set forth in such Amendments shall be considered to be part of the Collateral.

4.3. Pledged Collateral.

(a) Exercise of Rights in Pledged Collateral.

(i) Without in any way limiting the foregoing and subject to clause (ii) below, the Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Collateral owned by it for all purposes not inconsistent with this Security Agreement, the Credit Agreement or any other Loan Document.

(ii) The Grantor shall permit the Collateral Agent or its nominee at any time during the continuation of an Event of Default, after prior written notice to the Grantor, to exercise all voting rights or other rights relating to the Pledged Collateral owned by it, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any Investment Property constituting such Pledged Collateral as if it were the absolute owner thereof.

(iii) Unless an Event of Default under the Credit Agreement has occurred and is ongoing, such Grantor shall be entitled to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Collateral owned by it to the extent not in violation of the Credit Agreement.

4.4. [Reserved].

4.5. Intellectual Property.

(a) The Grantor shall take all actions necessary and appropriate to maintain and pursue each material application, to obtain the relevant registration and to maintain the registration of each of its material Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of non-contestability and opposition and interference and cancellation proceedings, except to the extent the failure to so is not prohibited by the Credit Agreement.

(b) The Grantor shall, unless it reasonably determines that such Patent, Trademark or Copyright is not material to the conduct of its business or operations, promptly enforce its rights in any such material Patent, Trademark or Copyright, including suing for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions where the Grantor, in the exercise of its reasonable business judgment, determines that such action is appropriate, or if during the existence of an Event of Default, as the Collateral Agent shall deem appropriate under the circumstances to protect such material Patent, Trademark or Copyright.

4.6. Commercial Tort Claims. The Grantor shall promptly, and in any event within 30 days after a Commercial Tort Claim exceeding $2,500,000 is filed in a court of competent jurisdiction, notify the Collateral Agent and, unless the Collateral Agent otherwise consents, the Grantor shall enter into an amendment to this Security Agreement, in the form of Exhibit G hereto, granting to Collateral Agent a first priority security interest in such Commercial Tort Claim and in the proceeds thereof, and amending and supplementing Exhibit C.

4.7. Federal, State or Municipal Claims. The Grantor shall promptly notify the Collateral Agent of any Collateral which constitutes a claim in excess of $2,500,000 against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

4.8. No Interference. The Grantor agrees that it shall not interfere with any right, power and remedy of the Collateral Agent provided for in this Security Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

4.9. Change of Name or Location. The Grantor shall notify the Collateral Agent in writing within 30 days of each of the following (a) a change of its name as it appears in official filings in the state or jurisdiction of its incorporation or organization, (b) a change of its chief executive office, (c) a change of the type of entity that it is or (d) a change of its state or jurisdiction of incorporation or organization, in each case, and shall take any action necessary and appropriate in connection therewith (including any action to continue the perfection of any Liens in favor of the Collateral Agent, on behalf of Secured Parties, in any Collateral).

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

5.1. Remedies.

(a) Upon the occurrence of an Event of Default which is continuing, the Collateral Agent may, and at the written request of the Required Lenders shall, exercise any or all of the following rights and remedies:

(i) those rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document; *provided that,* this Section 5.1 shall not be understood to limit any rights or remedies available to the Collateral Agent and the Secured Parties prior to an Event of Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement;

(iii) without notice (except as specifically provided in Section 8.1 or elsewhere herein), demand or advertisement of any kind to the Grantor or any other Person, enter the premises of the Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at the Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Collateral Agent may deem commercially reasonable; and

(iv) concurrently upon written notice to the applicable Grantor, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon and to otherwise act with respect to the Pledged Collateral as though the Collateral Agent was the outright owner thereof.

(b) The Collateral Agent, on behalf of the Secured Parties, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance shall not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Collateral Agent shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Collateral Agent and the Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption the Grantor hereby expressly releases.

(d) Until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) Notwithstanding the foregoing, neither the Collateral Agent nor the Lenders shall be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(f) The Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (a) above. The Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the Grantor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Grantor and the issuer would agree to do so. The Collateral Agent shall incur no liability as a result of the sale (whether public or private) of the Collateral or any part thereof at any sale pursuant to this Agreement conducted in a commercially reasonable manner. The Grantor and Secured Parties hereby waive any claims against the Collateral Agent arising by reason of the fact that the price at which the Collateral may have been sold at such sale (whether public or private) was less than the price that might have been obtained otherwise, even if the Collateral Agent accepts the first offer received and does not offer the Collateral to more than one offeree, so long as such sale is conducted in a commercially reasonable manner. The Grantor and Secured Parties hereby agree that in respect of any sale of any of the Collateral pursuant to the terms hereof, Collateral Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable laws, or in order to obtain any required approval of the sale or of the purchaser by any governmental authority or official, and the Grantor and Secured Parties further agree that such compliance shall not, in and of itself, result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Collateral Agent be liable or accountable to the Grantor or Secured Parties for any discount allowed by reason of the fact that the Collateral or any part thereof is sold in compliance with any such limitation or restriction.

5.2. Grantor's Obligations Upon Event of Default. Upon the request of the Collateral Agent after the occurrence of an Event of Default which is continuing, the Grantor shall:

(a) assemble and make available to the Collateral Agent the Collateral and all books and records relating thereto at any place or places specified by the Collateral Agent, whether at the Grantor's premises or elsewhere;

(b) permit the Collateral Agent, by the Collateral Agent's representatives and agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay the Grantor for such use and occupancy;

(c) prepare and file, or cause an issuer of Pledged Collateral to prepare and file, with the Securities and Exchange Commission or any other applicable government agency, registration statements, a prospectus and such other documentation in connection with the Pledged Collateral as the Collateral Agent may request, all in form and substance satisfactory to the Collateral Agent, and furnish to the Collateral Agent, or cause an issuer of Pledged Collateral to furnish to the Collateral Agent, any information regarding the Pledged Collateral in such detail as the Collateral Agent may specify; and

(d) take, or cause an issuer of Pledged Collateral to take, any and all actions necessary to register or qualify the Pledged Collateral to enable the Collateral Agent to consummate a public sale or other disposition of the Pledged Collateral.

5.3. Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article V solely during such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby (a) grants to the Collateral Agent, to the extent that it has the right to do so and subject to any pre-existing rights of third parties, for the benefit of the Secured Parties, an irrevocable, assignable nonexclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any intellectual property rights now owned or hereafter owned or licensed by the Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, for the avoidance of doubt solely to the extent necessary or advisable (as determined in the Collateral Agent's reasonable discretion) for the Collateral Agent to exercise the rights and remedies under this Article V and (b) irrevocably agrees that the Collateral Agent may sell any of the Grantor's Inventory directly to any person, including without limitation persons who have previously purchased the Grantor's Inventory from the Grantor and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Security Agreement, may sell Inventory which bears any Trademark owned by or licensed to the Grantor and any Inventory that is covered by any Copyright owned by or licensed to the Grantor and the Collateral Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein, provided in each of the foregoing grants that, with respect to Trademarks, the Grantor shall have such rights of quality control solely as are necessary under applicable law to maintain the validity and enforceability of such Trademarks.

ARTICLE VI
ATTORNEY IN FACT; PROXY

6.1. Authorization for Collateral Agent to Take Certain Action.

(a) The Grantor irrevocably authorizes the Collateral Agent at any time and from time to time as necessary and appropriate (in the discretion of the Collateral Agent) and appoints the Collateral Agent as its attorney in fact (i) to file financing statements necessary or desirable in the Collateral Agent's reasonable discretion to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (ii) to endorse and collect any cash proceeds of the Collateral, (iii) to file any financing statement with respect to the Collateral and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as the Collateral Agent in its reasonable discretion deems necessary and appropriate to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (iv) to apply the proceeds of any Collateral received by the Collateral Agent to the Secured Obligations as provided in Section 6.4, (v) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens that are permitted by the Loan Documents), (vi) to contact Account Debtors for any reason, (vii) to demand payment or enforce payment of the Receivables in the name of the Collateral Agent or such Grantor and to endorse any and all checks, drafts, and other instruments for the payment of money relating to the Receivables, (viii) to sign the Grantor's name on any invoice or bill of lading relating to the Receivables, drafts against any Account Debtor of the Grantor, assignments and verifications of Receivables, (ix) to exercise all of such Grantor's rights and remedies with respect to the collection of the Receivables and any other Collateral, (x) to settle, adjust, compromise, extend or renew the Receivables, (xi) to settle, adjust or compromise any legal proceedings brought to collect Receivables, (xii) to prepare, file and sign such Grantor's name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (xiii) to prepare, file and sign such Grantor's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables, (xiv) to change the address for delivery of mail addressed to such Grantor to such address as the Collateral Agent may designate and to receive, open and dispose of all mail addressed to such Grantor, and (xv) to do all other acts and things reasonably necessary to carry out this Security Agreement; *provided that,* this authorization shall not relieve such Grantor of any of its Secured Obligations under this Security Agreement or under the Credit Agreement.

(b) The powers conferred on the Collateral Agent, for the benefit of Secured Parties, under this Section 6.1 are solely to protect the Collateral Agent's interests in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent agrees that, except for the powers granted in Section 6.1(a)(i) and (iii), it shall not exercise any power or authority granted to it unless an Event of Default has occurred and is continuing.

6.2. Proxy. THE GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 6.1 ABOVE) WITH RESPECT TO ITS PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE ANY OF THE PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY OF THE PLEDGED COLLATERAL, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF ANY OF THE PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY OF THE PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE PLEDGED COLLATERAL OR ANY OFFICER OR AGENT THEREOF), DURING THE CONTINUATION OF AN EVENT OF DEFAULT.

6.3. Nature of Appointment; Limitation of Duty. THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE VI IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS SECURITY AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 8.13. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER THE COLLATERAL AGENT, NOR ANY SECURED PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, NOR ANY OF THEIR OR THEIR AFFILIATES' RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO.

6.4. Application of Proceeds. At such intervals as may be mutually agreed in writing upon by the Borrower and the Collateral Agent, or, if an Event of Default shall have occurred and be continuing, at any time at the Collateral Agent's election, the Collateral Agent may apply all or any part of the net proceeds of the Collateral realized through the exercise by the Collateral Agent of its remedies hereunder, in payment of the Secured Obligations in the order set forth in Section 2.21(c) of the Credit Agreement.

ARTICLE VII
[RESERVED]

ARTICLE VIII
GENERAL PROVISIONS

8.1. Waivers. The Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantor, addressed as set forth in Section 9.1 of the Credit Agreement, at least ten days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, the Grantor waives all claims, damages, and demands against the Collateral Agent or any Secured Parties arising out of the repossession, retention or sale of the Collateral. To the extent it may lawfully do so, the Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any Secured Parties, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, the Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

8.2. Limitation on Collateral Agent's and Secured Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Agent and each Secured Party shall comply with the standard of care set forth herein with respect to the Collateral in its possession or under its control. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, the Grantor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. The Grantor acknowledges that the purpose of this Section 8.2 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.2. Without limitation upon the foregoing, nothing contained in this Section 8.2 shall be construed to grant any rights to the Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 8.2.

8.3. Compromises and Collection of Collateral. The Grantor and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, the Grantor agrees that the Collateral Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Collateral Agent in its sole discretion may determine or abandon any Receivable, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

8.4 Performance of Debtor Obligations. Without having any obligation to do so, the Collateral Agent may perform or pay any obligation which the Grantor has agreed to perform or pay in this Security Agreement and the Grantor shall reimburse the Collateral Agent for any amounts paid by the Collateral Agent pursuant to this Section 8.4. The Grantor's obligation to reimburse the Collateral Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

8.5. Specific Performance of Certain Covenants. The Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.3, 4.5, 4.6, 4.7, 4.8, 5.3 or 8.7 will cause irreparable injury to the Collateral Agent and the Secured Parties, that the Collateral Agent and Secured Parties have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Collateral Agent or the Secured Parties to seek and obtain specific performance of other obligations of the Grantor contained in this Security Agreement, that the covenants of the Grantor contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against the Grantor.

8.6. Dispositions Not Authorized. The Grantor is not authorized to sell or otherwise dispose of the Collateral to the extent prohibited herein, the Credit Agreement or in any other Security Document.

8.7. No Waiver; Amendments; Cumulative Remedies. No delay or omission of the Collateral Agent or any Secured Party to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Collateral Agent under Section 9.2 of the Credit Agreement and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Collateral Agent and the Secured Parties until the Secured Obligations have been paid in full.

8.8. Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of applicable law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in this Security Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

8.9. Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured 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 Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," 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 Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.10. Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantor, the Collateral Agent and the Secured Parties and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Collateral Agent. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties, hereunder.

8.11. Survival of Representations. All representations and warranties of the Grantor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

8.12. Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

8.13. Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no obligations outstanding) until (i) the Credit Agreement has terminated pursuant to its express terms and (ii) all of the Secured Obligations (other than contingent indemnity obligations for which no claim has been made) have been indefeasibly paid and performed in full and no commitments of the Secured Parties which would give rise to any Secured Obligations are outstanding.

8.14. Entire Agreement. This Security Agreement and the other Loan Documents embody the entire agreement and understanding between the Grantor and the Collateral Agent relating to the Collateral and supersede all prior agreements and understandings between the Grantor and the Collateral Agent relating to the Collateral.

8.15. **CHOICE OF LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

8.16. **CONSENT TO JURISDICTION. EACH PARTY TO THIS SECURITY AGREEMENT HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY U.S. FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AND EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.**

8.17. **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION**.

8.18. Counterparts. This Security Agreement may be executed in any number of counterparts, including in electronic .pdf format, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement. All notices, approvals, consents, requests and any communications hereunder must be in writing, provided that any communications sent to the Collateral Agent hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider as specified in writing to Collateral Agent by the authorized representative), in English. The Grantor and Secured Party agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Collateral Agent, including without limitation the risk of Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

ARTICLE IX
THE COLLATERAL AGENT

9.1. Barclays Bank PLC is executing this Security Agreement, not in its individual capacity but solely in its capacity as Collateral Agent under the Credit Agreement. Barclays Bank PLC has been appointed Collateral Agent for the Secured Parties hereunder pursuant to Article IX of the Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Collateral Agent hereunder is subject to the terms of the delegation of authority made by the Secured Parties to the Collateral Agent pursuant to the Credit Agreement, and that the Collateral Agent has agreed to act (and any successor Collateral Agent shall act) as such hereunder only on the express conditions contained in Article IX of the Credit Agreement. In acting hereunder, the Collateral Agent shall be entitled to all the rights, powers, protections, immunities, and indemnities under the Credit Agreement as if the same were set forth herein, *mutatis mutandis* and shall survive any termination of this Security Agreement. The permissive rights, benefits and powers granted to the Collateral Agent hereunder shall not be construed as duties. All discretionary acts hereunder (including the exercise of any remedies) shall be taken by the Collateral Agent pursuant to the terms of the Credit Agreement. The Collateral Agent shall be entitled to exercise its rights, powers and duties hereunder through agents, experts or designees and shall not be responsible for the acts of any such parties appointed with due care.

9.2. The Collateral Agent shall not be responsible in any manner whatsoever for and makes no representation as to the validity or sufficiency of this Security Agreement or for or in respect of the recitals contained herein, all of which recitals are made solely by the applicable Grantor.

9.3. The powers conferred on the Collateral Agent hereunder are solely to protect its security interest in the Collateral. Notwithstanding any provision contained in this Security Agreement, the Collateral Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it hereunder and shall not be responsible to the Grantor or any other Person for any failure to do so or delay in doing so. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty or liability as to any Collateral or as to the taking of any necessary steps to exercise or preserve any rights against prior parties or any other rights, privileges or powers pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Grantor or otherwise. If the Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by the Grantor under Section 9.3 of the Credit Agreement.

9.4. The Collateral Agent shall not be responsible for or make any representation as to the existence, genuineness, value or protection of any Collateral, for the legality, effectiveness or sufficiency of any Security Document, or for the creation, perfection, priority, sufficiency or protection of any Liens. The Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting, monitoring or maintaining the perfection of any Lien or security interest in the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise maintaining the Collateral. It is expressly agreed, to the maximum extent permitted by applicable law, that the Collateral Agent shall have no responsibility for taking any action to protect against any diminution in value of the Collateral, but, in each case (A) subject to the requirement that the Collateral Agent may not act or omit to take any action if such act or omission would constitute gross negligence or willful misconduct and (B) the Collateral Agent may do so and all expenses reasonably incurred in connection therewith shall be part of the Secured Obligations.

9.5. Nothing in this Security Agreement constitutes the Collateral Agent as an agent, trustee or fiduciary of the Grantor or as trustee or fiduciary for the Secured Party under the Credit Agreement. The relationship between the Collateral Agent and the Secured Parties is that of principal and agent only. The Collateral Agent is not responsible or liable for the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Company, the Grantor or any other Person in or in connection with the Credit Agreement, this Security Agreement or any other Loan Document or the transactions contemplated herein or therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Credit Agreement, this Security Agreement or any other Loan Document.

9.6. The protections afforded to the Collateral Agent pursuant to this Article IX shall be in addition to, and not in limitation of, any related provisions set forth in the Credit Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Grantor and the Collateral Agent have executed this Security Agreement as of the date first above written.

GRANTOR:

TPB SPECIALTY FINANCE LLC

By: _____
Name:
Title:

[Signature Page to Security Agreement]

Collateral Agent:

BARCLAYS BANK PLC, as Collateral Agent

By: _____
Name:
Title:

[Signature Page to Security Agreement]

Exhibit 21

Subsidiaries of Turning Point Brands, Inc.

The following list outlines the subsidiaries of Turning Point Brands, Inc., as of December 31, 2023.

	Jurisdiction of Organization
Turning Point Brands, Inc.	Delaware
North Atlantic Trading Company, Inc.	Delaware
National Tobacco Finance, LLC	Delaware
National Tobacco Company, L.P.	Delaware
North Atlantic Operating Company, Inc.	Delaware
RBJ Sales, Inc.	Tennessee
North Atlantic Wrap Company LLC	Delaware
TPB Services LLC	Delaware
TPB Investments LLC	Delaware
South Beach Brands LLC	Delaware
TPB Beast LLC	Delaware
Turning Point Brands, LLC	Delaware
Intrepid Brands, LLC	Delaware
Nu-X Distribution LLC	Delaware
Turning Point Brands (Canada) Inc.	Ontario, Canada
Turning Point Brands Specialty Finance, LLC	Delaware
Interchange, IC	District of Columbia

Exhibit 23

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in (i) Registration Statements No. 333-211321 and No. 333-255758 on Form S-8 of Turning Point Brands, Inc. and (ii) Registration Statement No. 333-274825 on Form S-3 of Turning Point Brands, Inc. (the Company) of our reports dated February 28, 2024, relating to the consolidated financial statements, and the effectiveness of the Company's internal control over financial reporting (which report expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting because of a material weakness), appearing in this Annual Report on Form 10-K of Turning Point Brands, Inc. for the year ended December 31, 2023.

/s/ RSM US LLP

Charlotte, North Carolina
February 28, 2024

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Graham Purdy, certify that:

1. I have reviewed this Annual Report on Form 10-K of Turning Point Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 28, 2024

By: /s/ GRAHAM PURDY

Graham Purdy
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Luis Reformina, certify that:

1. I have reviewed this Annual Report on Form 10-K of Turning Point Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 28, 2024

By: /s/ LUIS REFORMINA

Luis Reformina
Chief Financial Officer
(Principal Financial Officer)

Exhibit 31.3

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Brian Wigginton, certify that:

1. I have reviewed this Annual Report on Form 10-K of Turning Point Brands, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 28, 2024

By: /s/ BRIAN WIGGINTON

Brian Wigginton
Chief Accounting Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT

In connection with the Annual Report on Form 10-K of Turning Point Brands, Inc. (the "Company") for the year ended December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Graham Purdy, President and Chief Executive Officer, Luis Reformina, Chief Financial Officer, and Brian Wigginton, Chief Accounting Officer, of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: February 28, 2024

By: /s/ GRAHAM PURDY
Graham Purdy
President and Chief Executive Officer
(Principal Executive Officer)

Date: February 28, 2024

By: /s/ LUIS REFORMINA
Luis Reformina
Chief Financial Officer
(Principal Financial Officer)

Date: February 28, 2024

By: /s/ BRIAN WIGGINTON
Brian Wigginton
Chief Accounting Officer

Exhibit 97

Adopted: October 30, 2023

TURNING POINT BRANDS, INC.

CLAWBACK POLICY

1. POLICY

In accordance with the applicable NYSE listing rules (the "Listing Rules") and Section 10D and Rule 10D-1 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") ("Rule 10D-1"), the Board of Directors (the "Board") of Turning Point Brands, Inc. (the "Company"), has adopted this Clawback Policy (this "Clawback Policy") to provide for the recovery of erroneously awarded incentive-based compensation from Officers of the Company.

2. APPLICABILITY

This Clawback Policy applies to all current or former "Officers" of the Company (as defined below) who received Recoverable Incentive Compensation (as defined below) during the Recoupment Period (as defined below). For purposes of this Clawback Policy, "Officers" means each individual who is or was at any time during the Recoupment Period designated by the Board (or an applicable committee thereof) as an "officer" of the Company, as defined in Rule 16a-1(f) under the Exchange Act.

3. RECOUPMENT/CLAWBACK

In the event of a Restatement (as defined below), the Compensation Committee (if composed entirely of independent directors, or in the absence of such a committee, a majority of independent directors serving on the Board) (as applicable, the "Committee") shall require a current or former Officer to reasonably promptly reimburse, repay or otherwise forfeit any Excess Incentive Compensation (as defined below) received by such Officer at any time during the three completed fiscal years immediately preceding a Restatement Determination (as defined below), including any applicable transition period that results from a change in the Company's fiscal year within or immediately following those three completed fiscal years (such period, the "Recoupment Period"). For purposes of this Clawback Policy, Recoverable Incentive Compensation (as defined below) is deemed "received" during the Company's fiscal period during which the financial reporting measure specified for the incentive compensation award is attained, even if the payment or grant of the Recoverable Incentive Compensation occurs after the end of that period.

"Excess Incentive Compensation" means, without regard to any taxes paid or payable, the amount of Recoverable Incentive Compensation that was received by the Officer based on the incorrectly reported financial results of the Company that exceeds the amount of Recoverable Incentive Compensation that otherwise would have been received by the Officer if such amount(s) had been determined based on the restated financial results of the Company, in each case, as determined by the Committee. If the Committee cannot reasonably determine the amount of Excess Incentive Compensation received by the Officer based on the information set forth or reflected in the Restatement, then it will make its determination based on a reasonable estimate of the effect of the Restatement on the Company or relevant measure (i.e., the stock price or total shareholder return). The Company must maintain documentation of that reasonable estimate and provide such documentation to NYSE.

"Financial Reporting Measures" means measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are financial reporting measures for purposes of this Clawback Policy. A Financial Reporting Measure need not be presented within the financial statements or included in a filing with the SEC.

"Incentive Compensation" means any compensation to the extent the amount is paid, earned, vested or granted based wholly or in part on the attainment of one or more Financial Reporting Measures.

"Recoverable Incentive Compensation" means all Incentive Compensation received on or after the Effective Date by an Officer: (i) after beginning service as an Officer; (ii) while the Company has a class of securities listed on a national securities exchange or a national securities association; and (iii) during the Recoupment Period.

"Restatement" means an accounting restatement (i) due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial restatements that is material to the previously issued financial statements, or (ii) that corrects an error that is not material to previously issued financial statements, but would result in a material misstatement if the error were not corrected in the current period or left uncorrected in the current period.

"Restatement Determination" means the earlier to occur of (i) the date the Board, the Committee and/or management concludes (or reasonably should have concluded) that a Restatement is required, or (ii) the date a regulator, court or other legally authorized entity directs the Company to prepare a Restatement of a previously issued financial statement.

In the event of a Restatement Determination, the Committee shall promptly determine the amount of any Excess Incentive Compensation for each Officer in connection with the Restatement and shall promptly thereafter provide each Officer with a written notice containing the amount of Excess Incentive Compensation and a demand for repayment or return, as applicable. The Committee shall have discretion to determine the appropriate means of recovery of Excess Incentive Compensation based on all applicable facts and circumstances and taking into account the time value of money and the cost to shareholders of delaying recovery. The Committee seeks to recover any Excess Incentive Compensation reasonably promptly. The right of recovery under this Clawback Policy shall run in favor of the Company and its parents and subsidiaries.

4. ADMINISTRATION OF CLAWBACK POLICY

Administration of this Clawback Policy is incumbent on the Committee. The Committee is authorized to interpret and construe this Clawback Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Clawback Policy and for the Company's compliance with the Listing Rules, Section 10D, Rule 10D-1 and any other applicable law, regulation, rule or interpretation of the SEC or NYSE promulgated or issued in connection therewith. Any determinations made by the Committee shall be final and binding on all affected individuals.

Notwithstanding anything set forth herein to the contrary, the Company shall not be required to seek recovery of compensation under this Clawback Policy (i) if the Committee reasonably determines that the direct expenses to be paid to a third party to recover the Excess Incentive Compensation would exceed the amount of the compensation to be recovered, making recovery impracticable, and provides all required documentation of prior reasonable attempt(s) to recover the Excess Incentive Compensation to NYSE, (ii) if recovery would be in violation of any home country law applicable to the Company or an Officer which law was adopted prior to November 28, 2022, *provided that,* before determining that it would be impracticable to recover any amount of Excess Incentive Compensation based on violation of home country law, the Company has obtained an opinion of home country counsel, acceptable to NYSE, that recovery would result in such a violation and a copy of the opinion is provided to NYSE, or (iii) to the extent applicable, if recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder. In connection with the foregoing, the Committee must also make a determination that, as a result of any or all of the foregoing, recovery under this Clawback Policy would be impracticable.

5. NO INDEMNIFICATION

None of the Company or any of its subsidiaries shall be permitted to indemnify or insure any Officer against (i) the loss of any Excess Incentive Compensation that is repaid, returned or recovered pursuant to the terms of this Clawback Policy, or (ii) any claims relating to the Company's enforcement of its rights under this Clawback Policy.

6. OTHER RECOVERY RIGHTS

This Clawback Policy shall be binding and enforceable against all Officers and, to the extent required by applicable law or guidance from the SEC or NYSE, their beneficiaries, heirs, executors, administrators or other legal representatives. The Committee intends that this Clawback Policy will be applied to the fullest extent required by applicable law. Any employment agreement, equity award agreement, compensatory plan or any other agreement or arrangement with an Officer shall be deemed to include, as a condition to the grant of any benefit thereunder, an agreement by the Officer to abide by the terms of this Clawback Policy. Any right of recovery under this Clawback Policy is in addition to, and not in lieu of, any other remedies or rights of recovery that may be available to the Company under applicable law, regulation or rule or pursuant to the terms of any policy of the Company or any provision in any employment agreement, equity award agreement, compensatory plan, agreement or other arrangement. Any amounts paid to the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 shall be considered in determining any amounts recovered under this Clawback Policy.

If an Officer fails to repay the Excess Incentive Compensation that is owed to the Company under this Clawback Policy, the Company shall take all appropriate action to recover such Excess Incentive Compensation from the Officer, and the Officer shall be required to reimburse the Company for all expenses (including legal expenses) incurred by the Company in recovering such Excess Incentive Compensation.

7. EFFECTIVENESS OF CLAWBACK POLICY

This Clawback Policy will become effective as of October 30, 2023 (the "Effective Date"), and will thereafter remain in effect for an indefinite period of time, provided, however, that this Clawback Policy may be suspended or terminated by the Board of Directors/the Committee at any time.

ATTESTATION AND ACKNOWLEDGEMENT OF CLAWBACK POLICY

By my signature below, I acknowledge and agree that:

- I have received and read the attached Clawback Policy (this "Clawback Policy").

- I hereby agree to abide by all of the terms of this Clawback Policy both during and after my employment with the Company, including, without limitation, by promptly repaying, returning or forfeiting, or allowing the Company to withhold from future compensation otherwise payable, the value of any Excess Incentive Compensation to the Company as determined in accordance with this Clawback Policy. I hereby agree that this Clawback Policy does not consitute a breach of any provision of my employment agreement or other compensatory agreement or arrangement with the Company.

_____

[Officer Name]
Date: